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COMMITTEE ON APPROPRIATIONS
March 3, 2005
LB 694

The Committee on Appropriations met at 1:30 p.m. on Thursday, March 3, 2005, in Room 1003 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 694. Senators present: Don Pederson, Chairperson; Lowen Kruse, Vice Chairperson; Chris Beutler; Jim Cudaback; Lavon Heidemann; Marian Price; and Nancy Thompson. Senators absent: Pat Engel and John Synowiecki.

SENATOR D. PEDERSON: And Senator Landis is here and he has a legislative bill that he would like to tell us about.

LB 694

SENATOR LANDIS: Thank you, Senator Pederson, members of the Appropriations Committee, David Landis, principal introducer of LB 694, representing the "Garden District" today, which includes the provinces of the State Fair Park. We're going to need a fund to hold the money that comes in from the lottery so the State Fair Support and Improvement Fund is created by this paragraph. The balance of the fund is "administratively created to receive lottery proceeds designated for the Nebraska State Fair prior to the effective date of this act shall be transferred to the Nebraska State Fair Support and Improvement Act on such date. The fund shall be expended by the Nebraska State Fair Board to provide support for operating expenses and capital facility enhancements."

I can tell you in partial answer to the question that I believe the city of Lincoln and the State Fair are looking for a contractual relationship. It is the hope of the city not to have to expend general fund dollars, however, if need be, they will. My advice to them both is that if there wasn't any in-kind of service, it could not be for a service that had previously been received. This needs to be new money. This doesn't need to be putting a name of the police support that's always been there so that if it is, in fact, in-kind, it should be able to be commercially valued and it should be a new service that has not historically been there. I think it's the obligation of the city to come up with the 10 percent. I do think, however, monies given to a foundation by a local donor or a business should count

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

Committee on Appropriations
March 3, 2005
Page 2

LB 694

towards that, and in essence their relationship now is one that will be reduced to a contract between the city and the State Fair.

SENATOR D. PEDERSON: Are there questions of Senator Landis?

SENATOR HEIDEMANN: What happens if we don't pass this?

SENATOR D. PEDERSON: Well, I think we...I don't know about this but we have to pass a bill in connection with this. There was a constitutional amendment and you have to have a vehicle in order to carry out the enablement of that constitutional amendment. Correct, Senator Landis?

SENATOR LANDIS: Yes, I think probably the constitution trumps everything and the constitution says that there would be a disbursement. This is a vehicle towards that. And an interesting problem, what would happen if you didn't create the pot that the constitution says essentially needs to be there to do a transaction which will occur. And I don't know the answer to that question off the top of my head. I think one could arguably...the State Fair could arguably maintain a mandamus for somebody to commit their public duty act to provide \$2 million because the constitution required it and the Legislature hadn't passed the mechanism to do it, but the obligation doesn't exist in the statute; it exists in the constitution; and I think that would trump. Off the top of my head, I think a mandamus action by which a court would order some state officer to pass the money absent this bill.

SENATOR D. PEDERSON: Senator Landis, I think just from reading the few words that are in this particular proposal, it appears that there is probably going to have to be some further implementing words in the form of an amendment that would probably relate to exactly who is responsible for determining the monies and things of that nature that aren't...

SENATOR LANDIS: Yeah. Compliance with, for example, a local match I now foresee as being the obligation of the Revenue Department. And by the way, they're aware of that, and in fact I've had conversations along that line. But if, in fact, that language along those lines need to in here, this would be an appropriate place for it to happen. There

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

Committee on Appropriations
March 3, 2005
Page 3

LB 694

isn't a, that I know of, an obligation to have that occur...

SENATOR D. PEDERSON: No.

SENATOR LANDIS: ...but if this committee thinks best, we'll live with it.

SENATOR D. PEDERSON: Yeah, I'm talking about an orderly method of making these determinations...

SENATOR LANDIS: Um-hum.

SENATOR D. PEDERSON: ...and when payments are due by the community that's involved and that they have adequately met those determinations and other mechanics of that. So perhaps we can work with the Revenue Department and see if they have some ideas. Mary Jane Egr usually has ideas, doesn't she.

SENATOR LANDIS: She does. Thank you very much.

SENATOR D. PEDERSON: Any other questions of Senator Landis? Are there other proponents in connection with this bill?

WALTER RADCLIFFE: Senator Pederson, again, Walter Radcliffe appearing, R-a-d-c-l-i-f-f-e, appearing before you as the registered lobbyist for the State Fair in support of LB 694. I perhaps addressed some of the questions that were asked. Senator Heidemann, your question really goes right to the heart of the matter, which is what if you don't pass it. In conversations with the Revenue Department, as Senator Landis had indicated, the constitution is the trump, is the ace of trump, and for all practical purposes arguably is self-executing. The Revenue Department, as they are frankly doing now, would hold this money in an administrative fund which they can create without statutory authority. Nobody has asked. And when you ask how long can you have an administrative fund, nobody knows. Everybody says, well, not forever, but we've never found out what forever is. So I think that's a short answer. Now, as to when the money is dispersed as Senator Pederson was asking, traditionally the money has been dispersed to the education and environmental interests who were and still remain to be the beneficiaries on a quarterly basis, so you would have a disbursement in April. Both the constitution and the statutes are silent as

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

Committee on Appropriations
March 3, 2005
Page 4

LB 694

to what is meant by the match, by the city match. And I think clearly if you had cash, which is what they're having this first quarter, that would not be up for challenge. As Senator Landis indicated, I think if the money was not disbursed a mandamus would lie but then you get into the question of whether the Department of Revenue, whether it's administrative or a judicial duty. If it's administrative duty, mandamus lies; if it's judicial, it doesn't. So, I mean, I don't think we're going to get there; I don't mean that. But ultimately mandamus becomes your enforcement remedy. A couple other questions that were asked previously, with regards to the sales tax issue, Senator Pederson, and I don't think I'm sharing anything out of school. When Don Wesely was mayor, he and I discussed the annexation issue, and we had provided the city some revenue figures as far as what we had in sales out there. And as I said, this was very preliminary, very unofficial, but, simply put, it didn't work. It just didn't make sense. I think, and I'm a little bit of a disinterested observer, I think both the fair and the city have a...not...they maybe have a...I was going to say a long way to go, but there is...the fair and the city has not worked well together in previous years. It's really been almost benign neglect. And now they're being put in a situation where they do need to work together. And I think legitimate efforts are being made on both parts. I think with our new director, with Rick, that's going to make a big, big difference. With regards, and I'll leave it with this, Senator Pederson, with your inquiry regarding possible amendments to the bill, I think the answer is yes. Anything that you would want to entertain, anything the Revenue Department thinks they need to help give them direction would be something that would be looked favorably upon. The main thing to keep in mind is that with the constitution we do have a self-executing directive and so any laws that would be passed wouldn't need to help facilitate the implementation of that directive. So hopefully we can get LB 694 out rather than have them... You know, it's kind of like Congress continuing to run on a continuing resolution with the budget. That's really the situation we would encounter here if there wasn't a specific fund created for the deposit of that money. So if there are any other questions, I would certainly attempt to answer them.

SENATOR D. PEDERSON: Senator Beutler.

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

Committee on Appropriations
March 3, 2005
Page 5

LB 694

SENATOR BEUTLER: I'm not sure who was speaking earlier but maybe it was you, made the statement something to the effect that the money goes into the pot and we appropriate it.

WALTER RADCLIFFE: That the money what, Senator Beutler?

SENATOR BEUTLER: The money goes into this new fund...

WALTER RADCLIFFE: Yes.

SENATOR BEUTLER: ...and then we appropriate it.

WALTER RADCLIFFE: You know, I honestly don't know if an appropriation is necessary. I don't believe it is because you do not appropriate today...

SENATOR BEUTLER: We don't have the power not to appropriate that, do we?

WALTER RADCLIFFE: I would hate to ever...

SENATOR BEUTLER: This is purely a (inaudible).

WALTER RADCLIFFE: I would not want to sit here and tell the Legislature what power it has, but I think that a fair legal interpretation would be that you do not have the...you don't have the power to appropriate; I think that's correct. Just as you don't have the power to appropriate...well, you do with education and environment, but basically still that then the statutorily prescribed percentage had to be appropriated, if you recall, I know you do, it became sometimes a question of what was meant by education and what was meant by environment. And you did specifically appropriate money for that.

SENATOR BEUTLER: Yes. But if we have no power to appropriate, is it...is the committee better off in the eyes of the public not having anything to do with it because then when we have the power to appropriate, people will assume that we have the power not to appropriate, and we don't have that power and why should we be saddled with things we don't like perhaps that the Fair Board is doing and we have no power to do anything about it and people think we should do something about it? Why not just have this fund out there

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

Committee on Appropriations
March 3, 2005
Page 6

LB 694

and it doesn't come through appropriations? It's just there for you to take the money out of it.

WALTER RADCLIFFE: In essence, that's what LB 694 does is it creates that fund, okay. Now, back though to your question as far as appropriations per se, I would agree, although personally I think that the Legislature should exercise an oversight capacity with the fair or with any agency that spends this type of money. I do not think it is unreasonable for the fair to come back to this committee on an annual basis as you are doing now with regards to the premium dollars, and present what their program is and how they're spending those dollars because I think quite candidly we all know that if they were doing something that was generally perceived as inappropriate with those dollars I think the Legislature would find a way to intervene. I mean, historically, you have...as like with Hannibal, you find a way or make one, and I think you probably would.

SENATOR BEUTLER: You mean you can't use our land anymore?

WALTER RADCLIFFE: Well, that would be a start. (Laugh)

SENATOR D. PEDERSON: From a legal standpoint, in my opinion, what we're called upon is to create a ministerial situation and that the State Treasurer, the state Revenue Department are in a ministerial function to carry out the constitutional amendment implemented by a procedure that is set forth in the legislative bill that we do.

WALTER RADCLIFFE: I agree.

SENATOR D. PEDERSON: But we don't have any direct contact with it beyond that. And so it was referred to this committee. It could have been referred to any one of a number of committees for this particular act, but it was referred here and I think it's our responsibility in that respect.

WALTER RADCLIFFE: I agree, Senator Pederson; yes.

SENATOR D. PEDERSON: So, Senator Cudaback.

SENATOR CUDABACK: Mr. Radcliffe, in the sense that the constitution says the money is owed, the \$2 million will

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

Committee on Appropriations
March 3, 2005
Page 7

LB 694

come no matter what, correct?

WALTER RADCLIFFE: It says that 10 percent, and we've, again, we've used...

SENATOR CUDABACK: (Inaudible).

WALTER RADCLIFFE: Yes, yes. That's correct, yes.

SENATOR CUDABACK: Yeah. But this body is probably...we want to make sure that they stand by statute because in the statute that is a 10 percent match, so isn't that kind...wouldn't that be our obligation to make sure that was followed? Not that is has to be necessary but it should be and that was the intent.

WALTER RADCLIFFE: Yes, but I think that what Senator Pederson is saying and Senator Beutler, as well, that the constitutional requirement for the 10 percent match would trump anything you do statutorily. If in fact for whatever reason the fair wasn't getting 10 percent, say, for some reason the Legislature gave them 8 percent, their remedy wouldn't lie with the Legislature because, as Senator Beutler and Senator Pederson pointed out, you don't really appropriate this money. Their remedy would lie in probably original jurisdiction in the Supreme Court and mandamus.

SENATOR CUDABACK: Maybe they...but the \$2 million doesn't hinge around their coming up with the 10 percent match.

WALTER RADCLIFFE: The only thing that...the thing that the disbursement of the lottery money hinges upon is the city of Lincoln, in this instance because it's the host city, city of Lincoln, county of Lancaster, does have to come up with that 10 percent match or else the money is not disbursed to the fair. That was Senator Bourne's amendment last year, if you recall. So...

SENATOR CUDABACK: That was by statute but that wasn't in the constitution.

WALTER RADCLIFFE: That is in the constitution. That was part of the constitutional amendment. Yes.

SENATOR CUDABACK: The \$2 million is not there unless the

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

Committee on Appropriations
March 3, 2005
Page 8

LB 694

match is made?

WALTER RADCLIFFE: Unless the match is made by the...

SENATOR CUDABACK: That's your interpretation... (inaudible).

WALTER RADCLIFFE: Well, it's my interpretation but I don't think there's anybody...

SENATOR CUDABACK: I didn't mean to doubt you.

WALTER RADCLIFFE: No, no. It's not a matter of doubting me. I don't mean that, Jim, but I, Senator Cudaback, but, no, it states that very clearly and that's why, quite honestly, the city of Lincoln and I shared some candid comments over the past couple of months.

SENATOR CUDABACK: That's good. Thank you.

SENATOR D. PEDERSON: Senator Beutler.

SENATOR BEUTLER: Walt, I'm assuming somewhere down the line you want to use this revenue stream for bonding purposes? Would that be...?

WALTER RADCLIFFE: That was discussed, yes. Now...but we're, as you know, we're in a whole different world there with regards to... I do not believe that at the present time there is sufficient statutory issuing authority for bonds to be let. I think if the...if the fair wanted to bonds I think what they would have to do is to come back. My recollection...and I'm taking this pretty much off the top of my head here, but, number one, as you know, you need an issuing authority. And I think the logical issuing authority would be NIFA so they would probably have to come back here, ask the Legislature to look at the NIFA statutes or we would go to NIFA first and see if in fact they had existing authority which I honestly don't know...if I had to bet I'd say no...but come back here, ask you to give NIFA that authority. Now, then the question is, the bond that you've put out basically is a revenue bond based upon the lottery. And you would have to go to the capital markets and to your underwriters to see, (a) what kind of a rating that would be, and (b) what kind or what type of a rate you would be paying. And I suspect the rate would be a fairly

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

Committee on Appropriations
March 3, 2005
Page 9

LB 694

high rate. I mean, come...most revenue bonds without a GO backing are for all practical purposes junk bonds.

SENATOR BEUTLER: You've got to two of my questions. And the third question is this: How does the bond market get around the lack of security with respect to the contribution by the city of Lincoln which is a condition precedent to getting (inaudible) money (inaudible)?

WALTER RADCLIFFE: Absolutely. And that's something that the underwriters would have to deal with--clearly have to deal with. I mean, those types of bonding arrangements, a la the cigarette tax revenue allocated for rent to the city to issue the bonds to pay for the Devaney Center. I mean, we have always circuitously done bonds in the state, trying to do two things. One, avoid the statutory prohibition against the state going into debt, and, two, as best we can, to try to keep the bonds a revenue bond and not to have them go back as a GO bond against the political subdivision. Qwest Center, though, is an example of revenue bond, but nonetheless you would still have the general obligation of the city behind it. I don't have the answer to that.

SENATOR BEUTLER: (Inaudible) general obligation of the city of Lincoln behind it in order to sell those bonds.

WALTER RADCLIFFE: You may very well get to that, and that becomes further complicated, Senator Beutler, when you consider the fact that the fairgrounds is not within the corporate limits of the city.

SENATOR BEUTLER: So there is an argume... for annexation.

WALTER RADCLIFFE: There is. There is always an argument for annexation. And I think if we...

SENATOR KRUSE: Please don't use that word.

WALTER RADCLIFFE: I was going to say, I think we could get Mayor Fahey down here to articulate any arguments on annexation.

SENATOR D. PEDERSON: I think if you were going to get anywhere on bonding you would have to have an established

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

Committee on Appropriations
March 3, 2005
Page 10

LB 694

line of funding from the city of Lincoln, assuming the city of Lincoln lives up to its responsibility of being a host city.

WALTER RADCLIFFE: I think we would probably have a shared experience with regards to bonded indebtedness,...

SENATOR D. PEDERSON: Um-hum.

WALTER RADCLIFFE: ..and that is, if you get the underwriters and the lawyers to agree, you can bond just about anything. And so that's usually where you start.

SENATOR D. PEDERSON: But the riskier the venture, the higher the interest rate, so.

WALTER RADCLIFFE: Absolutely; absolutely.

SENATOR D. PEDERSON: Are there any other questions here? We'll just right to the Supreme Court with these issues, so.

WALTER RADCLIFFE: Yeah. (Laugh)

SENATOR D. PEDERSON: I think that's it. Thank you very much, Walt.

WALTER RADCLIFFE: Thank you all very much.

SENATOR D. PEDERSON: Are there other proponents for this bill? Are there opponents? Is there neutral testimony? I assume, since he left, that Senator Landis is waiving closing. Okay. We'll close the hearing then on LB 694.