

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

Floor Debate  
April 07 , 2010

---

[LB252 LB373 LB411 LB420 LB507A LB563 LB563A LB594 LB695 LB696 LB706  
LB712 LB713 LB732 LB758 LB759 LB760 LB771 LB779 LB780 LB789 LB792 LB809  
LB813 LB820 LB829 LB844 LB852 LB861 LB864 LB872 LB880A LB880 LB884 LB894  
LB901 LB907 LB908 LB924 LB931 LB933 LB934 LB947 LB961 LB965 LB970 LB975  
LB978 LB986 LB987 LB987A LB993 LB996 LB997 LB999 LB1014 LB1020 LB1047  
LB1048A LB1048 LB1055 LB1065 LB1072 LB1081 LB1085 LB1103 LR540 LR541  
LR549 LR550 LR551 LR552 LR553]

SENATOR STUTHMAN PRESIDING

SENATOR STUTHMAN: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-fifth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Stephen Floyd, Church of the Nazarene, from Falls City, Nebraska, Senator Heidemann's district. Please rise.

PASTOR FLOYD: (Prayer offered.)

SENATOR STUTHMAN: Thank you, Pastor Floyd. I call to order the fifty-fifth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

SENATOR STUTHMAN: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR STUTHMAN: Are there any messages, reports, or announcements?

CLERK: I have the Reference report referring certain study resolutions to the appropriate standing committees, Mr. President. And that's all that I have. (Legislative Journal pages 1317-1326.)

SENATOR STUTHMAN: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, Mr. Clerk.

CLERK: Mr. President, LB507A on Select File. Senator Nordquist, I have no amendments to the bill. [LB507A]

SENATOR STUTHMAN: Senator Nordquist for a motion. [LB507A]

SENATOR NORDQUIST: Mr. President, I move LB507A to E&R for engrossing.

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

Floor Debate  
April 07 , 2010

---

[LB507A]

SENATOR STUTHMAN: All those in favor say aye. All those opposed, nay. Motion carried. Mr. Clerk. [LB507A]

CLERK: Mr. President, LB594. Senator Nordquist, Enrollment and Review amendments first of all, Senator. (ER8220, Legislative Journal page 1139.) [LB594]

SENATOR STUTHMAN: Senator Nordquist for a motion. [LB594]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB594. [LB594]

SENATOR STUTHMAN: You have heard the motion. All those in favor say aye. All those opposed say nay. It does advance. The amendments were adopted. [LB594]

CLERK: Mr. President, Senator Dierks would move to amend with AM2386. (Legislative Journal page 1260.) [LB594]

SENATOR STUTHMAN: Senator Dierks, you are recognized to open on your amendment. [LB594]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. The amendment is strictly a technical amendment that Bill Drafters caught, and it does...it changes nothing in the bill. It just puts some different numbers in place that are supposed to be there. I can't find the...the amendment clarifies that a violation of the provisions of LB594 is cause for a civil action only. Violations of other sections of the informed consent provisions may be cause for criminal action or professional negligence. So this just clears that up. I ask for your support of that technical amendment. [LB594]

SENATOR STUTHMAN: Thank you, Senator Dierks. Senator Haar, you're recognized. [LB594]

SENATOR HAAR: Mr. President and members of the body, as you probably know, I oppose LB594 because...however, I know it will pass, and so what I'd like to take some time today is to suggest some other things. That said, I'm a person that believes that abortion should be legal and rare. There are many beliefs about abortion in Nebraska. There are those who believe that there should be no abortions, period. There are those who believe that abortion should be only for rape, incest, or the health of the mother. There are people like me who believe that abortion should be legal but rare. And then, of course, there are some people who would say that there should...abortion shouldn't be limited in any way. So I really think there are two ways to reduce the number of

Floor Debate  
April 07 , 2010

---

abortions. The first is to limit access to abortion and the second is to reduce the need for abortion. And today I want to talk some about...take my time at the mike to talk about the second option: reducing the need for abortion. I want to talk about what I believe is a commonsense and effective way to reduce the need for abortions: namely, prevention of unintended pregnancies. I want to start with the chart that I handed out. And I won't be too long at the mike today, but I want to talk about this some. If you look at the chart, about half of all pregnancies are intentional and about half of all pregnancies are unintentional. Now the really surprising thing...or maybe not surprising, if you look at this pie chart, is for intended pregnancies, 4 percent of those end in abortion--4 percent--or about 2 percent of all pregnancies. If you look at unintended pregnancies, about 40 percent of unintended pregnancies end in abortion. And so that's what I want to talk about today. Senator Dierks's bill, LB...the one we're talking about, LB594, I assume is about reducing the number of abortions. Senator Flood's bill, LB1103, is about reducing abortions after the twentieth week. That's about 1.1 percent of all abortions. I will be talking about reducing this 20 percent of all abortions' piece of the pie--this brown piece. Furthermore, I believe that pregnant women that would be dissuaded by Senator Dierks's bill or Senator Flood's bill will probably just go to Iowa or Colorado, sort of a not-in-my-backyard approach. But prevention deals with women in Nebraska and unintended pregnancies in Nebraska. So, first of all, I'd like to go over--let's see if I could get a page--first of all, I would like to go over briefly...I'm going to talk about what the abortion law is, Roe v. Wade, in Nebraska; I'm going to talk about some abortion facts; then about what works and what doesn't work in terms of unintended pregnancies. Abortion law. The thing I'm passing out now, if you look at side 2 of something called "In Brief," is a summary of abortion law. "In the 1973 Roe v. Wade decision, the Supreme Court ruled that women, in consultation with their physician, have a constitutionally..." [LB594 LB1103]

SENATOR STUTHMAN: One minute. [LB594]

SENATOR HAAR: Thank you. "...a constitutionally protected right to have an abortion in the early stages of pregnancy--that is, before viability--free from government interference. In 1992, the Court reaffirmed the right to abortion in Planned Parenthood v. Casey." But it did give the "states the right to enact restrictions that do not create an 'undue burden' for women seeking abortion. Congress has barred the use of federal Medicaid funds to pay for abortions, except when the woman's life would be endangered by a full-term pregnancy or in cases of rape...." And "Family planning clinics"--again on the second page of this--"have helped women prevent 20 million unintended pregnancies during the last 20 years. An estimated nine million of these pregnancies would have ended in abortion." And I'll continue during my next time at the light. Thank you. [LB594]

SENATOR STUTHMAN: Thank you, Senator Haar. (Visitor introduced.) Those wishing to speak: Senators Dierks, Conrad, Council, and Haar. Senator Dierks, you are

Floor Debate  
April 07 , 2010

---

recognized. [LB594]

SENATOR DIERKS: Thank you, Mr. Chairman. The...I wanted to put some information into the record for the public record. You know, I understand to...that to those of us that are not physicians or statisticians, that the definition for complications associated with abortion and risk factors might appear confusing since we don't use terms like "statistical significance" every day. But these definitions have been prepared with the assistance of experts in the field and they have also been reviewed by the Nebraska Medical Association and accepted as clear and reasonable. As terms of art, these definitions have been carefully worded to be very clear and objective and to make perfect sense to statisticians and physicians who are familiar with reading medical studies. The statistical standard for significant findings used in this definition is the same standard used throughout nearly all medical studies, and such statistically significant results are always clearly noted in the tables and discussion sections of peer-reviewed studies. Plus, LB594 carefully defines that only studies published in peer-reviewed journals, which are indexed by the widely recognized indexing services which recognize the highest quality of medical journals, have a bearing on the issue. So the definition includes both the statistical tests and quality research test. Opponents of LB594 suggest that it is unreasonable to expect abortion doctors to stay informed of the medical literature on abortion risks, but everyone else in medicine...everywhere else in medicine we expect our doctors to stay up-to-date on their specialty. We even require them to take continuing education courses every year, and most belong to a specialized medical association like the AMA or the National Abortion Federation which help to keep them up-to-date on the latest research findings. Secondly, keeping up-to-date on the studies, especially in this computerized age, is actually very easy to search for studies using Internet-based medical research tools. Third, I want to emphasize that a number of studies being done on abortion and risk factors is actually relatively small. The much-talked-about APA task force on abortion found that between 1990 and 2007, an 18-year period, there were only 216 peer-reviewed studies published on issues related to abortion and mental health. That's only 12 studies per year. Surely it's not too much to ask abortion providers to read 12 studies per year. And even if a doctor doesn't want to personally read 12 studies per year, surely he can...we can expect the professional associations like the National Abortion Federation or Planned Parenthood to assign a staff member to review these 12 studies and to then notify their members if there are any new findings that should affect their screening and counseling practices. If neither the doctor nor the medical association he or she belongs to are willing to pay attention to the research, isn't that negligence? Well, I think it is. Women deserve better. Women rightly expect their doctors to keep up-to-date on their area of specialty. Why would we want the standards of care for abortion to be less than that for other medical procedures? And this complaining about how difficult it would be to keep up on new research is simply not credible. The problem is not that the list of risk factors is constantly growing too fast to keep up with; the problem is that the risk factors that have already been identified are all being entirely ignored and they don't want to start

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

Floor Debate  
April 07 , 2010

---

screening. Why? Because at the present time abortion providers face... [LB594]

SENATOR STUTHMAN: One minute. [LB594]

SENATOR DIERKS: ...no liability risks for ignoring the mental health risks of abortion. One minute? [LB594]

SENATOR STUTHMAN: Yes. [LB594]

SENATOR DIERKS: Right now, women have virtually no standing to sue when they only experience psychological injury. Under current law, unless there is also a physical injury, women are deprived the right to hold abortionists accountable for psychological injuries, even when these injuries could have been predicted based on known, proven, and universally accepted risk factors. This bill corrects that defect in the law. Thank you, Mr. Chairman. [LB594]

SENATOR STUTHMAN: Thank you, Senator Dierks. (Visitors introduced.) Those wishing to speak: Senator Conrad, Council, and Haar. Senator Conrad, you are recognized. [LB594]

SENATOR CONRAD: Thank you, Mr. President. I'd yield the balance of my time to Senator Haar, if he would so desire. [LB594]

SENATOR HAAR: Yes, thank you very much. [LB594]

SENATOR STUTHMAN: Senator Haar, you're yielded 4 minutes 50 seconds. [LB594]

SENATOR HAAR: Thank you. I want to go on talking about prevention. And if you don't take anything else away today or don't listen, I hope you'll look at this graph again, because 40 percent of unintended pregnancies come...end in abortion, whereas, only 4 percent of intended pregnancies end in abortion. And what I'm talking about today is, how do we prevent unintended pregnancies? Because although some of these other measures are perhaps what the body wants generally, one of the ways we could prevent the most abortions is through preventive measures. So the second handout I gave you, called "In Brief," I handed this out because I want you to know who the women are who tend to have unintended pregnancies, and therefore, abortions. If you look at the top of the first page, "Nearly half of pregnancies among American women are unintended, and four in ten of these are terminated by abortion." That's my graph that I'm showing you. "Forty percent of pregnancies among white women, 69 percent among blacks and 54 percent among Hispanics are unintended." And if you go on, "At least half of American women will experience an unintended pregnancy by age 45, and, at current rates, about one-third will have had an abortion." And then who has an abortion? I think it's important that we understand this. "Fifty percent of U.S. women

Floor Debate  
April 07 , 2010

---

obtaining abortions are younger than 25: Women aged 20 to 24 obtain 33 percent of abortions, and teenagers obtain 17 percent. Thirty-seven percent of abortions occur to black women..." and so on, and then "...34 to non-Hispanic white women, 22 percent to Hispanic women and 8 percent to women of other races. Forty-three percent of women obtaining abortions identify themselves as Protestant, and 27 percent" identify themselves "as Catholics. Women who have never married obtain two-thirds of all abortions." And then really important here is lower income people are affected the most by unintended pregnancies and, therefore, have the most abortions. "The abortion rate among women living below the federal poverty level is more than four times that of women above 300 percent of the poverty level. This is partly because the rate of unintended pregnancies among poor women is nearly four times that of women above 200 percent of poverty. The reasons women give for having an abortion underscore their understanding of the responsibilities of parenthood and family life. Three-quarters of women cite concerns for or responsibility to other individuals; three-fourths say they cannot afford a child; three-fourths say that having a baby would interfere with work, school or the ability to care for dependents; and half say they do not want to be a single parent or are having problems with their husband or partner." So, very much, the thing of unintended pregnancies, and therefore, abortion, is connected to income, to poverty. Then "Contraceptive Use." Here is...and later I'm going to talk a little bit about the need for education and access to healthcare. This is really important: "Fifty-four percent of women who have abortions had used a contraceptive method during the month they became pregnant. Among these women, 76 percent of pill users..." [LB594]

SENATOR STUTHMAN: One minute. [LB594]

SENATOR HAAR: Thank you. "...and 49 percent of condom users report having used their method inconsistently, while 13 percent of the pill users and 14 percent of condom users report correct use." So much of the unintended pregnancies come from women who aren't using condoms or pills correctly. "Forty-six percent of women who have abortions had" some "contraceptive method...during the month they became pregnant. Of these..., 33...had perceived themselves to be at low risk..., 32...had had concerns about contraceptive methods, 26...had had unexpected sex and 1 percent had been forced to have sex." I'll continue with this the next time I'm at the mike. Thank you. [LB594]

SENATOR STUTHMAN: Thank you, Senator Haar and Senator Conrad. Senator Council, you are recognized. [LB594]

SENATOR COUNCIL: Yes, thank you, Mr. President. While I don't expect to change any minds on this bill or this subject, I must rise to continue to point out the glaring inconsistencies between this bill and LB1103. LB1103 obliterates the viability standard as the measure of when this state can prohibit a woman from obtaining an abortion--a standard which is now and has been the law of the land. On the other hand, if we look

Floor Debate  
April 07 , 2010

---

at LB594, it is premised on a viability standard. LB594 specifically speaks to the interests of the state to protect and, I quote, every viable unborn child being aborted. In fact, LB594 contains a definition of viability which in no way takes into consideration the purported basis for the change in LB1103. There is no mention in the definition of viability in LB594 that speaks to any pain thresholds or any of the evidence that was presented in support of LB1103. Rather, LB594 recognized and confirms that the standard for determining when a state can prohibit an abortion is viability. Of equal concern is the fact that LB1103 essentially ignores the physical and mental health needs of the woman, and I particularly stress her mental health needs, because LB594, again, is ostensibly premised on the belief that the existing standard of care for preabortion screening and counseling is not always adequate to protect, and again I quote, the health needs of the woman. Indeed, LB594 specifically requires that at least 24 hours before performance of an abortion a physician, psychiatrist, psychologist, mental health practitioner, physician's assistant, registered nurse, or a social worker licensed under Uniform Credentialing Act, has evaluated the pregnant woman. Let me repeat: psychiatrist, psychologist, mental health practitioner. And what is the purpose of this screening if the woman's mental health is of no consequence under LB1103? Allow me to further highlight the absurdity of this dichotomy. LB594 specifically requires the physician performing an abortion to document in the woman's permanent record whether the doctor has formed a reasonable medical judgment that, and I again quote directly from LB594, continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated... [LB594 LB1103]

SENATOR STUTHMAN: One minute. [LB594]

SENATOR COUNCIL: ...by induced abortion. Clearly, LB594 recognizes something that LB1103 doesn't recognize, and that is the fact that there may be occasions where the risk of harm to the mental health of the woman is greater than preventing an induced abortion. And why must a doctor document his or her medical judgment if in LB1103 we ignore the doctor's medical judgment? Even if the doctor concludes that continuance of the pregnancy would involve risk or injury to the physical or mental health of the woman that is greater than if the pregnancy were terminated, LB1103 would prohibit that doctor from performing an abortion at or after 20 weeks. Quite frankly, in my opinion, LB594 confirms that LB1103 represents... [LB594 LB1103]

SENATOR STUTHMAN: Time. [LB594]

SENATOR COUNCIL: ...an unnecessary and impermissible intrusion. [LB594]

SENATOR STUTHMAN: Thank you, Senator Council. Senator Haar, you are recognized. [LB594]

Floor Debate  
April 07 , 2010

---

SENATOR HAAR: Mr. President, members of the body, I'm going to continue with what I've been talking about and, again, I'd refer you to the pie chart. Half of all pregnancies in this country are unintended and 40 percent of those end in abortion. And what I'm looking for really is some common ground in this body. Perhaps next year there will be some legislation to this effect, that one effective way of dealing with abortion is to try to limit the number of unintended pregnancies. The fact sheet that I handed out, called "In Brief," talks about that lower income women are more at risk, and the section on "Contraceptive Use" talks about the need for more education and access to healthcare, all of these reducing the need for abortion. Then I'd like to talk about what works and what doesn't work because there has been study on what works and what doesn't work in terms of preventing unintended pregnancies. First of all, and hopefully next year we can have a more extended debate on this, that education that stresses abstinence-only until marriage really does not work, and that's according to many studies that have been done. Quoting: One and a half billion dollars has been spent over the past 25 years on abstinence-only until marriage programs, yet no study in a professional peer-reviewed journal has found these programs to be broadly effective. Scientific evidence simply does not support an abstinence-only until marriage approach. There's another approach called...well, abstinence-only until marriage programs often have virginity pledges connected with them. And research on virginity pledges has found that actually it delays the onset of sexual intercourse for an average of 18 months. However, when these people who have taken an abstinence-only pledge, after 18 months, become sexually active, the first sex is usually unprotected, probably out of guilt, and that among people who took the pledge and didn't, the rate of sexually transmitted diseases was the same in both groups: those who had and hadn't taken the pledge. Further research found that among those young people who have not had vaginal intercourse, pledgers were more likely to have engaged in both oral and anal sex than their nonpledging peers. And again, I hope we can have some extended debate on this next year: what works and what doesn't. One of the problems with much of the abstinence-only education is that it makes false statements about reproductive healthcare, and I'm going to read you some of these. One statement, and this comes from the teachers guide to Reasonable Reasons to Wait, says AIDS can be transmitted by skin-to-skin contact. In truth, the HIV virus that causes AIDS can be transmitted only through direct exchange of bodily fluids such as blood, semen, vaginal secretions, or breast milk. Another misinformation, for example, and this is from Me, My World, My Future: At the least, the chances of getting pregnant with a condom are... [LB594]

SENATOR STUTHMAN: One minute. [LB594]

SENATOR HAAR: ...1 out of 6. In truth, when used consistently and correctly, condoms are 98 percent effective in preventing pregnancies, and also, importantly, they prevent STDs--help prevent STDs. From another manual called WAIT Training, "One thing that sex education and the media fail to communicate is the power of sex." And this is a quote. "Spies, who are trained not to give away government secrets, even lose their

Floor Debate  
April 07 , 2010

---

sensibilities and give in to the power of sex, often because of what a woman is wearing." Another. One mother told me about her daughter who had been in a sex education class that was abstinence-only, and the instructor used Scotch tape and put it on her hand and said, sex is like Scotch tape: the more you peel it off and put it back on, the less well it works. Now there is a study that was done recently that was... [LB594]

SENATOR STUTHMAN: Time. [LB594]

SENATOR HAAR: Thank you. [LB594]

SENATOR STUTHMAN: Thank you, Senator Haar. (Visitors introduced.) Those wishing to speak: Senators Conrad, Dierks, Langemeier, Council, Dubas, and Senator Haar. Senator Conrad, you are recognized. [LB594]

SENATOR CONRAD: Thank you, Mr. President. I'd yield the remainder of my time to Senator Haar, if he so desires. [LB594]

SENATOR STUTHMAN: Senator Haar, you are yielded 4 minutes 50 seconds. [LB594]

SENATOR HAAR: Yes. Thank you very much, Senator Conrad. Again, what I'm talking about today is a way of preventing abortion, which is the purpose of LB594 and LB1103. Again, the chart showing that half of all pregnancies are unintended and that 50 percent are...I'm sorry, 40 percent of those unintended pregnancies result in abortions. So I'm talking about how we can...what works and what doesn't work in terms of preventing unintended pregnancies. As of...I just got a report here dated February 2010, and there is a study that shows that abstinence...a program where abstinence-only worked, and I'd like to talk about that for a minute. In this study, this was an abstinence-only intervention aimed at young urban African-American adolescents which successfully delayed sexual initiation among participants in the program according to a well-designed new study. Now this is sort of a segue into my next portion: What does work? Because this abstinence-only program, unlike most programs, did not promote abstinence-only until marriage, and this is a quote: The target behavior was abstaining from vaginal, anal, and oral intercourse until a later time in life when the adolescent is more prepared to handle the consequences of sex. The program was not infused with morality, was medically accurate, and did not disparage contraception. The intervention did not contain inaccurate information. It portrayed sex...it did not portray sex in a negative light or use a moralistic tone. The training and curriculum manual explicitly instructed the facilitators not to disparage the efficacy of condoms or allow the view that condoms are ineffective, to go uncorrected. Furthermore, the authors are careful to note, and in many of these studies, that this was a small sample size and was hard to draw conclusions. However, while the study showed that the abstinence-only programs had a significant impact in delaying sexual initiation among participants, about one-third

Floor Debate  
April 07 , 2010

---

of the students who had not had sex when they started the abstinence-only program, had initiated sex at the two-year follow-up. And that's true of almost all other programs studied. In other words, while it's an important achievement to delay sexual initiation, it is likewise important to prepare students for the time when they do become sexually active. And my next time at the mike I would like to talk about studies showing what actually does work to prevent unintended pregnancies and, therefore, a huge number of abortions. Thank you. [LB594 LB1103]

SENATOR STUTHMAN: Thank you, Senator Conrad and Senator Haar. Senator Dierks, you are recognized. [LB594]

SENATOR DIERKS: Thank you, Mr. Chairman, members of the Legislature. I would like to continue to put into the record some information for our use. It has been suggested that the Legislature or perhaps the Department of Health should draw up a specific list of risk factors instead of using this definition referring to the medical literature and a specific level of statistical significance. There are three key reasons why that's a bad idea. First is the definitions in LB594 have already been prepared in consultation with physicians and statisticians to carefully and accurately reflect the terms of art already used in medicine for the accepted statistical standard of reliability. This definition provides a clear and objective standard that ensures that when statistically validated studies are published in the future, that they may discover a new risk factor, the standard of care will catch up. Secondly, the idea of assigning the task of creating a list of risk factors to the Department of Health would just turn this into a game of endless political football. Unless you require DHS to use exactly the same objective standards that is already in the bill, you would be inserting an element of subjective judgment into the process that would expose the department to endless lawsuits regarding which risks should be included and which should be excluded. After all, there are an endless number of disputes that researchers and doctors can raise regarding the details of any given study. At the end of the day the final determination about these disputes can only be made by a judge and jury after they hear the sworn testimony of both sides on the studies in question. Instead of exposing the Department of Health to lawsuits, we should leave disputes about the literature to be settled between the lawyers for the women and the lawyers for the doctor. At least, then the decision of the judge and jury will settle an actual case between a plaintiff and defendant instead of just laboring the Department of Health. Third, trying to create a specific list of five or ten factors shifts the moral responsibility for omitting screening requirements which may lead to women being injured from the abortion provider to us, the Legislature. Do you want to be responsible for women not getting adequate screening? For example, if we created a specific list and decided to leave off a particular risk factor like having green hair, to use a silly example, then if a woman with green hair actually...if women with green hair actually do suffer more complications from abortion, perhaps even death, who would be responsible for this omission? We would; not the doctor. We would be the only ones who decided to omit this factor. In fact, our decision to omit green hair from the list

Floor Debate  
April 07 , 2010

---

would actually give the negligent abortion provider complete protection from liability, even if it turns out that green hair really is an important risk factor. After all, if we decide to leave the factor off of our official list, then the abortion provider could then say I did what the state told me to do; you can't hold me liable for omitting risk factors that the state agrees can be omitted. It has also been suggested that in addition to protecting women from unsafe abortions, we should be equally worried about protecting abortion doctors from lawsuits. That is why they advocate for a specific narrow list of risk factors to be identified in the law, because doing so would shift the responsibility for knowing the literature to the state instead of the physicians. That's a bad idea. It is precisely the job and responsibility of doctors advocating any medical treatment to know its risk and benefits and to know when it should be recommended and when it should be avoided. [LB594]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: One minute. [LB594]

SENATOR DIERKS: That's their job. It is also definitely not the job of the Department of Health to essentially subsidize abortion providers by bearing the cost of doing their medical research for them. It is their medical practice. They should research and prepare their own checklists, not DHS. Our job as legislators isn't to count how many studies agree with this view or disagree with that, but it is certainly within the scope of our job to take notice when injured women complain of inadequate screening and to step in to strike a balance between the rights of patients and the duties of doctors. Thank you, Mr. President. [LB594]

SENATOR CARLSON: Thank you, Senator Dierks. Senator Langemeier, you are recognized. [LB594]

SENATOR LANGEMEIER: Thank you, Mr. President. I'd yield my time to Senator Dierks. [LB594]

SENATOR CARLSON: Senator Dierks, 4 minutes 50 seconds. [LB594]

SENATOR DIERKS: Thank you, Mr. Chairman. We just decided that our job in the Legislature isn't to count how many studies agree with this view or disagree with it, but it's certainly within the scope of our job to take notice when injured women complain of inadequate screening and to step in to strike a balance between the rights of patients and the duties of doctors. Today, that means our job in passing LB594 is to eliminate the barriers that prevent women from holding doctors accountable for negligent screening which leads to otherwise predictable bad results. At the end of the day, the exact checklist for what that screening should include should be determined not by us, but rather by a judge and jury after they have heard the sworn testimony describing the

Floor Debate  
April 07 , 2010

---

best peer-reviewed studies by experts from both sides. The clear objective statistical standard used in the definitions for this bill are reasonable, fully understandable to the appropriate experts, and will certainly be upheld by the courts. What we have in this bill is the best we can do. How carefully the abortion providers want to follow the definition is up to them. If they are cautious, they will carefully review the 200 or so studies out there and come up with a very thorough checklist. Or if they truly believe the short list of risk factors identified by the APA as adequate, they are free to use that list. If all their patients are well-served when they use the APA short list, then no one will sue them and they should get along just fine. If that list is inadequate, however, and women are hurt and do sue, then one or two suits will likely lead them to revise their perfect list. That is a part of the purpose of medical malpractice suits: They help doctors to recognize oversights and to correct them. That's what prevents the same mistake in the future. I really don't know if abortion providers will get the risk factor checklist right from day one, but I am sure that if we eliminate the barriers that prevent women from holding abortion providers accountable for negligent screening, it won't be long until the best preabortion screening in the country will be here. Thank you, Mr. President. [LB594]

SENATOR CARLSON: Thank you, Senator Dierks. Senator Council, you are recognized. [LB594]

SENATOR COUNCIL: Thank you, Mr. President. Again, the point of my rising on LB594 is to point out how inconsistent the measures, that this body is considering advancing, are on this subject. On one hand, the health and well-being of the woman is paramount and, again, that's ostensibly the purpose of LB594. But LB1103 literally ignores the health and well-being of the woman. LB594 expressly provides that clarifying the minimum standard of care for preabortion screening and counseling in statute is a practical means of protecting the well-being of women and may better ensure that abortion doctors are sufficiently aware of each patient's risk profile so that they may give each patient a well-informed medical opinion regarding her unique case. Sounds all well and good until you look to LB1103 where it doesn't matter what the doctor determines with regard to the woman's risk profile. It doesn't matter what his or her well-informed medical opinion is regarding her unique case. Instead, LB1103 simply sets out a prohibition on abortions at 20 weeks, and the only emergency situation that involves the health of the woman is her death or what is stated but not defined as an impairment of a major bodily function. Now some would disagree that mental health or mental disability is a major bodily function. During the committee discussions of LB1103 and LB594, there were efforts made to make these two measures consistent by inserting mental health into LB1103. The woman's mental health was rejected, not only by the committee, but by this body in advancing LB1103. So I have difficulty understanding how this body can advance LB594, that places an emphasis on determining a woman's mental health, ignoring the fact that LB594 says that if that evaluation shows that there is greater harm to the woman and her mental health if she continues the pregnancy, yet LB1103 doesn't provide her with the option of terminating. What sense does it make to

Floor Debate  
April 07 , 2010

---

have that requirement in LB594 if it's meaningless because of the application of LB1103? Another problem with this measure and LB1103 is LB594 requires the provider to perform this risk assessment, specifically mandates that the provider provide the woman with a written statement as to complications associated with abortion which is the defined in LB594 as meaning any adverse... [LB594 LB1103]

SENATOR CARLSON: One minute. [LB594]

SENATOR COUNCIL: ...physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a 5 percent probability that the result is due to chance. Senator Flood, timely entrance into the Chamber. If Senator Flood would yield to a question? [LB594]

SENATOR CARLSON: Senator Flood, would you yield? [LB594]

SPEAKER FLOOD: Yes. [LB594]

SENATOR COUNCIL: Senator Flood, do you know whether or not the issue of fetal pain is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a 5 percent probability that the result is due to chance? [LB594]

SPEAKER FLOOD: Would you repeat the second part of your question? [LB594]

SENATOR COUNCIL: Okay. Do you know whether fetal pain has been reported in a peer-reviewed journal to be statistically... [LB594]

SENATOR CARLSON: Time. [LB594]

SENATOR COUNCIL: ...associated with abortion? [LB594]

SENATOR CARLSON: Thank you, Senator Council and Senator Flood. Those still wishing to speak: Senators Dubas, Haar, and Conrad. Senator Dubas, you're recognized. [LB594]

SENATOR DUBAS: Thank you, Mr. President. Good morning, colleagues. I won't pretend in any way, shape, or form to know what's going through a woman's mind when she's contemplating an abortion, but I simply will remember a question that was asked of me when I was expecting our fourth child. And our family doctor that we had had up until that point, had passed away. We had a new doctor in the clinic. I had yet to have gone in and seen him, and so when I decided it was time for me to confirm my pregnancy and begin my checkups, I went to this new doctor and introduced myself and had a little bit of conversation and then told him that I was fairly certain I was expecting

Floor Debate  
April 07 , 2010

---

our fourth child. His immediate question to me was, well, do you want it? And that so caught me off guard, I didn't even know what to say. After getting my wits about me, I quickly said, well, of course we want this baby, and, you know, then we went on with the checkup. But I couldn't get that question out of my mind, and it, to this day, makes me wonder how many women go in and are asked that question and who are in a position where they aren't sure. Maybe they don't have family support. Maybe they have no financial means. Maybe there are a lot of reasons why when asked that question, they aren't sure and they don't know what other options they have, and they're scared, and to have a medical professional ask them that question may lead them to making a decision that isn't in their best interest. So I appreciate Senator Dierks introducing this bill. I support this bill and would be happy to yield him any of my time should he so desire. [LB594]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Dierks, 3 minutes. [LB594]

SENATOR DIERKS: Thank you, Mr. President. I'd just like to go through again some of the things that LB594 does. It amends Nebraska's informed consent statute on abortion to require abortionists to screen mothers for risk factors that decrease their likelihood of having postabortion complications--emotional, psychological or physical; it better protects women from undergoing coerced abortions, which is a major risk factor for severe postabortion psychological problems; it clarifies in statute the duty of physicians to screen for risk factors which place women at higher risk of postabortion complications. It strengthens informed consent requirements by ensuring that women are given not only the general information about abortion risks, but also the specific information most relevant to individual women according to their own unique risk factors. It removes legal obstacles which typically make it difficult or impossible for a woman to hold an abortionist liable for avoidable injuries which may have been avoided with proper screening and counseling; and it better protects women from illegal abortions and/or the marketing of self-abortion kits. What it does not do: It does not impose any requirements on abortion providers that are contrary to the standard of care for screening for which it applies to other medical procedures. It does not impose any burdens on women seeking abortions. It does not ban any abortions, even in those cases where a woman may be at higher risk of one or more adverse reactions. Thank you, Mr. President. [LB594]

SENATOR CARLSON: Thank you, Senator Dierks. Senator Haar, you're recognized. This is your third time. [LB594]

SENATOR HAAR: Thank you, Mr. President, members of the body. What I'm talking about today is how to prevent abortions, and we know that there's several. Senator Dierks's bill is about that. Senator Flood's bill is about that. And if you don't keep anything else I've handed out, keep that graph, because 40 percent of all unintended pregnancies end in abortion and that's what I think we need to target, and that...we'll

Floor Debate  
April 07 , 2010

---

see some legislation from me next year on that. I talked about what doesn't work, and next year we're going to talk about what does and doesn't work and peer-reviewed journals and statistics and those kinds of things, because we need to find out really what works and doesn't work in terms of preventing unintended pregnancies. And I'm going to quote a senator who is not here who made a statement several years ago. Senator White said, I am pro-life, and that's the way he votes. Then he goes on to say, if you're seriously opposed to abortion, the most dangerous thing you can do is to promote ignorance, and that's a quote from April 1, 2008, Lincoln Journal Star. What does work, and I'm going to read here some from the Lincoln Journal Star of March 18, 2008: The most controversial policy change that is needed for the federal government to start promoting abstinence-plus sex education programs...and this article was written in the lieu of release of...I'm sorry, because there was a study that was released showing a high rate of STDs in Nebraska teens, especially in Omaha. Abstinence-only programs aren't working. The teen birth rate rose in 2006 after 14 years of decline. The Centers for Disease Control has also reported last year that after years of decline, teen sexual activity hit a plateau. An evaluation of 48 programs in a study commissioned by the National Campaign to Prevent Teen and Unplanned Pregnancies showed that the most effective programs emphasized abstinence as the safest approach and also encouraged condom and contraceptive use for those who are sexually active. In other words, we can't put our head in the sands. According to the study author, Doug Kirby, the abstinence-plus or comprehensive programs do not increase sexual behavior and often resulted in a delay in sexual initiation. Kirby reported programs that were most successful, quote, tended to talk explicitly about sex and contraceptive use, identified specific situations that might lead to unwanted sex or sex without contraception, discussed how to avoid or get out of such situations, and practiced saying no to sex or insisting on contraceptive use. In Nebraska, in recent years, and this is still true, state officials seem to have become afraid of the word "sex," ordering it stricken from several publications, if you remember. Trying to hide from problems and controversy will only hurt in the long run. State officials need to confront these dangerous trends with pragmatic problems that have been shown to be the most effective. And the most effective programs have been shown to be those that are medically accurate, age appropriate, and comprehensive. In other words, as the Lincoln Journal Star called them, "abstinence-plus": teaching abstinence as the safest approach and also encourage condom and contraceptive use for those who are sexually active. So we know it works... [LB594]

SENATOR CARLSON: One minute. [LB594]

SENATOR HAAR: Thank you. We know what works and doesn't work, and by approaching the problem by preventing unintended pregnancies could also save the state a great deal of money. And either now or in a future time I'm up...I'm sorry. At a future time that I'm up at the mike, I would like to show you how the state could actually save money by tackling unintended pregnancies that 40 percent of the time result in

Floor Debate  
April 07 , 2010

---

abortions. Thank you very much. [LB594]

SENATOR CARLSON: Thank you, Senator Haar. Senator Conrad, you're recognized. This is your third time. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. And this actually dovetails nicely on some of the comments Senator Haar was just adding to the debate and dialogue. Look no farther than your Lincoln Journal Star paper from this morning. And they have a story about a report, a recent report from the CDC, the Centers for Disease Control, which shows that, nationally, statistics demonstrate a 2 percent drop in teen pregnancies in our country, and that's good news. But unfortunately, the trend is the opposite in Nebraska where we've seen an increase of teen pregnancies. And unfortunately, there is nothing in LB594, as amended or otherwise, that does, in fact, try to address key prevention and education strategies to lessen the number of unintended pregnancies and lessen the number of abortions. That is one among many reasons why I rise in opposition. We had a thoughtful debate about this bill on General File and I'd like to continue down that track and in that tone. I would like to reiterate the fact that this legislation is unconstitutionally vague, provides an impossible maze of complicated possibilities that no doctor in good faith could comply with. It is an extreme departure from accepted medical practice and ethics. And the bill requires physicians to go against their experience and ethics by counseling patients with information that they may believe to be irrelevant and, at worst, harmful. No state in the country has passed any bill like this, and this bill would do nothing to improve women's health and lives. It's been stated by the proponents that there are problems that exist in terms of safety for women in relation to this medical procedure. And colleagues, with all due respect, the facts don't bear that out. And you don't have to take my word for it; you can look no further than to how the record was presented and built at the Judiciary Committee. Read the record. Read the committee transcript on LB594. Nowhere there, is there clear indication or demonstration that our current informed consent procedures have resulted in harm or danger to women. Again, don't take my word for it. Take the word, take the statistics, take the report from the Nebraska Department of Health and Human Services, 2005, 2006, 2007, 2008. Under state law, they are required to report the number and percent of abortions that resulted in complications: 2005, out of 3,173 abortions, zero complications; 2006, out of 2,927 abortions, zero complications; 2007, out of 2,481 abortions, zero complications reported; out of 2008 from the Nebraska Department of Health and Human Services, the most recent report available, out of 2,813 abortions performed, zero complications reported. So, again, don't take my word for it. Look no further than our own Department of Health and Human Services and look no further than your committee record. And I do appreciate that my good friend, Senator Dierks, has tried to provide more information about the need for this legislation and he's passed around some data and some talking points about that, but unfortunately, and with all due respect, there are no citations for the statistics that are presented there, so it's unclear whether or not we can gauge the

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

Floor Debate  
April 07 , 2010

---

credibility of those numbers. Finally, I do want to talk a little bit about what the current informed consent law in Nebraska requires,... [LB594]

SENATOR CARLSON: One minute. [LB594]

SENATOR CONRAD: ...because, colleagues, it is one of the strongest in the nation and it does take into account many of the important things that all patients and all women need to know when undergoing any medical procedure, and we can get into that down the road. And then finally I do want to highlight and foreshadow some additional definitional problems with the legislation and concerns as to some of the legal liabilities and other issues that it brings forth and is not clear about. So, again, I believe that this bill is unconstitutionally vague; it does not improve women's health or lives; and it injects politics into the doctor/patient relationship, is where most of Americans and most Nebraskans agree politics does not belong. Thank you, Mr. President. [LB594]

SENATOR CARLSON: Thank you, Senator Conrad. (Visitors introduced.) Senator Council, you're recognized. [LB594]

SENATOR COUNCIL: Thank you, Mr. President. I just want to... [LB594]

SENATOR CARLSON: This is your third time. [LB594]

SENATOR COUNCIL: Thank you, sir. I just want to continue along a couple of paths. Number one, and I greatly respect and appreciate the fact that Senator Dierks genuinely and compassionately feels for women who have to make probably the most difficult decision in their life with regard to whether or not to carry a pregnancy to term. LB594, as he has indicated and as it purports in its preamble to provide for, is the health needs of the woman. In fact, a few minutes ago when Senator Dierks was on the mike, he stressed his concern about postabortion psychological effects. And the problem I have with LB594 is that rather than responding in the way that others responded on LB1103, if during the pregnancy a woman had an identified psychological effect of continuing the pregnancy, the response from some members of this body was, well, there's treatment for those psychological effects, those adverse psychological consequences and went so far as to repeat what was stated during the testimony at the Judiciary Committee that if a woman was experiencing severe psychological effects associated with continuing a pregnancy, that she could undergo electroconvulsive shock therapy. And that was the response in connection with a bill that ostensibly deals with pain and eliminating pain, yet we are quick to respond to the woman's health needs under LB1103 by subjecting her to electroconvulsive shock therapy. Under LB594, if a woman experiences postabortion adverse psychological effects, under LB594 she can contend that she wasn't properly screened or evaluated, and rather than treatment being her remedy, lawsuit is her remedy. I find that to be very contradictory that if there's a genuine concern about the psychological health of the woman, that the standard and the

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

Floor Debate  
April 07 , 2010

---

remedies should be the same under LB1103 and LB594. That is not the case. And I'm going to ask a rhetorical question because, again, LB594 states what are risks associated with abortions, complications associated with abortions. And under the clear language of LB594, fetal pain would be a complication associated with abortion. So my question is, if fetal pain at 20 weeks is not or has not been reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a 5 percent probability,... [LB594 LB1103]

SENATOR CARLSON: One minute. [LB594]

SENATOR COUNCIL: ...that the result is due to chance, does this body then agree that LB1103 is void and unconstitutional? I suspect that they won't. They'll dismiss it when it comes to the issues set forth in LB1103 but they'll stand on it when it comes to supporting LB594. I asked Senator Flood. He said he would look into whether or not this has ever been reported in a peer-reviewed journal which has the statistics that Senator Dierks stated. He stated there were about 12 articles that deal with complications of abortion. I think this body needs to know if any of those 12 articles says anything about fetal pain. [LB594]

SENATOR CARLSON: Time. Thank you, Senator Council. (Visitors introduced.)  
Senators still wishing to speak: McGill, Rogert. Senator McGill, you're recognized.  
[LB594]

SENATOR MCGILL: I yield my time to Senator Haar. [LB594]

SENATOR CARLSON: Senator Haar, 4 minutes 50 seconds. [LB594]

SENATOR HAAR: Thank you, Senator McGill. I'm just about done here, but what I'm talking about is if you look at my graph again, the pie graph I handed out...and I have no doubt that Senator Dierks and Senator Flood are working to prevent abortions. I don't agree with some of their thoughts on it, but on this graph what I'm talking about is that big brown slice, 20 percent...I'm sorry, 40 percent of all unintended pregnancies that end in abortion, and how as a body we can tackle that group. There's where the numbers are. The one sheet I handed out called "Medicaid Family Planning Waivers," there's something called the family planning waiver. Twenty-six states have taken it "to help promote reproductive health, help women avoid unintended pregnancies, and improve infant and maternal healthcare outcomes." We all could agree on those things. If you look at the bottom, there are dramatic cost savings. First of all, the federal government puts in a 90 percent match, and states who are using it have estimated that for every \$1 they invest, they have saved \$4. And what it provides for is the help with family planning and prenatal care. And if you turn over to the back, this is a fiscal note from last year and it's really significant because this was Senator McGill's bill from last year talking about Medicaid waiver. And in a time when we're talking about saving

Floor Debate  
April 07 , 2010

---

money, the part I've underlined, the savings to the state would be \$11 million in fiscal year 2012. We would have to invest \$4 million. The federal government would put in \$6 million. And we would save \$11 million based on the cost of prenatal care and delivery at \$9,300 and medical services for an infant up to one year of age at \$2,000. This is a real savings of money. The benefits are a minimum \$6 million in fiscal year '12 and beyond; a decrease in the number of unintended pregnancies, 4 in 10 of which are terminated by abortion. Yet a few years ago, there was a task force, a Governor's task force, chaired by Senator Don Pederson from North Platte, Senator Campbell, and others, unanimously recommended the state of Nebraska apply for Medicaid waiver for family planning. Over half the states now have done that. But the Governor did not apply. This is a program that would not only save money, a great deal of money, millions of dollars according to our Fiscal Office, but would also prevent abortions. So next year I will challenge you to join with me in looking at that. And one other final thing I want to present is the showing...it's a graph I handed out of "Teen Birth Rates: How Does the United States Compare?" If you look at this, it's most interesting. In the United States, there are 41.9 teen births...teen...per thousand girls, and that's 15 through 19 of teen birth rate. In the Netherlands, it's only 3.8 per thousand. What's the big difference? Why do they...and this has a lot to do with abortion. What's the big difference? The following information comes from the United States Statistics Division... [LB594]

SENATOR CARLSON: One minute. [LB594]

SENATOR HAAR: Thank you--and the National Campaign to Prevent Teen and Unplanned Pregnancy. The difference is not that Europeans have more abortions. In fact, the abortion rate is lower in western Europe than in the United States. It's not that European teens don't have sex. The average age of sexual debut in Europe is only slightly older than the average age of sexual beginning in the United States. There are three factors that seem to contribute to the relatively low rate in Europe compared to the United States: (1) is the emphasis on monogamy and mutual responsibility rather than abstinence in teen relationships; (2) thorough and unabashed comprehensive sex education programs that emphasize contraception; (3) the ready availability of free or low-cost contraception to European teens. [LB594]

SENATOR CARLSON: Time. [LB594]

SENATOR HAAR: Thank you. [LB594]

SENATOR CARLSON: Thank you, Senator Haar. Senator Rogert, you're recognized. [LB594]

SENATOR ROBERT: Thank you, Mr. President. I yield my time to Senator Conrad. [LB594]

Floor Debate  
April 07 , 2010

---

SENATOR CARLSON: Thank you, Senator Rogert. Senator Conrad, 4 minutes 50 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President, and thank you, Senator Rogert. Colleagues, I wanted to just continue and make clear that Nebraska's current informed consent laws are very strong and work very well, and again in opposition to LB594, which unnecessarily injects politics and cherry-pick science into the doctor/patient relationship. Under current Nebraska law when a patient contacts a medical provider and sets an appointment to terminate pregnancy, the following must be collected and discussed: name of the physician who will provide the abortion; information that abortion is only one option available to women; information that the woman elects to carry her pregnancy, the state of Nebraska may provide medical assistance; information that her partner may be required to assist with financial support for ongoing pregnancy, even if he's offered to pay for termination; information regarding the fact that she cannot be forced, coerced, or required by anyone to have an abortion and that she is free to withhold or withdraw her consent at any time; information that she can request printed from the Department of Health and Human Services about fetal development in two-week increments; information from DHHS on referral agencies; and information on detrimental physical and psychological effects of abortion; information about how she can request and obtain from DHHS a comprehensive list of healthcare providers, clinics, and facilities that have a person at least as qualified as a registered nurse to perform an ultrasound free of charge; the probable gestational age of her pregnancy. Additionally, there is discussion regarding infection, hemorrhage, danger to subsequent pregnancies and infertility; information about the statistical risk of complication at her current age of gestational age; information about risk of the latest gestation that abortion is available. Additionally, they discuss unplanned and collect information regarding to major surgeries, including cesarean section and hysterectomy; possibility involving hemorrhage and blood transfusions; blood clots in the uterus, legs, or lungs; cervical, vaginal, or rectal laceration; preparation of uterus; injury to the bladder or bowel; reactions to anesthesia; amniotic fluid embolism; cervical incompetence; spontaneous abortion; fetal death; hydatidiform mole pregnancy--I'm sorry, I'm not familiar with that term. Less common but also additional risks of carrying a pregnancy to term include and are discussed: extrauterine pregnancy, sometimes requiring surgery; hyperemesis gravidarum; toxemia of pregnancy; hydramnious. Forgive my pronunciation; I do not have a medical background. Also, additional information collected currently under Nebraska law from the patient: name and contact information; menstrual history; information about pregnancy tests and results; information about possible ultrasound or pelvic exam results; screening for a history of medical problems; allergies; current medications. Additional information provided to patient when making an appointment: advised about options for medication to treat pain; advised about hygiene; advised to not eat or drink before the appointment; advised not to use medications; advised birth control will be available, and provided options about this. Additional information for those under 18 years of age: discussion about need of parental notification. Additional

Floor Debate  
April 07 , 2010

---

information collected and provided at the Health Center. The following is a summary collected from the patient and provided to the patient at the time of appointment: the provision of an ultrasound and information shared about the ultrasound one hour prior to. An ultrasound is performed at least one hour before the abortion that includes the following requirements: women informed about the ultrasound image and displayed so that she can view it; ultrasound image is simultaneously displayed in such a way that a woman can choose to view it. If the woman requests, a sonographer must provide detailed simultaneous medical description... [LB594]

SENATOR CARLSON: One minute. [LB594]

SENATOR CONRAD: ...of an ultrasound image that includes dimensions of pregnancy; presence of cardiac activity if present and viewable; presence of external members and internal organs if present and viewable; if the woman is asked if she would like to be told if a multiple gestation is present; information collected from patient on the day of the appointment; information about allergies; list of medications; other medical care; a family history on diabetes, blood pressure, cancer, heart attack; her mother's medical history; genetic conditions; high cholesterol; heart disease; stroke; liver; hepatitis; gall bladder; diabetes; thyroid problems; chronic cough; abnormal uterus; PID; cervical LEP; anemia; blood clotting disorder; blood transfusion; sickle cell anemia; arthritis; broken bones; depression; counseling; hormone replacement; past surgeries; past hospitalizations; vaccines; current health; weight gain; weight loss; colds; flu; chronic fatigue; high blood pressure; blood clots; migraines; numbness; seizures; stomach and bowel problems... [LB594]

SENATOR CARLSON: Time. [LB594]

SENATOR CONRAD: Thank you, Mr. President. [LB594]

SENATOR CARLSON: Thank you, Senator Conrad. Senator McGill, you're recognized. [LB594]

SENATOR MCGILL: I yield my time to Senator Haar. [LB594]

SENATOR CARLSON: Thank you, Senator McGill. Senator Haar, 4 minutes 50 seconds. [LB594]

SENATOR HAAR: Thank you, Senator McGill. I'm going to conclude what I'm talking about and that's that a way to prevent many abortions is to work at unintended pregnancies. Going back to the graph of teen births where in the Netherlands it's only 3.8 per thousand teen girls and in the United States it's 41: What's the difference? It's not that Europeans have more abortions. In fact, the abortion rate is lower in western Europe than in the United States. It's not that European teens don't have sex. In fact,

Floor Debate  
April 07 , 2010

---

the average age of first sex in Europe is slightly older than the average age of first sex in the United States. Three factors seem to contribute to the lower rates. First is the emphasis on monogamy and mutual responsibility rather than abstinence in teen relationships, (2) thorough and unabashed comprehensive sex education programs that emphasize contraception, (3) the readily availability of free or low-cost contraception to European teens. There is no abstinence-only sex education in Europe. In conclusion then, I believe that people of good faith and different faiths can find common ground if we're willing to work together on finding effective solutions to unintended pregnancies. And reproductive healthcare, especially family planning and sexuality education, should not be treated as controversial issues, they can't be if we're to deal with this problem. We can reduce the need for abortion by focusing our efforts on decreasing the number of unintended pregnancies through use of contraception and comprehensive sexuality education--the abstinence-plus education that the Journal Star talked about. We can also protect our teens and Nebraskans from dangerous STDs, sexually transmitted diseases, if we are willing to have honest conversations about making smart decisions about our own reproductive health. Prevention is a real and effective solution for reducing the number of abortions, that big 20 percent slice of all pregnancies and the 40 percent slice of unintended pregnancies. Next year, I will challenge this body to work with me to work on that large slice, that 40 percent of abortions among unintended pregnancies, by working to try to reduce the number of unintended pregnancies. Thank you very much for your time. [LB594]

SENATOR CARLSON: Thank you, Senator Haar. Senator Giese, you are recognized. [LB594]

SENATOR GIESE: Thank you, Mr. President. I yield my time to Senator Conrad. [LB594]

SENATOR CARLSON: Thank you, Senator Giese. Senator Conrad, 4 minutes 50 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President, and thank you, Senator Giese. Colleagues, again not to belabor the point, but I'm trying to build an appropriate record about Nebraska's existing informed consent law, and I'm going to continue on in the list of statutorily mandated and medically ethically mandated information that is collected and discussed at...within the context of pursuing elective abortion. And the list goes on: discussing frequent urethritis; bladder and kidney problems; swollen lymph nodes; pelvic infection and pain; Pap smears; abnormal Pap smears; recurrent vaginal infections; breathing problems; breast problems and/or lump; jaundice; acne; (inaudible) rash or itching; other skin problems; eye problems; hearing problems; nosebleeds; frequent sore throats; teeth, gum problems; anxiety; mood swings; HPV; syphilis; gonorrhea; trichomoniasis; herpes; chlamydia; scabies. Additionally, they discuss a history and relevance related to use of street drugs; injectable drugs; dietary

Floor Debate  
April 07 , 2010

---

supplements; douching; calcium supplements; tampons; alcohol use; tobacco use; caffeine use; exercise; snacks, meals, and nutrition; a woman's pregnancy history regarding number of pregnancies and outcome of previous pregnancies; a woman's contraceptive history; a woman's sexual history. Additional topics discussed during this procedure: difficulty related to sleeping; emotional or relationship problems; whether or not there is any history of domestic violence; whether or not there is any fear regarding the woman's partner; if there are alcohol or drug problems in her life; risk factors in her partner's history; a full overview of the woman's menstrual history. And then whether or not...a discussion about whether or not she feels she has been forced to have an abortion; how sure or confident she is about her decision; who's been involved in her decision; her overall emotional state; any specific concerns she wants to have addressed. In addition to those medical issues and psychological issues, then the clinics also provide information about HIPAA and the woman's right to privacy of her medical records. They also provide information about the availability of interpretive services for those with limited English proficiency. And then they also discuss risks, possible problems and complications, and alternate choices. They also fully discuss possible risks related to abortion, including--and this is under Nebraska law--blood clots in the uterus; infection of the uterus; failure to end pregnancy; heavy bleeding; hemorrhage; injury to cervix; injury to uterus or other organs; allergic reaction or other drug reaction and/or death. They also discuss emotional reactions to abortion; a step-by-step description of the process; information about how to receive care after their visit; the ability to return for follow-up exams; information about where she can obtain free counseling, if desired; information about contraceptions and pregnancy prevention; and contraceptive supplies may be made available. Each woman is treated, according to staff and medical facility policy, each woman is treated as an individual. Staff use a client-centered approach to patient education and informed consent. All of the information I just read into the record is provided to each woman in a form of a discussion and in writing. So you can see how extensive our current informed consent laws are and why LB594 is unnecessary. Each patient is provided the opportunity and encouraged to ask questions and seek clarification about any and all of the above, as needed. If it appears to clinic staff at any time that a woman has doubts... [LB594]

SENATOR CARLSON: One minute. [LB594]

SENATOR CONRAD: ...about her decision, or if there is a suspicion related to coercion, the procedure will not be performed and additional counseling services will be offered. That is consistent with current state law and with current medical ethics. And that is the appropriate standard that has worked well in Nebraska. We do not need an additional layer added on top of that, that poses a significant burden to doctors and women in relation to their reproductive healthcare. Thank you, Mr. President. [LB594]

SENATOR CARLSON: Thank you, Senator Conrad. Those still wishing to speak: Ashford, Christensen, and Fulton. Senator Ashford, you're recognized. [LB594]

Floor Debate  
April 07 , 2010

---

SENATOR ASHFORD: Thank you, Mr. President. I just having listened to the discussion this morning regarding prevention and other issues which are important discussions to have, I thought, though, I would just go back a little bit to what the committee looked at and try to bring it back to the bill a little bit as we saw it in the Judiciary Committee which voted the bill out 6-0-2, I believe, or 6-4, 2 not voting. And we had discussions, many discussions about the impact of the legislation, what it meant. Let me just share a couple of comments. One...first of all the amendments that were given to us in the committee and some of the amendments that we made in the committee ourselves, and the discussion that was had with the Nebraska Medical Association were all very important pieces of information that we had. I believe we voted the bill out for a couple of reasons. One, is that it's clearly an issue, informed consent is an issue, that is important for the body to discuss. We, obviously, have an informed consent law which was passed a few years ago, several years ago. And updating that law or changing or modifying that existing law based on current information is, I think, critical for the body to discuss. There is no question that Senator Dierks has brought us a list of very compelling criteria, things that a physician can discuss with a woman prior to an abortion. The second issue is constitutionality. Is a particular law constitutional or not? And I know we have many debates or discussion on topics out here and we throw around, or not throw around, we suggest that a particular bill is constitutional or unconstitutional. We really don't know whether it is (laugh) or isn't. We don't know until a court makes its decision on constitutionality. We can only make a judgment on that. And I know in the committee we discussed, certainly, the constitutionality of LB594. That's part of our job in the committee. And quite frankly, most every bill we put out, and we've got gobs of them dealing with criminal law and civil law, all have potential, or many have potential constitutional issues. We're not perfect and sometimes we pass laws here that are found to be unconstitutional. But it is a criteria when we think about passing legislation. Is there some obvious part of this bill that is violative? In my view, there is not. There is not an obvious violation of the U.S. Constitution in LB594 and for a couple of reasons. One is that...and I might say that isn't a reason to vote for or against the bill but I think, again, it gets to the process that we go through in evaluating whether a bill ought to come out here. The first issue we looked at is the penalty. And in this case what Senator Dierks is proposing to us is a civil penalty that would arise if a physician fails to provide the information that the statute requires. It's not a criminal penalty. Most of the bills that have been...have dealt with by the U.S. Supreme Court state law regarding abortion, informed consent deal with criminal statutes. And there is certainly a heavier burden in passing a law that deals with criminal statutes... [LB594]

SENATOR CARLSON: One minute. [LB594]

SENATOR ASHFORD: ...which can involve the freedom of the individual physician. Secondly, we're dealing with the issue as has been discussed here of undue hardship on the woman. I felt, maybe some of the other members of the committee felt as well,

Floor Debate  
April 07 , 2010

---

that the hardship here is probably not to the woman. I mean, the woman is receiving additional information. That's not necessarily a hardship to the woman. It may be additional burden to the physician to find out what information should be given to the woman. But I did not find, and I don't think it does...and there may be anecdotal evidence in some cases that it does, but in most cases it does not impact that standard adversely. So for those reasons, at least I felt, and six members of the committee felt that this particular bill was not in all probability unconstitutional and that...but each of us, though, will have to decide whether it's...that it ought to pass. But I would suggest... [LB594]

SENATOR CARLSON: Time. [LB594]

SENATOR ASHFORD: ...not necessarily on constitutional grounds. Thank you. [LB594]

SENATOR CARLSON: Thank you, Senator Ashford. Senator Christensen, you're recognized. [LB594]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, we've heard discussion this morning on what has affected pregnancy rates and which is part of the bill, I guess, you could say, but we need to look at the family structure. That is what really affects pregnancy rates. Family issues affect the pregnancy rate. Society and how society views things affects pregnancy rates. I think many families believe now that the schools are teaching appropriately on the issue so they don't need to teach about sex and how that really relates to the pregnancy issue or abortion issue that we're discussing. If we want to get...if we want to reduce pregnancy, we need to look at getting the family units to stick together and teach these issues at home. You know, we've had discussion on this abortion. If there is mental issues or psychological issues with the abortion or not, if being...having more information before is good or bad that the bill's about, here's a quote from a lady talking about abortion is a cure-all for unwanted pregnancy. I believed that my abortion would ease my pregnancy and make my life as it was before. That wasn't true for me or for anyone. Pregnancy changes a woman whether it results in abortion, miscarriage, or a childbirth, she is forever changed. You know, it's a very true fact that pregnancy affects both parties involved and that there is effects to us. Here's additional study or comments out of the study. The circumstances surrounding the abortion decision can impact a woman afterwards. According to research published in the American Journal of Psychiatry abortions for medical or genetic indications a history of abortions often result in more stress afterwards when a woman experiences significant ambivalence and decisions or when the decision is not made...is not freely made, the results are even more likely to be negative. After an abortion, women can experience psychological reactions ranging from guilt feelings and nervous syndromes to sleep disturbance and regrets. Also as many as 10 percent of the women experience serious psychotic problems following an abortion. As many as 60 percent of the women having an abortion experience some level of emotional distress

Floor Debate  
April 07 , 2010

---

afterwards. In 30 percent of the women, the distress is classified as severe. A Finnish study of suicide after pregnancy found that suicide rates after an abortion was three times the general suicide rate and six times that associated with birth. Suicides are more common after a miscarriage and especially after an induced abortion than in the general population. An increased risk of suicide after an abortion indicates either common risk factors for both suicide and abortion are harmful effects of induced abortion or mental health. Welsch researchers examined abortion and suicide and concluded, our data suggests that the deterioration in mental health may be a consequential side effect of induced abortion. Studies of couples involved in first trimester abortions in Canada found that the abortions can be highly distressing for both men and women. [LB594]

SENATOR CARLSON: One minute. [LB594]

SENATOR CHRISTENSEN: Researchers found that both before and after the abortion, study couples were found to be much more stressed than in controlled couples. You know, there is affects here and this bill, giving additional information and warnings, is very warranted and I support the bill. Thank you. [LB594]

SENATOR CARLSON: Thank you, Senator Christensen. Senator Fulton, you're recognized. [LB594]

SENATOR FULTON: Thank you, Mr. President and members of the body. I thought that it was important to indicate something that I've been listening to in the debate that I caught and have it reflected in the record. It's instructive to go back and while we're reviewing these bills to look not only at that which is underlined or that which is new material for the statute, but to look, indeed, at the statute itself and those words that are not being changed. So I'm looking on the E&R amendments, and this is page 2, line 9, "That it is in the interest of the people of the state of Nebraska to maintain accurate statistical data to aid in providing proper maternal health regulations and education." It has been said that there have been no complications reported by the abortion facilities in Nebraska and I don't know that that can be true. The abortion facility in Lincoln happens to be in my legislative district and I remember distinctly when we were talking about the ultrasound bill last year I quoted from a case that had been filed that was filed as result of a woman who went in for abortion and suffered a perforated uterus. It was covered in the media. It was covered in the media because of the accident itself but also because of the suit that followed. I think it was settled later. But there's an example of...well, certainly something that should have been reported. If, indeed, that was not reported and if similar incidents are not reported, then I think that bodes in favor of this bill. Because, as the law presently states, it is in the interest of the people of the state of Nebraska to maintain accurate statistical data to aid in providing proper maternal health regulations and education. So I thought it was important...I think we're probably getting close to voting on this bill, and I thought it was important to at least get that into the

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

Floor Debate  
April 07 , 2010

---

record. Thank you, Mr. President. [LB594]

SENATOR CARLSON: Thank you, Senator Fulton. Seeing no other lights, Senator Dierks, you're recognized to close on AM2386. [LB594]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. Thank you for your attention and debate this morning. I appreciate it and urge your support of this amendment. Thank you. [LB594]

SENATOR CARLSON: Thank you, Senator Dierks. Members, you've heard the closing on the amendment. The question is, shall AM2386 be adopted? All those in favor vote yea; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB594]

CLERK: 33 ayes, 5 nays, Mr. President, on adoption of Senator Dierks's amendment. [LB594]

SENATOR CARLSON: AM2386 is adopted. Are there items for the record, Mr. Clerk? [LB594]

CLERK: I do, Mr. President, thank you. Enrollment and Review reports they've examined and engrossed LB1048 and LB1048A. Senator Cook offers LR549. That will be laid over. And an amendment by Senator Hadley to LB420 to be printed. (Legislative Journal pages 1327-1332.) [LB1048 LB1048A LR549 LB420]

Mr. President, the next amendment to LB594, Senator McGill, AM2496, but I have a note you want to withdraw AM2496. Senator McGill would move to amend with AM2509. (Legislative Journal pages 1332-1333.) [LB594]

SENATOR CARLSON: Senator McGill, you're recognized to open on AM2509. [LB594]

SENATOR MCGILL: Mr. President, members of the body. I bring to you an amendment here that I actually think is very reasonable and as I've been talking to members of the body I think we'll be able to get broad support for this particular amendment. I do not, of course, support LB594 and this amendment will not make me change my mind on that. But I do feel that this makes it better for the women who are going in and considering abortion. With LB594 we are, you know, according to the language, going to be giving women an evaluation that says, you know, whether or not they're going to suffer more risks if they have the pregnancy or if they have the abortion. And I think instead of just saying, here's the evaluation, here's all the issues that you're going to have, bye, that we should also be giving them some follow-up information on how to get mental health services regardless of what decision they make. There is a part of the statute that already links or tells doctors that they have to provide certain information to a woman,

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

Floor Debate  
April 07 , 2010

---

including adoption agencies and alternatives, as well as information on where they can get a free ultrasound. So I'm proposing amending that particular part of statute to include a list that HHS has to put together of mental health agencies, both outpatient and crisis services. Originally, I wanted them to hand them a printed...a women the printed materials with those geographically listed regions and the services available in that area. But because that would have carried a fiscal note with it, I've changed...I've offered this particular amendment which simply says that HHS has to put the listing of those providers on a Web site and then the doctors can then offer to provide that Web site to the woman so she can choose to go on there or maybe the doctor will print the materials off for the woman. That's what I hope would actually happen knowing that not everyone will have Internet access. But I think this is a very reasonable amendment. I've kept Senator Dierks in the loop about it. I've kept the Catholic Conference in the loop about it. I think that if we're going to be telling women here are the issues that you're facing psychologically, that we need to be telling them where they can go to get services to deal with whatever psychological issues that may be facing them. Thank you, Mr. President. [LB594]

SENATOR CARLSON: Thank you, Senator McGill. Members, you've heard the opening on AM2509. The floor is now open for debate. Those wishing to speak: Senators Dierks and Cook. Senator Dierks, you're recognized. [LB594]

SENATOR DIERKS: Thank you, Mr. Chairman and members of the Legislature. I stand in support of the amendment that Senator McGill has brought to us. For the most part we've told everybody that we didn't need any amendments because we thought the bill had been adequately prepared by the Judiciary Committee and I think that's true. But with Senator McGill's amendment we're adding to the impetus and the strength, I think, of the psychological testing and the testing is needed to make it a more complete bill. So with that, I'll accept the amendment and encourage you all to do the same thing. [LB594]

SENATOR CARLSON: Thank you, Senator Dierks. Senator Cook, you're recognized. [LB594]

SENATOR COOK: Thank you, Mr. President. Good morning, members. I also rise in support of AM2509 by Senator McGill. We've had conversations the last couple of days and as I discussed this bill over the weekend with constituents and with friends in conversation, this amendment addresses one big issue that kept coming up over and over in conversation, what specifically are we doing for women in terms of offering them support or direction in terms of getting some counseling as we go forward. So I think this amendment is a good one for this bill proposal and I also think that it reinforces what this body and previous Legislatures have been doing to highlight the importance of mental health. Thank you, Mr. President. [LB594]

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

Floor Debate  
April 07 , 2010

---

SENATOR CARLSON: Thank you, Senator Cook. Seeing no other lights, Senator McGill, you're recognized to close on your amendment. [LB594]

SENATOR MCGILL: Okay, I hope that...thank you, Mr. President and members of the body, I hope that we can go ahead and get a green light on this one since we do have the bill sponsor's support. I thank Senator Dierks for that. I think this is the proper follow through. You know, if we're telling a woman here are the risk factors that you currently have in your life, we should then be trying to get them help as well. There is no cost to the state. HHS has told the Fiscal Office they believe they can absorb the cost of simply adding to their Web site or making the tweaks that are necessary. I think, you know, I'm a strong supporter and believer in serving and treating mental health more like physical health and making sure that we're following through with all of our citizens in terms of encouraging them to get mental health services when necessary. And these women, you know, with the situations they're in with their pregnancy, regardless if they chose to have an abortion or not, they're women who, I think, do truly need some sort of counseling service to help them through that. This will give them direction in terms of where to go and I ask for the body's support. Thank you. [LB594]

SENATOR CARLSON: Thank you, Senator McGill. Members, you've heard the closing on the amendment. The question is, shall AM2509 be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB594]

CLERK: 34 ayes, 1 nay, Mr. President, on adoption of Senator McGill's amendment. [LB594]

SENATOR CARLSON: AM2509 is adopted. [LB594]

CLERK: I have nothing further on the bill, Mr. President. [LB594]

SENATOR CARLSON: Senator Nordquist, for a motion. [LB594]

SENATOR NORDQUIST: Mr. President, I move LB594 to E&R for engrossing. [LB594]

SENATOR CARLSON: Senator Conrad, you're recognized. [LB594]

SENATOR CONRAD: Thank you, Mr. President. I thought I had hit my light on in time to discuss the bill before it was advanced. Is that correct, procedurally? [LB594]

SENATOR CARLSON: Yes, it is. We're now open for debate. You're recognized, Senator Conrad. [LB594]

SENATOR CONRAD: Okay. Thank you, Mr. President. I just wanted to make sure that we were in line with the rules here. Colleagues, I think we've had a good discussion on

Floor Debate  
April 07 , 2010

---

LB594 this morning. I still have grave concerns and serious reservations about the legislation itself even with the amendments. While well-intentioned and I think a good step in the right direction, there's still a variety of problems definitionally and as to liability and otherwise that do not rectify or remedy the unconstitutional nature of this big piece of legislation. If you would look to the language of the bill as amended, there's really no clear indication as to the relevant time frame for the peer-reviewed journals that should be evaluated except for a year up to the date of elective abortions. So actually we're setting a different standard in place each and every day, which is clearly almost impossible to comply with. I think if you look further and you see how we're changing and modifying, in fact, in a different manner than how, what our other standards are for medical malpractice, there are some additional concerns. For example, if you look to see that we're using a preponderance of the evidence standard here and we're actually utilizing a lower standard of proof than we did on a piece of legislation that was hotly contested earlier this session relating to property tax appeals. There was a movement to change the standard of proof from clear and convincing evidence to preponderance of the evidence that failed. So we're actually putting in place a lower standard of proof for medical malpractice in this context than we are for property tax cases, which I think is really disconcerting. Finally, I also want to talk about there's language that says the physician has the burden of proving that the pregnant woman had sufficient reflection time giving her age, maturity, emotional state, mental capacity, and ability to comprehend. Well, colleagues, how can anyone bear the burden of what somebody else feels or thinks or whether or not they had proper reflection time? That is a vague and ambiguous standard that is impossible to comply with and then impossible for a doctor to defend themselves. There is additionally, and we noted this on General File, new causes of action put into place in terms of reckless endangerment. And granted, they are civil in nature but they are new and I think that's something that we need to be very cautious and very careful about and may even provide concern as to whether or not this could pass a challenge on the single subject rule. Finally, I want to talk about, there is a section in the bill that says, basically, that it will provide immunity for criminal action to doctors who are subject to the Uniform Credentialing Act under the provisions of this legislation. But, colleagues, what this bill doesn't make clear is whether or not women will have the same immunity. What if there's a zealous prosecutor out there who chooses then to prosecute her criminally under accomplice liability or solicitation or any other of our criminal laws and framework? There is no specific clarity. There is no specific immunity for women in this legislation. Those are serious legal questions and concerns that have not been addressed. I urge you, I urge you to reconsider and look closely at this flawed law. [LB594]

SENATOR CARLSON: Thank you, Senator Conrad. Senator Lathrop, you're recognized. [LB594]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Pardon me for coming to this late. I intended to speak on Senator McGill's amendment because I think it is a

Floor Debate  
April 07 , 2010

---

good addition to LB594. We're, after all, dealing with mental health issues as they relate to women who are making a difficult choice and a decision relative to whether or not they should undergo an abortion. And I think it's altogether appropriate that we have Senator McGill's amendment to this bill and I'm pleased to see that it's been embraced by essentially everyone that's involved in evaluating this bill. I also wanted to talk because a good deal of the discussion this morning has come from the opponents and I just want to suggest to you that I've had occasion to represent people in a malpractice claim before. And essentially when we are talking about malpractice claims, the most obvious example is if a doctor cuts off the wrong arm, right? So that's malpractice, but it is also malpractice or a breach of the standard of care for a physician to fail to inform a patient of all of the known risks relative to a procedure. Let me say that again. It is a breach of the standard of care for a physician, regardless of what kind of procedure it is, to fail to inform a patient of the possible complications or the risks associated with a particular procedure. Whether that is an appendectomy, eye surgery, you name it. And I may have spoken about this before but when I had some eye surgery a few months back and I can tell you that before I had that procedure I had to watch a video, I filled out about and signed three pages acknowledging all the risks associated with that. And it's important, particularly in the context of an elective procedure, that the patient know all the risks because it's not something that must be done for medical reasons but is an elective procedure. And what Senator Dierks is doing with his bill here today, I think, is carving out, admittedly carving out a particular procedure that the state has a particular interest in and making sure that that informed consent is given, that when the procedure is done or if the procedure is done, it is done after the patient is fully apprised of and evaluated for risk factors. And while it is an expansion or a little bit of a departure from a typical malpractice claim, it certainly has many of the characteristics of a run-of-the-mill informed consent malpractice claim in the sense that we are evaluating the patient for certain risks which would not be unlike evaluating someone having a hysterectomy, for example, visiting with the patient about those risk factors, and making sure the patient is fully informed and appreciates those risks before undergoing a procedure. So while there has been thoughtful discussion today and my good friend, Senator Conrad, who I disagree with on this occasion, who I'm often on the same side of, has spoken and put much in the record today, I wanted my thoughts as to the relationship between LB594 and a typical malpractice claim on the record so that people understood that we are in only a small sense plowing new ground today... [LB594]

SENATOR CARLSON: One minute. [LB594]

SENATOR LATHROP: ...but in a real sense providing a medical malpractice type cause of action in the context of informed consent for these types of procedures. Thank you. [LB594]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Council, you're recognized. [LB594]

Floor Debate  
April 07 , 2010

---

SENATOR COUNCIL: Yes, thank you, Mr. President. And I, too, was late hitting my light because I needed to state on the record why I voted in opposition to, my colleague, Senator McGill's amendment. Senator McGill and I had a conversation and I know that she appreciates and understands the need for the mental health of the woman to be taken into consideration in these decisions and I am aware of her intent that the amendment provide for that consideration. My vote against it is due to the fact that this body has advanced LB1103. And in LB1103, it doesn't matter if the woman is referred to a mental healthcare provider, a psychologist or a psychiatrist, to deal with whatever particular mental disability that she may be laboring under with regard to her pregnancy because LB1103 discounts that medical opinion, if that medical opinion, as provided in LB594, is that the risk to her mental health of continuing the pregnancy outweighs the risk associated with an abortion. So in my opinion, the addition of the amendment by Senator McGill may improve LB594 but it does not improve the conditions for women who may be faced with what is admittedly an emergency if someone is considering an abortion at or after 20 weeks. It doesn't, in my opinion, do anything to address that. That's my fundamental problem with LB594 and LB1103 is that they are contradictory in a number of respects and I cannot support that. With regard to my colleague, Senator Lathrop's statements, the fact of the matter is that this body has previously gone to great lengths on the issue of informed consent with regard to this elective medical procedure. That in the event that an individual would claim that a provider had failed to provide known risks, that's one of the concerns with LB594. The provider is expected to be aware of published peer-review reports on certain risks and complications, even though in that particular physician's medical opinion it has no application in the case of that particular patient. We, I believe, unnecessarily interfere with the doctor/patient relationship in this regard and one of the earlier amendments was intended to address, and it's still not clear to me, that a cause of action could be brought under LB594 if the medical provider or the person performing the elective procedure advised the woman of every known risk that that doctor considered to be relevant to that unique case. [LB594 LB1103]

SENATOR CARLSON: One minute. [LB594]

SENATOR COUNCIL: And if you look at the language of the statute, it talks about that unique case, that woman's unique case. But if you look at the civil liability provision, it talks about the absence of a risk factor. So if the medical provider doesn't provide every single risk factor that may be found in any given report, peer-review report, that provider is subject to civil liability. I think that goes far beyond the typical medical malpractice case and that's another reason why I believe that LB594 is fatally flawed. Thank you. [LB594]

SENATOR CARLSON: Thank you, Senator Council. Seeing no other lights, Senator Nordquist for a motion. Senator Dierks for what purpose do you rise? [LB594]

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

Floor Debate  
April 07 , 2010

---

SENATOR DIERKS: Mr. Chairman, I'd like to read a small item to go in the record before we vote on the bill and then I'd ask for a record vote. [LB594]

SENATOR CARLSON: You're recognized. [LB594]

SENATOR DIERKS: It's a letter that I received from Dr. Bruce Gfeller, a medical doctor in Lincoln, and he had read the bill and the amendments and he said that it's reasonable, if I take off a toe or inject a joint, I have to tell the patient the risks, benefits, and alternatives. I have to judge that they're competent to consent and, if not, I have to find the appropriate person to give informed consent. Anyone who does a procedure is obligated to maintain current knowledge of that procedure, indications, and risk. So the only thing that differs is the waiting period and the civil penalties. I can be sued if I do a procedure without informed consent however. Thank you. With that I'd like to ask for a record vote, please. [LB594]

SENATOR CARLSON: Thank you, Senator Dierks. Senator Nordquist, for a motion. [LB594]

SENATOR NORDQUIST: Mr. President, I move LB594 to E&R for engrossing. [LB594]

SENATOR CARLSON: There has been a request for record vote. The question is, shall LB594 advance? All in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB594]

CLERK: (Record vote read, Legislative Journal pages 1333-1334.) 36 ayes, 7 nays on the advancement, Mr. President. [LB594]

SENATOR CARLSON: LB594 does advance. Next item, Mr. Clerk. [LB594]

CLERK: Mr. President, LB999, was a bill originally introduced by Senator Campbell. (Read title.) Introduced on January 20 of this year, at that time referred to the Health and Human Services Committee. The bill was advanced to General File. I have no committee amendments, but I do have other amendments, Mr. President. [LB999]

SENATOR CARLSON: Thank you, Mr. Clerk. (Visitors introduced.) Senator Campbell, you're recognized to open. [LB999]

SENATOR CAMPBELL: Thank you, Mr. President. Good morning, colleagues. I must admit that this past weekend is probably one of the most interesting Easter weekends I've spent in my lifetime. I would particularly like to indicate that Speaker Flood deserves a great deal of credit for the discussion, negotiation, and culminating framework for the hospital resolution in Kearney. I do want to thank the Kearney citizens who ultimately

Floor Debate  
April 07 , 2010

---

came together in the spirit of serving their community. In addition to the Speaker, I want to acknowledge the counsel and advice of three senators throughout the past months who have helped me talk through this issue as we tried to work through a resolution. Senators Gay, Gloor, and Hadley deserve a thanks and also the honest discussion from the members of the Health and Human Services Committee. I think the final amendment that we will talk about today will make a lot more sense to all of you as I'll yield my time to Senator Flood to discuss the results of the negotiations. [LB999]

SENATOR CARLSON: Thank you, Senator Campbell. Senator Flood, you're recognized. [LB999]

SPEAKER FLOOD: Thank you, Mr. President and members. Senator Campbell asked me to share just a little bit of what we worked on over the weekend. I'll start by saying, Kearney is a can-do community. We've all heard that, I'm sure. All of us have seen the success that the community of Kearney has had in terms of economic development in growing it's population base. We witnessed that firsthand last weekend. We saw very committed community leaders, folks that have been on the Good Samaritan board for a lot of years and care quite a bit about the healthcare services delivered. We also had the opportunity to work and meet and talk to physicians that are very committed to the highest quality care with the best equipment and the best resources for people in Kearney. And I got to give Senator Gay and Campbell most of the credit because, as you might know, they were, prior to this weekend, opposed to...you know, Senator Gay was opposed and Senator Campbell was in support of LB999. And they were able to shed all of the baggage that comes with a legislative session on a particular issue and provide good counsel and advice to the community leaders that came to the table. And essentially what the Good Samaritan Hospital folks came to terms with, and after discussing with the doctors, is that exempting the Kearney project was acceptable because the Good Samaritan Hospital is going to engage and is engaging the doctors in Kearney on issues related to governance of that particular hospital and more importantly, opportunities to find common ground and potentially a partnership as opposed to two separately owned facilities. People ask me, well, what does that mean? And I guess I want to leave it at that because at the end of the day it's ultimately up to the doctors and the hospital and the citizens of Kearney, through its board, to talk about what's appropriate there, and to find common ground and resolution. The other person I want to recognize through this entire process and it needs to be said often today, Senator Hadley stepped forward to represent the city of Kearney in the Legislature. He cares about his community, he cares about the delivery of healthcare services. As you know, for many years or for some time prior to this session, he had been serving on the board at that hospital. And anybody that lives in a town the size of Kearney knows that a community dispute is never fun. But, in my opinion, he has gone over and above to do his job to represent in his district the wishes and the goals that he wants. And those are quality healthcare, access to services, and to maintain Kearney as a regional medical center. He's as excited as anyone, in my opinion. He can talk for himself that we've

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

Floor Debate  
April 07 , 2010

---

found ourselves at this spot, but we've had several senators in here that have spent a lot of time on this. And I only hope that it works out for the folks in Kearney. So hopefully, Senator Campbell, that provides you kind of the assessment as to what happened. Thank you. [LB999]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Campbell, you have... [LB999]

SENATOR CAMPBELL: Thank you, Speaker Flood. I'm sorry, Mr. President. [LB999]

PRESIDENT SHEEHY: ...just over 6 minutes. [LB999]

SENATOR CAMPBELL: Okay. I think we'll go ahead and start talking about the last amendment that will come up on the screen in a little bit here. And that amendment, I think, accurately reflects the decisions that were made in Kearney this past weekend. If you are going to follow along on your screen or in your Journal, Section 2 of the new amendment is the new language that should now exempt all known projects including the Kearney project to proceed with construction. So you may want to note that. The second point is that the amendment provides an outline of a study which it certainly is the intent to be inclusive of all hospitals and interested associations and individuals. The study will be done by the Health and Human Services Committee and will be completed by December 31, 2010. Now many of you have probably said, why would we continue with this or why would we continue with the moratorium? The new amendment does include, instead of a two-year moratorium, it includes a one-year. And basically what this would allow is for the Legislature to get the report by December 31 of this year. Then we would have the legislative session starting next January to hone in on any potential regulations or conditions that we may want to put into place on a new license. All of our hospitals across the state are already licensed so this would be any hospital that came after that deadline that's in the bill. This would afford the Legislature...and it is a very cautious and measured approach, I will give you that. But it would give us the time in order to determine that. Several senators have said, is there any other reason that you might take that one-year time period? And what I have answered is that we don't really know what's going to come across in the new healthcare reform. It's now pretty much in place. We need to study it. We need to see how this will affect our hospitals. I'm one of those people that would rather take a look at what is federally there but ensure that we have a Nebraska response. We should be looking at our own hospital network across the state and what can we do to ensure that it is as stable and sustaining as we can make it. And so that is a two-pronged reason why we looked at this amendment. I'm going to go ahead and start on some other reasons and then perhaps when we get to the amendment time, I can finish out. I want you to know that I looked at this and I kept saying to many people who responded, why do we need

Floor Debate  
April 07 , 2010

---

LB999? And I want to first start with one of the most important reasons why I introduced the legislation originally and that is Medicaid. The Medicaid Reform Council and the Legislature have been working the past few years to ascertain ways to effectively serve our most vulnerable citizens, the elderly, people with disabilities, children, low-income, while looking for ways to be more efficient and creative in order to ensure that this broad safety net across the state is there for years to come, to sustain it, and to keep its costs from spiraling out of sight. And I want to say, this is not a small program. We spend \$502.5 million in General Funds, \$23.1 million in cash funds and a whopping \$1.11 billion in federal funds on the Medicaid program in total, which accounts for 21 percent of state spending. And what really caught my attention is looking at hospitals. If we turn our attention to hospitals only, Nebraska's Medicaid programs paid out, in 2009, \$232-plus million for inpatient and \$98 million in outpatient for a total of \$331 million, the highest percentage of all categories of Medicaid expenditures. So if you remember no other number, please remember \$331 million. We are not a bystander to the issue of hospitals in this state. The state is a major payer in hospital costs. We have a stake at that table and the state is front and center of this issue. And I know I can hear Senator Utter saying, now that is real money. And indeed, my colleagues, it is real money. It's important for us to know what we are spending in Medicaid... [LB999]

PRESIDENT SHEEHY: One minute. [LB999]

SENATOR CAMPBELL: ...on hospitals and how we should proceed. For me this issue was never solely about Kearney even though that took the spotlight and the fireworks, I will admit. For me it was the convergence of issues coming together at the same time: a local community confronting hospital needs; a national debate over healthcare reform; the continuing worry and importance of our budget planning for the future; the desire to ensure that we are providing Nebraska answers to Nebraska questions. Thank you, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You've heard the opening to LB999. Mr. Clerk, you have an amendment on your desk. [LB999]

CLERK: Mr. President, several. First of all, Senator Campbell, AM2321. I have a note you want to withdraw AM2321. [LB999]

SENATOR CAMPBELL: Correct. [LB999]

PRESIDENT SHEEHY: AM2321 is withdrawn. [LB999]

CLERK: The next amendment, Mr. President, is AM2366. Senator Campbell would like to withdraw that and substitute, therefore, AM2503. I might also indicate with that withdrawal there will be a series of amendments to that amendment that will be withdrawn including amendments from Senators Karpisek, Gay, Conrad, Carlson,

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

Floor Debate  
April 07 , 2010

---

Cornett, Karpisek, McCoy, Cornett, Hansen, and Gay. So Senator Campbell would like to withdraw AM2366 and offer as a substitute AM2503. [LB999]

PRESIDENT SHEEHY: Without objection? So ordered. [LB999]

CLERK: Senator Campbell, AM2503. (Legislative Journal page 1314.) [LB999]

PRESIDENT SHEEHY: Senator Campbell, you're recognized to open on AM2503 to LB999. [LB999]

SENATOR CAMPBELL: Thank you, Mr. President and I will continue. I want my colleagues to understand that for me there was another part of an issue, not only the Medicaid, but we need to look a little back at history. From 1979 to 1997 the state of Nebraska had a Certificate of Need process to oversee hospital construction, expansion, and significant equipment purchases. Its intent was to control the growth of healthcare costs by preventing unnecessary duplication of healthcare services and to conserve limited healthcare resources. In 1997, Senators Crosby, Witek, and McKenzie worked to repeal this process which many had come to believe was costly and frustrating. It is not my intent, and I repeat, it is not my intent to return to the Certificate of Need process. But to my knowledge no study or review has taken place since 1997. Over those years we've changes in our hospitals as well as the entrance of physician-owned hospitals, specialty hospitals, ambulatory surgery centers, diagnostic imaging centers, and so forth. Some states still retain the Certificate of Need process, but others have passed laws to address hospital development through rules and regulations and licensure conditions. A preliminary review, which I shared with the Health and Human Services Committee, of national data shows that a number of states have enacted regulations or licensure requirements in one or more of the following categories: requiring disclosure of physician-ownership, enacting special fees or taxes, banning or limiting physician self-referral, setting quality and other standards, and requiring Medicaid participation. Nebraska is silent in each of the above categories. There are no policies. While national healthcare reform will dictate some avenues, other issues probably call for us to prepare Nebraska answers or at least to know how they will affect us. It is the perfect time to study Nebraska hospitals and, hopefully, also adding tools for Nebraska communities to look at their hospital resources as they are a part of the state network. I've kept a one-year moratorium on licenses to provide time to gather data and submit a report to the Legislature. And if we determine we need to institute conditions and we may say there is no need, we feel very comfortable where we're at, we'll have next session to do that. LB999 and its amendment, AM2503, affords us the opportunity to look beyond just today's needs and resources but to begin seeing and creating a bigger picture. A standing in place moratorium is a wise investment if we shore up our Medicaid costs for the state and at the same time as many healthcare providers to be a part of improving our statewide hospital network. Thank you, Mr. President. [LB999]

Floor Debate  
April 07 , 2010

---

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the opening of AM2503 to LB999. Members requesting to speak: Senator Fulton followed by Senator Gloor, Senator Hadley, Senator Gay, Senator Campbell, Senator Wightman, and others. Senator Fulton, you're recognized. [LB999]

SENATOR FULTON: Thank you, Mr. President and members of the body. First, just to be clear, I am appreciative of the work of Speaker Flood and Senator Campbell, Senator Hadley and Senator Gloor on this and I understand there are others. And I respect that there has been a compromise struck, so, I mean, that...just to make that clear and to assuage any concern; I'm not here trying to delay this. But I do have concerns, legitimate concerns, I think still, which again is not enough to warrant holding this bill up in any way but still, I think, legitimate such that they should be made public. One of the reasons why I opposed the bill in its original form was it came down to some basic logic. If we have decided against having a Certificate of Need as our policy going forward, put another way, if we have decided against the state government any way making a decision as to which hospitals can and can't go forward, if we've decided consciously to disallow that interference, then by putting forth any moratorium, particularly this case in Kearney, then we are controverting that decision that was made in the late nineties. That was why I was opposed to this. Now there has been an exception made and it's found here, you know, basically on the first page, lines 13 through 16, it looks like, so that those doctors who are in Kearney do not experience what I think would have been an injustice if we would have allowed some doctors in Nebraska to open hospitals while we said to others, you cannot. That's why I would have opposed the original bill. Now this is much better and, again, the sides that were in disagreement have found an accord and so I plan on respecting that. The question I have then I'd like to ask Senator Campbell, if she would yield, Mr. President. [LB999]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Fulton? [LB999]

SENATOR CAMPBELL: Yes. [LB999]

SENATOR FULTON: The...so I understand the necessity of studying this and I am particularly pleased with line 17 in which we say it's the Health and Human Services Committee, just because I know members of that committee and this will get studied and studied well. What need then is there for the moratorium? And you may have touched on this but I'm being more specific here. What necessitates the action of government to disallow any more...any hospitals from this point forward? And granted, it's only through September 15, 2011, but the principle is what I'm getting at. We've made a conscious decision that the government would not disallow or allow through the Certificate of Need going forward. But by putting forward a moratorium, we are saying that the government is disallowing any activity, at least through 2011. So why the need for the moratorium still? [LB999]

Floor Debate  
April 07 , 2010

---

SENATOR CAMPBELL: I think that's a very valid question, Senator Fulton, and I appreciate you're bringing it forward. When we left the Certificate of Need in 1997, we never followed it up, it seems, with any study, we know that. Number two is, we wouldn't...during this time period, it would give us time to study this and bring information to the Legislature because the key here is on the license. Some of the states have done away with Certificate of Need and I do not intend that we would return to it. But what they have done, Senator Fulton, is they've looked at certain things and said, on a license for a brand new hospital, no matter physician-owned or whatever, we may wish to place a condition that that license holder would have to come forward with, for instance, that the hospital would serve Medicare and Medicaid patients. That the hospital, if it was owned by physicians, would put forward... [LB999]

PRESIDENT SHEEHY: One minute. [LB999]

SENATOR CAMPBELL: ...the amount, the percentage of it. It is not going to preclude beyond that date that we'd never, ever have another hospital, but do we as a state feel that we need to put any conditions on a license. [LB999]

SENATOR FULTON: Okay. Thank you. That's actually very helpful. I'm going to listen for the debate and I'm being honest in saying while I opposed LB999, I'd like to be able to vote for AM2503 to respect and recognize the accord that was struck. I still have concerns because of the involvement in government and that's not...I recognize that that exists now because government is issuing the license and Senator Campbell has cleared that up, so. That's a concern and I think it's legitimate to put that out publicly and with that, I will close. Thank you, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Gloor, you're recognized. [LB999]

SENATOR GLOOR: Thank you, Mr. President, and good morning, members. I would throw my congratulations to the negotiating team for the work that they did on Saturday and the preparatory work they did beforehand. I've been involved in a few of those negotiations. The term "herding cats" is not an appropriate metaphor. In fact, it's rather demeaning when you consider the competencies and professionalism of the people involved. But the term "getting eagles to fly in formation" is probably a little more appropriate and that, in and of itself, would be a challenge. And it appears that that formation is, in fact, lined up and the hope would be for the Kearney community that it sees some progress and flies somewhere. My appreciation also to my friend, Senator Hadley, because I know he is the epitome of straightforwardness when it comes to these issues and has taken some inappropriate slings and arrows for doing what he is expected and elected to do. I come at this bill very interestingly and I'm in supportive of both the amendment as well as LB999. People will say, surprise, surprise, but I think

Floor Debate  
April 07 , 2010

---

you should backtrack a little bit and think about LB999 which, given my former career as a hospital CEO, should surprise people since I don't like people to tell me I can't do things when it comes to running a hospital, getting a license, adding beds, all of those things. And yet I would tell you, I think LB999 is the right thing to do and the fact that it is supported by the Nebraska Hospital Association should also tell you that this might be the right thing to do. This was never for me about what was happening in the Kearney medical community. Senator Campbell has said that and I will tell you the same thing. I am concerned about utilization. I'm concerned about unbridled utilization. I am concerned, as Senator Campbell pointed out, about the huge amount of dollars that get poured into acute care, outpatient services, the whole host of medical services by the state of Nebraska with taxpayers' money being used to underwrite that. We're talking about double-digit inflationary increases in healthcare services in this state. And here we sit in the Legislature knowing that asking for a fiscal bill that has very small dollar amounts, \$10 million, \$5 million, is like putting concrete speedos on a swimmer. The swimmer is going to sink and that fiscal bill will cause that bill to sink. And we have an opportunity for a policy discussion and a serious moratorium that allows us to flesh out that policy discussion even further to look at the millions, the tens of millions of dollars that, from an inflationary standpoint, are being spent by this state on a yearly basis on acute care services. I believe a moratorium is one of the ways we get a handle on this. There will be discussions about free enterprise and treating hospitals acute care medical services in this state as a business enterprise and let the market shake it out. I know that was going to certainly be a discussion had the original LB999 been intact and, in fact, had there been a focus on Kearney. Over 50 percent of almost every hospital's revenue in this state comes from tax dollars, either Medicare or Medicaid, over 50 percent. And if you're talking about a rural hospital, in some cases it's 80 to 85 percent comes from taxpayers. It isn't just about licensure which the state holds a key to a facility opening, it's about the hundreds of millions of dollars that go into those acute care facilities. How are we spending that money? How are we going to spend that money in the future? [LB999]

PRESIDENT SHEEHY: One minute. [LB999]

SENATOR GLOOR: Thank you, Mr. President. I don't care if LB999 struggles. I do care if LB999 passes, but I especially care that we talk about LB999 because it gives us an opportunity to talk about something that's very expensive to this state. Last year I was told that the increase in expense for K through 12 education and health services in this state, the inflationary growth was so great that if it didn't get reigned in at some point in time, we would be talking about our entire state budget being spent on those two items within the next 12 to 15 years. No roads, no parks, no anything else, except those two areas of state government. We should be talking now about medical services. We should at least put a moratorium so we have a time-out, a chance to take a deep breath, look at those expenditures for acute care services... [LB999]

Floor Debate  
April 07 , 2010

---

PRESIDENT SHEEHY: Time. [LB999]

SENATOR GLOOR: ...and decide. Thank you, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Hadley, you're recognized. [LB999]

SENATOR HADLEY: Mr. President and members of the body. Thank you for this opportunity to visit with you. It has been a pretty stressful time the last two or three months. As someone in Kearney said, that's what I get paid the big bucks for. I would like to set a couple things straight. I went off the Good Samaritan Hospital board three years ago so I have not been involved with the Good Samaritan Hospital for three years. I went on the Nebraska CHI board for one orientation meeting in November. That's all I was on that. So the idea that I've been speaking for the hospital is not correct. I would be in the same position anybody in this body that talks about if they're a farmer, if they talk about ag things; if they're a lawyer, they talk about legal things; a school teacher they talk about school teacher things. I spent a lot of time in healthcare. I loved the one e-mail I got, all the perks I got, the thousands of hours of nonpaid work I put in over the last nine years, so I guess that was the perk. I want to thank Speaker Flood for going beyond what a normal person would have done; as he did in Nebraska City with the community college, he did in Kearney. Senator Campbell, Senator Gay, went beyond and worked hard. I'm going to stand in support of AM2503 and LB999. I will support the idea that Kearney is exempted. We're trying to work through the process out there at a local level. It is not done yet. They're still meeting. They're still negotiating. There's a lot of work to be done, but I think both sides are coming together to try and come up with a good solution for Kearney and, and for the middle part of Nebraska. Kearney is one of three level two trauma centers. There are 33 counties in the middle of Nebraska that it serves as a level two trauma center. They made 525 helicopter flights, life-saving flights, for trauma cases in 33 counties in the middle of Nebraska. The reason I was involved with LB999 is that I wanted the parties to be able to talk and to understand that what we need in healthcare is solutions that improve quality, lower costs, and improve access, especially in rural Nebraska. There is a difference between Lincoln and Omaha with the healthcare facilities and rural Nebraska. We've talked, I don't know how many times we've had bills in this body in the last two years whether it's mental health providers, whether it's nurse practitioners, whether it is dentists, pharmacists, you name it, for healthcare providers in rural Nebraska it's a problem. So we need to have good, sound policy that we can help. I say we have a billion reasons for doing this because that's what we spend in our Health and Human Services budget. So I ask your support. Someone said, why do we need the moratorium? I think we need the moratorium so your community, in the next 9 or 12 months, doesn't have to go through what Kearney has gone through. It has not been a pleasant process on either side. It's pitted neighbors against each other, physicians against hospital, it hasn't been good. [LB999]

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

Floor Debate  
April 07 , 2010

---

PRESIDENT SHEEHY: One minute. [LB999]

SENATOR HADLEY: Let's sit back and study it. Thirty-six states have some form of study or requirements before they will license a hospital. Nebraska doesn't. I want to quickly read an e-mail I got from a constituent: I want you to know that Nebraska still needs LB999 to protect us from unchecked expansions of hospitals in our rural areas. Duplicative hospitals cropping up in towns like Grand Island, Kearney, etcetera, would be very bad for our current critical access highways. While I feel deep sadness and regret that this bill will protect other hospitals but Kearney, the entire state still needs LB999. I also believe that Nebraska needs good public policy developed around this issue. I feel that a moratorium study and ensuing public policy is incredibly important for our state. And this was a person who wanted to exempt, or wanted the hospital stopped. They're willing to move ahead. So I encourage you to vote for LB999... [LB999]

PRESIDENT SHEEHY: Time, Senator. [LB999]

SENATOR HADLEY: ...and AM2503. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Gay, you're recognized. [LB999]

SENATOR GAY: Thank you, Mr. President. I just wanted to rise in support of AM2503 and the bill. And a little bit why is, is I think the amendment brings the parties together and I'm not going to get into the weekend. A lot of professionals got together and I thought did a very good job working on a difficult situation. When we talk about a moratorium, I'm not thrilled with that idea but then I thought about it a little further and I think with...to say changes in healthcare, that's an understatement of what's going on right now with healthcare reform. We have, right now there's so many interim studies that we're going to be looking into, several dealing with this and this bill would also have a study done through the Health and Human Services Committee. I had listened closely to Senator Gloor and his expertise on hospitals and Senator Campbell and her expertise on the different issues. And I'm convinced that their leadership going into the future will get this sorted out and do the right thing for Nebraska, come back to you, and you'll have options to look at. But if you read through the amendment, I think there are several things that are...need to be looked at and talked about. And it's probably best that we do it in the nature where we're not argumentative and getting back and forth and putting someone, the community of Kearney and others in a situation that they really shouldn't be in on the legislative floor. So I'm pleased that we're going to take a step back and look at it a little closer. This is just my file here on what's...on LB999, and there are so many issues to look at. And Senator Campbell did a fine job in her amendment sorting those out. But I think with their leadership this summer and I'll, hopefully, be involved in that as well. But going forward, I think, when she put a date on here, you're

Floor Debate  
April 07 , 2010

---

going to have a report back to you by December 31, and then next year when you return or whoever returns, most of you will be here, you'll have a chance to look at this a little more in-depth. So I don't think this is a long-term problem for hospitals or doctors if they want to try to do something. But this is a good solution, I think, to where we're going. And I would just want to commend also just on the record, Senator Campbell and Senator Gloor, as I'm usually not opposed to them on too many things in our committee and this one I happen to be. But their professionalism and just the way they handled this thing has been very good and I know they will go forward and give you some good solutions or at least some more data that you can make informed decisions on. And we wouldn't be doing it on day 56 or whatever we're on today. So I do rise in support of the amendment and the bill and would encourage your support as well. Thank you, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Wightman, you're recognized. [LB999]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I, too, rise in support of AM2503 and LB999. I would like to add my congratulations to...along with those that have already been handed out to Senator Flood, Senator Campbell, Senator Gay, and the extraordinary efforts of Senator Gloor and Senator Hadley. They accomplished a lot over the last weekend in bringing the players together and at least coming to a conclusion that they would work together and try to find a local solution. We've heard the question raised, why should government be involved or at least government should be as little involved as possible. I believe that Senator Gloor answered a lot of these questions when he said that 50 percent of the revenues from hospitals across the state of Nebraska come from taxpayer dollars and that in some areas, rural areas, as much as 80 percent come from taxpayer dollars. We don't have to look any further than the number of employees across the state of Nebraska that are covered, public employees that are covered with state supported or taxpayer supported policies healthcare insurance. I don't know for sure how many there are at the state level but probably close to 30,000 state employees and University of Nebraska state college employees. I know we've heard the figure several times from Senator Adams about 21,000 teachers, I believe, across the state of Nebraska. And you add to that the number of spouses and families, and you probably have over 10 percent of the total population of the state of Nebraska included under public employee health plans. So I think it is very important that the state does have very much a vested interest. With that, I would like to ask Senator Campbell a question or two, if she would yield. [LB999]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Wightman?  
[LB999]

SENATOR CAMPBELL: Yes, absolutely. [LB999]

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

Floor Debate  
April 07 , 2010

---

SENATOR WIGHTMAN: Senator Campbell, on AM2503, you have the language beginning at page 15 of line 1, the exception "for any hospital which has begun construction prior to May 1, 2010," is that correct? [LB999]

SENATOR CAMPBELL: That is correct. [LB999]

SENATOR WIGHTMAN: Let me ask you a little bit about what we mean when we say, "begun construction." For example, if a group had bought land prior to that time and hired an architect, would that be, "begun construction," in your opinion? [LB999]

SENATOR CAMPBELL: Senator, no, it would not. We are purposely using perhaps the more dictionary intent on construction that this means that they actually started to move dirt, brought products in, put a foundation. I mean, there is very clearly the intent that a construction, in all of its sense, has started. [LB999]

SENATOR WIGHTMAN: Well, let me ask you another question to try to, perhaps, zero in on this. Say they bought the land and, as I understand they had done at Kearney, had begun at least some dirt work in providing some of the infrastructure and roads into the site. Would that be "begun construction"? [LB999]

SENATOR CAMPBELL: Actually, the Kearney facility has gone beyond that. They have started bringing steel to the site and actually digging what would be within that footprint. [LB999]

PRESIDENT SHEEHY: One minute. [LB999]

SENATOR CAMPBELL: So they will certainly meet this definition. [LB999]

SENATOR WIGHTMAN: What if a group had only begun infrastructure in getting traffic in to the site? Would that be construction? [LB999]

SENATOR CAMPBELL: Senator Wightman, my understanding from the discussion with all parties this weekend is that, no, it would not. They wanted very clearly to note the construction of a facility has been undertaken. [LB999]

SENATOR WIGHTMAN: That's helpful. Senator Campbell, thank you. Thank you, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Hansen, you're recognized. [LB999]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. Three hundred thirty-one million. Senator Campbell, I'll remember that number, \$331 million

Floor Debate  
April 07 , 2010

---

the rest of the summer at least. I just want to go back a little bit and explain what North Platte and Kearney have in common. They have a lot in common and they have a lot in competition. They're probably our number one competitor, our number one competitor in sports in our school athletics, in our school activities, in debate, in one-act plays. I mean, it just goes on and on and on where North Platte and Kearney have been competitors. lifelong competitors in my lifetime. We are competitors in getting conventions. They're a few (laugh) steps ahead of us there right now, too, but we're trying to catch up. And we're certainly competitors in the healthcare market. It's North Platte's closest big hospital. I've been a patient there. I've been a visitor there of family members that have been at Good Samaritan and have...everyone has had a great outcome of that use of that hospital. Senator Campbell also said that there is no Certificate of Need since 1997 and that certainly is. So let's fast forward to 2010 when a group of doctors get together and they say, you know, this may be our last chance to go together and build a hospital. I think that's great. I thought it was a good move. They went through all the hoops on the local level. They went through the city, they got their permits. They started construction a few weeks ago and I thought that the idea was good. I talked to some of the doctors there. I got drawn into this, I guess, by Dr. Denny, and not necessarily Dr. Denny, but Dr. Denny's younger brother and my sons played football and basketball against each other and that's how I got involved in this. But when we do fast forward into 2010, I think that this hospital will create, you know, more competition for North Platte and, in the big scheme of things, probably more competition in the state and certainly in the Kearney area in healthcare. It gives us more options too. I think in the face of national healthcare, these doctors said, this may be our last opportunity to put our money at risk. And they put a lot of money at risk with engineers, architects, and now dirt movers, and they're going into the building phase. I don't think this body is the place to debate a bill like LB999 as it came out in the first place and I do want to stand and thank Senator Flood and Senator Gay and Senator Campbell, Dr. Denny of Kearney, and the administration of Good Samaritan Hospital for getting...sitting down, even though it was at a late hour in this discussion, and certainly in this session, but they did sit down and they talked this through. And I don't know all the details of what happened there, but as long as what we read in the paper is positive, I hope that this certainly turns out in a positive way. As I began this, North Platte and Kearney are competitors. They always will be. We're one hour away from each other. We'll compete. We'll continue to compete. We are the same community. And I wish the best to our good friends in Kearney. And, Mr. President, I yield the rest of my time to Senator Carlson. [LB999]

PRESIDENT SHEEHY: Senator Carlson, you're yielded 1 minute, 15 seconds, and you're next in the queue. [LB999]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I am grateful for the two sides in Kearney that got together last weekend and those from the Legislature that went out and were helpful in that process. I do want to get on the record

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

Floor Debate  
April 07 , 2010

---

for a couple of statements because I live close to Kearney and I've had a number of constituents contact me on both sides of this issue. But we as a people, we're watching with concern as it seems many of our freedoms are being taken away. We look at excessive taxes. We look at excessive regulations. We look at excessive spending and what I think are too many restraints on business and free enterprise. Now my struggle with LB999 is that restricting a freedoms on healthcare, restrictions we wouldn't consider in other areas and I've heard it said this morning, it's not the same, but it's related. Pork producers in our state have had some hard times. Maybe we need a moratorium on pork producing expansion. Cattle feeders have had a tough time. Maybe we need a moratorium on expanding cattle feeding. Corn producers, maybe they need to restrict number of acres of corn so we can control supply. Law practices, maybe we've go too many in this state. Let's put a moratorium on those. [LB999]

PRESIDENT SHEEHY: Senator, you're now on your time. [LB999]

SENATOR CARLSON: Thank you. Fast food establishments, we're concerned about obesity, money could be better spent on groceries, let's put a moratorium on fast foods. Now having gotten that off my chest, I had told the hospitals in my district that contacted me and wanted me to support LB999 that I would not support a two-year moratorium, I would not support a one-year moratorium. I'd support an interim study to the end of this year. Now that looks like what we have and I would like to address a question to Senator Campbell, if she would yield. [LB999]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Carlson? [LB999]

SENATOR CAMPBELL: Yes. [LB999]

SENATOR CARLSON: Senator Campbell, in the amendment, we've got a September 15, 2011, date. What does that mean? [LB999]

SENATOR CAMPBELL: The reason that date was chosen, Senator, is that it would allow us as a Legislature to hear the report next session and if we enacted anything, it's really kind of the date that a bill would become law. And that's how we got to the 15th, would allow the Legislature to put into place any conditions and on a license that we may choose to. And after the study, after bringing all the parties together, we may come back to you and say, we feel very confident with what we have in place. We don't need anything further. [LB999]

SENATOR CARLSON: Thank you, Senator Campbell. And I have another question here because we've had a lot of discussion last week on sunset dates. In a sense, is September 15, 2011, a sunset date? [LB999]

SENATOR CAMPBELL: Correct. [LB999]

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

Floor Debate  
April 07 , 2010

---

SENATOR CARLSON: Okay. Thank you, Senator Campbell. Thank you, Mr. President. I would yield the balance of my time to Senator Lautenbaugh. [LB999]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 3 minutes 15 seconds. [LB999]

SENATOR LAUTENBAUGH: I'll waive, Mr. President. Thank you. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Stuthman, you're recognized. [LB999]

SENATOR STUTHMAN: Question. [LB999]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on AM2503? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB999]

CLERK: 34 ayes, 1 nay to cease debate, Mr. President. [LB999]

PRESIDENT SHEEHY: Debate does cease. Senator Campbell, you're recognized to close on AM2503. [LB999]

SENATOR CAMPBELL: Thank you, Mr. President and I appreciate the conversation and the questions today because this is a very critical issue to our state and certainly to our citizens across the state. I neglected to draw colleagues' attention to the fact that the bill will carry the E clause at the request of the Kearney physicians, the new hospital physicians and that side as we finished on Saturday they specifically requested that. And I'm sure that's because that will enable it to go into effect and protect their negotiations. I'm...I think at this point we've covered quite a bit of information. I just appreciate the colleagues good questions and continue to bring those questions to us as we go through the study and certainly would encourage your support of AM2503 and LB999. Thank you, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the closing. The question before the body is on the adoption of AM2503 to LB999. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB999]

CLERK: 41 ayes, 0 nays on adoption of the amendment, Mr. President. [LB999]

PRESIDENT SHEEHY: AM2503 is adopted. We'll move to the next amendment, Mr. Clerk. [LB999]

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

Floor Debate  
April 07 , 2010

---

CLERK: Mr. President, a series of amendments to be withdrawn: Senators Cornett, Hansen, Gay, Conrad, Karpisek, McCoy, Carlson, Lautenbaugh, all those members indicated to me they'd like to withdraw. I have nothing further pending on the bill, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. All current pending amendments are withdrawn. We will now return to floor discussion on LB999. Senator Louden, you're recognized. [LB999]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Campbell yield for a question, if she would please. [LB999]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator Louden? [LB999]

SENATOR CAMPBELL: Absolutely. [LB999]

SENATOR LOUDEN: Yeah, Senator Campbell, as I look over this bill and as has been pointed out, it's similar to an interim study but it is actually a legislative draft and it will go into statutes. And what I want to have into the record, is it any way, shape, or form that this will affect the construction of the nursing home that the Oglala Sioux Tribe is planning on building in Whiteclay? I don't see that in there but I would like to have it on the record that this does not affect that construction of that home. [LB999]

SENATOR CAMPBELL: Senator Louden, I can assure you that it does not. [LB999]

SENATOR LOUDEN: Okay, good enough because as we read through it, most of it is strictly about hospitals and I didn't pick up anything on any nursing homes but we do have a medical facility going in up there, supposed to be somewhere around 60 beds and about 80 to 100 jobs and this has been in the process and we've been working at it for a long time to get that started and I didn't want anything to come across that would probably hinder that construction in any way. [LB999]

SENATOR CAMPBELL: Senator Louden, I don't foresee any of that and, in fact, nursing homes come under a whole separate point of Certificate of Need and unrelated to hospitals. So I think we can with great confidence assure you that it does not. [LB999]

SENATOR LOUDEN: Thank you, Senator Campbell and thank you, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Louden. Seeing no additional requests to speak, Senator Campbell, you're recognized to close on LB999. [LB999]

SENATOR CAMPBELL: Mr. President, I'll once again thank all of my colleagues today

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

Floor Debate  
April 07 , 2010

---

and particularly those senators who have worked very hard and wish for Senator Hadley and his community a very successful completion of the negotiations. Thank you, Mr. President. [LB999]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the closing. The question before the body is on the advancement of LB999. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB999]

CLERK: 41 ayes, 2 nays, Mr. President, on the advancement of LB999. [LB999]

PRESIDENT SHEEHY: LB999 advances. While the Legislature is in session and capable of transacting business I propose to sign and do hereby sign LR540. Mr. Clerk, you have items for the record? [LB999 LR540]

CLERK: Senator Council offers LR550. That will be laid over. Senator Flood would like to print an amendment to LB771. Name adds: Senator Janssen would like to withdraw his name from LB996. (Legislative Journal pages 1336-1337.) [LR550 LB771 LB996]

And recess: Senator Stuthman would move to recess the body until 1:30 p.m.

PRESIDENT SHEEHY: You have heard the motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We are in recess.

RECESS

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Sergeant at Arms will secure the Chamber. Record please, Mr. Clerk.

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any items for the record?

CLERK: Enrollment and Review reports LB771 to Select File with E&R amendments. Senator Fischer would offer LR551; that will be laid over. That's all that I had, Mr. President. (Legislative Journal page 1338.) [LB771 LR551]

SPEAKER FLOOD: Thank you, Mr. Clerk. Members, we will proceed to the first item on the agenda, at 1:30, LR541. Senator Nelson, you are recognized to open on LR541. [LR541]

Floor Debate  
April 07 , 2010

---

SENATOR NELSON: Thank you, Mr. Speaker, members of the body. I am very pleased to rise today to introduce LR541. This is a resolution that does not call for any money out of the General Fund. It's not a mandate on any municipality. This is a bonding project. LR541 recommends approval for the Board of Regents to issue revenue bonds in an amount not to exceed \$18 million for the purchase of a 480-bed student housing complex at the University of Nebraska at Omaha on their Pacific campus. The revenue bonds would be retired by student rental fees. The purchase price for the student housing project to be paid by the university is \$15,670,000. The difference between the purchase price and the \$18 million bond issuance request is the cost of bonding, in other words, debt service, reserve fund, capitalized interest fund, cushion for interest rate changes, and issuance, and miscellaneous costs. The estimated cost to construct the 480-bed student housing complex is \$23,500,000. The difference between the estimated construction cost and the \$15,670,000 is a loan which comes from the Scott Foundation that will be repaid by the university in part or in full via a development fee to be paid over the 30 years of the bonding period. The debt service coverage is 1.4 and that is maintained for this revenue bond issuance. Construction of the project by the Scott Foundation would begin this spring with completion scheduled for fall of 2011. The university is requesting the approval for issuing revenue bonds now because the cost of bonding, in other words the interest rates, are currently low and are projected to increase between now and fall of 2011. In that manner, a considerable amount of interest and additional cost can be saved by beginning at this time. UNO currently has four student housing complexes for a total of 1,068 beds. Two are located on the Pacific Street campus, and two are located on the Dodge Street campus. The Pacific Street campus is where Ak-Sar-Ben used to be. In fact, this 480-bed complex would be built kind of on the east end of where the racetrack used to be. This would increase total beds to 2,088. A 2002 study estimated the demand for UNO housing between 1,315 and 2,650, with a 2000 midpoint, and enrollment at UNO is 10 percent higher now than it was in 2002. Currently, 13 percent of the undergrad students at UNO can live on campus. This project will increase that number to 16.4 percent. According to the university, the target for metropolitan universities is 20 percent, and I might add the College of St. Mary is at 25 percent residential and Creighton has about 60 percent, way up there, which is very good for their campus. At the present time, UNO's student housing is at full capacity and there's a waiting list. Ten percent of the students who were admitted to UNO but did not enroll cited housing as a factor in selecting another university or college. It is estimated that a significant number of Avenue scholars in the Bright Futures program will need housing while attending UNO and this could vary from 250 to 800 students over a period of a couple of years. And there's an opportunity for other target groups to have on-campus housing: learning community business students at the new Mammel Hall located on the Pacific Street campus and international students. The student housing complex would consist of four three-story apartment buildings with 30 units per building, totalling about 170,000 gross square feet, and a parking lot with 252 parking spaces. Each apartment will have four individual bedrooms,

Floor Debate  
April 07 , 2010

---

2 baths, a living room, and a full-size kitchen. Apartments would be fully furnished and have a 12-month lease. Each of the four apartment buildings are secured with cameras at the entrances, cameras at the elevators, key card at the entrances, key locks to the suites, key locks to the rooms. I don't know if you've visited the UNO campus, but they have really done some fine things on the south side of Pacific Street. This started with the Scott Conference Center. There is a residential hall for graduate students that connects to the Scott Conference Center and then to the east and to the south there are a number of housing units that have been built and in operation now and all very good looking and really makes a nice south campus. This 480-bed complex would sort of complete the L there. All of the complexes are in proximity, near proximity to the Scott Conference Center where they have a full kitchen and cafeteria, and additional parking could be added. So I ask your support for approval of this project. It's a very good thing for the campus. It will enable them to attract even more students who are interested in living in a residential atmosphere there on the campus and will be well worth, I think, the expense. So at this point, I will close and I'll be glad to answer any questions that any of my colleagues may have. Thank you, Mr. President. [LR541]

SPEAKER FLOOD: Thank you, Senator Nelson. Mr. Clerk. [LR541]

CLERK: Mr. President, Senator Ashford would move to amend the resolution with FA75. (Legislative Journal page 1339.) [LR541]

SPEAKER FLOOD: Senator Ashford, you're recognized to open on FA75. [LR541]

SENATOR ASHFORD: Thank you, Mr. Speaker. And I apologize to you, Mr. Speaker, for not alerting you to this amendment but it is a serious amendment and what the amendment basically provides is that the Legislature resolves, commencing immediately, that all construction at the University of Nebraska and any of its campuses immediately cease until the Legislature determines that the crisis, economic crisis in our state is over. We have been sitting here for this year and last year making significant cuts to our budget, making significant cuts to human needs, cuts to students who attend the universities and our community colleges, cuts to state aid, cuts to Medicaid, cuts to services that are going to impact people in a real way every day everybody, from the unborn to moms to behavioral mental health to the issues that we deeply...every single one of us care deeply about. I've been listening to all this as we discussed the abortion bills and hear about the compassion that this body has for the unborn and it is incredibly compelling. It is. And I believe, I believe that it is that same compassion that this body has for the unborn it has also for every young person in this state, every young person that is not getting adequate healthcare, every young person that is not getting an adequate education because of cuts, and the cuts are going to get worse. There are \$700 million worth of projects at the University of Nebraska right now, \$700 million. That does not count community colleges and it does not count state colleges and it does not count other construction projects that are going on throughout our state. Those \$700

Floor Debate  
April 07 , 2010

---

million are funded by private funds, by state funds, and by university funds. Even if they are funded by some other source other than the General Fund, they're going to be maintained, these buildings, no matter where they are, by university personnel out of the university budget. I am absolutely convinced, members, that we have to take a stand as a Legislature. This is not about the Governor. This is not about anybody else but ourselves. We had a meeting the other day, and it was the right thing to do, that the Speaker called and talked to some of the committee Chairs about how we are going to make cuts for the next fiscal year, and it was absolutely the appropriate thing to do and it shows great leadership, and Lavon Heidemann as well, sitting down with the committee Chairs and saying, look it, we got to get into this, we got to get into this as a Legislature and deal with these issues this year. I have sat here, I know we've all sat here, and I sat here this morning hearing speeches about the informed consent bill and about making sure that women are informed about their decision prior to seeking an abortion. Why do we do that? Do we do that for political purposes to say we're pro-life? No. We do it because we care about the unborn. That's why we talk about that. That's why we talk about it. The problem is that young babies are going to be born and they're going to get sick and they're going to die, and we are spending \$700 million on buildings we can't afford. It's time for this body to stand up and say no more, no more, no more until we can take care of those who are the least (sic) vulnerable in our society. I know we believe it. I don't have to convince one single person in this body that that's exactly what we believe. That's why we're troubled by the death penalty. That's why we're troubled about things like that. We're troubled because it's taking a life. We know there are bad guys out there. We know that there are people that can do great destruction in our society. But even given that, we struggle with that and we struggle with it because we have compassion. We have compassion for every living being in this state, whether they're born or unborn, and it's exhibited by every one of these members every single day. And we've got \$700 million worth of projects, almost \$1 billion, which is equal to around 25 percent of our total budget, under construction or in the planning stages. I don't think it's bad that the university is doing this. I don't think it's bad that we have dorms for students. It's great. It's great. But this is a bad place we're in, members. This is a really bad place we're in, in my view. And the human needs of our state are not going to be met and it is not the fault of the Governor, it is not the fault of anybody. It is an issue of what are we going to do about it. What are we going to do about it as a state? We, in this Legislature, declare our priorities. Are our priorities human needs, students, mothers, single moms who can't...don't have the resources to get their kids the things they need so that they can go to school and be good students and learn? Gwen Howard the other day, I've known Gwen Howard since 1975. I have known her since 1975 when she worked for, at that time, Douglas County social services, and they had caseloads of I can't even remember, Gwen, but they had 100, 200 files, 300 files of people in our county that could not be taken care of because of their situation in life. And Gwen Howard, she mentioned the other day, she was talking about adoptive families and the caseload that she had of adoptive families in this state and she talked about their needs and she talks about bullying and she talks about domestic abuse and

Floor Debate  
April 07 , 2010

---

she talks about those issues over and over again, not because it makes good political...it's not...it's some great political move that's going to elevate her politically. It's because she's lived it her whole adult life, every single day, raising here children, working for the Department of Social Services, then HHS, taking care of adoptive families. Colby Coash sits in my committee every day and talks about the needs of children and juveniles in this state and what's lacking and what's needed, and he says, you know, I do this for a living and, you know, I think here's...here's what we really need to do, and there aren't enough, there is not enough, there is not enough assets, there are not enough resources to do it, but we got to do it. Arnie Stuthman, who will be gone next year, gets on NBC television nationwide and says we're a state with compassion. Are we embarrassed by safe haven? Hell no. We're not embarrassed; we're proud that we could stand up for kids who have behavioral issues. And Ron Raikes, who sat back there, and he developed a system so kids with a learning gap in our community in Omaha could maybe learn better. Was it his community? Nope. Was he from Omaha? No way. Did he get criticized by Omaha people? Absolutely. But did he do it? Yep, he did it and he created an historic piece of legislation that will change the lives of many children in our state and in our city of Omaha. Members, it's time to stop. It's time to stop at this stage in this debate, in this stage of this session and say no more. No more buildings at the university, no more buildings anywhere until we stop the drain on the resources for our children in this state. [LR541]

SPEAKER FLOOD: One minute. [LR541]

SENATOR ASHFORD: This is a serious motion. This is not just an opportunity for me to get up because I had...didn't get a chance to have a run at noon. This is what I believe has to be done. Somehow we have to declare...somehow we have to declare what our priorities are in this Legislature, not for political reasons, not to criticize anybody else, but to take charge ourselves of our own destiny as a Legislature and move forward on the issues that we know are important to all of us. Thank you, Mr. Speaker. [LR541]

SPEAKER FLOOD: Thank you, Senator Ashford. Returning to discussion, FA75 and LR541, we begin with Senator Avery. Senator Avery, you are recognized. [LR541]

SENATOR AVERY: Thank you, Mr. President. I want to say that I share many of the views that Senator Ashford just expressed. He's right. He has a passion for these issues and I applaud him for that. He did say, however, that this is a serious floor amendment and since he apparently does not intend to withdraw it, I would ask him to take a good look at the wording because it reads that, "The Legislature resolves that a moratorium on all new construction by all colleges and universities cease immediately." That implies we have a moratorium now and I take it that that is not what he intended to offer us. So on those grounds alone, I would have to oppose the resolution or the amendment. But I hope that he is not intending to go forward with this but to use it as an opportunity to make the very valid points that he just made. I would say that I think there is a rational

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

Floor Debate  
April 07 , 2010

---

explanation for why we're doing what we're doing; that is, why we're taking up LR541. And I think it has something to do with timing. Maybe Senator Nelson would like to address that. But I certainly do understand the need for additional housing, not only at UNO but at UNL in Kearney and other places in our university and college systems. I do have a question that I would like to ask Senator Nelson, if he would be willing to yield. [LR541]

SPEAKER FLOOD: Senator Nelson, will you answer a question from Senator Avery? [LR541]

SENATOR NELSON: Yes, I will yield to a question. [LR541]

SENATOR AVERY: Senator Nelson, I know that frequently these projects on university campuses have implications for student activity fees. Do you know if this will have any impact at all on what students pay every year in activities fees? [LR541]

SENATOR NELSON: Thank you, Senator Avery. So far as I know, there will be no application of any student activity fees or anything of that sort. I should point out, if I didn't make it clear before, there are no tax dollars involved here. The revenue comes solely from the rentals that the students pay in residence in this 480-bed complex. And if I may just give you a few numbers, they anticipate in 2012 that the revenues from the student rentals that come in will be \$2,621,000. Total expense will be \$1,030,000. The net operating income will be \$1,591,000. The debt service will be \$1,114,000. So there's about \$400,000 there that will be used or that you have as a cushion in case for some reason there are additional costs or they aren't filled to capacity. So this is entirely...this income, revenue is entirely from the amounts that the students are charged, which I think are probably in the area of \$750 a month, which is really pretty reasonable compared to what you have to pay for rental units off the campus in the Omaha area. [LR541]

SENATOR AVERY: Thank you. As a parent of a freshman at UNL, I'm acutely aware of these student activity fees and I do know that frequently they...a portion of them will go to help pay for capital construction. Thank you, Senator Nelson. It's clear that this project and this resolution, of course, will have no impact on General Funds from this Legislature. That would... [LR541]

SPEAKER FLOOD: One minute. [LR541]

SENATOR AVERY: ...seem to me be important in our consideration of Senator Ashford's floor amendment. Again, let me stress I certainly do share his frustration and I've said so on this mike, and I do certainly share his objectives. I don't think, however, this is the way in which we can achieve that. In the first place, we're not talking about, with LR541, any expenditure of general revenues from the state of Nebraska. This is an

Floor Debate  
April 07 , 2010

---

enabling resolution that will enable the Board of Regents to approve a project that already has a reliable source of funding, including private donors and the revenue generated by students who would stay in these...in this residence hall. So I will support the resolution and I will listen carefully to what... [LR541]

SPEAKER FLOOD: Time. [LR541]

SENATOR AVERY: ...Senator Ashford has to say about his floor amendment. [LR541]

SPEAKER FLOOD: Thank you, Senator Avery. (Visitors introduced.) Returning to discussion on FA75 to LR541, Senator Krist, you are recognized. [LR541]

SENATOR KRIST: Thank you, Speaker, colleagues. Thank you, Senator Ashford, for presenting FA75 and for your careful words. I just want to go back and mention that when we discussed our passing our budget, I made a comment that at some point an across-the-board 2 percent or 3 percent or .5 percent cut meant across the board; that those areas in the budget in the state that were considered to be, and I used the term, "sacred cows" would have to be approached and potentially cut. This is a good example of how we as a Legislature cannot do what we need to do for the citizens because there's not enough money, yet there are \$700 million or \$200 million or \$300 million or whatever the right figure is of construction or projects out there. So even though the floor amendment may or may not be pulled, even though Senator Ashford may or may not be using this to let us know and attack our conscience again, I think it's appropriate. If Senator Cornett was here, I would ask her to yield to a question. But remember, very early in this process in this legislative session, we couldn't find...I think the right number was \$40,000 to take care of anaphylactic shock issues for our kids in our school system. I couldn't find \$650,000 to fund a cutting-edge technology to diagnose lung cancer. Maybe we are managing our cash funds correctly and maybe we are not, but maybe the sacred cows across the state need to be approached and maybe we need to carefully scrutinize the dollars that are being spent. I had the opportunity to talk with a past Speaker of this Legislature and he told me about a budget-cutting session not too long ago where \$850 million was cut from the budget. That's not even half of what we did. And every time we hear Senator Heidemann get up at a mike, it's doom and gloom. Listen to the message. If we're going to take care of the citizens, the kids, if TEEOSA is going to remain fundamentally sound, if we're going to do what we need to do financially in the near future and for the long-term future, we need to consider the money that's being spent. I stand in support of LR541 because I think it is a sound investment and it does not come out of the General Fund. But the point that Senator Ashford makes is valid and the valid point and the valid part of it should ring true. We didn't have \$40,000 to take care of an issue, an issue that is becoming more and more prominent in this state, anaphylactic shock, in our school systems, but we are going to press on with \$700 million worth of construction. Thanks for your time. [LR541]

Floor Debate  
April 07 , 2010

---

SPEAKER FLOOD: Thank you, Senator Krist. Senator Howard, you are recognized. [LR541]

SENATOR HOWARD: Thank you, Mr. President and members of the body. And thank you, Senator Ashford, for your words of support and encouragement. He has given me the opportunity to address something that's kind of been stewing with me for the last few days concerning our appropriations and where we put our money. I think many of you probably read in the paper over the weekend that the CEDARS organization has pulled out of the state contracts with the Department of Health and Human Services in terms of providing services for children. These contracts were only entered into last, I believe, October was the date. It was delayed and I think the final signing was last October. And the major rub is that we expect the Cadillac of services in child welfare, we all do, I do, I want that. I want low caseloads. I want children to have their needs met. I want these same children in permanent families. I want them adopted or I want them to be safely returned home whenever that's possible. But you know what? That costs money, just what Senator Krist was saying, just what we all know, just what Senator Heidemann says with his doom and gloom reports. It all costs money. And what concerns me about these, the contracts and these private agencies, is that they cannot continue to front the money that they're doing right now for the Department of Health and Human Services and expect to be able to sustain themselves. This is what happened to CEDARS and my prediction, and I've talked to Senator Campbell about this, is they're not going to be the only one to fall here. I worry that the mom-and-pop, if you will, organizations of child welfare, the agencies that for years have provided services, are not going to be able to be in this game. They're simply not going to be able to afford to do it and we're going to be left with a large corporation, one corporation standing, which brings to my mind sort of the Walmart of child welfare, and I think we need to realize that. We need to realize this is the direction this is going. Again, dollars and cents: I'm not saying we should willy-nilly pump more dollars into a system. I think we need to really critically look at what we're paying for, what our expectations are, hold agencies accountable and hold ourselves accountable for what we decide we're spending money on. I'm all for putting money into child welfare. I once told the Governor if we had all the money in the world, I'd want it to go into child welfare. But the simple unfortunate reality, and I believe I'd be backed up by Senator Heidemann, is that we don't have that kind of money so we need to be careful. We need to look at what we're doing. We need to watch this child welfare contract very, very carefully because I think we're going to be facing some very difficult choices with this, some hard choices for us, some hard choices for families in Nebraska, and especially hard choices for those children in foster care. Thank you. [LR541]

SPEAKER FLOOD: Thank you, Senator Howard. Senator Karpisek. [LR541]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Senator Hansen came over and asked me if I thought that Senator Ashford's floor amendment, if drafted correctly, would also pertain to the Innovation Campus where the State Fair

Floor Debate  
April 07 , 2010

---

used to be. I think that he is right, it probably would, and if that's the fact then I'm going to support it. How far ahead of ourselves did we get on that? State Fair is already on the train. It's gone. It's out of town. We're going to do all this stuff at Innovation Campus. Yeah, now where are we? Now we're going to spend how much money? I'm all for Innovation Campus. Again, I've said that all along. How much money are we going to spend there? How much money has been spent to ship the State Fair to Grand Island? I know you're tired of hearing this but Senator Ashford got me a little riled up too. I'm for Senator Nelson, what he's trying to do here, but I'm trying to make a point that we get moving, we get something in our heads, it's going to be the savior of everything, then we don't have the money to pay for it. I think we need to step back, think about what we're doing to people, instead of just running; we've got the power; we're going to move it. Still upset about that whole situation and I'll be upset for quite awhile. I know things will turn around and everything will be all right again for awhile, but I think it is something to think about. How are we going to pay for all those things? How is it going to work out? I think that this is a revenue issue for the university at Omaha and they can make money by spending some money. Seems like that's what this world is about. You got to have some money to make some money, seems to be in my case anyway how I haven't made any. But I think we need to be careful, we need to slow down, think through some things. I'm a little...also taking up a little time to see what Senator Ashford really wants to get done here. Haven't seen him this fired up for a while. It's a little bit of fun. Again, this will be interesting to see how it plays out. Senator Nelson has a good idea for the university of Omaha. Innovation Campus is a great idea. Still don't think it had to take the State Fair out. Thank you, Mr. President. [LR541]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Conrad, you're recognized. [LR541]

SENATOR CONRAD: Good afternoon, colleagues. I wasn't planning to speak on this resolution but, as is the province and prerogative of any one of our individual members, they can bring forward provocative ideas that are on their mind and that are important to our state. And with all due respect to Senator Ashford and his very passionate words and ideas that he has expressed here, and what I believe they represent is an extraordinary frustration in terms of a variety of different issues affecting our social safety net and otherwise. But might I suggest that they are a bit misdirected in terms of what is trying to be accomplished through LR541 and that Senator Nelson and the rest of the Appropriations Committee has brought forward. A couple points I think processwise that might be helpful to this dialogue. Number one, of course, is just the distinction between a legislative bill and a legislative resolution. At the end of the day, of course, FA75 and other things that may be adopted or inserted into this action don't have the force of law to the same extent that a legislative bill would be. It's only an avenue, it's only a vehicle for really expressing an opinion. According to our legislative glossary, a legislative resolution is only a proposal to make an expression of opinion, intent, or recognition, or suggest an amendment to the state or federal constitution, or

Floor Debate  
April 07 , 2010

---

authorize a study of an issue. So let's be really clear that FA75, regardless of the intentions and regardless of the context, doesn't have the force of a legislative bill to actually stop, impede, or frustrate any existing construction happening in the university system or otherwise. In regards to why this resolution is here on your agenda today, there's also been some questions asked about that. Normally, this kind of language would be included in our mainline budget bill, whether or not we're going to grant an authority to the university or other institutions for bonding on important projects. But because of the time frame involved in this specific project, which was fast-tracked and which represents the good intention of a very generous donor, the process became a little bit muddled. But, nonetheless, the university went through all of the appropriate levels of consideration with the appropriate bodies, including the Postsecondary Coordinating Commission, and then rather than having the ability to be included in the mainline budget, came forward in a legislative resolution. If we weren't in session, then this same sort of resolution would be presented to the Executive Board, when we're in recess or have adjourned sine die, for their consideration, but since we're still in session, that's why it's here before you today. It has the full support of your Appropriations Committee. It has gone through all the appropriate channels. And Senator Nelson has done a great job talking about how this won't have an impact on our state budget in a negative way but rather facilitates a very generous gift from a private donor to improve student housing at one of our important institutions in the university system. And I know Senator Heidemann can talk more about process and I'd be happy to give him a little time if he so desires. Thank you. [LR541]

SPEAKER FLOOD: Thank you, Senator Conrad. Mr. Clerk. Senator Heidemann, I'm sorry. You have 1 minute. [LR541]

SENATOR HEIDEMANN: Thank you, Mr. Speaker, and thank you, Senator Conrad. In reality, you've done a very good job of explaining the process that we go through to give the universities and state colleges the authority to bond. I do want to reiterate though that this does not affect our budget by any means. This is just giving the Regents the authority to bond for this project. It appears to be a very good project, something that I think we need to stand behind. This could be not only a good thing for UNO and the students for housing for them, but for the university system as a whole and actually for this state. Someone had walked by and said that this is actually a very good thing because we have construction, a project going to go on, and this actually will create jobs. So this could be actually a very positive thing and it could be a positive thing for our budget because when you have jobs then you have revenue coming in. So... [LR541]

SPEAKER FLOOD: Time. Thank you. (Laughter) Mr. Clerk. [LR541]

CLERK: Mr. President, Senator Ashford, I understand you'd like to withdraw FA75. [LR541]

Floor Debate  
April 07 , 2010

---

SENATOR ASHFORD: Yes. [LR541]

CLERK: And Senator Ashford would then move to amend with FA76, Mr. President. (Legislative Journal page 1339.) [LR541]

SPEAKER FLOOD: FA75 is withdrawn. FA76. Senator Ashford, you're recognized to open on FA76. [LR541]

SENATOR ASHFORD: Thank you, Mr. Speaker. This amendment substitutes...or FA76 is a substitute for my floor amendment initially filed and it simply would resolve that any project commencing after the subject project in this resolution would cease until the Legislature determines that the fiscal crisis is over. I understand that this is a revenue bond. I understand (laugh) that. But you know what, there are a lot of different financing mechanisms that we use and we stand behind as a state and as a university that add to the General Fund costs. There are \$700 million worth of projects on the books at the university. That's a quarter of our budget. Some of them have revenue bonds; some of them don't. Some of them are funded with General Fund dollars; some of them aren't. Some of them are the result of donors who are very generous but we pay the freight once those buildings are built. It's fine, it's good, and in good days we should do it and we should continue, but what I'm suggesting here today is that the Legislature make it clear in some very clear fashion. And I agree with Senator Conrad about process. This really isn't about process. This is about conviction. It's not about process. Senator Conrad is good when it comes to understanding and explaining process. I'm not as good as she is on that topic so it's good to hear from her. And Senator Heidemann is absolutely right, there's nothing wrong with Senator Nelson's resolution in and of itself. But this is not about that. What this is about is this Legislature saying stop, stop now, stop now until we know where we're at. We can do this, members. We are the only body that can do this and impact the state as a whole. We have seen for two years funds dwindle for education and human services. They continued to dwindle over the special session, they have continued to dwindle over this last three months. What I'm trying to say is I find it very ironic because every single person in this body, and I know every one of you very well, does not believe that the priorities should be buildings over people. We all believe the opposite of that because that's what we talk about here. Whether it's a bill involving the unborn about abortion, whether it's a bill about funding for education, whether it's a bill about HHS, I think every single person in this body plus the Governor, plus the executive branch, plus education all believe the same thing. We want the best for our children but we...I think we need to take the initiative. It's not about process. It's about conviction. We should take the initiative to say to the university...and if we want to add other public buildings, I don't really care who's in this resolution. It's not about the university anyway. It's about the Legislature. It's about what we have not been able to do this year, not because we haven't wanted to but because of circumstances to a great extent that made it impossible for us to do them. And certainly it's about the money.

Floor Debate  
April 07 , 2010

---

There isn't the money to do X, Y, and Z. Senator Stuthman earlier was talking about CEDARS and some cutbacks at CEDARS in Lincoln. I don't know the details of it but I hear all the time about the concerns upon the...on the implementation of the safe haven legislation we passed last year. The violence continues in Omaha. The learning gap continues in our public schools. Sure, we spend a lot of money to try to solve those things, but you know what, those issues are more important than buildings. They simply are. They simply are. So this resolution is not about process. No question, building dorms at UNO is a good idea, no question about that. I remember being involved in helping to fund the fine arts building at UNO when I was on the Appropriations Committee years ago. We all want to do those things, but I believe we want to do the human services more. We care about the children more. And I understand a vote for this resolution is not anyone saying they don't care for the children more. I understand that, too, and that's not what I'm saying either. I'm not saying pick and choose. I'm not saying don't vote for...or vote for LR541 and you will be ignoring the children. That's a silly statement and I don't believe that's what we would be doing. But we need to say it. Somehow we need to, after this session and after the special session and all the things we're not going to be able to do this year and all the compelling comments that were made this morning and have been made on LB1103 about how we care so deeply for all children, whether they're born or unborn, the only way to really address some of those issues is make sure that those children get the care they deserve and they get the education they deserve and that those priorities are bigger, more important, better than buildings. It's not to say that Senator Nelson's resolution is not important, because it is. But lastly and in summary, I would say this. In the end of the day, we make the law. We declare the policy. We have the ability above anybody else in this state to declare priorities and to see that those priorities are carried forth. No one else has that authority and that power, and I think we use it wisely. I'm proud of this body. I'm proud every day I come here. I'm proud of everybody here because I've never, never, I would never...I would never have come back if I didn't believe I wasn't going to be serving with 48 of the most committed, wonderful people in this state, and I believe that every day I wake up and it gets me down here. But I think in the end it's not about process; it's about conviction and it's about priorities and it's about kids and it's about all those things that we care about deeply. Thank you, Mr. Speaker. [LR541 LB1103]

SPEAKER FLOOD: Thank you, Senator Ashford. Members, you've heard the opening on FA76. Senators Harms, Mello, Gay, Wightman, Hadley, and Stuthman are in line. Senator Harms, you are recognized. [LR541]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Ashford, would you yield, please? [LR541]

SENATOR ASHFORD: Yes. [LR541]

SPEAKER FLOOD: Senator Ashford, will you yield to a question from Senator Harms?

Floor Debate  
April 07 , 2010

---

[LR541]

SENATOR ASHFORD: Yes, sir. [LR541]

SENATOR HARMS: In your amendment, you talk about postsecondary education. Define that, because there's a problem with this and that's the community colleges are considered political subdivisions and by putting this restriction on the community colleges I will tell you, colleagues, you will be...you may very well be in violation of the Duis amendment, which will cause that to be unconstitutional, and then we have another mess on our hands. So be careful how we word this, okay? I just would like to have your thoughts about that. [LR541]

SENATOR ASHFORD: I don't have a lot of thought about it. As I suggested to Senator Conrad, I know nothing about process but I accept your critique on that, Senator Harms. [LR541]

SENATOR HARMS: Well, thank you. Because I think that creates another problem. I also don't disagree with what my good friend Senator Ashford is doing. I understand his passion and compassion for this. But when I look at where we are today, our only hope to address the issues of children and poverty and where Nebraska is going to be in the future, quite frankly, is going to be through education. If we're going to take the brightest kids we have in this great state, give them a proper education, put them in a place they can live, then we've got an opportunity to do that. By ignoring what this request is, our young people will go somewhere else. They don't have a place to live. That's why this residence hall is being requested to be built. And that's the last thing that I think we want to do is to lose the best minds we have to go somewhere else because they have a place to live. I will tell you, in the research that I've looked at it's very clear that when students leave home to go to college, the first question that's asked by the mother and, by the way, the mother makes the decision, is the safety of my teenager: Do you have a safe residence hall for my teenager to live? What type of monitoring do you have? What kind of security force do you have? And then after that's answered, they begin to have the discussion about the curriculum and what kind of programs you do have. And without residence halls and without giving the university the opportunity to grow, these teenagers will have to live off campus and, as a parent, I would tell you I would not want my freshman teenager living off campus. It's not safe, it's not appropriate. I would want them under the control that we need to have. So I think we have to think through this very carefully that I think that our hope in this great nation is to give our kids quality education, to keep our best and brightest students here in Nebraska, either going to the University of Nebraska or the state college system or the community colleges or the university system. But you've got to have a decent place for them to live. And when you look at some of the research that I've looked at, when you look at residence halls, I can tell you that 75 percent of the kids who enter college have never shared a bedroom with anyone. That's why the residence hall that they are building is designed the way that it

Floor Debate  
April 07 , 2010

---

is. It has the security, it has the safety, and it has exactly what students need to have. Students are mobile today. They don't need to come to Nebraska. They don't need to go to the University of Nebraska at Omaha. So what I'm really asking for you is to consider to accept this. I don't know what the University of Nebraska is doing in all their other constructions, but I do know that most of those dollars are not being run through the general budget. They have other sources that they can do this. They've got a great foundation. They've got people who will donate and who will give. So I would hope that you don't lose sight of what the purpose of this is. It's to keep our brightest minds here, to give them a quality education so that we can look back and we... [LR541]

SPEAKER FLOOD: One minute. [LR541]

SENATOR HARMS: ...can begin to resolve some of the issues that my friend Senator Ashford has talked about. When you look at us, for Nebraska to be competitive in a changing world, global economy, education is a key factor. And when you look at the fact that Nebraska does well in high school graduation but beyond that we don't do well with kids graduating and this economy, colleagues, is a knowledge economy. [LR541]

SPEAKER FLOOD: Forty-two seconds. [LR541]

SENATOR HARMS: It's a digital economy. And for us to be competitive, we've got to provide the necessary facilities. We've got to provide a place for students to live so they can get a quality education. That's part of the whole system and atmosphere. So I would urge you to give that consideration. And I understand where my good friend is coming from and I don't disagree with him, but on this project, no. I would ask you to support LR541 and do not favor AM76 because, quite frankly, I think it will make community colleges unconstitutional because of the Duis amendment. Thank you, Mr. President. [LR541]

SPEAKER FLOOD: Thank you, Senator Harms. Senator Gay, you are recognized. [LR541]

SENATOR GAY: Thank you, Mr. President. I rise in opposition to the amendment and in favor of the resolution. To continue on with Senator Harms, I agree. I know there's an opportunity and Senator Nelson handed out timing is advantageous. We should not take advantage of an opportunity that's given to us. There are priorities and this is a very large priority of the youth of Nebraska and those people who are going to be our future work force. But I've watched UNO over the years become an excellent institution and it's a statewide institution and watched the campus grow. This is a great addition. And I think the generous donors, as Senator Conrad had talked about, have come forward, they want to help the state, their own state where they have created business opportunities and created wealth, to give back. So I think it would be just terrible if we didn't take advantage of that. To put a complete moratorium or whatever this says here

Floor Debate  
April 07 , 2010

---

that we aren't going to spend any money on construction and some of those things, you know, there will be time to argue that. This right now is not the time. When I listen to Senator Ashford, I know how compassionate he is on these causes and I've worked with him on several issues and just...he speaks from the heart. However, I disagree with him on this and I think we need to maintain focus on what the resolution does. This creates an opportunity for the University of Nebraska at Omaha and for students throughout the state who can take advantage of some quality living. Senator Harms discussed it too. I think the mood is changing. College is changing and those opportunities that they're looking for, you need these residence halls to be competitive so we don't lose our students. So with that, Mr. President, I'd yield the balance of my time to Senator Ashford, if he'd like it. [LR541]

SPEAKER FLOOD: Senator Ashford, 3 minutes. [LR541]

SENATOR ASHFORD: I think we've had enough discussion and I'm sure that we would be ending the discussion fairly soon and I appreciate the indulgence of my colleagues on this issue. I know we're going to solve it. I know we're going to do it. We just have to remember that it's us that are going to do it. We're the ones with the ability to do it. We're the ones that make the priority decisions. We're the ones that decide where the money goes. And it doesn't do any good, and I'm not casting aspersions on anybody, but it doesn't do any good to criticize anybody else outside the body, whether it's lobbyists or the executive branch or somebody else or our constituents--we have to listen to them, of course--but it is us. It is a mammoth degree of responsibility and authority that we have and we're blessed to have it and I think we are the ones to do it. I just want us to remember as we move forward and think about these issues that we declare our priorities, that sometimes we ignore process once in awhile so that we can declare our priorities aside from process, and to declare our convictions and where we're going as a state, and as we think forward to next year and we think about how we're going to have to make decisions that we do so in the way that protects those that are least able to help themselves, and those are the poor and those are the unborn and those are the children that don't have the advantages that maybe our children have and that many of our friends and their children have. That's all I'm saying by this. With that, Mister...again, I thank the body for this one hour of your time and I would withdraw the FA76. [LR541]

SPEAKER FLOOD: FA76 is withdrawn. Thank you, Senator Ashford. Returning to discussion on LR541: Senator Wightman, Senator Stuthman. Senator Wightman, you are now recognized. [LR541]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I appreciate Senator Ashford's passion and compassion. We've just heard two of the best at that in Senator Ashford and Senator Harms. Compared to them, I'm probably not much better than a robot up here. But I do appreciate their passion and their compassion for the citizens of

Floor Debate  
April 07 , 2010

---

this state. But this is a good project. We heard this presented to us in the Appropriations Committee. Came out with a unanimous vote, as I recall. There are certainly more than enough revenues to cover this. We were told that all of these projects, including other indebtedness on other bond issues are cross-collateralized. There's plenty of revenue to cover this and I don't think that there's any risk that the state of Nebraska...obviously, there's no obligation to pay it through General Funds so...but I don't see any likelihood at all or probably possibility that the project would fail and that the state or the University of Nebraska would have any other liability on it. So I do urge your support of LR541. Thank you. [LR541]

SPEAKER FLOOD: Thank you, Senator Wightman. Senator Pankonin, you are recognized. [LR541]

SENATOR PANKONIN: Thank you, Mr. President. Members of the body, I just want to briefly also speak in favor of LR541. Having grown up south of the metro area, I spent all my whole life in Cass County, I've watched what's happened at the UNO campus. I'm old enough to remember when it was Omaha University and basically a commuter college for people from right in Omaha metro area. But what I've seen with the dorms and so many of the wonderful things that have happened is that many of our high school graduates from my community now attend UNO which wouldn't have happened 10 or 20 years ago. The dormitories have made a big difference on that campus and that campus life, and I think it's an outstanding institution. I'm very proud that it's close by and the leadership team at the University of Nebraska at Omaha have done a great job. And I think this is a continuation of our state's commitment to that institution and the benefit it brings to not only the Omaha metro area but to the entire state. So I urge the adoption of LR541. Thank you. [LR541]

SPEAKER FLOOD: Thank you, Senator Pankonin. Senator Howard, you are now recognized. [LR541]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If I could ask Senator Nelson a question or two. [LR541]

SPEAKER FLOOD: Senator Nelson, will you yield to a question from Senator Howard? [LR541]

SENATOR NELSON: I would be happy to. [LR541]

SENATOR HOWARD: Thank you, Senator Nelson. The proposed buildings, the 30 units per building student resident hall, will that be managed by the university? Will they keep... [LR541]

SENATOR NELSON: No, it's managed by the Scott Foundation management system or

Floor Debate  
April 07 , 2010

---

whatever it's called and they are currently managing three of the other apartment complexes that are on the campus and they're doing a very good job. I might add that the University Village, which was the first one, and you might be familiar with that, that was operated by another outfit that was located down in Texas and it wasn't a disaster but it wasn't satisfactory. So through an arrangement, the university was able to purchase that back and now they are...the university is doing the management on that and making the buildings much more livable and secure. [LR541]

SENATOR HOWARD: I'm really glad to hear that because I was aware of the problems that they had with the initial management, the contracting out, and I think that, as a parent, I would feel more assured if it was managed in-house and I know that the university had looked at doing that. But it sounds more like it's a partnership with the university and the Scott Foundation working together, which obviously that's local. It's not based in Texas. I think that's a very good thing. [LR541]

SENATOR NELSON: Um-hum, um-hum. Well, and the Scott Foundation is protecting its investment and the security. I mean they did this on Scott Village number one. This is Scott Village number two and it's working out very well. And I'm sure you were listening when I read all the security provisions that they're putting in there to make this as safe as possible for the students. It's kind of state of the art right now with the cameras and things available to them. So I think you can feel a lot...you can feel very good about this. [LR541]

SENATOR HOWARD: I really appreciate that. [LR541]

SENATOR NELSON: Yeah. [LR541]

SENATOR HOWARD: That's important information and thank you. [LR541]

SENATOR NELSON: Thank you. [LR541]

SENATOR HOWARD: Thank you, Mr. President. [LR541]

SPEAKER FLOOD: Thank you, Senator Howard. Senator Sullivan. [LR541]

SENATOR SULLIVAN: Thank you, Mr. President, and I'll be brief in my comments. But what I have to say actually relates not only to LR541 but what Senator Ashford had talked about, because I think as I read this description of the intent behind building this new facility at UNO, if you look at the sheet, it talks about the influx of new students in the fall of 2011, which in part will be brought about by the Bright Futures Foundation, which is reaching out to at-risk students. I have long been a proponent, when we talk about vulnerable individuals and breaking that cycle, that we've got to talk about prevention and education. And I think this is precisely what this is attempting to do. The

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

Floor Debate  
April 07 , 2010

---

Bright Futures Foundation is reaching out to at-risk children, moving them along in an intensive program so that they can enter higher education and have the advantages of living on campus. So I think that it addresses some of the things that are of equal concern to Senator Ashford and Senator Nelson. Thank you. [LR541]

SPEAKER FLOOD: Thank you, Senator Sullivan. Senator Pirsch, you are now recognized. [LR541]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Nelson might yield to a quick question. [LR541]

SPEAKER FLOOD: Senator Nelson, will you yield to a question from Senator Pirsch? [LR541]

SENATOR NELSON: Certainly. [LR541]

SENATOR PIRSCH: Or two, although...well, thank you for that. Just with respect to the nature of the bond that we're talking about here, first of all, the Legislature does have to authorize, and that can come through a normal, usual process, either through the appropriation, mainline appropriation bill or we can do so through a legislative resolution such as the one you're offering. Is that correct? [LR541]

SENATOR NELSON: That's correct. And as you heard, this was done because this came on fairly late in the process for us, but we wanted to take advantage, if we possibly could, at the lower interest rates or the university did. [LR541]

SENATOR PIRSCH: Very good. And the nature of this bond, and there are at least two types, one being general obligation bond, which would be backed by the taxpayers in some capacity, versus a revenue bond which means it is backed not by the taxpayers but by the...whether or not a profit materializes or revenue materializes from the people who are utilizing the project. Is that correct? [LR541]

SENATOR NELSON: That's correct, Senator Pirsch. This is solely funded by revenue from rentals paid by the students over the 30-year period. And it's set up so starting at 92.5 percent capacity we're in good shape. It's even better at 100 percent capacity. [LR541]

SENATOR PIRSCH: Oh good. But whatever the structure is, worst-case scenario and whatever projections be...whether they be overly optimistic or overly rosy in the revenue that was projected to be had from the people who are utilizing these, through rents or leases of these buildings, if that didn't materialize it wouldn't be the taxpayers who are ultimately on the line for this, correct, it would be the bondholders, correct? [LR541]

Floor Debate  
April 07 , 2010

---

SENATOR NELSON: Well, possibly, but certainly not the taxpayers. And you ask a good question. If things fall apart, and we hope that they certainly don't, the university has what is called...I just have to...a master trust indenture surplus fund that they can fall back on and that's built...that's surplus that is built up for all the construction projects in the past where there has been some surplus, a little profit. And so that's there to back this up. These bonds are not guaranteed. [LR541]

SENATOR PIRSCH: Right. But the... [LR541]

SENATOR NELSON: The state does not guarantee these. [LR541]

SENATOR PIRSCH: They're backed up, so it's at the risk of the bondholder who gets into this and says I will, I feel confident in the structure of the rents that will come from this such that the rate of return...but it's the bondholder who's risking it by buying,... [LR541]

SENATOR NELSON: Yes, I would agree with that. [LR541]

SENATOR PIRSCH: ...not the taxpayer, correct? [LR541]

SENATOR NELSON: I would agree with that, yes. [LR541]

SENATOR PIRSCH: Now but you mention a backup fund that would be able to offer, if things were overly optimistic and it came up short on the revenue. Is that backup fund guaranteed or somehow paid for by the taxpayers? Do you know? [LR541]

SENATOR NELSON: It's not. It's available but it's not guaranteed. [LR541]

SENATOR PIRSCH: Right. But it's not...those funds were not provided by the taxpayers nor are they... [LR541]

SENATOR NELSON: No. [LR541]

SENATOR PIRSCH: ...are the taxpayers guaranteeing that? [LR541]

SENATOR NELSON: No, to the best of my knowledge, those are from revenue just like we're talking about here today. [LR541]

SENATOR PIRSCH: Okay. So essentially these would be analogous to user fees, correct? [LR541]

SENATOR NELSON: Yes. [LR541]

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

Floor Debate  
April 07 , 2010

---

SENATOR PIRSCH: Okay. I just wanted to settle that in my mind before I...make sure that I settled that in my mind as we go forward and frame the issue. Thank you for your time. [LR541]

SENATOR NELSON: Thank you. [LR541]

SPEAKER FLOOD: Thank you, Senator Pirsch. There are no lights on. Senator Nelson, you're recognized to close on LR541. [LR541]

SENATOR NELSON: Thank you, Mr. President. I will be brief. These two amendments were rather unexpected but I think it was good to hear what our esteemed Senator Ashford had to say. It boils down to this: we have priorities, we have process that we have to follow. As has been said, ordinarily this would have come through the regular budget but we, because of the lateness of the hour, we did this by legislative resolution. What we are doing here is approving what the Board of Regents has done through their constitutional authority, and statute 85-404 provides that when the Board of Regents do take action on university or college housing, dormitories, residence halls, of that sort, then the Coordinating Commission on Postgraduate (sic) Education has to look it over, and they did so very carefully, and they have to approve it. They did approve it and then it came to the Appropriations Committee and we approved it and now it's up for approval by this body. Back to the priorities, I think process is still very important. If you sat on the Appropriations Committee, everybody that comes to you and wants money, as far as they're concerned, they're the priority. So we have a lot of priorities to look at. It can't be done in a hurry. We have to do it with some process over the period of time. The Appropriations Committee has to take a look at those priorities and present to the best of their ability and then this body has to decide what the priorities are. I can understand Senator Ashford's frustration. We all have that. There simply isn't enough money. We don't have enough money to do what we'd like to do and we may have to cut some more, so this is a difficult time for us. But I would say that we don't want to stop construction, we don't want to put the onus on the backs of education at this time, just as Senator Harms has said. We need to look at this when we meet again after the first of the year. With that, I will forgo my usual closing and just say that I ask you, having heard all this discussion, to proceed with approval of LR541. It is a good resolution. The university has done a good job of setting this up. We're utilizing funds from a private foundation to help buy this and then pay it off, and it's going to be a wonderful thing for 480 students at the University of Nebraska at Omaha. Some of them will be there through the...through the avenue of the Avenue scholars, which, as Senator Sullivan said, anywhere from 200 to 800 over the next couple of years can go through and they will have this available to them. Thank you, Mr. President. [LR541]

SPEAKER FLOOD: Thank you, Senator Nelson. Members, you've heard the closing on LR541. The question is, shall LR541 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LR541]

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

Floor Debate  
April 07 , 2010

---

CLERK: 43 ayes, 0 nays, Mr. President, on adoption of the resolution. [LR541]

SPEAKER FLOOD: LR541 is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and to hereby sign LR541. Mr. Clerk, items? [LR541]

CLERK: Mr. President, Enrollment and Review reports they've examined and engrossed LB252, LB411, LB695, LB696, LB706, LB713, LB732, LB759, LB760, LB792, LB813, LB861, LB933, LB961, LB978, LB986, LB997, LB1047. Communication from the Governor to the Clerk. (Read re LB373, LB820, LB864, LB880, LB880A, LB901, LB924, LB965, LB970, LB975, and LB1081.) That's all that I have, Mr. President. (Legislative Journal pages 1339-1341.) [LB252 LB411 LB695 LB696 LB706 LB713 LB732 LB759 LB760 LB792 LB813 LB861 LB933 LB961 LB978 LB986 LB997 LB1047 LB373 LB820 LB864 LB880 LB880A LB901 LB924 LB965 LB970 LB975 LB1081]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to LB563. [LB563]

CLERK: Mr. President, with respect to LB563, Senator Nordquist, I have Enrollment and Review amendments first of all. (ER8214, Legislative Journal page 984.) [LB563]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB563]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB563. [LB563]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB563]

CLERK: Mr. President, Senator Lathrop would move to amend. Senator, I have AM2365. I have a note you wish to withdraw AM2365 and offer as a substitute AM2500. (Legislative Journal page 1312.) [LB563]

SENATOR LATHROP: That's true. [LB563]

SPEAKER FLOOD: Without objection, so ordered. [LB563]

CLERK: AM2500, Senator. [LB563]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open on AM2500. [LB563]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. Good afternoon. I think I'll start by talking about the bill just to kind of take you back to our

Floor Debate  
April 07 , 2010

---

discussion to put this in context a little bit. LB563 is a simple bill which does something pretty important, I believe. It deals with the improper classification of employees in two industries: the construction industry and the delivery industry. And you will recall from our conversation or our debate rather on this bill on General File that the problem that we are trying to address with misclassification of employees, which is growing more and more each day across the country in many industries, these two in particular, is that when a contractor or an employer hires a bunch of people to work for them and they have a relationship of employer-employee but that employer calls them independent contractors, that there are problems, many faceted problems that follow. First of all, for the state of Nebraska, those people that are called independent contractors are not...they are not paying into unemployment; they're not paying into revenue, our state income taxes; they are not covered by work comp; they're not paying into the federal system. So this business model of calling your employees independent contractors is cheating the state out of money and revenue. These people are not covered by work comp so when they're hurt there's no one to pay for the cost of their care and treatment. So the state is losing significant dollars with this business practice of calling your employees independent contractors. But the problem doesn't end with the state. It ends with those who try to compete with the unscrupulous contractor and the unscrupulous employer in this respect: The person who calls his employees independent contractors has about a 30 percent labor cost advantage over his credible competitors. Those people that are obeying the law can no longer compete with those unscrupulous employers that are calling their employees independent contractors. It is a widespread problem. The Fiscal Office estimated that we're losing \$10 million a year in revenue. And honest employers and honest contractors are not able to compete, and the problem is growing. This is also the business model of those who would hire the undocumented worker. By hiring an undocumented worker and calling them an independent contractor, besides not paying taxes, besides not withholding, besides not covering them by workers' compensation insurance we are allowing the undocumented worker to take jobs away from those who would do work in the trades. It is providing an unfair advantage and we're losing revenue. This bill enjoyed broad support on General File. AM2500 is an amendment intended to provide changes that came at the suggestion of the Commissioner of Labor. The Department of Labor sat down, the commissioner sat down with me after this was over. They embraced the idea of getting to the misclassification and recognize the costs associated to the state and the problems related to the use of this business model in hiring the undocumented worker. The changes to this bill with AM2500 are simple. Section 5 clarifies that the information provided to the Department of Labor concerning an alleged violation of the Employee Classification Act is confidential unless the information is needed in administrative, civil, or criminal proceedings. Section 8 makes it clear that the Department of Labor will only share violations with other agencies. Section 11 adds clauses to public contracts stating that the contractor must follow the provisions of the Employee Classification Act and is currently not barred from...you'll recall they had to fill out an affidavit on a public contract. We've added, at the request of the Department of Labor, an additional

Floor Debate  
April 07 , 2010

---

requirement in the affidavit that they represent they are not barred from entering into public contracts pursuant to the Employee Classification Act. Section 13 identifies the funding source as the Contractor Registration Cash Fund. In the original bill and in the original A bill we had a different fund. This fund is now going to be used and we will amend the A bill to reflect that. The Contractor Registration Fund is a cash fund run by the Department of Labor with receipts from the Contractor Registration Act. There is, I'm told, sufficient funds in that and it is logical to have the money for enforcement of this bill come from that fund because they will enforce the Contractor Registration Act and the Employee Classification Act with the same people out of the same office and use the same investigators. Section 13 also deals with provisions pertaining to information sharing between the Department of Revenue and the Department of Labor. Those are clarified. Contractor is added...subcontractor, rather, is added to the definition of contractor. And the amendment also clarifies that the act does not apply to individuals in the delivery industry if they are exempt from unemployment insurance or meet the three-part independent contractor test. That's the amendment. And I don't think you're going to have much difficulty with the amendment. They are changes suggested by the Department of Labor to make this more workable, to have the enforcement be more coordinated with the Contractor Registration Act, and to have the cost of that enforcement come from a fund that makes sense. As I said, this bill enjoyed widespread support on General File. And I'm now to understand that Senator Price has an amendment that we'll talk about shortly after this bill, assuming it is, this amendment is adopted, we'll be talking about Senator Price's amendment. And I want to maybe jump ahead a little bit with respect to the concerns, and the amendment talks about taking delivery people out of here. I'm not sure what the concern is. I've gotten some e-mails, as you probably have, from some people that run a messenger service, somebody that has an industry association of messenger service people. And I think it's fair to talk about that if you don't mind me doing so. This bill, to give you a little historical perspective, we have been working on this bill in my office and in the Business and Labor Committee for two years. Two years this has been out there. We've had hearings. We've had...I believe we had an interim hearing on it in addition to the bill introduction. And we have spent, and my legal counsel in particular, countless hours listening to the concerns of those who have come to the table to talk about their concerns. We have spent a good part of the summer accommodating the concerns of the trucking industry. They are represented by an association. We've spoken to several concerns that are over-the-road truck drivers that operate out of this state and the truckers association and have accommodated their concerns. We now have a group of folks who are sending e-mails. They are messenger service people. [LB563]

SPEAKER FLOOD: One minute. [LB563]

SENATOR LATHROP: And they have expressed concern that this bill is going to cause them problems with their business model. And I will tell you, to give you a preview, that we are not changing the standard for delivery service. And let me say that again. This

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

Floor Debate  
April 07 , 2010

---

bill does not change the standard for who is an employee or an independent contractor in the delivery service industry. All we do is provide for some enforcement of the current standard. So when people tell you that we are about to turn upside down a particular industry, I will tell you that they never came to the table. I suspect they're reading the green copy of the bill, and I'll talk about that later. But you should understand that I am not, in this bill, changing the standard. These people, if they are breaking the law after LB563 becomes the law, they're breaking it today. [LB563]

SPEAKER FLOOD: Time, Senator. [LB563]

SENATOR LATHROP: Thank you. [LB563]

SPEAKER FLOOD: Thank you, Senator Lathrop. (Visitors introduced.) One quick note on scheduling, I do anticipate working until approximately 6:00 p.m. this evening. There will be no evening meal and would like to advise everybody that tomorrow we will most likely be working into the night. Mr. Clerk. [LB563]

CLERK: Mr. President, Senator Price would move to amend Senator Lathrop's amendment with AM2506. (Legislative Journal page 1315.) [LB563]

SPEAKER FLOOD: Senator Price, you're recognized to open on AM2506 to AM2500. [LB563]

SENATOR PRICE: Thank you, Mr. President and members of the body. Let me begin by expressing my support of the efforts to properly classify those in the construction industry. Like many of you, I've heard from contractors in my district with concerns about this unscrupulous business practice being done and performed by some contractors. And I believe LB563 may level the playing field for contractors and construction workers across Nebraska. However, I am concerned about the provisions in this bill which apply to delivery services. My recollection of the debate on General File is that it centered exclusively on the construction industry. So myself and my staff went and we reviewed the transcript from the committee hearing on the bill and, again, I found nothing to show that the need to include delivery services so much so that I can't find a single instance where the words "delivery service" are mentioned during the hearing. Now what I'm very concerned about is how this piece of legislation will be interfering with the employer-employee model. It's almost like a privity there that we talk about in the federal acquisitions where we, the state, are getting into that relationship and define it. And that could be parlayed across the spectrum of the employer and employee relationship. But to refocus, there were concerns that were raised by the trucking industry about how the bill, as introduced, could apply to the owner/operator truckers. And it is my understanding that the amendment attempts to address those concerns in the committee amendment. So what is the problem we're trying to fix by including delivery services in the bill? We just heard Senator Lathrop state what's the

Floor Debate  
April 07 , 2010

---

big deal? Well, if there's no big deal, if it's already a crime if they do something, then why are we putting it in this bill? Why are we taking the time to include it? Now I've discussed this with some of the people outside the glass and some of the constituents, and they have given me one example of a delivery company that they believe will fall under this bill, but I don't see that happening in the state right now. And I have two other concerns. First, I'm uncomfortable supporting a bill that addresses perhaps one bad actor. Second, do we fully understand what the other businesses and industries would fall into under this piece of legislation? Do we understand who all the independent contractors are who could be impacted by this? It's my understanding that there are businesses which provide courier services between Omaha and Lincoln, just as Senator Lathrop alluded to in his remarks, who would fall under the definition of delivery service under this bill. What about local florist shops? What about people who deliver groceries from a warehousing company to the end retailer? I could go on and on about this on car dealers which ship and receive inventory, manufactured home, pizza delivery drivers? I think it's important for the members of this body to fully understand the scope of this language and also for the record to provide some additional clarity as to what is considered a delivery service. But really, I believe the elephant in the room is how this bill would impact FedEx Express. FedEx Express contracts with drivers to deliver packages across the country, and these individuals wear FedEx uniforms and drive FedEx trucks, but they are independent contractors. That is one aspect of the FedEx model. And there's a debate going on in Washington on whether FedEx Express drivers should fall under the National Labor Relations Act instead of the Railway Labor Act. And out of respect for your time, I won't go into the details, but essentially it's easier for employees to organize under the National Labor Relations Act than it is under the Railway Labor Act. How many times has anybody here been pulled out on the other side of the glass and had had a conversation with someone from the Teamsters? Or just the other day when we were talking yesterday on the mental mental (sic) bill and we said, and we were accosted, why do we have the grocers talking to us? Well, why do we have carpenters talking about delivery? Sauce for the goose, sauce for the gander. Our role in this body is to enable businesses and entrepreneurs as well as to curtail any bad actors. Again, I want to reiterate my support for the construction worker part of this bill. I believe it will help reduce the bad actors in the construction industry. But I'm waiting to hear more about the bad actors in the delivery service. And I would like to see and hear some discussion as to why delivery services are included in this bill and what businesses would and would not fall under the definition of this bill. Again, there is no reference to delivery services in the green copy when we talked about it in the committee hearings, no mention at all in general debate. So if the supporters of this bill can give me examples of bad behaviors we're trying and attempting to address by including delivery services, I'm all ears. But until that happens, I encourage you to support the amendment and I look forward to the debate on this issue. Thank you, Mr. President. [LB563]

SPEAKER FLOOD: Thank you, Senator Price. Members, we now turn to discussion of

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

Floor Debate  
April 07 , 2010

---

AM2506 to AM2500 to LB563. We begin the discussion with Senator White. [LB563]

SENATOR WHITE: Thank you, Mr. President. I rise in support of LB563, AM2500, and I am opposed to AM2506. Unlike Senator Price, I've had extensive experience with abuses of people who are claimed to be independent contractors and who have caused substantial losses to the public because of that status. I handled a case with a company that has what they call independent contractors deliver and install satellite dishes. These people have to wear the uniform, they have to have a truck with the name of the company on it, they have to go when they're told to go by computer, they have to show up within a limited amount of time, they have to do the tasks, they have to charge only what the company allows, they have to return at that time. They're not allowed to do any other business. And in the course of this, a gentleman got into a collision because he ran a stop sign in his van with the name of the company on it. He irrevocably injured a police officer who was then forced to take public retirement. And there was not sufficient money available on his insurance to cover the police officer's actual injuries, nor was there sufficient money for the public to recover their losses. Now Senator Price asked to hear about other bad actors. Senator Price, personally I can tell you about that one because there is a police officer right now suffering with...former police officer with serious life-changing disabilities because of the abuse of these very laws by a delivery person. I handled the case. We lost the case. The opinions are published in the Nebraska Reports. So I have seen that. I have also seen systematic abuse by illegal immigrants to this state exploiting holes in the independent contractor laws, and that includes things like delivering roofing tiles and shingles to job sites. Every person with a hammer after a storm goes through my neighborhood is an independent contractor. If you're serious about stopping illegal immigration, the clear lesson was when we had the economic downturn over a million people here illegally left for their homes because the jobs aren't here. Earlier I had talked, if we want to stop illegal immigration, well, we can't put up a fence, we can't put up border guards because only the federal government can do that. But we don't need that to stop illegal immigration. We certainly need those to protect our country from terrorists and drug smugglers, but we don't need it to stop illegal immigration. What we need to stop illegal immigration is to control the employers to keep them from hiring people and misclassifying them in a way that allows them to hire people here illegally and pay them substandard wages and not withhold their various taxes, not withhold unemployment insurance, and not comply with the law. You're right, Senator Price. One of our functions, not our only purpose, but one of the functions we are here to serve is to create a fair and level playing field by law-abiding businesses so that they can compete in a fair and aboveboard manner, not being penalized for following the law. If you support Senator Price's amendment, in fact what you've done is open up a large part of the law for people who have a history of violating it. You open a large part of the law up so that more illegal immigrants can find work here in Nebraska. You open up a large part of the law so that honest taxpaying citizens... [LB563]

Floor Debate  
April 07 , 2010

---

SPEAKER FLOOD: One minute. [LB563]

SENATOR WHITE: ...will carry an additional and unfair burden while others illegally dump those burdens on honorable, law-abiding citizens. None of that is consistent with conservative values. None of that is consistent with fiscal responsibility. None of that is consistent with good, fair social policy. Thank you, Mr. President. [LB563]

SENATOR SULLIVAN PRESIDING

SENATOR SULLIVAN: Thank you, Senator. Next in the queue is Senator Lathrop. [LB563]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'd like to respond to some of the...of Senator Price's opening. And I would begin by repeating and maybe you noticed yesterday I repeated a lot. I found that that's good when it comes to persuasion. And so you may hear me say this a couple of times today. We are not changing the standard for who is an employee and who is an independent contractor for delivery guys. There is a standard right now in our unemployment law. It's called the ABC test. That ABC test has been around forever, and it's not just Nebraska's ABC test. Other jurisdictions use it as well. It is the standard in unemployment for determining who is an employee and who is an independent contractor. Now these people that are in the delivery business that Senator Price wants to exclude are subject to this standard currently. They're subject to this standard currently. So it makes you wonder if they're here trying to get out of this bill; we're being asked to give a legislative wink and a nod to letting them continue a practice that's unlawful. And that's not our purpose. We are not changing the standard for delivery people and AM2506 is not a good amendment. The arguments, and I have to tell you with a bill that enjoyed the support this did on General File, when I started to hear some concerns...Senator Price told me he was going to file this amendment, and I'm trying to run down who's got the concern here, and it was like trying to capture something in a fog. I can't find it. Is FedEx out in the lobby working this? They are not because I'm told by the trucking industry that this doesn't touch that issue. And let me talk about that. The suggestion that we are trying to set the stage so that a union can come in and organize an industry or FedEx or something like that, no. We're looking for problems that don't exist or we're creating issues that aren't there. This bill isn't going to affect FedEx. FedEx has a fight with the IRS. FedEx has a fight with some attorneys general across the country. They don't have a fight in Nebraska, and this doesn't change their situation one bit. You've probably received letters as I have from some couriers. You would have received them in the last day or two because they weren't participants in an effort to improve the bill. But the letters from the courier service suggests that they're reading the green copy when they talk about, and I'm going to quote, I'm extremely concerned over language in the Employee Classification Act which encourages workers to bring a lawsuit against transportation companies if they believe they've been misclassified. That isn't in the bill.

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

Floor Debate  
April 07 , 2010

---

It's not there. It was in the green copy, which was amended a couple of times ago. The arguments for taking delivery people out of this bill boil down to this: We want to keep doing what we're doing and we don't want an enforcement mechanism. We know we're breaking the law, but no one is holding us accountable for it. The only thing, frankly, that LB563 does to the delivery people... [LB563]

SENATOR SULLIVAN: One minute [LB563]

SENATOR LATHROP: ...is it provides an enforcement mechanism to stop those who are breaking our unemployment compensation law from continuing that practice. And you'll recall the purpose of the bill is to require people to be properly classified so the state of Nebraska can get the money it's due, the money it's due in the unemployment, the money it's due in our General Fund. Those who would come and argue that delivery people should be taken out simply want to avoid the enforcement of existing law. The standard for delivery people has not changed in this bill. There is no need for AM2506. Thank you. [LB563]

SENATOR SULLIVAN: Thank you, Senator. Those wishing to speak: Fulton, Price, Council, Krist, and White. Senator Fulton, you are recognized. [LB563]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Lathrop yield to a question? [LB563]

SENATOR SULLIVAN: Senator Lathrop, would you yield? [LB563]

SENATOR LATHROP: Yes. [LB563]

SENATOR FULTON: Thank you, Senator. We did talk off the microphone so I am...we've had some conversation, but I think it's appropriate to have some of this at least on the mike. Catching up to the amendment that Senator Price has brought forward, and I guess the question is during the course of your working on this, and you have worked on this for a long time, I assume that you selected industries to focus this bill on and you probably had to do some negotiating in order to get this bill to its present form. What I'm reading is that this is both the construction industry and delivery. Is that a correct assumption? That you... [LB563]

SENATOR LATHROP: That's it. That's... [LB563]

SENATOR FULTON: Okay. [LB563]

SENATOR LATHROP: ...directly the two industries that we're going after. [LB563]

SENATOR FULTON: Were there other industries that you had contemplated previously

Floor Debate  
April 07 , 2010

---

that are not...you don't have to name them, I'm just curious were there other industries that you contemplated to include in this bill which, for the sake of moving this bill forward, you have decided not to include? [LB563]

SENATOR LATHROP: Yes. [LB563]

SENATOR FULTON: Okay. The...so if the argument is that by striking...so if we adopted AM2506 and we would strike the provision for delivery service, then it seems to me that if the argument against that is, well, then you're saying that delivery services they get a free ride, then couldn't that just as well be an argument for some, say, in the healthcare industry or whatever industries you chose not to include in this bill? [LB563]

SENATOR LATHROP: Perfect question, perfect question. It's a very valid question and gets to a point I would make. If we do anything to LB563, we ought to add industries to them. I don't think we start taking some out. I think we should look at industries. Here's the difficulty. The bill originally written said if these people are employees and they meet this standard, they're employees. Don't call them independent contractors. And we offered the bill. All right? It applied to every segment of the economy. The difficulty was that in order to look at legitimate independent contractor relationships like insurance salesmen, real estate agents, people like that, we would have had a 2,000-page bill. I have no problem, I have no problem looking at other industries after LB563 is there. I have a list, I'm trying to put my hands on it, from other states and what revenue that they've captured after they passed a misclassification that's more broad than this. But I can tell you construction was probably number one and transportation was second or third. [LB563]

SENATOR FULTON: There was a decision then at some point. It seems to me that if we were to start adding industries in, there could be unintended consequences. And in order to avert those unintended consequences, your point is this would be a several thousand page bill. [LB563]

SENATOR LATHROP: Well, I may be exaggerating a little bit. [LB563]

SENATOR FULTON: Or, you know, more... [LB563]

SENATOR LATHROP: But when you start looking at relationships that I'm not familiar with and will take...Senator Janssen had some questions earlier about nurses that work in hospitals that come by way of a contract through an agency such as he runs. Honestly, Senator Fulton, I don't know a lot about that. So if I'm going to try to stop the practice of misclassifying people inside of a hospital, I need to know more about it. [LB563]

SENATOR FULTON: Okay. [LB563]

Floor Debate  
April 07 , 2010

---

SENATOR LATHROP: These two industries were easy to understand, easy to legislate. [LB563]

SENATOR FULTON: Okay. Can you assuage my curiosity as to why...it just...it seems...this...when we had debate on this on General File, this was about the construction industry. And it seems conspicuous that delivery service, and this is, I mean, incidentally, I'm sure why Senator Price is... [LB563]

SENATOR SULLIVAN: One minute. [LB563]

SENATOR FULTON: ...bringing this amendment, it seems conspicuous that delivery service is included with construction industry. Can you explain why delivery service and not some other industry? So I understand why we have it in the construction industry. It has a little to...I think it has a lot to do with the problems we see with illegal immigration, which is why... [LB563]

SENATOR LATHROP: It does. [LB563]

SENATOR FULTON: ...it's appropriate we're talking about. Delivery service is also included. It seems conspicuous that delivery service is included while others are excluded. Why delivery service? [LB563]

SENATOR LATHROP: Well, this isn't exclusively about the undocumented worker, right? [LB563]

SENATOR FULTON: Right, understood. [LB563]

SENATOR LATHROP: It's about the revenue the state is losing. And I had a document that I think we're looking for that talked about where Iowa picked up their...they had a broad misclassification bill. They picked up a significant amount from the transportation industry. That's why I've chosen construction and the transportation industry. But, Senator Fulton, believe me, if somebody comes to me and tells me that we have people operating in this state who are getting an unfair... [LB563]

SENATOR SULLIVAN: Time, Senators. [LB563]

SENATOR LATHROP: ...competitive advantage, I'll look at those industries as well. [LB563]

SENATOR FULTON: Thank you, Madam President. [LB563]

SENATOR SULLIVAN: Thank you, Senators Lathrop and Fulton. (Visitors introduced.)

Floor Debate  
April 07 , 2010

---

Those still wishing to speak are Price, Council, Krist, White, and Gay. Senator Price, you're recognized. [LB563]

SENATOR PRICE: Thank you, Madam Chair, members. Well, we see the chips falling and we kind of get an idea what's happening. This is a bill about illegal immigration. We're going to fix it here in Nebraska with this bill. We're going to fix our revenue. Heck, we might even have people grow hair. Now look, Senator Lathrop has spent a good amount of time on this bill, and I appreciate the efforts he put, particularly with the emphasis towards the construction industry. But he has said repeatedly on opening and again here that this bill doesn't change anything. It doesn't change anything with delivery. Doesn't reclassify them; doesn't change anything. Then why is it in the bill? Just take it out. If it doesn't change anything, if you're breaking the law now you'll be breaking the law then, then why do we need it? Gives one pause for concern there. And just because there isn't a lobbyist or wasn't a lobbyist on the other side of the glass, that doesn't mean that there isn't merit. Must we have a lobbyist before we can bring anything? If you're looking in the fog, maybe the fog is there but maybe it means that this bill isn't fully thought out. If you have fog in your bill and you can't find pro or con, maybe it's not well thought out and removing it would be helpful. Now and I also heard comments earlier about the unscrupulous, self-employed individual. Would we castigate all the self-employed people in such a manner? If you're self-employed, you're paying your taxes. You're supposed to be paying your taxes. If you're not, you're breaking the law. We have remedy for that. We have statutes to deal with that. You're self-employed so if you don't pay the workmen's comp, you don't get workmen's comp. Now, again, we go and we start talking about all of the different things and we talk about the immigration. And I agree--we have an immigration issue. But really, if this is an immigration bill, call it immigration bill, say it's immigration. Now let's talk about that a little bit. If you're going to be a person with a commercial driver's license, and I looked it up. I went and looked at the tests and I looked at the process. I even went so far to go and look at it at the community college, what it takes to get a CDL. And do you know in the CDL process you're supposed to be able to satisfy the requirement of being a citizen? If that process is broken, fix that process. This process doesn't do anything. The proponent says there's nothing done. There's no changes. But we're going to put it in statute. I've talked to some senators off the mike, and I'm glad that Senator Fulton had brought it up, but when I had talked to some senators, they wanted to include everything. They want to go down to all the packing plants and everywhere because it's a huge immigration issue, yet we picked transportation and construction. You know, when I want to get my dog to take a bitter pill, I wrap it up in some cheese or some meat so the dog can take that pill, doesn't realize what's happening. Now sometimes I get the feeling that the sweetness wrapped around it is everything we all agree with: the problem in the construction industry. But what's the bitter pill that could be hidden in here? Why are we passing a bill that has a provision in it that doesn't do anything? Now let's get back to more specifically the issue of the change. What is it changing? [LB563]

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

Floor Debate  
April 07 , 2010

---

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR PRICE: Thank you. There are three-part tests that we don't have right now to be an independent contractor. In a workmen's comp, and I wouldn't ever want to go toe to toe with Senator Lathrop on a workmen's comp issue, you may have to have a way you figure things out. You work back. But right now if you're an independent contractor, you're an independent contractor. There's no test that you have to go through first of all. So again, I ask the members why would there be a fight about taking out something that does nothing? Thank you, Mr. President. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Price. Mr. Clerk, do you have items for the record? [LB563]

CLERK: I do, Mr. President. Thank you. Enrollment and Review reports LB758, LB789, LB809, LB829, LB844, LB852, LB872, LB884, LB894, LB907, LB908, LB934, LB947, LB993, LB1055, LB1065, LB1085 as correctly engrossed. Business and Labor Committee reports LB1020 to General File with committee amendments attached. And Senator Pankonin offers LR552, Mr. President. That will be laid over. That's all that I have. Thank you. (Legislative Journal pages 1341-1343.) [LB758 LB789 LB809 LB829 LB844 LB852 LB872 LB884 LB894 LB907 LB908 LB934 LB947 LB993 LB1055 LB1065 LB1085 LB1020 LR552]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Resuming floor discussion of AM2506 to AM2500, members requesting to speak are Senator Council followed by Senator Krist, Senator White, Senator Gay, Senator Lathrop, Senator Stuthman, and Senator Lautenbaugh. Senator Council, you're recognized. [LB563]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in support of AM2500 and the underlying bill, LB563, and necessarily rise in opposition to AM2506. Being a member of the Business and Labor Committee and having heard the testimony and having been aware of the discussions with the Department of Revenue in terms of where the state could capture the income that it is losing from income taxes, the payment of uninsurance...unemployment insurance benefits, of workers' comp benefits that the committee looked to those areas, those industries that have the greatest likelihood of utilizing independent contractor status to veil the fact that they are actually employing individuals and not paying the requisite income taxes, unemployment insurance benefit premiums, and workers' comp premiums. Having been involved in labor and employment law for most of my legal career, I am familiar with the issues surrounding the transportation industry and the use of independent contractor status. And it's always been an issue. It's certainly an issue with regard to delivery services that are related to a company that utilizes aircraft because there's always been an issue as

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

Floor Debate  
April 07 , 2010

---

to whether those employees are subject to the provisions of the National Labor Relations Act or the provisions of the Railway Labor Act because the Railway Labor Act applies to airlines. So that's always been an ongoing debate. But the issue here is to set forth some direction and some guidance and to provide some authority, quite frankly, to our Department of Revenue and our Department of Labor so that they can have the tools that they need to go after those entities, whether in the transportation or the construction industry, who are utilizing independent contractor status when the reality is, is that the individuals are employees. Now I agree with Senator Price in terms of his response to Senator Lathrop's comment and that is if they're violating a law now, they're violating the law under AM2500 and why do we need to change it? I need to remind Senator Price that that's never been a concern with regard to other pieces of legislation and, you know, we recently enacted legislation that, in fact, codifies the state of the law as it exists now. And those kind of concerns weren't expressed--that we were going too far in terms of setting out what this state expects from its employers. So in terms of the issue of whether we should or should not include delivery service, I'm standing to say that the argument that, well, if we can enforce the... [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR COUNCIL: ...revenue laws and the labor laws without the necessity of specifically naming delivery services, I just suggest to you that that should not be the measure of whether or not AM2500 should be adopted. I'm quite frankly reminded of the exploited children act when I made it clear to everyone in this body that there's already a cause of action at the federal level for any child who's exploited over the Internet, same provisions, same amount of monetary damage, didn't matter. We wanted to make a statement that we did not accept and would not tolerate the exploitation of children. Well, that's exactly what AM2500 and LB563 is intended to do--to make it clear that we will not tolerate employers who try to circumvent our labor and our tax laws with regard to the people who perform services in this state. [LB563]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Senator Krist, you're recognized. [LB563]

SENATOR KRIST: Thank you, Lieutenant Governor, colleagues. I wonder if Senator Lathrop would yield to a couple of questions. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Krist? [LB563]

SENATOR LATHROP: Yes, I will. [LB563]

SENATOR KRIST: I want to read you just a quote here and we'll make it a question. I'm extremely concerned over language in the Employee Classification Act which encourages workers to bring lawsuits against transportation companies if they believe

Floor Debate  
April 07 , 2010

---

that they have been misclassified. Can you talk to me about that? [LB563]

SENATOR LATHROP: It's not true. [LB563]

SENATOR KRIST: Okay. [LB563]

SENATOR LATHROP: In the original bill that was introduced two years ago, in the original draft, the enforcement mechanism was a private cause of action. Somebody that should have been classified as an employee could have brought a cause of action against the employer to recover the taxes the employer didn't pay and the work comp that wasn't paid. The business community had significant concerns that that would cause a lot of lawsuits, many of which they expected to be unmeritorious. We went with a different enforcement mechanism, which is in the amendment. There will be no lawsuits as a consequence of LB563 unless they are brought by the Department of Labor or the Department of Revenue to collect taxes from the cheats. [LB563]

SENATOR KRIST: Okay. Next question. The issue of misclassification is a result of a lack of clarity in the various definitions in status determination tests, and there are simpler and better ways to address this issue. That is again a quote. Can you address that for me, please? [LB563]

SENATOR LATHROP: Yes. In fact, that's a quote from these letters that we're getting from apparently the couriers. And my answer to that is the standard used to determine whether they are an employee or an independent contractor has been around for years. There is no ambiguity in the definition or in the standard. It's found in the statute at 48-604(5). It has been the...it's the ABC test and it's not just law in Nebraska but in many other states as well. [LB563]

SENATOR KRIST: Okay. And I see that Senator Price has handed out the same document that I'm quoting here from so I hope I'm not stealing anybody's thunder, but these are all questions in my mind. And then just to my own question without a quote, Senator Lathrop, I know in our conversations off the mike that you have not only spent two years doing this but in the past 24, 48 hours have consulted with lawyers, particular interest lawyers with businesses in the local area and Kansas City and Omaha. Could you kind of summarize where those concerns of a rather large company in the area have gone? [LB563]

SENATOR LATHROP: Yes. I had a significant merchant in Omaha who appeared in the Rotunda yesterday with concerns over how this bill and the use...and the presence of the delivery folks included into this bill would affect their business model. And I think what's important to understand is that we're not talking about the person that has the delivery made. Okay? We're talking about somebody who employs truck drivers or delivery persons. Yesterday when I was discussing this concern with this individual, we

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

Floor Debate  
April 07 , 2010

---

talked to the truckers association and satisfied this person that they're not...nothing changes for them under this bill. Their delivery drivers are truly independent contractors. They work for a different corporation that's regulated by the... [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR LATHROP: ...Public Service Commission. They're outside of this. [LB563]

SENATOR KRIST: Okay. [LB563]

SENATOR LATHROP: And many of these folks who are concerned probably are. [LB563]

SENATOR KRIST: And then specifically to address the question that was posed by Senator Price, what do we fix in this particular area? Why is this important to be included? [LB563]

SENATOR LATHROP: Yeah, thank you, because I didn't say this doesn't do anything. That was a misstatement. It does something. It doesn't change the standard by which we judge these folks. It brings some enforcement to the table, so the people that don't want this don't want enforcement. The standard is the same for the delivery people. We're only providing for enforcement in LB563 which will bring revenue to the state and stop the unscrupulous business model of calling people independent contractors when they are indeed employees. [LB563]

SENATOR KRIST: Thanks for clearing those items for me, Senator Lathrop. I stand in support of LB563. [LB563]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Krist. (Visitors introduced.) Continuing with floor discussion of AM2506 to AM2500, members requesting to speak: Senator White followed by Senator Gay, Senator Lathrop, Senator Stuthman, Senator Lautenbaugh, Senator Conrad, and others. Senator White, you're recognized. [LB563]

SENATOR WHITE: Thank you, Mr. President. I would like to address a couple of concerns Senator Price had discussed. He said, for example, if you're an independent contractor and you don't pay for workers' compensation insurance then you just don't get it. Well, that's true and it's not true. Senator Price, will you yield to a question, please? [LB563]

PRESIDENT SHEEHY: Senator Price, would you yield to Senator White? [LB563]

SENATOR PRICE: Yes. [LB563]

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

Floor Debate  
April 07 , 2010

---

SENATOR WHITE: If you have, for example, an illegal immigrant working on a roof putting on shingles, claiming...working for a roofing company but claiming that they're an independent contractor because they own their own hammer and they fall off the roof, now they haven't paid workers' compensation, they've not been listed for workers' compensation nor have they had any withholding taxes paid, and they're not paying any state income taxes, right? We track and they fall off and they break their back, which happens. Are you aware of the fact that they'll be taken to an emergency room and will be treated at public expense even though they didn't pay the insurance premiums to insure for that injury? Were you aware of that? [LB563]

SENATOR PRICE: Senator White, and I won't take up time here, it's not a delay tactic, but if I understand your question, I have to first preface it by saying I'm not a workmen's comp person. I don't own a construction company. Would someone be treated if they go to the hospital? Yeah, that's the law of the land. If they can't pay for it, yeah, we're stuck with the bill. [LB563]

SENATOR WHITE: And even though they're here illegally and even though they were on a job and they should have been paying workers' compensation insurance premiums so that the public wouldn't get stuck with the bill, we still end up paying for it. [LB563]

SENATOR PRICE: Is that a question? [LB563]

SENATOR WHITE: Yes. [LB563]

SENATOR PRICE: Okay. [LB563]

SENATOR WHITE: Do you understand that? [LB563]

SENATOR PRICE: Well, it's an immigration issue that doesn't talk to what my bill is saying. My bill is saying why are we doing it with delivery? I wasn't talking about the construction aspect. [LB563]

SENATOR WHITE: We're going to get to that real quickly, Senator. Let's move right there. Are you aware of the term NAFTA? [LB563]

SENATOR PRICE: I'm fairly familiar with the North American Free Trade Agreement. [LB563]

SENATOR WHITE: All right. Are you aware that it currently provides that this country must open up all of its highways to trucks from Mexico and it's the Teamsters that are lobbying the current administration to block that from happening? Now let's assume NAFTA goes in as enforced and we now open up the interstate and the highways of the state of Nebraska to unrestricted access to trucks from Mexico or Canada, haven't you

Floor Debate  
April 07 , 2010

---

just reserved a whole sector of the economy just for people here illegally because after all we can't go after the employers for using them because they're independent contractors and they can bring their trucks up without DOT inspection? That's the law of NAFTA. Now that's an unintended consequence. Do you really want to the cut the transportation industry out so it can be a haven for illegal immigrants? [LB563]

SENATOR PRICE: So, Senator White, you want to know about how the Teamsters see this as an encroachment and how Nebraska will start (inaudible)... [LB563]

SENATOR WHITE: No, Senator. What I want is for you to acknowledge that often I've heard you decry people here illegally and yet you are covering at this moment in time for industries that will be able to prey on people who come here out of desperation, chase wages down because American citizens will be competing with people who won't be withholding, won't be paying taxes, won't be paying Social Security, won't be paying unemployment insurance premiums, and you want to cut a whole segment of the economy out and protect that segment of the economy as a haven for people here illegally. [LB563]

SENATOR PRICE: Well, Senator White, I think you mischaracterize it. First and foremost, I'm not trying to cut anything out of any part of it. If the North American Free Trade Agreement, which is a national policy, has provisions for people who go through on a highway, I don't know that the Nebraska Legislature can trump the supremacy clause there enacted by the... [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR PRICE: ...North American Free Trade. [LB563]

SENATOR WHITE: Ah, Senator, we can't stop them from being here, but we can say that if a person is using them in a systematic method that they should be an employee, then we can control that so that if they run over your family, Senator, or a family I just represented and did \$3.5 million in medical bills alone for one truck accident, driven by a person from Vietnam and a person from Somalia, neither of whom really spoke very good English, that just happened, Senator--it happened a couple of years ago to an Omaha area family that I represented--then they will at least hopefully have enough insurance to try to keep the public from picking up the damage done. Thank you, Mr. President. [LB563]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Gay, you're recognized. [LB563]

SENATOR GAY: Thank you, Mr. President. On General File I discussed a few things about the enforcement, the Department of Labor, how they would enforce some of

Floor Debate  
April 07 , 2010

---

these measures. And I know there is going to be a meeting that was held, and I assume that was held, and also what a credible report of suspected violations would be. I wanted to follow up on that a little bit if Senator Lathrop would yield to a question. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Gay? [LB563]

SENATOR LATHROP: I'd be happy to. [LB563]

SENATOR GAY: Thank you, Senator Lathrop. Senator Lathrop, you did have that meeting, I assume, on the enforcement mechanism. There's a fiscal note. We're going to hire a few people to get the revenue in. But I guess you just heard what I wanted to ask you. The Department of Labor on the enforcement measures, how they're going to do this and if they have enough staff to do this correctly. And then also I'll give you a little time to talk about credible reports of suspected violations. My concern was that somebody...I drive by in Omaha and I see somebody camped outside...actually I just saw it at Lincoln municipal building, they're camped outside the building and they have a big sign and they're obviously upset with the current contractor that they feel is in violation of some labor relations. But can you expand on those a little bit how this bill could help that? [LB563]

SENATOR LATHROP: I'd be happy to. And, Senator Gay, thanks for the opportunity because it gets to the question of what's at the heart of this bill. We have a definition of who employees are and who independent contractors are, that's in the law. We're not changing that. Right? I've said that before. What this does is it sets up an enforcement mechanism and it says if you suspect that the guy that hired you should have called you an employee or properly classified you as an employee, then you can contact the Department of Labor through a hot line or through an Internet site. Or if you are a contractor and you missed a...you know, let's say you're on the job and you look over and everybody that's doing the drywall work is an undocumented, misclassified independent contractor and they're working for Jim's Drywall. Anybody can call and make a report, the first filter in this process so that we're not chasing our tail at the Department of Labor is...that the Department of Labor makes a calculation, is this a credible complaint? Their obligation under this bill is to investigate not every complaint that comes in but credible complaints. And I had somebody else ask me this: If Senator Cornett spends her days reporting people and the Department of Labor is getting 35 complaints from her and none of them are panning out, they don't have to look at those anymore because the crackpots, not to suggest that Senator Cornett is a crackpot, but those that are just repeat folks that aren't sending credible complaints in, they don't have to investigate them. Or if the circumstances and they're required to give a narrative to give a little bit of information to the Department of Labor so that they know which ones do we investigate today and which ones just seem like we're trying to yank somebody's chain. They check the credible complaints and then follow up on them.

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

Floor Debate  
April 07 , 2010

---

[LB563]

SENATOR GAY: Senator Lathrop, though, I guess I still...you're asking somebody in the Department of Labor to decide credible or not. What concerns me here is again and again and again the same contractor gets the same person. At what point in this mechanism here let's say, you know what, no, we're not going to go there? We just went there last week. Is there one or two times or what is the deal? It's a judgment call. That's what scares me. And then quickly, if you can answer, how this is done in the real world when they have to enforce this fairly quickly because I want to ask you also on the transportation piece, if you can. How do they enforce it more than once or twice or I got ten... [LB563]

SENATOR LATHROP: We've left that discretion for the commissioner and we did it on purpose so that we didn't say here you have to investigate two complaints from any one person but not three. [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR LATHROP: We'll leave it to their judgment. There are people over there that have been enforcing the Contractor Registration Act for a few years now, and I believe they're well suited to sorting that out. Investigation really means getting in their car, driving over to the job site, walking up to the drywaller and saying, who do you work for? Are you an employee or are you an independent contractor? It is a pretty simple process. [LB563]

SENATOR GAY: Senator Lathrop, you...and I've wanted to dialogue, I know you're the next speaker, but I guess I looked at the initial bill, now you have an amendment. There were plenty of people opposed to this bill in the transportation industry, all now who have no complaints and I haven't heard that much, quite honestly. I'm listening to Senator Price. They all of a sudden are good with this bill. How was that done I guess now that...and I don't listen to the lobby on every single thing. I know a lot of us, (laugh) just for our own knowledge, how do we know that there isn't flaws in here as Senator Price has talked about and that we aren't creating some kind of a problem just because now we have an amendment and it's all okay? [LB563]

PRESIDENT SHEEHY: Time, Senator. [LB563]

SENATOR GAY: Thank you, Mr. President. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Lathrop, you're recognized. [LB563]

SENATOR LATHROP: Thank you, colleagues. And I think I'll begin by trying to answer

Floor Debate  
April 07 , 2010

---

Senator Gay's question because it's a thoughtful question and a substantive question, which is where's the transportation industry at on it? He's suggested that he's talked to some people in the industry. I think there is an important place for folks who work in the lobby. They are able to appreciate the intricacies of different industries. I'm a lawyer. I've never driven a truck. I don't know all the intricacies of that industry. So what we did, we met with a couple of significant trucking concerns in this state to find out what their concerns were, and then we worked with the lobbyists representing the trucking industry. So these people that care enough about their industry to join the association were represented through the summer. And my legal counsel and I spent a great number of hours, Ms. Burton far more than I, talking to folks in the industry and to the lobby and trying to find a way to keep the legitimate independent contractors, and we got a lot of them, in the transportation industry out of the bill. And we came to this conclusion and why you don't see opposition from the trucking industry and frankly from anybody but these delivery guys that showed up yesterday is that we've addressed their concerns. And we did it by adopting a standard that's already in place. Now these folks that are coming to this bill on Select File the day before it's up on Select File and writing you letters, and Senator Krist read portions of them, it's obvious that they've read the green copy and not the amendment. But if they've read the amendment and they are still adamant that they want to be taken out of the bill, I would suggest that they would like us to turn our back on a practice that we're trying to resolve with LB563. Take me out of the bill so there's no enforcement and I can continue to call my employees independent contractors. Or the other alternative is they haven't read the amendment. But I know this and I can represent this to the body: The lobbyist for the trucking industry has tried to talk to these people and said, we've worked it through. If you have legitimate independent contractors, you don't have anything to worry about. And they're not here. They're not down here. We've got four e-mails and some intimation that this bill is about trying to help FedEx or hurt FedEx. That isn't the point of the bill. It is pretty simple. And if we stood here today, as maybe would be more constructive, and talked about other industries that ought to be captured by this bill, it would make more sense than trying to exclude people from enforcement from a practice that's already against the law. Senator Price is a colleague of mine and a friend, and I've listened to him. He's obviously passionate about this. But he's taken some of the things I've said and misrepresented them. I've not said that my bill is a fog or that I don't understand my bill, not at all. This bill couldn't be clearer, it couldn't be simpler to read, and it couldn't be simpler to enforce. The fog is where this interest in pulling delivery people out of the bill comes from. It is a haze. It's a fog. I can't find a lobbyist out back that's looking to see delivery people taken out of this. The suggestion that this is somehow... [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR LATHROP: ...a union organizing step or we're trying to inject ourselves into federal litigation over FedEx and the people that work for them is...I just have to...it's silly. It's silly. This doesn't have a thing to do with FedEx. That's the IRS is trying to

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

Floor Debate  
April 07 , 2010

---

litigate with FedEx. That's not our fight. And even if it were, we couldn't change it here. They have a fight with the IRS. The IRS doesn't care what we're doing in the state of Nebraska with respect to independent contractors. I wrote down bitter pill (laugh). There's no bitter pill in here. This is really as simple as it looks. It's as simple as it is. And, frankly, I'm wondering who we're trying to protect. If the law already says these people are employees and not independent contractors, the only reason to take them out of here is to take away... [LB563]

PRESIDENT SHEEHY: Time, Senator. [LB563]

SENATOR LATHROP: ...the enforcement mechanism. Thank you. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Stuthman, you're recognized. [LB563]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would like to ask Senator Lathrop a question. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Stuthman? [LB563]

SENATOR LATHROP: Yes, I would. [LB563]

SENATOR STUTHMAN: Senator Lathrop, I want to give you an example of a situation in the livestock industry where we hire trucks to haul the livestock to grass, to haul livestock to market. We hire a company, an incorporation. It's another farming operation that it's a family that runs the truck. They charge either by the mile or by the load or with an additional fuel surcharge. Is that trucking operator an employee of mine or is that...how do we define who that person is when I hire them? [LB563]

SENATOR LATHROP: Well, what we've done is adopted the standard from unemployment and I've said that before, and I couldn't be clearer; 48-604 is the statute that we borrow from. The test for whether somebody is an employee is found in Section 5, and you and I talked about that. [LB563]

SENATOR STUTHMAN: Um-hum. [LB563]

SENATOR LATHROP: There are exceptions for employments that are exempt, including ag employments. Okay? [LB563]

SENATOR STUTHMAN: Okay. [LB563]

SENATOR LATHROP: If somebody owns a truck and they pick up cattle at your place, you call them up and you say, Tom, I need to have my cattle taken from my place on

Floor Debate  
April 07 , 2010

---

over to the barn. Tom delivers them, you pay him. The next call he gets is from your neighbor and your neighbor says, Tom, I want you to pick my pigs up and take them to the barn, that guy is a...those are the hallmarks of independent contractor. Right? He's not controlled by anybody. The hallmark of an employment relationship is control over the person, and that really is the fundamental part of the test used by unemployment. [LB563]

SENATOR STUTHMAN: So in other words, they would not be considered an employee of mine. [LB563]

SENATOR LATHROP: Not under the circumstances you described. [LB563]

SENATOR STUTHMAN: Okay. Thank you because those are the issues that I was dealing with, with my business and my farming operation. I want to give you another scenario. Let's say there are people that are farmers, retired farmers that are delivering seed for a seed company and myself could be a dealer and he's delivering my seed to the farmers around. Is that an employee of mine also? [LB563]

SENATOR LATHROP: You grow the seed, you give it to Joe. Joe is now selling that to all the farmers up in Platte County and delivering the seed. Is that? [LB563]

SENATOR STUTHMAN: No. It's the seed company that I'm a dealer for and then the seed is at the plant and there's farmers that contract with the seed company to deliver the seed that I have purchased and my neighbors have purchased and then the seed is delivered to those neighbor entities. [LB563]

SENATOR LATHROP: Okay. So the farmers...you have a warehouse and the farmers are calling up Joe, the guy with the pickup truck, and saying, run over to Stuthman's warehouse and I need a pallet or I need 75 bags of corn. [LB563]

SENATOR STUTHMAN: Yes. [LB563]

SENATOR LATHROP: No, they're not an employee of yours. Just because they come over to your place to pick something up doesn't make them an employee. And that gets to maybe the more obvious example because the pizza delivery guy comes by your place, if somebody has got him misclassified as an independent contractor, the fact that he's delivering pizza to your house doesn't make him...doesn't give you any responsibility for it whatsoever. [LB563]

SENATOR STUTHMAN: Okay, okay. Thank you. Thank you, Mr. President. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Lautenbaugh, you're recognized. [LB563]

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

Floor Debate  
April 07 , 2010

---

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And I'm wondering if Senator Lathrop would yield to a few questions. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Lautenbaugh? [LB563]

SENATOR LATHROP: Yes. [LB563]

SENATOR LAUTENBAUGH: And, Senator Lathrop, thank you for that. And I heard you say earlier that repetition is valuable so if we're plowing some of the same ground then I hope you will still find it valuable. And maybe we are overthinking this. I don't know. But I have to confess to a little bit of confusion now myself. The committee amendment replaced the entire bill. Is that correct? [LB563]

SENATOR LATHROP: Right. [LB563]

SENATOR LAUTENBAUGH: And in the committee amendment it basically provides the same test for an independent contractor versus an employee as exists under the unemployment law currently. Is that correct? [LB563]

SENATOR LATHROP: That's true. [LB563]

SENATOR LAUTENBAUGH: Now is there any current enforcement mechanism for that in existing law? [LB563]

SENATOR LATHROP: I don't think as a practical matter. As a practical matter, I would say misclassification has flourished because enforcement has been absent. [LB563]

SENATOR LAUTENBAUGH: So is that the purpose of your law is just to provide an enforcement mechanism in the areas of delivery and construction labor for the existing classification? [LB563]

SENATOR LATHROP: It would...the construction industry has more criteria than the unemployment compensation criteria, but they generally go back to the same thing which is existing unemployment law. [LB563]

SENATOR LAUTENBAUGH: Now is there a circumstance where an employee could now be found to be an independent contractor under common law but an employee for unemployment services or purposes? [LB563]

SENATOR LATHROP: You know, this is starting to sound like law school, Senator Lautenbaugh, (laugh) when we go into hypotheticals. And the answer is that I can't...a

Floor Debate  
April 07 , 2010

---

little background if I may. [LB563]

SENATOR LAUTENBAUGH: Please. [LB563]

SENATOR LATHROP: There are a variety of tests for determining who's an employee and who's an independent contractor. The IRS has a 20-point test. You and I studied the 10-point test, which is the common law test, that applies to tort litigation and applies to work comp. Unemployment has a 3-point test. The 3 points in the unemployment are the essential elements of the 10- and the 20-point test. They are, and you know this from reading the case law, the most central...the central principle of unemployment versus employment is control. And that's found I think in all three tests. We also have in this bill that this does not affect the common law or tort liability or the work comp liability so this is not intended to affect or change tort law or work comp law. [LB563]

SENATOR LAUTENBAUGH: Now how does this affect a business, say, for instance, a furniture store that would employ people as independent contractors to install carpet? [LB563]

SENATOR LATHROP: It's funny you'd ask that (laugh). I went through this exercise yesterday. I have a real question whether or not they're even in the construction industry because they are not constructing anything. But beyond that, if you look at the three-point test, those people that you refer to are free to lay carpet for any business in the city. All right? So the first thing that they are...the first thing that they meet is being free from the control or direction of the business for which the service is performed. So a furniture store or a carpet store that has... [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR LATHROP: ...Norm lay the carpet and he's laying the carpet for Norm one day and he's laying the carpet for Home Depot the next or maybe he has enough business with one person that he stays busy with them. As long as he's free from the control of the person who has set this up, then he should be fine. [LB563]

SENATOR LAUTENBAUGH: Now it wasn't your intent in bringing this to add carpet installers to construction. [LB563]

SENATOR LATHROP: No. [LB563]

SENATOR LAUTENBAUGH: And I do have a couple more questions, but I think we're going to run out of time so I'll yield now and if I turn my light back on to be brief with the follow up. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Members requesting to

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

Floor Debate  
April 07 , 2010

---

speak on AM2506, we have Senator Conrad followed by Senator Wallman, Senator Dubas, Senator Wightman, Senator Price, Senator White, and others. Senator Conrad, you're recognized. [LB563]

SENATOR CONRAD: I would yield my time to Senator Lathrop if he desires. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, you're yielded 4 minutes 50 seconds. [LB563]

SENATOR LATHROP: Thank you. And in the interest of trying to move this along, I think I'll continue my dialogue with or answering questions from Senator Lautenbaugh if I may. [LB563]

PRESIDENT SHEEHY: Senator Lautenbaugh, would you yield? [LB563]

SENATOR LAUTENBAUGH: Yes, I will. [LB563]

SENATOR LATHROP: And now you're yielding to me so I can answer questions for you. But if you'd like, Senator Lautenbaugh, I think it might be constructive if I answer some of your questions. [LB563]

SENATOR LAUTENBAUGH: So you're asking me if I have any more questions then. [LB563]

SENATOR LATHROP: Yes. [LB563]

SENATOR LAUTENBAUGH: Yes, I do, Senator Lathrop. Thank you. In the amended...committee amendment which becomes the bill, I'm sorry, there's a provision in there and you discussed, touched on it a little bit earlier about how a person calls in and makes a complaint about a suspected business, if you will, and that triggers an investigation. Do you recall that? [LB563]

SENATOR LATHROP: Yes, I do. [LB563]

SENATOR LAUTENBAUGH: Now do you know what form the investigation would take of that business? [LB563]

SENATOR LATHROP: Yes. And the reason I can kind of speak to that is that we're already doing it with contractor registration and here is what happens. If I'm on the job and I see somebody...say I'm an electrician and I see somebody that's a drywaller or a painter, and I'm eating lunch with them and I'm talking to them every day and we're on the job for a couple of days and he says, yeah, I'm an independent contractor. The electrician can call in and say to the Department of Labor, I'm working over here at the hospital annex and I'm an electrician and my name is, you know, Joe Smith and there's

Floor Debate  
April 07 , 2010

---

a guy over here that's doing the drywall work that's classified as an independent contractor but he works for, you know, Jones Drywall. And then the Department of Labor, consistent with what they've been doing with the contractor registration, they send somebody over there to talk to him. It's pretty simple. It doesn't require a subpoena or some...launch some long investigation which is why we're not adding a lot of people for the enforcement. They drive over there, they find the guy and say, listen. Are you an employee or an independent contractor? Tell me about your relationship to the painter. And it's that simple. [LB563]

SENATOR LAUTENBAUGH: Now you indicated earlier that if the same person is always calling making complaints the department will know probably not to put a lot of stock in those complaints. Is that correct? [LB563]

SENATOR LATHROP: That's true. Their obligation is to investigate credible complaints. [LB563]

SENATOR LAUTENBAUGH: Do you have any concern that if, say, 20 people got together and decided to harass a single business they could call in succession with complaints and their anonymity would be protected but the business would still be subjected to an investigation every time? [LB563]

SENATOR LATHROP: No, I'm not because going back to my hypothetical, if the drywaller...if they've gone over and talked to the guy at the drywall company, Jones...Johnson Drywall, and they've investigated him once, they don't need to keep going back because 19 more people have made the same complaint. They've already been there and looked into it. [LB563]

SENATOR LAUTENBAUGH: Okay. Thank you, Senator Lathrop. I guess we're on your time so. [LB563]

SENATOR LATHROP: All right, thank you. With the little bit of time that I have left, I'll remind you that I'm not changing the standard for who an employee is versus an independent contractor. We are providing for enforcement of existing law with LB563. We are going to stop the practice of people who call their employees independent contractors. They've been regarded or they've been referenced in the letters as taxpaying folks, who maybe... [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR LATHROP: ...some of them do, but we know we're not getting all of our tax receipts from people who are called independent contractors. This is what unscrupulous employers are using to pay folks cash to get out of their obligation to pay withholding, to pay into Social Security, to pay unemployment, and to cover people with work comp.

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

Floor Debate  
April 07 , 2010

---

The bill with AM2500 is good law. Thank you. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Wallman, you're recognized. [LB563]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I'm a little bit confused here. A couple of weeks ago we didn't want to take care of prenatal care. So now I do read in the mornings on a kind of a book out of Native American culture said Americans love to hate somebody. So I'm not hating the immigrants no matter where they're from. My aunt was in a nursing home in Omaha for a while and there wasn't anybody in there could speak English that took care of the people. She wanted out, a very nice nursing home. So we got her in Beatrice. So this is about immigration, illegal things, some of it. But why don't we want to be legal, you know, pay taxes? It's all about taxes, folks. A lot of our money is going someplace else. It's going south of the border. It's going all over the place. And trust me, if they're not legal, they usually spend their money someplace else--south. And you go to Walmarts at night and see where the money is going. You can find out. And my parents supported their relatives in Germany after the Second World War. They sent some money over to Germany because they were very, very poor. And I can really appreciate families taking care of families. That's what we're supposed to do on earth. And I'd yield the rest of my time to Senator Lathrop. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, you're yielded 3 minutes 15 seconds. [LB563]

SENATOR LATHROP: Thank you and thank you, Senator Wallman, for the time. Let me just read you the standard, okay, because we've been talking about it. It's not spelled out in the bill but referenced. The section that I referred to provides as follows: Services...this is existing law now...services performed by an individual for wages, including wages received under a contract of hire, shall be deemed employment unless it's shown to the satisfaction of the commissioner that (a) the individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of services and, in fact, (b) such services are either outside the usual course of business for which such services are performed or such services performed outside of all the places of business of the enterprise for such services are performed; and (c) such individual is customarily engaged in an independently established trade occupation, profession, or business. That's the standard. That's the law. LB563 doesn't change the standard or the law. It just brings enforcement to stop a practice of misclassifying employees. Thank you. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. (Visitors introduced.) Continuing with floor discussion on AM2506 to AM2500, members requesting to speak: Senator Dubas followed by Senator Wightman, Senator White, Senator Fulton, Senator Hadley, and Senator Price. Senator Dubas, you're recognized. [LB563]

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

Floor Debate  
April 07 , 2010

---

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. Would Senator Lathrop yield to some questions, please? [LB563]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Dubas? [LB563]

SENATOR LATHROP: Yes. [LB563]

SENATOR DUBAS: Thank you, Senator Lathrop. And I'm going to ask you questions and probably you're going to give me answers that have already been stated, but I don't think it hurts to maybe state the obvious in this discussion. So these delivery companies that have come forward and raised these concerns on Select File, if they're following the law, if they're complying, they shouldn't have anything to worry about with this particular piece of legislation, should they? [LB563]

SENATOR LATHROP: Exactly, Senator Dubas. [LB563]

SENATOR DUBAS: (Laugh) Okay. There is, though, concern that this could have a devastating impact on their business and drastically increase costs. How could it possibly increase costs? [LB563]

SENATOR LATHROP: The only way it could increase costs is if they're misclassifying their employees currently they now have to properly classify them and then pay the money the state should have been getting all along. [LB563]

SENATOR DUBAS: Okay. Could there be any other unintended consequences with this bill? I guess there's always a potential of unintended consequences, we know that, but... [LB563]

SENATOR LATHROP: I can't think of one under this bill. I mean the intention is probably all we're going to get, which would be some enforcement of existing law. [LB563]

SENATOR DUBAS: So it's pretty straightforward. We're just putting more of an enforcement mechanism in place for a law that already exists. [LB563]

SENATOR LATHROP: Exactly. [LB563]

SENATOR DUBAS: All right. Thank you for your time. If you'd like my time, you certainly may have it. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, you're yielded 3 minutes 25 seconds. [LB563]

Floor Debate  
April 07 , 2010

---

SENATOR LATHROP: Well, Senator Dubas, I appreciate the question. And the idea that this will have an immediate and devastating impact on the business of anyone, the only way that would happen, frankly, is if those people were misclassifying their employees and now they'd have to follow the law because they're concerned that we now have enforcement, a proper vehicle for enforcement. And let me tell you, colleagues, that after this passed on General File I sat down with the Commissioner of Labor. They're on board. I'd say the commissioner was on board. I can't represent to you what the Governor's intentions are or what the Governor's position is. It's not my place to speak for him. But when I sat down with the commissioner, the changes that they wanted to see in this bill were procedural. And in fact, they made a suggestion that the affidavit required for public contract include a representation that they are not barred from having a public contract. They were improvements which are found in AM2500. Ultimately if you adopt the amendment filed by Senator Price, then we'd have to answer this question: Who are we protecting? Why would we remove from an enforcement mechanism that we have a fiscal note for, a process set up for, why would we take an industry out of this bill? The only explanation would be to protect somebody that wants to continue to engage in this unscrupulous practice. And I don't think that's what we're here for. Don't weaken LB563 with Senator Price's amendment. Thank you. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Thank you, Senator Lathrop. Senator Wightman, you're recognized. [LB563]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I guess one of the problems I have, and I want to engage in some questions and answers with Senator Lathrop later, but one of the problems I have is that we seem to be handpicking the construction business and the delivery service. And it seems fairly obvious if we designate them in the bill, the enforcement is probably going to be much closer...more closely scrutinized with regard to them. Whereas, I think there may be many, many violations that don't fit or are not characterized under construction or the delivery service. For example, I think the abuses are rampant with regard to hiring domestic employees, particularly, to provide health services within the home of an individual, and we see that all the time, and I know that occurs. But obviously, it wouldn't be very politically astute to look at women around town who are providing these services and provide a \$500 fine for the first offense and \$5,000 fines for second and subsequent offenses, at least that would be my opinion of why we might not name them at this point. But I think the abuses aren't just there. They're probably in agriculture, they're probably everywhere. But we're seeing fit to point out two of them. With that, I would ask Senator Lathrop a question or two if he would yield. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB563]

SENATOR LATHROP: Yes. [LB563]

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

Floor Debate  
April 07 , 2010

---

SENATOR WIGHTMAN: When we're talking about delivery services, Senator Lathrop, are we talking about delivery of goods? Are we talking about delivery of people that would provide transportation for people? Exactly what are we talking about in delivery services? [LB563]

SENATOR LATHROP: Paragraph (4) of Section 1 (sic) provides that, "Delivery service means the transport and delivery of goods, products, supplies, or raw materials upon the highways of this state." [LB563]

SENATOR WIGHTMAN: So it would not include delivery of people...and there might be a distinction there. I concede that from the standpoint that many of those people would use their own vehicles, perhaps, like taxi services. Would that be a correct characterization? [LB563]

SENATOR LATHROP: As defined, I don't think it would include taxi cab drivers. By the way, there's been a considerable amount of litigation and they may even be specifically exempted under the unemployment compensation statute. The exemptions run a couple of pages long, Senator, and I have to tell you I don't have them all memorized. [LB563]

SENATOR WIGHTMAN: And I could appreciate that. For example, if someone was providing healthcare services in a person's home, I think normally they would be characterized as an employee, would they not? [LB563]

SENATOR LATHROP: If someone was providing what? [LB563]

SENATOR WIGHTMAN: Healthcare services, taking care of an elderly person who was receiving possibly Medicare services, Medicaid services, but not necessarily so, would they be an employee? I think the state and federal government normally considered that they are employees rather than independent contractors. [LB563]

SENATOR LATHROP: The answer to that is I'm not sure. I'm looking at the statute that I've referenced earlier and the exemptions. Ag is in here, as is domestic service. I don't know if the services performed by a nurse tending to someone inside their home is domestic services or not, Senator. [LB563]

SENATOR WIGHTMAN: And I'm not necessarily talking about nurses but people who just go into the home and take care of an elderly person and provide those services. They may be providing some things that would be provided by a nurse, but they may be providing domestic help such as cooking, cleaning, whatever else it might be. [LB563]

SENATOR LATHROP: And that's a question for me and the answer is... [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

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

Floor Debate  
April 07 , 2010

---

SENATOR LATHROP: ...I have to go through this statute to answer the question. I'm not trying to dodge it. I'll sit down and try to look and see if I can come up with an answer as I look at those industries and jobs that are exempt from the unemployment standard. [LB563]

SENATOR WIGHTMAN: I'd like to give you a situation that I ran into over the weekend and that is that the Department of Health contracted with a lady to provide transportation services of an individual to take a lady or man, I don't remember which, to dialysis twice a week. And the Department of Health gave them a 1099. Now it is true they were using their own vehicle, but they were providing them for their time paying them for their time, and it was a lot like wages. I guess I'm wondering if possibly the Department of Health is misclassifying those services. [LB563]

SENATOR LATHROP: I'm looking at, under exemptions, (f) is services performed in the employe of the state or a political subdivision. [LB563]

PRESIDENT SHEEHY: Time, Senator. [LB563]

SENATOR LATHROP: You said they got a 1099? [LB563]

SENATOR WIGHTMAN: Thank you. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator White, you're recognized. [LB563]

SENATOR WHITE: Thank you, Mr. President. I would like to address a couple of thoughts to Senator Price, and I want to thank Senator Price for raising these issues. Senator Price, unlike yourself, I have spent a long time struggling on these very issues. I've tried cases with people who have been grievously injured, who have faced bankruptcy because what I believe to be an employee was found to be an independent contractor. I have watched as the roofing industry in Omaha has largely been taken over by people here illegally on the labor side and they were called independent contractors. During the construction of the Qwest Center, it was uncovered that almost all of the drywallers were here illegally. And this is a hard problem that I have worked on for many years so I know it may seem to you all of a sudden this appears to be anti-immigration bill, illegal immigration bill. But I want you to know it's just a further extension of what we've already tried to do. I know Senator Wightman had asked some questions about why these industries. Right now these are two of the worse offenders, two of the biggest employers of people here illegally, and citizens here who are abusing the tax system this way. But we've already acted as a body to shut this kind of abuse down in other areas. Through the Revenue Committee with Senator Cornett, I sponsored a bill that became a law that limited the number of personal exemptions a

Floor Debate  
April 07 , 2010

---

person can claim on a state tax form because one of the scams had been, largely in the meat packing industry, that you would...if you're working there and you're there illegally and you can't apply for a tax return, you'd claim 12 dependents. Well, with 12 dependents nothing is ever taken out of your paycheck. So we already worked on other industries. We have already targeted other industries to do, to the extent the state can lawfully, what it can to protect, first of all, its citizens so that they are not paying an unfair share of costs. Second, to protect jobs for the citizens and those here legally. Third, to protect the integrity of the laws of the state. And one of the things that we have done successfully is start moving that way on a lot of the bigger areas by controlling the number of dependency exemptions you can claim. But these are areas where it's been particularly easy for unscrupulous operators to use independent contractors. And now I can tell you the transportation industry, from my point of view, longtime friends that I represented recently resolved a case literally \$3.5 million in medical bills for three people in a one-truck, one-car accident and the devastation that caused to people was overwhelming. And the idea that we will make an exemption for people putting vehicles on our roads who may or may not comply with insurance requirements but with the DOT only requires \$1 million for a semitruck, they may not even have that. And then people who know that and use that because they can then charge less chase honorable trucking companies out of business, making all of us at greater risk is just something I can't accept. And I do want you to understand, Senator Price, I understand your concern on producing and helping business; I share it. But I will tell you right now your amendment will create a refuge for illegal workers in the state. It will. A vote for your amendment is a vote to harbor illegal workers and to encourage further illegal immigration into the state, and we've had a bitter history of that over the years, especially in meat packing, but other areas as well. And we need to shut that down. Thank you, Mr. President. [LB563]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Fulton, you're recognized. [LB563]

SENATOR FULTON: Thank you, Mr. President, members of the body. Senator Wightman actually was touching on something that I have some experience with and that is in the field of elder care, sending people into the homes of elderly folks to help them stay at home. That's what I do in my business, and I can tell you that this is a concern in my industry. My situation are the people that we send into the homes of our clientele are our employees so we pay the workers' compensation, we pay unemployment insurance, all of the things that you're supposed to do for an employee. There are those we compete with in the industry who don't have to pay that same overhead, and so we are at a competitive disadvantage. And I've often wondered, is that fair? Is there an enforcement mechanism in place? There probably is, but nonetheless it's something that causes...that's a concern of mine because I'm so proximate to it. I'm in that industry. I see that there are abuses that occur and that the playing field is not level. And so when I was questioning Senator Lathrop as to why

Floor Debate  
April 07 , 2010

---

delivery services and the construction industry, it's partly because of my own experience. We are singling out certain industries with this particular piece of legislation. The...well, I'll leave it at that. There are a number of abuses that occur in our industry. It's not part of what this bill is, but it is germane to what we're talking about because we are consciously making a decision to laser in on a couple of industries. Now...so I have to speak on that issue because Senator Wightman and Senator Lathrop were talking about it. It's something near and dear to my heart because it affects my livelihood every day. The point...a point was brought up earlier that we have not heard from folks in delivery services, in that industry, and Senator Lathrop brought it up. And I share that frustration. I've brought bills forward that, you know, by the time I've gotten to the point that we have it out here on the floor, there are those who come in with concerns about it, and I wish that their concerns could have been aired earlier. I forget now what it was. I think it was, oh, it was a bill on, oh, thieving of copper and metal. And Senator Cornett nods her head. We worked on that thing last year. It's frustrating, but at the same time in defense of those small business owners, I just got an e-mail from a fellow who is worried that this is going to affect his industry or actually it's probably more accurate to say he doesn't know how it's going to affect his business and his industry. And his response was that I don't have a lobbyist, I can't afford one, and what's more, I don't have the time to pay attention to what's going on down at the Legislature because I'm busy in my small business. So I'm not saying that that's good or that's bad necessarily, but it's something that we have to bear in mind. And oftentimes we want to say that we, in the Legislature, are trying to advocate for the little guy while we're making policy. Well, as a small business owner, I can tell you it's pretty hard to pay attention to the Legislature, even when you're a senator. And it's certainly hard to hire a lobbyist if you don't have money budgeted for a lobbyist. So in deference to those small business guys out there, we have to take their input seriously, even if it happens on Select File. Let's see, and I had some questions for Senator Lathrop if Senator Lathrop would yield. [LB563]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Fulton? [LB563]

SENATOR LATHROP: Yes, I will. [LB563]

SENATOR FULTON: The argument that Senator Price is making that if indeed we have laws in place, we're not changing the law with respect to misclassification of an employee or an independent contractor, what his point is, is that if indeed we're not changing any law, then what harm by pulling out...by adopting his amendment? Can you help me? I mean that's compelling to me. I... [LB563]

SENATOR LATHROP: I just want to make sure we're clear. What this bill doesn't do... [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

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

Floor Debate  
April 07 , 2010

---

SENATOR LATHROP: ...is change the standard. We're doing something in this bill that's important and that is bringing enforcement to bear on an industry, two industries. And is there harm in pulling it out? Sure, we'll be protecting the guys that want to continue breaking the law and call their employees independent contractors so that is a harm. [LB563]

SENATOR FULTON: Okay. And the way that we'd be protecting is by saying there's no longer...if we were to adopt AM2506 there's no longer an enforcement mechanism for... [LB563]

SENATOR LATHROP: As a practical matter, I don't want to stand here and say something about the Department of Labor and their efforts to enforce this. They have a lot going on over there. They have a lot going on over there. What we're bringing is a little bit of modern technology, a hot line, and a computer Web site where people can make complaints. And we're going to put some people involved in enforcement and investigation and then we're going to do something else that this bill does... [LB563]

PRESIDENT SHEEHY: Time, Senator. [LB563]

SENATOR LATHROP: ...that we would miss... [LB563]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Thank you, Senator Lathrop. Members requesting to speak on AM2506, we have Senator Janssen followed by Senator Karpisek. Senator Janssen, you're recognized. There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on AM2506? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB563]

CLERK: 27 ayes, 2 nays, Mr. President, to cease debate. [LB563]

PRESIDENT SHEEHY: Debate does cease. Senator Price, you're recognized to close on AM2506. [LB563]

SENATOR PRICE: Thank you, Mr. Lieutenant Governor and members of the body. Thank you for your indulgence here. I know the day grows long, and I'm the only thing between you and getting home and to your dinner. And with respect to that time, I will be brief in this closing. The bill before us and my amendment are pretty clear. And what I'd like to do is take you over a brief review of what we've heard today. First and foremost, we've heard from the proponent of the bill and others that the bill does nothing with regards to delivery. It doesn't change anything, doesn't change how they're classified. Perhaps, perhaps the only thing it does is add a mechanism for reporting and enforcement. And with regards to that enforcement, it is a mischaracterization to say

Floor Debate  
April 07 , 2010

---

that there is no enforcement right now because there is enforcement. It can be taken to Department of Labor; fines can be levied. Back to point one, it does nothing. Next I spoke with the truck industry individuals. I spoke with truckers. And what they said was they work long and hard just as Senator Lathrop said and represented. They did work very hard. Matter of fact, they work so hard to just squeeze inside of this. They think that they're covered. That's what I heard. It's a quote, I think we're okay, not a solid yeah, we're good, go with it, man. What the heck are you doing? But, you know, I think we're good. I asked them about my amendment and they say, oh, yeah, we'd like that too. So the work was to squeeze in. Next we heard numerous times about the desire to broaden the scope of what this bill does. Some had said it doesn't do enough. So the question is with the proverbial camel under the tent, what's next? Are we going to be getting the independent operators that are beauticians, shop owner owns a shop, beauticians rent the chair, independent contractors. Are they next? What about the other independent drivers hauling cement? What about ranch hands? I know we already heard in agriculture that's not there. But the point is there are many, many independent contractors out there. Why are we going to shut down the economic engine? Everybody has said numerous times, both at the national level and state, small business is the backbone. And what we're going to do, we're going to impede that. So the question is, back to point one, it does nothing. Why are we working so hard for something that does nothing? Perhaps what we should do when we push the buttons and adopt this is we should push for a study to have a better understanding. See, we have a great understanding about the construction business. Matter of fact, I would dare say that 95 percent of the conversation here today has always gone back to the home, the home of construction where we all seem to agree that there's an issue in the construction industry. Maybe we need to resolve this so we understand better the impacts and if there are any unintended consequences here with this. But to blindly rush forward and not blindly anymore because we brought light to it, unfortunately, only on Select. But to go forward and not know what's going to happen--members have spoken they don't know what's going to happen with this. And I'll close with this. [LB563]

PRESIDENT SHEEHY: One minute. [LB563]

SENATOR PRICE: Thank you. When I buy a franchise, I'll wear that franchise uniform. I'll operate under franchise rules if it's a McDonald's or a Burger King. If it's a Lube N' Go, that is not unheard of to operate in some manner or form under the guise and guidance of a company who's helping you out. So, members, I ask that you push green on this, that we take the opportunity to study this and get a better understanding of the impact as well as an understanding as we have on the construction trade so that you feel as comfortable when you finally vote on it that you understand what is going on here like we do with the construction trade. Thank you, Mr. President. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Price. You have...Senator White. [LB563]

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

Floor Debate  
April 07 , 2010

---

SENATOR WHITE: Record vote. [LB563]

PRESIDENT SHEEHY: There has been a request for a record vote. Members, you have heard the closing of AM2506 to AM2500. All those in favor vote yea; opposed, nay. There has been a request for a roll call vote. Mr. Clerk, please proceed. [LB563]

CLERK: (Roll call vote taken, Legislative Journal page 1343.) 5 ayes, 21 nays, Mr. President, on the amendment. [LB563]

PRESIDENT SHEEHY: AM2506 is not adopted. We will now return to floor discussion on AM2500. Mr. Clerk, you have an amendment to the amendment. [LB563]

CLERK: Mr. President, Senator Lathrop would move to amend his amendment. Senator, AM2513. (Legislative Journal page 1344.) [LB563]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on AM2513 to AM2500. [LB563]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. I appreciate that last vote. I have a very simple amendment in AM2500. With respect to the construction industry, we have three elements. One is that you have to meet the criteria found in the unemployment compensation statute. The other criteria is you must be registered under the Contractor Registration Act for at least six months. And the third is you have to have a combined tax rate pursuant to 48-649. I was visiting with Senator Langemeier who had a question, and I thought a good one: Why do we have to have these people be registered under the contractor registration for six months? This amendment would remove that requirement so that we would leave the construction industry with this criteria: They have to meet the unemployment compensation standard, they have to be registered with the Contractor Registration Act, and have a combined tax rate. It is, I think, a cleanup amendment to take care of what I have to confess is an oversight in some leftover language that came out of the green copy. I would urge your support and I think it's consistent with the views expressed by my colleagues here today with respect to the construction industry. Thank you. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening of AM2513 to AM2500. Are there members requesting to speak? Seeing none, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is on the adoption of AM2513 to AM2500. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB563]

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's amendment to his amendment. [LB563]

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

Floor Debate  
April 07 , 2010

---

PRESIDENT SHEEHY: AM2513 is adopted. [LB563]

CLERK: I have nothing further pending to AM2500, Mr. President. [LB563]

PRESIDENT SHEEHY: We will now return to floor discussion on AM2500 to LB563. Are there members requesting to speak? Seeing none, Senator Lathrop, you're recognized to close on AM2500. [LB563]

SENATOR LATHROP: Thank you. I'll be brief. I think that AM2500 takes care of some concerns that were expressed to me by the Commissioner of the Department of Labor. It makes the bill more workable over at the Department of Labor, takes the cost of this out of a cash fund that was done at the suggestion of the Department of Labor. I appreciate the concerns expressed by Senator Price, and I want to acknowledge and appreciate his work. He obviously felt very strongly about those delivery guys. I will tell you that going forward we can look at other industries. This isn't some sneak attack. This is a model that will be in place, a mechanism that will be in place for enforcement, and we can look at other industries. Senator Fulton talked about one and certainly other people have approached me about different industries. They would require legislation. We can't sneak them by you in the Business and Labor Committee. They'll come to the floor and we can take them up as we learn more about misclassification in the various industries. And I promise to listen and work with those of you who have concerns about this unscrupulous practice in other industries. I would encourage your support of AM2500. Thank you. [LB563]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question before the body is on the adoption of AM2500 to LB563. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB563]

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's amendment. [LB563]

PRESIDENT SHEEHY: AM2500 is adopted. Further amendments, Mr. Clerk. [LB563]

CLERK: Yes, sir, Mr. President. Senator Price, I assume you want to withdraw the versions of...okay, yeah. Senator Price would withdraw AM2453 and AM2299. I have nothing further pending to the bill, Mr. President. [LB563]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. AM2453 and AM2299 are withdrawn. Senator Nordquist, you're recognized for a motion. [LB563]

SENATOR NORDQUIST: Mr. President, I move LB563 to E&R for engrossing. [LB563]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.

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

Floor Debate  
April 07 , 2010

---

Opposed, nay. LB563 advances. We will now proceed to LB563A. [LB563 LB563A]

CLERK: LB563A, no E&R. Senator Lathrop would move to amend, Mr. President, with AM2480. (Legislative Journal page 1312.) [LB563A]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on AM2480. [LB563A]

SENATOR LATHROP: Thank you, Mr. President and colleagues. As promised, we have an amendment to the A bill. In the original committee amendment, we used funds from the employment security special contingent account for enforcement. When I met with Commissioner Lang, she suggested that it would be a better...that the Contractor Registration Cash Fund would be a better place to get the money for the enforcement. This amendment does that in its very simplest terms. I will tell you that it makes a lot of sense to take the cost of this from the Contractor Registration Cash Fund because they will be enforcing both the Contractor Registration and the Employee Classification Act with the same people, the same Web site, the same hot line, and the same investigators. So using and keeping it all in one place makes perfect sense. I would urge your support of the amendment to LB563A. Thank you. [LB563A]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening of AM2480 to LB563A. Seeing no requests to speak, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is on the adoption of AM2480 to LB563A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB563A]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's amendment. [LB563A]

PRESIDENT SHEEHY: AM2480 is adopted. [LB563A]

CLERK: I have nothing further on the bill, Senator Nordquist. [LB563A]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB563A]

SENATOR NORDQUIST: Mr. President, I move LB563A to E&R for engrossing. [LB563A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB563A advances. We will now proceed to LB931. [LB563A LB931]

CLERK: LB931, Senator, I have E&R amendments. (ER8224, Legislative Journal page 1228.) [LB931]

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

Floor Debate  
April 07 , 2010

---

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB931]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB931. [LB931]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB931]

CLERK: I have nothing further on that bill, Senator. [LB931]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB931]

SENATOR NORDQUIST: Mr. President, I move LB931 to E&R for engrossing. [LB931]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB931 advances. We will now move to LB1014. [LB931 LB1014]

CLERK: LB1014, Senator, I have E&R amendments first of all. (ER8222, Legislative Journal page 1235.) [LB1014]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB1014]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB1014. [LB1014]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB1014]

CLERK: Senator Haar would move to amend with AM2508. (Legislative Journal pages 1344-1349.) [LB1014]

PRESIDENT SHEEHY: Senator Haar, you are recognized to open on AM2508 to LB1014. [LB1014]

SENATOR HAAR: Mr. President, members of the body, I just passed out a sheet again and this new amendment basically incorporates what you see on the reverse side, page 2 of this sheet, the "Wind for Teachers," LB1014. It's what I passed out about a week ago. It's the same thing except that we have incorporated the agreements we reached with Senator Fischer and others that you see on page 2. Other than that, I would be willing to answer any questions. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Haar. You've heard the opening of

Floor Debate  
April 07 , 2010

---

AM2508. Members requesting to speak are Senator Fischer and Senator Stuthman. Senator Fischer, you're recognized. [LB1014]

SENATOR FISCHER: Thank you, Mr. President and members of the body. I'd like to thank Senator Haar for introducing this amendment. It is what we talked about on General File. I have some points that I'll go through that explain the amendment. Beginning in 2016, the Commissioner of Education will annually collect data to determine if 75 percent of the districts have a performance pay system in place, and that's to distribute the income from those wind and solar leases that are on school lands. A performance pay system is included in the local collective bargaining agreements. If 75 percent of the school districts do not have this performance pay system in place in their collective bargaining agreements, no district will receive the apportionment that is set aside for that teacher performance pay. The school districts in the state have three years to meet that 75 percent requirement. If a performance pay system is not in place by 2018, then this program that we're implementing under this legislation, it will sunset. There will be a separate accounting system and that will cap the lease money from the wind and solar leases at \$10 million and only wind and solar leases are covered under this new accounting system that we're coming up with. Again, I'd like to thank Senator Haar for his work on this. I would like to thank my colleagues that have been involved in this process. I think we've reached an agreement that will benefit our local school districts, our local boards of education, and our local educators across the state, and I would urge your kind consideration and advancement of this amendment. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Stuthman, you're recognized. [LB1014]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor, members of the body. I would like to ask Senator Fischer a question. [LB1014]

PRESIDENT SHEEHY: Senator Fischer, would you yield to Senator Stuthman? [LB1014]

SENATOR FISCHER: Yes. [LB1014]

SENATOR STUTHMAN: Thank you, Senator Fischer. Now this special...there is no special teacher performance pay fund. [LB1014]

SENATOR FISCHER: No... [LB1014]

SENATOR STUTHMAN: Okay. [LB1014]

SENATOR FISCHER: No fund is established under this legislation that has a separate

Floor Debate  
April 07 , 2010

---

fund. It's all in the current fund we have for school lands. [LB1014]

SENATOR STUTHMAN: And that was a question that I had, you know. Is there going to be, you know, some type of a recordkeeping as to the amount? But it's my understanding that the money that is collected from leases from the school land, immaterial of what type of lease it is, will continue to be funding for students in the public schools. Correct? [LB1014]

SENATOR FISCHER: The leases that come from wind and solar from school lands, Senator Stuthman, there will be internal accounting done by the Board of Educational Lands and Funds that will separate that money. When 75 percent of the school districts in the state, there's a three-year time period there where it's allowing the school districts to take advantage of this with their staff, but 75 percent of the school districts in the state have to reach an agreement with their bargaining, the collective bargaining unit before those funds then are distributed for teacher performance. If that benchmark is not met, then this idea for this program will sunset and the money will be distributed as it is now, which is on a per pupil basis to all school districts. It's apportioned out there. [LB1014]

SENATOR STUTHMAN: Okay. Thank you, Senator Fischer. So in other words, in your opinion, there is going to be a bookkeeping method that will have that amount of dollars from the wind leases accumulating into a fund. Is that correct? [LB1014]

SENATOR FISCHER: No, that is not correct, Senator Stuthman. There is no fund and no money will accumulate unless 75 percent of the school districts have reached an agreement with their collective bargaining units. Then it will be separated internally by the Board of Educational Lands and Funds. There will be no separate fund set up. [LB1014]

SENATOR STUTHMAN: Yes. Thank you, Senator Fischer, because that is what I wanted to get on the record, to make sure that, you know, up until that time the funds that were generated from those additional leases was to go to the...to each student. And then when in that three-year period or if they have come up to that 75 percent, then, from then on, that will be...those dollars will be utilized from those wind leases for teacher performance pay. Would that be correct? [LB1014]

SENATOR FISCHER: Yes, Senator Stuthman, but it still will be distributed on a per pupil apportionment to the districts and then it will be distributed to teachers based on the agreement that the school districts have reached with their collective bargaining unit. [LB1014]

SENATOR STUTHMAN: Okay. Thank you. That clarifies it for me and I thank you, Mr. President. [LB1014]

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

Floor Debate  
April 07 , 2010

---

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Carlson, you're recognized. [LB1014]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I certainly am in support of AM2508 and the underlying bill, and hopefully this surprises everyone and we end up with funds that are available for LB1014 and in the same process preserves the integrity of our public power, preserves the rate structure for the citizens of Nebraska, and is a good thing for private developers that are going to put money into creating this energy. But as we look at the situation that we find ourselves in, in education, basically the dollars to fund education come from property tax, come from sales tax, come from income tax, I thought that the approach to the dollars that come from wind energy could be looked at a little bit differently, almost saying these are dollars we're not receiving now, they could help us in teacher salaries without an increase in property, sales, and income tax. And I hope that it actually works out that way. Let's keep in mind that the most valuable asset that we have in the state of Nebraska are the minds of our young people and those minds need to be developed. They need to have opportunity so that they can be successful and that hopefully we can keep them in the state of Nebraska. Colleagues, let's look and let's brainstorm and let's try and figure out ways that we can bring dollars into our educational system without further taxing property, sales, and income. We need to strive to take care of the position that we find ourselves in, in salaries for teachers that were toward the lower end. And teachers are the key to developing these young minds so that they can benefit themselves and they can benefit us in the future. And let's look for those ways as we move forward and hopefully this is an area that can help in that direction, and I'm sure there are others. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Seeing no additional requests to speak, Senator Haar, you're recognized to close on AM2508. [LB1014]

SENATOR HAAR: Mr. President, members of the body, all I'd like to say is we're all getting kind of tired and I forgot to say thank you to Senator Fischer and others in this body for working on the amendment and the bill itself, so thank you very much. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Haar. You have heard the closing. The question before the body is on the adoption of AM2508 to LB1014. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Haar's amendment. [LB1014]

PRESIDENT SHEEHY: AM2508 is adopted. [LB1014]

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

Floor Debate  
April 07 , 2010

---

CLERK: I have nothing further on the bill, Senator. [LB1014]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB1014]

SENATOR NORDQUIST: Mr. President, I move LB1014 to E&R for engrossing. [LB1014]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1014 advances. We'll now proceed to LB987. Items for the record, Mr. Clerk. [LB1014 LB987]

CLERK: Very quickly, Mr. President, thank you. Enrollment and Review reports LB507A, LB712, LB780, LB1072 as correctly engrossed. Senator Heidemann offers LR553. That will be laid over. And I have Senator Heidemann wanting to print an amendment to LB779. (Legislative Journal pages 1349-1351.) [LB507A LB712 LB780 LB1072 LR553 LB779]

Mr. President, LB987, next bill on Select File. Senator Nordquist, I have E&R amendments, Senator. (ER8234, Legislative Journal page 1291.) [LB987]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB987]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB987. [LB987]

PRESIDENT SHEEHY: You've heard the motion on the E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB987]

CLERK: I have nothing further on that bill, Senator. [LB987]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB987]

SENATOR NORDQUIST: Mr. President, I move LB987 to E&R for engrossing. [LB987]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB987 advances. We will now proceed to LB987A. [LB987 LB987A]

CLERK: No E&R. Senator Heidemann would move to amend LB987A with AM2444, Mr. President. (Legislative Journal page 1297.) [LB987A]

PRESIDENT SHEEHY: Senator Heidemann, you're recognized to open on AM2444 to LB987A. [LB987A]

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

Floor Debate  
April 07 , 2010

---

SENATOR HEIDEMANN: Thank you, Mr. Lieutenant Governor, fellow members of the body. This is just a technical amendment. I have cleared this with Senator Council. She wanted me to run it. It would just, on page 2, line 23, "strike the new matter and reinstate the stricken matter." It was something that we caught after we had put in the A bill and something that we need to correct, and I would appreciate your support on AM2444. [LB987A]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You've heard the opening of AM2444. Seeing no requests to speak, Senator Heidemann, you're recognized to close. Senator Heidemann waives closing. The question before the body is on the adoption of AM2444 to LB987A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB987A]

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Heidemann's amendment. [LB987A]

PRESIDENT SHEEHY: AM2444 is adopted. [LB987A]

CLERK: I have nothing further on the bill, Senator Nordquist. [LB987A]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB987A]

SENATOR NORDQUIST: Mr. President, I move LB987A to E&R for engrossing. [LB987A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB987A advances. Items for the record, Mr. Clerk. [LB987A]

CLERK: Mr. President, I have none other than a priority motion. Senator Flood would move to adjourn the body until Thursday morning, April 8 at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Thursday, April 8, 2010, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.