

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

Floor Debate
February 25, 2008

[LB15 LB36 LB37 LB38 LB45 LB180 LB215 LB234 LB296 LB308 LB371 LB463 LB554
LB611 LB612 LB613 LB679 LB734 LB743 LB745 LB746 LB768 LB777 LB781 LB786
LB797 LB806 LB813 LB819 LB822 LB828 LB837 LB838 LB839 LB858 LB877 LB884
LB888 LB894 LB907 LB911 LB914 LB916 LB933 LB939 LB953 LB956 LB957 LB962
LB967 LB986 LB1001 LB1014 LB1030 LB1056 LB1065 LB1066 LB1067 LB1085
LB1094 LB1096 LB1104 LB1107 LB1147 LB1159 LB1160 LB1172 LR225CA LR229CA
LR233CA LR246 LR247 LR248]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirtieth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Pastor Bud Leach, from the Church of Nazarene, from Falls City, Nebraska, Senator Heidemann's district. Would you all please rise.

PASTOR LEACH: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Leach. I call to order the thirtieth day of the One Hundredth Legislature, Second Session. Senators, please record your presence by roll call. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Any corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Your Committee on Retirement Systems reports LB371, LB1147 to General File with amendments; and LB611, LB612, LB613, LB679, LB967 as indefinitely postponed. I have LR246, offered by Senator Howard and a number of the members, declaring the month of March as professional social work month. And Senator Christensen offers LR247. That will be laid over, Mr. President. I also have a list of priority bills as designated by the Speaker. I believe copies have been distributed to the membership. (Re: LB308, LB734, LB743, LB746, LB768, LB781, LB786, LB806, LB813, LB819, LB837, LB877, LB884, LB894, LB907, LB911, LB914, LB939, LB953, LB956, LB962, LB1056, LB1104, LB1172, and LR229CA.) That's all that I have at this time, Mr. President. (Legislative Journal pages 675-677.) [LB371 LB1147 LB611 LB612 LB613 LB679 LB967 LR246 LR247 LB308 LB734 LB743 LB746 LB768 LB781 LB786 LB806 LB813 LB819 LB837 LB877 LB884 LB894 LB907 LB911 LB914 LB939 LB953 LB956 LB962 LB1056 LB1104 LB1172 LR229CA]

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

Floor Debate
February 25, 2008

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Doctor of the day introduced.) This morning there will be treats that will be distributed to the members, and these are being provided by Senator Kruse, on behalf of his 79th birthday. Senator Kruse, happy birthday! Mr. Clerk, we'll move to first item under General File.

CLERK: Mr. President, LB797, introduced by the Health Committee and signed by its members. (Read title.) The bill was introduced on January 10 of this year, referred to Health and Human Services Committee. The bill was advanced to General File. At this time, Mr. President, I have no amendments to the bill.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Johnson, you're recognized to open on LB797.

SENATOR JOHNSON: Good morning, members and Lieutenant Governor. LB797. Members, LB797 is what we call our clean-up bill, requested by the Department of Health and Human Services. This bill does contain an emergency clause for portions of the bill and makes the following changes, and there are about eight or nine, as I recall. And here they are: First of all, for Medicaid the bill updates a reference to federal law in the Medical Assistance Act. This part of the bill becomes operative with the emergency clause. Number two, public assistance administrative disqualification process. The bill reinstates provisions that were outright repealed last year with LB296 and originally adopted in LB234. You might recall that LB296 was the omnibus bill of some 1,100 pages. The provisions require the Department of Health and Human Services to establish an administrative disqualification process for the Aid to Dependent Children, that is ADC, and the childcare subsidy programs. This is not new language but simply a reinstatement of language that was inadvertently repealed in the HHS reorganization bill last year. Number three, DHHS administrative references. The bill changes administrative references following the reorganization of the Department of Health and Human Services, again, in LB296 of last year. The bill places the licensure of childcare programs in the Division of Public Health within the department. The chief executive officer in the department, or his or her designee, is made a member of the Geographic Information Systems Steering Committee. Number four, Rural Health Systems and Professional Incentive Act. The bill makes technical changes to the Rural Health Systems and Professional Incentive Act. It updates a reference to existing law which is outright repealed on December 8 of this year, the effective date of LB463, which was passed last year, you'll recall, as well. The bill changes reference to "advanced practice registered nurse" to the term "nurse practitioner" to harmonize with the changes in LB256, which had been passed in 2005. Number five, the screening mammography program; that is, breast and cervical cancer. The bill deletes provisions relating to the state screening mammography program to harmonize, again, with federal law changes. The bill makes technical changes to statutes relating to Breast and Cervical Cancer Advisory Committee and outright repeals several other sections. Number six, release of

Floor Debate
February 25, 2008

case-specific data to trauma quality assurance committees. The bill permits the department to release case-specific but nonidentifying trauma information to trauma quality assurance committees, to enhance the flow of electronic information and improve the provision of emergency medical services and trauma care. Number seven, cancer registries. The bill permits the Centers for Disease Control and Prevention, that is the CDC, and the North American Association of Central Cancer Registries, to rerelease case-specific but, again, nonidentifying information received by the Nebraska Cancer Registry to qualified research centers. Number eight, outright repealer. The bill outright repeals sections relating to the Governor's Roundtable on Welfare Reform, which is now obsolete, and sections relating to breast and cervical cancer. This bill was heard on the 23rd of January this year, the bill was advanced unanimously by the committee, and there is no fiscal impact. Mr. Lieutenant Governor, I'd ask for the advancement of LB797 to E&R Initial. Thank you very much. [LB797 LB296 LB234 LB463]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the opening to LB797. The floor is now open for discussion. Members wishing to speak: Senator Schimek. [LB797]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I was down in my office when I heard Senator Johnson begin talking about this bill, and I want to make sure that I understand what we're doing here. Senator Johnson, the part that caught my attention was the part about the mammography screening program and the cervical cancer screening program, and the summary says that the bill makes technical changes to statutes relating to the Breast and Cervical Cancer Advisory Committee and that it deletes provisions relating to the state screening program to comport with federal law. That happens to be a program near and dear to my heart, and I want to make sure that I know what you're doing here. Could you explain more fully for me, please? [LB797]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB797]

SENATOR JOHNSON: Yes, I'd be happy to. Senator, let me...I can...it's rather a brief reference, and I can read this to you from the original, and I think that will clarify it for you. [LB797]

SENATOR SCHIMEK: Okay, and do you have any...well, I can be looking in the bill for the part that it refers to, if you will... [LB797]

SENATOR JOHNSON: Okay. And, you know, if there is any problems this way...and we really think this is, as Jeff Santema, our counsel says, this is boring and redundant bill here this morning. But if there are any problems with this, obviously, we'll be glad to work with you. [LB797]

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

Floor Debate
February 25, 2008

SENATOR SCHIMEK: Well, I learned... [LB797]

SENATOR JOHNSON: (Inaudible) important program you're talking about. [LB797]

SENATOR SCHIMEK: I did learn my lesson last year on a bill, when I didn't ask questions about some language being deleted, and I should have. So here I am. [LB797]

SENATOR JOHNSON: Well, we will assure you that we'll work with you if there's any problem. But I will supply you with this, and it's my understanding that...and I would be with you wholeheartedly, to make sure that these programs are preserved. You are correct. They must be preserved. [LB797]

SENATOR SCHIMEK: And that is... [LB797]

SENATOR JOHNSON: Would you like me to read the section? [LB797]

SENATOR SCHIMEK: I'll tell you what, Senator Johnson. While you are maybe answering some other people's questions, I will talk with committee counsel and try to find out explicitly what we're doing here. [LB797]

SENATOR JOHNSON: Certainly. That would be great. [LB797]

SENATOR SCHIMEK: And then I will turn my light on again, so that I can come back and say... [LB797]

SENATOR JOHNSON: Or I will put mine on, if needed. [LB797]

SENATOR SCHIMEK: Okay, thank you. [LB797]

PRESIDENT SHEEHY: Thank you, Senator Schimek. Senator Ashford. Senator Ashford? [LB797]

SENATOR ASHFORD: Thank you. I'm sorry, Mr. President. I just...if I may ask Senator Johnson just a quick question, and it may take some research, but one of the...over the weekend I think on the front page of The New York Times this weekend there was a...on the Sunday New York Times there was a discussion about the cuts in Medicaid funding. And one of the cuts that they mentioned was that Medicaid funding would no longer...could no longer be utilized for training physicians or doctors. Do you know anything about that, Senator Johnson,... [LB797]

SENATOR JOHNSON: No, sir. I'd have to... [LB797]

Floor Debate
February 25, 2008

SENATOR ASHFORD: ...or is that an issue that we need to be concerned about, not in this bill necessarily but going forward? [LB797]

SENATOR JOHNSON: No. I would be glad to research that, and I was unaware of that, sir, and would be glad to. What we have here...as you'll recall we had these two huge bills on reorganization last year, both of them being approximately 1,100 pages, each of the bills. And these are really clean-up technicalities in those bills. I guess I'm surprise that there's only eight references that need a little bit of clean up. [LB797]

SENATOR ASHFORD: Thanks, Senator Johnson. And this is just for the record, Mr. President. It was alarming to read in The New York Times, and many things are alarming to read in The New York Times, but this was alarming to read in The New York Times. It was a lead article on the front page of the Sunday Times that talked about the cuts in Medicaid, and there were quotes from governors. In fact, I think what the story was about was the Governors' Conference in Washington had resolved...passed a bipartisan resolution to oppose the Medicaid funding cuts, and one of the big issues was training physicians in hospitals, which would have a very dramatic impact on our institutions. Children's Hospital, I called today, I think it's \$2 million they get to train physicians at Children's, and I would guess that the Nebraska Medical Center would be substantially more than that, and Creighton would be some amount. So this is no reflection on the bill, Senator Johnson, just sort of a question out there. Are we going to be faced with dramatic underfunding of physician training? So with that, I would just certainly urge the advancement of this bill. Thank you. [LB797]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Schimek. [LB797]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Johnson, I think I'm still not clear what's going on here, so what I'm going to do is I'm going to try to understand it better between now and Select File and, if necessary, come back for further discussion on it on Select File. But for now, I'm not going to try to hold up your bill or anything like that. I trust you all know what you're doing, but, still (laugh), one can't be too careful. Thank you. [LB797]

SENATOR JOHNSON: Yes, thank you. And, Senator, there is the thing, I trust you, but let's verify it and make sure we're right. [LB797]

PRESIDENT SHEEHY: Thank you, Senator Schimek. Are there additional members wishing to speak? Senator Nelson. [LB797]

SENATOR NELSON: Thank you, Mr. President. Will Senator Johnson yield to a question? [LB797]

PRESIDENT SHEEHY: Senator Johnson, would you respond? [LB797]

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

Floor Debate
February 25, 2008

SENATOR JOHNSON: Yes, sir. [LB797]

SENATOR NELSON: Thank you. Senator, I had some correspondence from a constituent. I'm referring to page 5, and starting there on page (sic) 12, a little farther on down there, this eligibility for loan repayments. And the language has been changed, formerly from an advanced practice registered nurse, and it's now a nurse practitioner. And we have such a thing as a CNM, a certified nurse midwife. My constituent was under the impression that with this change now, the CNMs, whereas they used to be able to get loan repayment, would no longer be eligible. And I just...as long as you're researching other things, you know, and we're working here, perhaps we could check that out and see if, in fact, they were eligible for loan repayments and now would no longer be. And that's the only question I have. Do you have any comment at this time? [LB797]

SENATOR JOHNSON: Well, again, sir, I do have some information. It is very technical. It's my understanding, in a global sense here, is just to go back to what was originally the understanding and the law. And we do have the reference, and I'll be glad to show this to you off mike. And we can do much the same with your questions as with Senator Schimek's, and I think that... [LB797]

SENATOR NELSON: All right. [LB797]

SENATOR JOHNSON: ...you will be satisfied with what has been done, but we'll be glad to go over them with you. [LB797]

SENATOR NELSON: I suspect that everything is probably fine and in good order, but I just thought this question should be answered. So I appreciate that, Senator Johnson. Thank you, and thank you, Mr. President. [LB797]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Are there other members wishing to speak on LB797? Seeing none, Senator Johnson, you're recognized to close. [LB797]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. Yes, there are a great deal of things that could be questioned here, and we will be more than happy to go over not only the people that brought up these questions here on the floor this morning, but if any of the rest of you have any questions, feel free to call upon us, and we'll be glad to research and find you the answers. So with that, I'd ask that you advance the bill this morning. [LB797]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the closing. The question before the body is, shall LB797 advance? All those in favor vote yea; opposed,

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

Floor Debate
February 25, 2008

nay. Please record, Mr. Clerk. [LB797]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB797. [LB797]

PRESIDENT SHEEHY: LB797 does advance. Next item under General File. [LB797]

CLERK: LB1014, introduced by Senator Ashford. (Read title.) The bill was introduced on January 17 of this year, at that time referred to the Judiciary Committee, advanced to General File. There are committee amendments pending, Mr. President. (AM2006, Legislative Journal page 673.) [LB1014]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Ashford, you're recognized to open on LB1014. [LB1014]

SENATOR ASHFORD: Thank you, Mr. President and members. The committee amendments essentially comprise LB1014 now, so I'm going to introduce the bill and then go into the committee amendments as part of my introduction. LB1014 is a vehicle for several court-related bills that the Judiciary Committee has considered and decided to advance this session. The original provisions of LB1014 have been combined with the provisions of eight other bills to form AM2006 that we'll get to in a moment. The common thread running through these measures is an effort by the Judiciary Committee to improve efficiency of our judicial system while maintaining accessibility, accountability, and fairness. LB1014 includes these recommendations: These are recommendations from the Nebraska Judicial Structure and Administration Task Force, a group that was assembled by the Nebraska State Bar Association to study ways for the state to use judicial resources more efficiently. The first item in what is in LB1014 is the judicial vacancy process. As you know, and has been the case in Nebraska for many, many years, the Legislature determines when a judicial vacancy is to be filled and determines that by legislative enactment. The judicial vacancy provisions are changed in this bill in the following way: The Nebraska Supreme Court would determine by a majority vote where a vacancy should be filled and what type of judgeship should be, essentially, chosen, if the Judicial Resources Commission decides that a judgeship should be moved. If the Judicial Resources Commission, which is the body that is set up to determine the filling of vacancies, if they decide that the judge not be moved from one district to another, then that decision would be binding and the Supreme Court would not act. In effect, the Supreme Court acts only upon a disagreement by or a decision by the Judicial Resources Commission to move a judge from the district that they are in. Last year you remember we did move a judge legislatively from District 12, I believe, to District 9. This is process is somewhat...it always has seemed to me to be not focused on the issues but somehow gets politics involved in the middle of judicial resource allocation. It's a burdensome process, and it seems to me the better way to go is what we have here in LB1014. The Legislature would still continue to provide the total number of judges and the location of judicial district boundaries. LB1014 also provides

Floor Debate
February 25, 2008

for more uniformity in the appeal procedure from Small Claims Court and county court to district court, and this has always been an issue in the practicing bar, where a Small Claims Court decision is retried, in effect, in the county court or the district court. That's a very burdensome process and really, in our opinion, my opinion--I think of the committee, as well--an necessary level of hearing. So what will happen is, now, that the district court or the county court will hear the appeals on the record. There would be no need for an additional trial in a small claims matter. And, to refresh your memory, the small claims matters are small money matters that are tried by the judges themselves, and many of those cases are pro se. LB1014 expands the authority for courts to appoint referees in child support cases and equity matters. There has been some confusion there about the court's jurisdiction to expand the use of referees, and referees in equitable actions, equity actions or money actions, or tax measures involving complex tax issues, it's very, very prudent and expeditious to bring referees into those cases. And this expands the jurisdiction of the district court to handle those matters. On the issues of caseload and scheduling management, the bill does several things. First of all, it allows for the use of telephonic or videoconference hearings in nonevidentiary matters and in evidentiary matters, if the parties agree and the court approves. Again, this is bringing the court system into the twenty-first century, utilizing technology to expedite the process without burdening the equitable nature of our proceedings. In addition, it requires that felony and misdemeanor charges be filed in district court when they arise from the same incident; again, not having...getting away from the practice of filing felony cases in district court and misdemeanor cases in county court, so you have dual jurisdiction. Some of these things are very common sense, but they...and I wonder and we all probably wonder why they are still there. But hopefully this bill will rectify some of these things. It requires...the bill requires district and county court judges to communicate about their caseloads and create an annual plan on how to assign between the court cases involving domestic relations matters and Class IV felonies. This is an important measure. This provision will bring the county court judges more into some of the more difficult cases that the district court bench handles. It will allow county court judges to hear felony IV cases, domestic relations matters, and will...is a more expeditious and efficient way of handling the caseload management and I think a very important provision. The bill authorizes the Supreme Court to compensate retired judges who are willing to hear court proceedings on a temporary basis. This is a very important provision. Judges are retiring earlier and earlier. Rather than having to add additional judges, if retired judges are willing to come back into the process and hear cases, as happens in the federal court on a regular basis, that that should impact positively on court efficiency and spending on district court proceedings. I might now just go into some of the...if I...how much time do I have, Mr. President? [LB1014]

PRESIDENT SHEEHY: About 2 minutes, 45 seconds. [LB1014]

SENATOR ASHFORD: I'll just start talking about some of the additional bills that were combined into LB1014. What I've talked about so far are the bills that is LB1014 itself.

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

Floor Debate
February 25, 2008

The first major bill that is made part of LB1014 is Senator Flood's LB1085, and we passed last year an expansion of the Parenting Act, providing processes and procedures for mediation in all domestic relations cases throughout the state. It was an extremely, in my view, positive piece of legislation that this body passed, but as is the case with complex legislation dealing with the courts over the year, we heard a number of concerns raised about some of the provisions of that measure, all be the concerns...many concerns but really limited to a few parts of that mediation process. We've corrected those, Senator Flood has corrected those, and the committee unanimously supported the changes. And so LB1085, which is now part of LB1014, will incorporate those changes, and I believe Speaker Flood is going to talk about those. The bill also incorporates language from LB1159, which is a bill that I introduced regarding truancy and judicial processes, and the bill does a couple of things. It adds school attendance to the list of items that must be considered... [LB1014 LB1085 LB1159]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR ASHFORD: ...in determining the best interest of the child. It provides that certified court copies of school records are admissible as evidence in a child custody proceeding. It provides that foster children shall attend the same school they attended prior to entering the system, unless the judge finds it against the best interest of the child to do so. And this is a major issue, the issue of mobility, the issue of children who go into foster care and go from school to school. It's a major issue in the truancy area, and I think is a good measure. It currently...LB1159...currently, any funds not distributed to counties under the County Juvenile Services Aid Program are sent back to the General Fund. This measure or this part of LB1159, amended in LB1014, would correct that and allow the money to stay with the County Juvenile Services Aid Program. I'd stop there, Mr. President. [LB1014 LB1159]

PRESIDENT SHEEHY: Time, Senator. Mr. Clerk, do you have an item for the record? [LB1014]

CLERK: Mr. President, Health and Human Services will meet at 10:45 in Room 2022; Health and Human Services in Room 2022, 10:45. [LB1014]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. As you have read, there has been a Judiciary Committee amendment filed. Senator Ashford, you're recognized to open on AM2006. [LB1014]

SENATOR ASHFORD: Thank you, Mr. President, and I'm just going to continue with a few of the additional measures that were brought to the committee by our colleagues, that have been incorporated in LB1014 and are before you in the committee amendments. LB1160 was a bill involving the juvenile court procedures, and it requires

Floor Debate
February 25, 2008

the juvenile to make the motion for a waiver to juvenile court not later than 30 days after arraignment. This is a very important...in my view, an exceedingly important provision. In today's practice, a defendant who is charged in district court...and, as all of you know, Nebraska may be the only state--it's certainly one of the only states--that do not require that actions against juveniles be filed in the juvenile court directly. Those actions, criminal actions, are filed in the district court and not in the juvenile court. In order to get a measure to the juvenile court from the district court, the defendant must file a waiver of district court jurisdiction motion. That motion is heard by the district court and then goes to...if adopted or accepted, the juvenile court takes jurisdiction. This provision would require that the defendant make his or her motion within 30 days of the filing of the action or the arraignment--it's the arraignment, not the filing of the action. And that will allow what the courts are doing in a few jurisdictions--juvenile courts are doing--called front-loading of juvenile services in juvenile cases, to bring to bear as early as possible in the proceeding where these...all of the potential services that can be made available to juveniles much earlier in the process than what is the case today. This particular process is being utilized throughout the...a couple of jurisdictions throughout the juvenile court system and works very well, and I know the Supreme Court Chief Justice, Justice Heavican, is very supportive of this process. The amendment also clarifies that the juvenile court has authority over parents of the juvenile that is under the court's jurisdiction, regardless of whether the parent has custody of the child, which again brings the parents--both parents--into the process, if there are two parents involved. It clarifies that mediated prehearing conferences for children involved in the juvenile court are confidential. This is an extremely important measure, because mediation or mediated conferences under the Nebraska Mediation Act are confidential--mediations are confidential in nature. This clarifies that those kinds of prehearing conferences should also be confidential so that, for example, something that is said between juveniles and county attorneys and public defenders and guardians ad litem, that those, as they relate to past acts, that those discussions cannot be used to file additional charges against the juvenile, and it's a very important provision. The amendment provides that the county attorney and judge must consider any previous firearm-related conviction or acknowledgment of unauthorized use or possession of a firearm in any order declaring the juvenile as not amenable to the rehabilitative treatment of the juvenile court in determining a transfer motion. Again, anyone with a possession-of-a-firearm charge, the district court and the county attorney must consider firearms violations in that determination; again, a significant amendment, in my opinion. It gives juvenile court judges...the amendment gives juvenile court judges the authority to issue an order after a hearing on the matter indicating that a juvenile is not amenable to the rehabilitative treatment of the juvenile court. This issue comes up when juveniles who have been adjudged in a juvenile court come back again with having violated the provisions of their...it's handed down by the court in a prior case and may be considered in determining whether or not a juvenile case gets back to juvenile court again. This is a concern brought to us by county attorneys and I think is applicable and appropriate. Senator Synowiecki, in LB1107, has brought to us a provision involving problem-solving

Floor Debate
February 25, 2008

courts. These are specialized drug courts, domestic violence courts, community courts, family treatment courts, DUI courts, and mental health courts, and as we know, Senator Synowiecki has been very much involved in these issues throughout his years here, and this is an important provision. It gives statutory authority to special court programs and makes it clear that these particular kinds of courts are appropriately there, that they have the authority to act, that they are eligible for...to be a part of the judicial processes of our state, and I applaud Senator Synowiecki for this measure. LB933 is a clean-up measure related to the training and title of clerk magistrates, simply a clean-up measure clarifying that the Supreme Court has the authority to establish education requirements for clerk magistrates--very simple, technical in nature--and that's incorporated in these bills. Again, the...we're almost finished. The seventh amendment provides authority to the Supreme Court to establish rules regarding service and delivery of court papers pursuant to the court's authority to promulgate rules. Under current law, service and delivery of a court document is explicitly regulated by statute. This provision would give to the Supreme Court the authority to find more efficient mechanisms for delivery and service of court papers, and this would primarily be the pleadings, not so much the service of process that starts a case but the pleadings themselves in a particular case. The next amendment clarifies the authority for Nebraska courts to refer cases to mediation and other dispute resolution matters. This is somewhat of a clean-up measure. There has been concern raised by district judges that they do not have the authority to refer cases to mediation. This clarifies that and explicitly gives that authority to the court. Finally, Judge Burling, late in our hearings, brought us a very interesting bill...Senator Burling, excuse me, brought us a very interesting bill dealing with jurors taking notes, and the last amendment does, in fact, give the authority in civil and criminal cases, regardless of whether the parties agree, for jurors to take notes...the Nebraska Bar Association...during the proceedings. This is a process and a practice that has been adopted successfully in the federal courts. An attorney in Senator Burling's district has advocated strongly for this. The Nebraska Bar Association have adopted a resolution in support of this provision. I think it is an extremely important measure. These cases, many of them, the complex cases, take weeks and weeks to try. Not having the right to take notes seems to me that...to militate against fairness and equity, and I appreciate Senator Burling for bringing this measure to the body, and it is incorporated in the amendments. Finally in conclusion, Mr. President, I appreciate the patience of the body listening to all of these provisions. The goal of the committee was to find initiatives, measures, proposals that would make our court system more efficient to utilize the funds, the precious funds, that the court system has in administering justice in a fair and equitable manner. And I applaud all of the senators who brought us these provisions, many of these provisions, which were incorporated in AM2006. Especially again, Speaker Flood for his work on mediation in domestic relations matters, which really is revolutionary. These measures will save time, will bring parties together, hopefully, on many contentious issues throughout the state. And sometimes moving lawyers...we in the legal profession are sometimes slow to change, believe it or not. [LB1014 LB1160 LB1107 LB933]

Floor Debate
February 25, 2008

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR ASHFORD: But I think the Legislature or certainly the committee and hopefully the Legislature will see the positive repercussions of these changes and that...and I certainly would urge the adoption of AM2006, and thank the committee. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening on the Judiciary Committee amendment, AM2006. Members wishing to speak are Senator Lathrop, followed by Senator Flood, Senator Harms, Senator Ashford. Senator Lathrop. [LB1014]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I obviously am standing in support of LB1014 and AM2006. I did want to take a moment at Senator Fischer's request to address what the bill does with respect to judicial appointments and whether or not our friends in greater Nebraska are at risk or at particular risk of losing judges, as a consequence of this bill. An explanation is in order. First, the current system requires that the Judicial Resources Commission meet when there has been a vacancy. That vacancy can be created through the death of a member of the court, it can be created because the judge is not retained or retires or resigns. In whatever circumstance those vacancies are created, the Judicial Resources Commission meets, makes recommendations. The Judiciary Committee presently...in the Legislature the Judiciary Committee looks at those recommendations, can endorse them, can ignore them. We can put a new judge or fill that vacancy anywhere we want, making the process political and subject to the votes on Judiciary and, ultimately, on the floor. The changes to the process of allocating judges across the state in this bill takes place in this way, and it comes at the recommendation of the state bar that did a study, trying to provide for a good mechanism for the allocation of judicial resources. Basically what the bill says is this: There will still be 124 judges. Those are judges of the district court, of the county court, and the juvenile court. Those judges will continue to serve where they serve, but when there are vacancies, the Judicial Resources Commission will again review the judges' caseloads across the state, all 124 of them. They will consider not just the number of cases they have but also the travel time involved in administering to several different counties, and that's important for our friends in greater Nebraska, where our dedicated judges get in their car and go from county to county. The significant change to the manner in which judges will be allocated will be that those recommendations will be made no longer to the Legislature but to the Supreme Court, and the Supreme Court will then decide whether or not a judge should be reallocated to a different district or a different bench, from county to district court, for example. What does this mean to people in greater Nebraska, and is it more likely that we will see judges allocated to Lincoln or Omaha and taken from the rural areas? The answer is no. I think that under the present system, those...the chance of effectively the big cities

Floor Debate
February 25, 2008

making a raid on the rural bench is more likely with having that decision made in the Legislature than having the decision made by the Nebraska Supreme Court. It is also, I believe, more consistent with the overall function of the Nebraska Supreme Court. In addition to deciding appeals, they are responsible for the administration of the courts. It is, therefore, appropriate, I believe, to follow the recommendations of the Nebraska State Bar, to follow the language in the amendment and permit the Nebraska Supreme Court to make those decisions on where, what court, and how vacancies are filled across the state. And with that, I'd be happy to answer questions from people who have concerns relative to this change in the law. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR LATHROP: But otherwise, I think that's a satisfactory explanation of...and should make the folks in Greater Nebraska feel a little more comfortable with the changes in how judges are allocated in the state of Nebraska. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Flood. [LB1014]

SPEAKER FLOOD: Thank you, Mr. President, members. I, too, am supportive of AM2006 and LB1014, and I want to start my remarks by thanking the members of the Judiciary Committee for their hard work on putting this package together, but, more importantly, on working with me as we attempt to make changes technical in nature to LB554, which passed last year regarding proposed changes in the Parenting Act. Last year's bill, I really believe, struck a balance between recognizing the importance of maintaining parent/child relationships, while at the same time protecting victims of abuse and neglect. This bill, technical in nature, attempts to make some changes that resulted from a collaborative process. There's no question there were folks from across the state that had some concerns about LB554 last year. Senator Ashford, Senator Lathrop, myself and others sat down at the table and we worked through all the concerns, and what you see in this bill represents LB1085 that I introduced this year, and those are the technical changes that we're proposing to LB554. Real briefly, one of the changes would require a plaintiff, who is living in an undisclosed location for his or her protection, to provide an alternative address for mailing of notice; clarifies the section as to what shall be contained in a decree for dissolution, legal separation, or paternity order, in order to protect the identity of the parties for purposes of guarding them against identity theft. It amends Section 42-371, which pertains to the release or subordination of a lien for a support order, to provide that a judgment debtor can file a motion requesting such release or subordination. The bill requires that the child information affidavit be offered as an exhibit rather than filed with the court, as set forth in Section 43-2930, and it removes a requirement that judges and attorneys involved in Parenting Act cases participate in training and handle abuse cases but retains the requirement that mediators take training. I don't think it's our job in the Legislature to tell officers of the court in the judicial branch when and what kind of training they should

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

Floor Debate
February 25, 2008

have. That is a power reserved to the judicial branch, and one that we clean up from LB554 last year. This is a good bill; it makes the changes, I think, that people can be comfortable with, following the input of all those across the state that came to the table, and I would urge its adoption. Thank you, Mr. President. [LB1014 LB554 LB1085]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Harms, followed by Senator Pirsch and Senator Avery. Senator Harms. [LB1014]

SENATOR HARMS: Thank you, Mr. President, colleagues. I wonder if Senator Ashford would yield to a question. [LB1014]

PRESIDENT SHEEHY: Senator Ashford, would you respond? [LB1014]

SENATOR ASHFORD: Yes. Thank you, Mr. President. Yes, I will. [LB1014]

SENATOR HARMS: Senator Ashford,... [LB1014]

PRESIDENT SHEEHY: To Senator Harms. [LB1014]

SENATOR ASHFORD: Senator Harms. [LB1014]

SENATOR HARMS: Thank you. I have several questions I'd like to ask you, if I may. On page 3 of the white copy--do you have that handy, Senator? [LB1014]

SENATOR ASHFORD: Well, I can get page 3 of the white copy. [LB1014]

SENATOR HARMS: Well, I can just walk you through it. It's no big deal. I think... [LB1014]

SENATOR ASHFORD: I'm going to get to page 3 right now. [LB1014]

SENATOR HARMS: Okay. I'm sure you can answer the question without... [LB1014]

SENATOR ASHFORD: Okay. I'm there. [LB1014]

SENATOR HARMS: What I'm concerned about, we talk about videoconferencing. [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

SENATOR HARMS: We talk about telephonically... [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

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

Floor Debate
February 25, 2008

SENATOR HARMS: ...and then we talk about similar equipment. I'm not sure what similar equipment means. But what my concern here is, is that where most of this is going to take place is going to be through greater Nebraska. [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

SENATOR HARMS: And the further west you go, the more that we're going to use this, and I guess I'm just concerned that rural America should have maybe the same feeling that they're being treated appropriately and have the same...seem to have access to the court system, as they know it today. And they're not going to have that, and that's where most of that is going to be done. Is that correct? [LB1014]

SENATOR ASHFORD: Well actually, no. Well, it's going to be done in rural Nebraska but also in Lincoln and Omaha, because what has happened in Lincoln and Omaha is now that we have a court in the jail, for example, and this would alleviate that problem. That's a big problem in the cities, having to have a court in the jail itself. It takes a person away from the courthouse. So it does...it applies differently to rural and urban areas, but it is designed to apply to both. [LB1014]

SENATOR HARMS: But I would say...am I correct in thinking that probably the majority of this would be the further west you go? [LB1014]

SENATOR ASHFORD: It could, but I do think you're going to see a lot of preliminary motions being handled in the urban area. I understand your point. I'm not trying to belay your point. I think I understand your point, but I think it's also an urban issue. But I understand how you may feel there, that somehow there won't...that everything will be done telephonically or outside of the courtroom, and it's another way of somehow not...somehow judges aren't needed, because you can do everything telephonically. And I understand the point, but... [LB1014]

SENATOR HARMS: Yeah, the one other further question--I'm not done yet. We talk about similar equipment. What does that mean... [LB1014]

SENATOR ASHFORD: Well, we... [LB1014]

SENATOR HARMS: ...on line 26 on page 3? [LB1014]

SENATOR ASHFORD: We leave that up to the Supreme... [LB1014]

SENATOR HARMS: So what does that actually mean? I'm not sure what similar equipment is. [LB1014]

Floor Debate
February 25, 2008

SENATOR ASHFORD: Well, first of all, any kind of...I don't have a laundry list of that, those pieces of equipment, but the protection here is the constitution, and that if...equipment would have to be...would have to meet constitutional criteria, and it would have to provide for fairness and equity, and I can't imagine equipment that...I don't know what it would be, whether it's...I doubt if it would be the Internet, because the Internet is not secure. It would have to be some sort of closed line or a line that is only for the purpose of taking...of having these hearings. But I don't know what other equipment it could be, Senator Harms. [LB1014]

SENATOR HARMS: Well, thank you, Senator. I just wanted you to understand. I have a couple more questions. Don't go away. I'm not against what you're doing; I just want clarification,... [LB1014]

SENATOR ASHFORD: Yeah. [LB1014]

SENATOR HARMS: ...because I will have to answer those sometime when I go home. I also have an interest in wanting to know how the commission actually will determine whether or not they are going to do this electronically,... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR HARMS: ...or they're going to move a...thank you, Mr....move the judge around. How do they determine that, and if they...I'm sure it's on caseload, but how is that actually done, and how many cases can a judge handle, and what is the situation there? [LB1014]

SENATOR ASHFORD: It is on caseload, and it...but not totally on caseload. Caseload is one of the many criteria they look at. The Judicial Resources Commission is made up of bar members from around the state, and my experience is that they're sensitive to the issues of rural areas when they make these determinations, but they would look at all of those concerns, about the fact of this...what impact this moving a judge would have on the court proceedings, even though the caseload may be less, so... [LB1014]

SENATOR HARMS: Okay. Well, thank you. My biggest concern about this is the simple fact that when it comes to videoconferencing, there's not many places you can go in rural America that really does have that, so I think we're going to take some away from the court system as we know it today. And thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Avery, followed by Senator Synowiecki and Senator Lautenbaugh. Senator Avery. [LB1014]

SENATOR AVERY: Thank you, Mr. President. I would like to ask Senator Lathrop a question or two. [LB1014]

Floor Debate
February 25, 2008

PRESIDENT SHEEHY: Senator Lathrop, would you respond to questions? [LB1014]

SENATOR LATHROP: Yes. [LB1014]

SENATOR AVERY: Senator Lathrop, do you know if this bill does anything to change the current boundaries of districts? [LB1014]

SENATOR LATHROP: I don't think it does. I think that the boundaries of the districts remain the responsibility of the Legislature. [LB1014]

SENATOR AVERY: And that would not be given to the Supreme Court? [LB1014]

SENATOR LATHROP: No. In fact, the bill says specifically that there shall be 12 districts, and there shall be a county judge and a district judge in each of the 12 districts. I don't believe it changes any of the boundaries. [LB1014]

SENATOR AVERY: And I...it does. I was looking at it, and it does show that each district has specific counties assigned to it, but what I was wondering is whether or not, when the Supreme Court is given the authority to allocate the judges, we retain the authority to determine how many judges. They then, the Supreme Court, would have the authority to distribute those judges, correct? [LB1014]

SENATOR LATHROP: That's the point. [LB1014]

SENATOR AVERY: Would it not also make sense for them to have the authority to change district lines, as well? Because in some cases you can change district lines and that would allow for a better allocation of judicial resources without having to create a new judgeship. [LB1014]

SENATOR LATHROP: You may be right, but I think there are other provisions in the law that permit the Supreme Court to effectively say to one judge--and we heard some testimony about this in Judiciary a week ago, where they said perhaps we can alleviate some of the difficulty in Lincoln by bringing somebody in from Seward, and we have authority in the statute to do that, and I think the Supreme Court can do that. [LB1014]

SENATOR AVERY: That was my bill, Senator. [LB1014]

SENATOR LATHROP: There are...you can make a temporary assignment under existing law to alleviate backlogs in the various districts. The one other thing that this bill does do that is going to help is we considered, or the bar association considered the idea of a unified court system. This doesn't do that, but it does permit the district court judge to work with the county court judges so that the county court judges can be

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

Floor Debate
February 25, 2008

handling some of the domestic relations work and some of the Class IV felonies, and that is new. [LB1014]

SENATOR AVERY: I'm inclined to support this bill, but let me ask you one more question. The court now has, that is, the Chief Justice, has a formula for determining total judicial resources need. Are you familiar with this formula? [LB1014]

SENATOR LATHROP: Generally. [LB1014]

SENATOR AVERY: In determining this total need, will the current number of child support referees be counted in the total current resources, or do you know? [LB1014]

SENATOR LATHROP: I don't know. I don't know that the focus of the bill is on the 124 judges of the various courts in the state of Nebraska, and I don't know...I don't remember reading anything about the allocation of child support referees. [LB1014]

SENATOR AVERY: Well, they're currently counting them. I was just wondering if that formula would change, because there is some concern, I know in Lancaster County, about counting their one child support referee in total current resources, which then pushes the total number of resources for Lancaster or District 3 up to 8, and the need calculation is that we need 7.52. But the judges I talked to tell me that that's not enough. They do, in fact, need another judge. I guess then each court will... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR AVERY: ...each district will have to make their case to the Supreme Court in the allocation of these resources? [LB1014]

SENATOR LATHROP: That's true. That's true. But you know, we have considered this in the Judiciary Committee, as we tried to reallocate some judges last session, which we did. And you will see, if you look at the numbers, just on a pure caseload, it's Douglas County, Sarpy County, Lancaster County, in terms of purely caseload. But the criteria also allow the court to consider the travel time. So 500 cases in Douglas County isn't as onerous as 500 cases for a judge whose district includes Valentine and many other counties that he or she has to travel through. [LB1014]

SENATOR AVERY: It would seem to me that the real issue might be figuring out what goes into determining the formula for the total judicial resources need. I know that some... [LB1014]

PRESIDENT SHEEHY: Time, Senator. [LB1014]

SENATOR AVERY: Thank you, Mr. President. [LB1014]

Floor Debate
February 25, 2008

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Synowiecki. [LB1014]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Senator Ashford, would you yield to a question? [LB1014]

PRESIDENT SHEEHY: Senator Ashford, would you respond to some questions? [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

SENATOR SYNOWIECKI: Relative to the provision on...Senator Ashford, I did hear some stuff from my county back home on allowing the county court judges...I don't have the first... [LB1014]

SENATOR ASHFORD: To do the felony IV cases? [LB1014]

SENATOR SYNOWIECKI: Allowing them to do the Class IV felonies. Will there be, you know, physical rehabilitation of a county courthouse? As you're very well aware, Senator,... [LB1014]

SENATOR ASHFORD: Right, and I received some of those similar, (laugh)... [LB1014]

SENATOR SYNOWIECKI: (Laugh) As you're very well aware. [LB1014]

SENATOR ASHFORD: ...rather boisterous calls on those (inaudible). [LB1014]

SENATOR SYNOWIECKI: A room at the county courthouse is a precious commodity, and it is a...there's more and more county functions being moved out of the county courthouse. [LB1014]

SENATOR ASHFORD: Correct. [LB1014]

SENATOR SYNOWIECKI: So I...can you address that on some level? [LB1014]

SENATOR ASHFORD: Yeah, that's an excellent question, Senator Synowiecki, and I did hear also from some county court judges in Omaha and others who are concerned about space allocation in the district court. I wish we had a larger courthouse in Douglas County, and maybe someday we can get that done. But the way we address that, with the resources committee and with the bar and everybody else involved, and the judges, was to require that the county judges and the district court in each district would agree on a plan or not. They would put together a plan on how they are going to handle felony IV cases and domestic relations cases within their jurisdiction; that if that plan can be

Floor Debate
February 25, 2008

worked out where they can agree on how to do it, then that would dictate how it works. If they don't agree, it would go to the Supreme Court for resolution. But clearly--and it's good to get this on the record, Senator Synowiecki--clearly, space allocation must be a consideration in determining whether or not there can be a...or to what degree we would be utilizing county courts, because the issue is juries, whether or not the county court would not have 12-member jury boxes, for example, in Douglas County. And it may be the same--and I think it is the same--in Lancaster County. It becomes less of a concern as we get out of Omaha and Lincoln. But it is a concern, and so when the plan is put together each year, those resources must be looked into and agreed to...prior to the agreement, must be part of the consideration, Senator Synowiecki. [LB1014]

SENATOR SYNOWIECKI: Well, I think it is excellent we get that on the record, Senator Ashford. As you know, again, in the district court in Douglas County, those judges essentially have their own courtroom, and in the county court, they kind of revolve through, courtroom to courtroom. And this would provide some substantive problems relative to space allocation, and it's good to hear that, as part of the plan, that the resources for space allocation...so the county will have...Senator Ashford, maybe just one more question, and then I'll be done. The counties will have a role in the planning relative to space allocation? [LB1014]

SENATOR ASHFORD: That's correct, Senator Synowiecki, and if it would be helpful, we would certainly...could put a little amendment on Select File that would...making certain that space allocation was a consideration at that time. But clearly it's our intent, and we did hopefully try to address that in the requirement that a plan be developed. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Senator Louden, followed by Senator Fischer and Senator Pirsch. Senator Louden. [LB1014]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I guess whenever I look at a bill and it's over ten pages long I get somewhat concerned. I see this one is, what, one hundred pages. And there are some things in there I would...kind of concerned about. So I was wondering if Senator Ashford would yield for questions, please. [LB1014]

PRESIDENT SHEEHY: Senator Ashford, would you respond to some questions? [LB1014]

SENATOR ASHFORD: Yes, sir. [LB1014]

SENATOR LOUDEN: Is the way...as I was thumbing through some of this, amendments there, is there a way that some of these judicial districts will lose judgeships? I mean, is it left now up to the Supreme Court to decide where to put district judges and some of

Floor Debate
February 25, 2008

the judgeships? [LB1014]

SENATOR ASHFORD: It's...yeah, Senator Louden, it's a good question. What doesn't change from current practice is that the Judicial Resources Commission would, once a judge...I think Senator Lathrop was correct in stating this, that once a vacancy occurs, the Judicial Resources Commission would evaluate the situation, and if it decides that the district judgeship that is vacated or county judgeship that is vacated would remain there, then that's the decision. If there's a disagreement...strike that. If the commission voted to move the judge from a particular district, it would be up to the Supreme Court, by majority vote, to decide the issue. [LB1014]

SENATOR LOUDEN: Okay, because that's been part of the problem at the present time out in, what, 12th Judicial District, is they've been short on a judge most of the time, and it's never really been filled. And I'm wondering if you need more judges in the eastern part of the Nebraska, if the caseloads are getting higher, then why don't they hire another judge rather than take one from the 12th Judicial District, because we have such an amount of territory to cover out there, and, sure, the caseloads aren't that high, but a lot of those judges will have 150 miles to drive in order to get...for court hearings particular days. And they already are using some of those "by telephone" type deals, has went on already. So I'm wondering in this bill if that was necessary to put that in there, or if there's a reason for it. [LB1014]

SENATOR ASHFORD: Senator, I would have no objection to looking at some language that would make sure that the Judicial Resources Commission consider travel time in determining allocation of judges. They do that already. Last year we did move legislatively a judge from District 12 to District 9, which did come out of the District 12 district, and that was done legislatively. That experience for us on the Judiciary Committee was...I do not think was a positive one. I just don't think it's a...should be a political decision. But we should consider the issues involved in some of these district like your district. And, quite frankly, the Judicial Resources Commission did not move the judge from 12 to 9, is my recollection; we did it anyway. So I think the commission does a pretty good job, but I would be happy to talk to you about language that would assuage some of your concerns there. [LB1014]

SENATOR LOUDEN: Okay. Thank you, Senator Ashford. And this would be my concerns, is that we don't get less out in the western part of the state, because when we come up with judgeships or whatever, there's still the same amount of territory out there that there always has been, and, of course, consequently, there's probably going to be more litigation comes up from time to time and more technical litigation. Some of the technical aspects are probably worthwhile in here, but at the present time I would like to see some wording done in this bill. And with that, I'll wait and see what the debate is, and thank you, Mr. President. [LB1014]

Floor Debate
February 25, 2008

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Fischer, followed by Senator Lautenbaugh and Senator Erdman. Senator Fischer. [LB1014]

SENATOR FISCHER: Thank you, Mr. President and members of the body. I have a lot of questions on this bill. It's been up in the past, the part about the judges. There has been concerns by rural Nebraska senators, by people in rural Nebraska. And the main concern is, shouldn't every citizen in the state of Nebraska have reasonable access to governmental services? In my area of the state, we already only have court maybe one day a week. That's already a burden, it's a challenge that the citizens in my area face and that the attorneys in my area face. I have had calls from attorneys in Cherry County, in Brown County, Holt County, and Custer County--4 of my 13 counties on this bill. They do not support that part of it. So the State Bar Association may support the bill, but attorneys who are members of that association in 4 of my 13 counties do not support it. I don't feel very comforted yet by comments made on the floor. I appreciate Senator Lathrop trying to address some of the concerns, but then when I get phone calls from those attorneys, the concerns are still there. And the main concern is, right now, yes, it's in the Legislature. We decide where these judges are. As I understand it, the rationale behind this part of the bill is that basically we are turning over our duty in that regard to the Supreme Court. I don't know if that's wise. Right now I'm not convinced of that. We talk about caseloads. Well, certainly the caseloads are going to be higher in the more populated area of the state, but we still have citizens who have legal needs and legal obligations throughout this state. We still have citizens right now who are traveling over two hours to get to the courthouse for their one-day-a-week chance to be with the judge. That happens in my area of the state. If you're going to extend that mileage where citizens have to travel in order to have access to courts, I can't agree with that. And when we give up that prerogative that we have as a Legislature to make it political, and to give me a chance to stand up and represent rural Nebraskans and the concerns we have with this, to take that away and give it to the Supreme Court, maybe that is the rational thing to do. But I can't support it, because I think this is a case where you have to look out for the needs of the minority, and, in this case, I am in the minority because I am from rural Nebraska, and our citizens need to be represented here, too. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Lautenbaugh. [LB1014]

SENATOR LAUTENBAUGH: Thank you, Mr. Lieutenant Governor. I'm wondering if Senator Ashford would yield to a few questions. [LB1014]

PRESIDENT SHEEHY: Senator Ashford, would you respond to some questions? [LB1014]

SENATOR ASHFORD: Yes, Mr. President. [LB1014]

Floor Debate
February 25, 2008

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. I'm looking at page 53 of the bill. [LB1014]

SENATOR ASHFORD: Okay. [LB1014]

SENATOR LAUTENBAUGH: And it appears to reference the Parenting Act, bringing it into a juvenile court proceeding of some kind. [LB1014]

SENATOR ASHFORD: This is in the...this is the Parenting Act, yes. [LB1014]

SENATOR LAUTENBAUGH: Now by bringing this into the juvenile realm, are you worried this might slow terminations and result in children being in foster care longer, or am I just reading this wrong? [LB1014]

SENATOR ASHFORD: Let me read it. Is this Section 41, or is it... [LB1014]

SENATOR LAUTENBAUGH: I've got down it's page 53. Let me double-check. [LB1014]

SENATOR ASHFORD: It simply...I mean, my reading of it is that in any...I think it's an expansion of jurisdiction to provide for the Parenting Act...to apply the Parenting Act to all cases of termination of parental rights. [LB1014]

SENATOR LAUTENBAUGH: Okay. [LB1014]

SENATOR ASHFORD: And I believe...and is that an expansion of juvenile court jurisdiction? It's certainly a clarification and certainly could be an expansion of... [LB1014]

SENATOR LAUTENBAUGH: Similarly, in Section 41, it references the guardian ad litem... [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

SENATOR LAUTENBAUGH: ...having some role in child support determinations. [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

SENATOR LAUTENBAUGH: Do you know what is envisioned there? [LB1014]

SENATOR ASHFORD: Well, it's...the court shall appoint a guardian ad litem in those cases, Senator Lautenbaugh, and, again, that's...it's an expansion of the court's authority to appoint a guardian ad litem in those cases. I...that's the intent and it is

Floor Debate
February 25, 2008

clearly an expansion, as it is in other kind of tangential proceedings. But it does, yes, it does appoint...it does require the appointment of a guardian ad litem in those cases. [LB1014]

SENATOR LAUTENBAUGH: And I guess I'm just concerned--is there any thought as to what role the guardian would have in that proceeding, the guardian ad litem? [LB1014]

SENATOR ASHFORD: Well, again, it's not a...it would have the role that a guardian ad litem would normally have. They would not necessarily...they would be there to protect the interests of the minor child and in an objective manner. They are not attorneys for the child. They would be the guardian for the child, to...in the way that they would be in all other juvenile proceedings. Senator Lautenbaugh, I don't think it changes, unless I'm missing something--I know this is something you know a lot about--but I don't believe it changes the function of the guardian ad litem, other than it expands the role. [LB1014]

SENATOR LAUTENBAUGH: Okay. I wish I knew as much as you think I know about this, Senator, but... [LB1014]

SENATOR ASHFORD: Well, I think you do, which is good. Somebody needs to. (Laugh) [LB1014]

SENATOR LAUTENBAUGH: Thank you, Senator. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Erdman. [LB1014]

SENATOR ERDMAN: Thank you, Mr. President. Would Senator Ashford yield to a question, please? [LB1014]

PRESIDENT SHEEHY: Senator Ashford, would you respond to some questions? [LB1014]

SENATOR ASHFORD: Yeah, two is all. No, go ahead. [LB1014]

SENATOR ERDMAN: I just have one, but if you want to yield to two, that's twice as many as I had envisioned,... [LB1014]

SENATOR ASHFORD: Right. [LB1014]

SENATOR ERDMAN: ...so I'll make up a second one. Section 7 of the committee amendment refers to when a retired judge may be brought in on temporary duty. [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

Floor Debate
February 25, 2008

SENATOR ERDMAN: It strikes the language about the one-twentieth of their retirement benefit. [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

SENATOR ERDMAN: When a judge is brought back for this purpose, does that term that they provide at that time that they're on salary count towards their benefit as a retiree? Or is it something different than that? Is it just simply an additional contract benefit that doesn't get counted towards their retirement benefit? [LB1014]

SENATOR ASHFORD: The answer, I believe, and I'm going to check it, Senator Erdman, right now, but I believe it does not count. [LB1014]

SENATOR ERDMAN: Okay. And I would encourage you do to that, for a couple logical reasons. One, if it does, then technically this provision of the bill is in violation of our rules, and we need to make sure that if it does provide that retirement benefit, that it has an actuarial study and would have had to have been introduced in the first year of a legislative session. If it does not, then I think the policy discussion is substantially different. But I think we as a Legislature need to know that, and I caught that provision from my years on the Retirement Committee on previous issues. But I would generally agree with you that it probably doesn't, but I think it would be important for us to make sure that that's accurate, to ensure that we're doing this right, because for some reason judges and their retirement plans are an important issue to them, and Senator White can tell you all about that at a later date. The other question that I have, Senator Ashford, is on the same provisions that Senator Fischer and others have brought up. Sections 1, 4, and 8 through 12 generally deal with the reallocation of judges. [LB1014]

SENATOR ASHFORD: Um-hum. [LB1014]

SENATOR ERDMAN: As I read the new language--and I think this is written to allow the ultimate flexibility--there could be a situation, if LB1014 passes with this amendment, that there would be only one judge in each of those judicial districts. That's the only requirement, that those districts have one judge; correct? [LB1014]

SENATOR ASHFORD: They must have a judge; that is correct. [LB1014]

SENATOR ERDMAN: And that's it? [LB1014]

SENATOR ASHFORD: I...that's... [LB1014]

SENATOR ERDMAN: So if you have three now, as the example Senator Loudon pointed out, there's nothing that would provide you any comfort that you're not going to

Floor Debate
February 25, 2008

eventually only have one judge, if you have an entire Panhandle that you have to cover. [LB1014]

SENATOR ASHFORD: Correct. [LB1014]

SENATOR ERDMAN: What type of assurances can we get from this process? Obviously, the Judicial Review Commission has the authority now. I would argue, and I argued last year, as you well know, that some of the weighting in that provision is not quite reflective of the realities of traveling in rural Nebraska. I mean, you've talked about working on language. Obviously, this isn't a new topic. What types of language are we looking at? Because as I read the bill, even with some of the language you're proposing, we're looking at having one judge in western Nebraska. [LB1014]

SENATOR ASHFORD: Thank you, Senator Erdman. I knew you had two questions, but... [LB1014]

SENATOR ERDMAN: But you encouraged me to ask the second one, so I wanted to (inaudible). [LB1014]

SENATOR ASHFORD: (Laugh) Thank you. And I think it's worthy of further reflection, Senator Erdman, to see if we can assuage some of your concerns. But again, I'd just remind you that last year we did make a switch from the 12th District to the 9th District in this body, even though the Judicial Resources Commission did not recommend that. So my sense would be that the commission... [LB1014]

SENATOR ERDMAN: Hold on, Senator Ashford. It's my understanding that they did recommend that. [LB1014]

SENATOR ASHFORD: Well, I thought they were neutral, Senator Erdman, but maybe... [LB1014]

SENATOR ERDMAN: It's my understanding that the motion from the Judicial Resources Commission was to not fill that vacancy. Whether they recommended moving it or not, it was my understanding that the folks on the commission didn't recommend filling that vacancy, and, in theory, by recommending not filling that vacancy, made it available for it to be reallocated. But again, that's a decision that currently we make. We have a public hearing. We have a process that enables the public to be aware of this change,... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR ERDMAN: ...because it doesn't just affect the inner workings of the Supreme Court; it affects the ability for people in my area to have access to the courts. What

Floor Debate
February 25, 2008

types of processes do you envision the Supreme Court going through? Because as I read the bill, the resource commission makes a recommendation; the Supreme Court votes in a majority vote to get rid of a judgeship from one county or one area and send it to another one. What process do they have in place to make sure that the public is able to be informed or to inform them on the impact? [LB1014]

SENATOR ASHFORD: I think maybe my answer would...and I will dissect your question when I have some more time, Senator Erdman, but my intent in the bill is to deal with situations where there is a judicial vacancy, and not with the issue of districts being moved around or the number of judges in a particular, though the practical effect could be that. I understand your point. And again, I will... [LB1014]

PRESIDENT SHEEHY: Time, Senator. Senator Lathrop, followed by Senator Erdman. Senator Lathrop. [LB1014]

SENATOR LATHROP: Thank you, Mr. President. I would like to stand up and maybe address some of the concerns expressed by Senator Fischer and, again, some of the concerns expressed by Senator Erdman, and that has to do with the changes that relate to the reallocation of judges in the state. The last time I spoke I gave a little bit of the history of where we are today and what this bill would change, and I think what is important to know is that currently, currently the Judicial Resources Commission makes recommendations and they come to the Judiciary Committee. And you know what happens there, currently? We hear from the Supreme Court Justice, the Chief Justice, and we hear from judges across the state who say, boy, I'm being worked very hard; I want the judge in my district to help me out. And so what we get into is essentially what the Supreme Court will do and that is, show me the numbers, let's see the considerations. And this does...and page 15 of the bill, which is Section 24-1206, says the commission sets out the criteria. And here's what the criteria are, so that you understand that it's not going to be a judge grab by Omaha or by Lincoln or by Sarpy County. This is the criteria. It says the analysis...they shall consider the following: an analysis of the judicial workload statistics compiled pursuant to statute; whether litigants in the judicial district have adequate access to the courts; number three, the population of the judicial district; number four, the judicial duties and travel time involved within the district; and number five, other factors determined by the Supreme Court to be necessary to assure efficiency and maximum service. I think in some ways I believe that this process will result in a less political system. But how did we get here, you might ask. How did we get here? Because if the lawyers in Valentine and Seward and in Gering call their state senator and say, I got a problem with this, how did we get here? The state bar did a study, and I can appreciate the state bar isn't a branch of government, but they are the people who work everyday in the court system. The State Bar Association is an important instrument in the administration of justice in this state, as is the Supreme Court. They did a study, people had all kinds of opportunity to provide input. And what was the issue? The issue is, we don't have enough judges,

Floor Debate
February 25, 2008

okay? What I'm disappointed in is that we don't have a bill here providing for three more judges, because we need them. The commission met and the bar association had hearings to determine what do we have to do to try to provide for the best coverage for the judiciary across the state? And this is their recommendation. This is their recommendation. It is thought through, and it has given lawyers across the state an opportunity to participate in that process. I think the end result, the product of that work, which is the amendment into LB1014, which we're dealing with today, is thoughtful, it is workable, and it will provide for a nonpolitical process for deciding where these judges should go. And I think that works well for greater Nebraska. Thank you. [LB1014]

SPEAKER FLOOD PRESIDING [LB1014]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Erdman. [LB1014]

SENATOR ERDMAN: Thank you, Mr. President. With all due respect to my colleagues from urban Nebraska, we appreciate their input, but I'm interested in the realities of this process. Members of the Legislature obviously know that it's not only members of the bar that appear before the court. Individuals can represent themselves. There are other provisions that allow for that to happen. And so I'm assuming that when we talk about the bar association traveling the state, they went out and talked to all their members. And to go beyond that, it's part of the court's rules that you have to be a member of the bar to practice law or some other provision, and so the bar has been elevated beyond a simple association. There's a requirement there that you be a member of the bar for certain practices in the state of Nebraska, and that's dictated by the Supreme Court. I'm not a lawyer, thankfully. So from the standpoint of me trying to understand this, I'm understanding this from a practical process. To say that there's no politics in the bar association is kind of funny, because there's politics everywhere else, and somehow the bar association has created this nice little globe that insulates them from politics. That's amazing! But let's get back to what's actually in the bill. Within 90 days of receiving a recommendation from the Judicial Commission, the Supreme Court will have a majority vote on whether they reallocate a judge, period. That's eliminating politics? No, no, that's eliminating public input; that's not eliminating politics. If what happens in front of the Judiciary Committee, which is now the responsibility of the Nebraska Legislature to decide where judges are allocated, is politics, and the public has access to that, then I think that's the politics we need to be playing. But what I'm not seeing in the draft of AM2006, as you go through this whole process...and we're going through it now in rural Nebraska. We have a vacancy. A judge that has been there for 15, 20 years decides that it's in their best interests to retire, so they do so. They are currently one of three or four judges in an area that hears cases from across an entire region. We're not talking about a couple blocks within the city/county building in Lincoln or somewhere else. We're talking about an entire region of the state that's 150 miles wide by approximately 300 miles wide--four people, now three. That was a decision made by this Legislature. It was made by this Legislature with the opportunity for the public to have input, based on

Floor Debate
February 25, 2008

the recommendation or the statistics given to us by the Judicial Review Commission. Senator Loudon has pointed out, and I've had conversations with the bar association's representative and others talking about how this plays out. I understand the game. I understand the need for the court to be more efficient. I understand the need for the court, which is the third coequal branch of government, to have the tools that they need to provide for an effective judiciary in the state of Nebraska. I understand all of that. But what you're asking the public to do is to go from a process where they know that there is a check and balance in place to a process where there is none. We don't pass legislation in the Nebraska Legislature without the Governor's input. We can ignore it, we can override it. But there's a check on what we do. Currently, in the way the judges are set up, the way that the districts are allocated, the Judicial Review Commission makes a recommendation. They do it under the auspices and under the authority that they have through the court to evaluate these things through the bar association, to come up with recommendations. Ultimately, the check on that process is the Nebraska Legislature. The members of the Judiciary Committee are the first line of defense; the rest of us are the second line; and ultimately, if a majority of the members of the Legislature...and then the final check, the Governor decides if that's appropriate. [LB1014]

SPEAKER FLOOD: One minute. [LB1014]

SENATOR ERDMAN: Then we do it. Now maybe that's too cumbersome, and I'm not saying that what we have is the right way to do it, but I'm telling you, if you read the plain language of AM2006, that process goes from public input to being short-circuited. And the same Judicial Review Commission makes the same recommendations, based on the same criteria that they currently have, to the Supreme Court, and if the Supreme Court, by a majority of votes, decides that in those vacancies that we're not going to fill that, but we're going to reallocate that district to Omaha or Lincoln or somewhere else, so shall it be. Maybe that's the way it needs to be. I'm sorry--what's missing from that, however, is the public input that's currently allowed. Because it's not simply what the lawyers of the state want for the judiciary to operate. It's what best serves the people of the state of Nebraska. And if there's need to improve and enhance the way that it's being done, I'm all for that. I'm not opposed to this in any form. [LB1014]

SPEAKER FLOOD: Time. [LB1014]

SENATOR ERDMAN: I think it has to be responsible the way it's being done. Thank you, Mr. President. [LB1014]

SPEAKER FLOOD: Senator Fischer, you're recognized. [LB1014]

SENATOR FISCHER: Thank you, Mr. President and members of the body. Again, I do appreciate Senator Lathrop's explanation of the bill, but I still have problems with it.

Floor Debate
February 25, 2008

When he spoke of the bar association had worked hard on this, and I do appreciate that too. As with any organization, it's important to have input from members and the majority decides. But I still have attorneys in my district who are members of the bar association and they are opposed to this. The bar association is like any organization, it's like any association. Policies are made through a majority decision. NSEA, the Nebraska State Education Association, they have a process where the majority makes recommendations. That doesn't mean every teacher in this state agrees with it. Nebraska Cattlemen, Farm Bureau, they have a process where their members go through and the majority decides the stance of the association. That certainly doesn't mean that every member agrees with it. Senator Erdman mentioned a lot of things that I had planned to speak about on this. You look at the amendment and see what the changes are. The Judicial Review Commission already makes recommendations. The Legislature can act on those. What changes is that the Supreme Court will now make the decision. As I said before, I don't think that's wise. In visiting with another senator on the floor, we were discussing that the Supreme Court already can temporarily move judges from one district to another to fulfill a need. That's our understanding. What this amendment does is allow the Supreme Court to permanently move a judge. It can already be done temporarily. I believe it should be the prerogative of this body to decide when a judge is permanently moved. As Senator Erdman said, in his area in western Nebraska there are three judges now. Under the law there only has to be one judge per district. I have many counties that are in two districts under the law, and it's a large area. Yes, we don't have the caseload out there, but we do have the miles. The public process, I guess I would like an explanation from proponents of this on how they view public input and if they believe there's truly public input left if this would pass. I question that. It's obvious I'm coming from a rural perspective on this bill. It's obvious I'm trying to represent rural interests from greater Nebraska, from outstate Nebraska. I understand the need in the urban areas on it. But instead of, in a way, sacrificing one area of the state and citizens' access to their government in one area of the state to ease a caseload in another, I don't believe is a wise way to go. Thank you, Mr. President. [LB1014]

SPEAKER FLOOD: Thank you, Senator Fischer. Senator Erdman. [LB1014]

SENATOR ERDMAN: Mr. President, would Senator Ashford yield to...Senator Ashford, I don't know how many questions, but I would like to ask you a question. [LB1014]

SPEAKER FLOOD: Senator Ashford, will you yield to a dialogue with Senator Erdman? [LB1014]

SENATOR ASHFORD: Yes, Senator,... [LB1014]

SENATOR ERDMAN: And it won't be a dialogue. [LB1014]

Floor Debate
February 25, 2008

SENATOR ASHFORD: ...I'd be honored, Senator. [LB1014]

SENATOR ERDMAN: It won't be a dialogue; it will be questions. Senator Ashford, in the current process in which the Supreme Court sets the rules that they have, is there input, public or otherwise, in those processes outside of the members of the bar? [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

SENATOR ERDMAN: And can you generally explain how that works? [LB1014]

SENATOR ASHFORD: Well, right now the Judicial Resource Commission is...I believe it's 17 members: 6 members of the public, 6 lawyers that are appointed by Supreme Court... [LB1014]

SENATOR ERDMAN: Senator Ashford, hold on. [LB1014]

SENATOR ASHFORD: ...district. As far as the Supreme Court, I think that decision would be made by the Supreme Court. [LB1014]

SENATOR ERDMAN: And that's my question. I'm not asking about the Judicial Resources Commission. I'm asking about the actual court. When the Supreme Court goes through the process of determining the rules that will govern the proceedings for the state of Nebraska and the judiciary, what guidelines or what process do they use in arriving at those? Do they allow for...do they work through the state bar? How does that work? [LB1014]

SENATOR ASHFORD: It's...yeah, right now, in the way the bill is written now, Senator Erdman, there is not a...the Supreme Court would make the decision with the recommendation from the commission, is how they would do it. [LB1014]

SENATOR ERDMAN: Okay. [LB1014]

SENATOR ASHFORD: There would not be another hearing, if that's what...there would not be another public hearing under the bill as it is now. [LB1014]

SENATOR ERDMAN: Let me draw you out of the forest and take the global view here. On something other than this topic, how does the court generally arrive at their rules that they set? Do they go through a process where they work with the bar in determining some of these issues, whether it's procedure or evidence? How do they come up with those? [LB1014]

SENATOR ASHFORD: You have to be more specific. Generally, the Supreme Court rules are generated by the court. I believe there are public hearings in some of those

Floor Debate
February 25, 2008

cases. But I would have to take a look at where there are public hearings and where there aren't public hearings. But it's, I believe, a fairly open process, Senator Erdman. [LB1014]

SENATOR ERDMAN: And that's what I'm trying to get to, Senator Ashford. We're obviously changing the process in which this will be carried out. One of the arguments that I've made, and I've been assured that I'm accurately reflecting the language of the law that's before us, is that when we go through this process in the future, should this become law, the Judicial Resources Commission would make a recommendation, and within 90 days the Supreme Court, by a majority vote, would vote. If they vote yes, it's over; if they vote no, then they have evidently said no to the Resources Commission report and they go on. There is no public input as I see it. So then I have to backup and inherently wonder, does the Supreme Court have that ability, as a coequal branch, to solicit the opinion of the public in making this determination? Do they do that in other areas of their rules? Do they allow for truly public hearings? I'm not specifically talking about this, but in order to arrive at an understanding of how this might work and what safeguards may be in place for the general public to be able to have a say in this process that they currently have, what would that process look like? That's what I'm...what I'm trying to get at. And so if after 90 days they receive a recommendation from the Judicial Resources Commission, by a majority vote they determine the location and the type of vacancy, then they notify the clerk that the vacancy is in the district, and they go through this whole process, and they proceed to whatever the recommendation is. Right now the Judicial Resources Commission makes that same recommendation to us as a Legislature in the way of legislative bills. And I'm interested in making sure again that we provide flexibility to the court, to the judiciary, to be able to effectively allocate the resources that they need but, at the same point, protecting the opportunity for input. And maybe that's why this bill is here. We don't want the public's input or we don't want it to the level that it currently is because they're not members of the bar, they're not involved. [LB1014]

PRESIDENT SHEEHY PRESIDING [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR ERDMAN: I don't think that's it, but I can only assume those rationale for this process. Senator Ashford, I'll yield you the remainder of my time. I believe I have about a minute. [LB1014]

PRESIDENT SHEEHY: Senator Ashford, about 50 seconds. [LB1014]

SENATOR ASHFORD: Well, I appreciate the comments, Senator Erdman. I have absolutely no problem applying the rule-making processes the Supreme Court utilizes, which in many cases they do have public input, whether it's by public...in many cases,

Floor Debate
February 25, 2008

it's by public hearing. So those are the kinds of changes that only...that are appropriate and I think meet some of your concerns, hopefully. And I think they're appropriate and well-thought-out. And I think we should...I have no problem looking at some of those things that will maybe address your concerns, Senator Erdman. [LB1014]

SENATOR ERDMAN: Senator Ashford, one last...how much time do I have, Mr. President? [LB1014]

PRESIDENT SHEEHY: Ten seconds. [LB1014]

SENATOR ERDMAN: This will be quick. The limitation of one judge per district now, is that negotiable? Because obviously right now we have more than that. Could we put a backstop in there that if they're going to below two they'd have to come back to the Legislature? [LB1014]

PRESIDENT SHEEHY: Time, Senator. Senator Dierks. Senator Erdman, that was your third time. [LB1014]

SENATOR DIERKS: Thank you, Mr. President. I would like to yield my time to Senator Ashford to answer that question. [LB1014]

SENATOR ASHFORD: Senator Erdman, anything is on the table, as far as I'm concerned, on these issues, and I'm not going to preclude anything. I think that what we're after is a more efficient and appropriate means. And reflecting what Senator Fischer has said, obviously, it's important that we concern ourselves with the issues of...in the 12th District, for example. And I have no problem looking at them. You've raised good ideas and I think it's important that we try to address them on Select File, Senator Dierks. [LB1014]

SENATOR DIERKS: Thank you. I just...you know, I've been through this for a lot of years, Senator Ashford. The year we came here, 1987, the first time, Senator Sandy Scofield represented the very northwest corner of the state. We decided at the end of one day or one noontime that the rural part of the state had been picked on enough, we were going to bring a bill that secede the western half of Nebraska into Wyoming. Needless to say, that didn't happen, but it crossed our mind. So like I say, I've been through this for so many years that I can remember that most of the time the Panhandle thought that they were second-class citizens in this state. And then it got to the point where the area in between the Panhandle and the populous part of the state thought they were second-class citizens. I think we have to structure our legislation to make sure that isn't really just real. I think the perception is all right but reality is not. So my question is something like Senator Erdman asked. When we're doing this legislation, isn't there some way that we can allow for an amendment that would allow those three judicial district judges to stay in place, if they are needed in the Panhandle? [LB1014]

Floor Debate
February 25, 2008

SENATOR ASHFORD: I certainly will address it, Senator Dierks. I'm not sure how we exactly do it, but I'm hearing what you're saying and I absolutely will look at it. And I understand your point. It's well taken and the wisdom of that is important. So, yeah, we will look at it and see what we can come up with. [LB1014]

SENATOR DIERKS: Thank you. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Langemeier. [LB1014]

SENATOR LANGEMEIER: Mr. President, I'd yield my time to Senator Erdman. [LB1014]

PRESIDENT SHEEHY: Senator Erdman. [LB1014]

SENATOR ERDMAN: Thank you, Mr. President. Senator Ashford, I apologize to keep you at the mike, but I would like to ask you a follow-up on that question I had earlier. [LB1014]

PRESIDENT SHEEHY: Senator Ashford, would you respond? [LB1014]

SENATOR ASHFORD: Yes. [LB1014]

SENATOR ERDMAN So as I understand the answer, and Senator Dierks graciously allocated the time to do that, right now, as I read the language, and it's either in Sections 1, 4 or 8 through 12, and I happen to know that because that would be what I would divide, if I wanted to divide the committee amendment. But I'm not going to do that at this point. In that provision it says that the district court and the county court provisions shall have at least one of those judges in each of their districts, at a minimum, and so that way that the Supreme Court and the Judicial Resources Commission could not give away all of the judges or vote to eliminate all of those judges via vacancy under this process. [LB1014]

SENATOR ASHFORD: Correct. [LB1014]

SENATOR ERDMAN: Right now we have judges allocated in statute based on the counties and the districts that we have determined, by law, for those areas. [LB1014]

SENATOR ASHFORD: Correct. [LB1014]

SENATOR ERDMAN: Can you give me a sense of why we chose one? Was it just simply the reality that we don't want to deal with this ever again? And I take you at your word, that you're willing to look at, you know, maybe the threshold is two judges before

Floor Debate
February 25, 2008

they'd have to come back or something. But I'm just...I want to know a little bit more about this process because this process is now in the Legislature. And I'm not a member of the bar. I may have known more as a member of the bar about what happened here before, if I was. So I'm just wanting to get the understanding here. Tell me was it just that we wanted to arrive at the one judge limitation, and then make them come back, or was the idea just to leave them alone? [LB1014]

SENATOR ASHFORD: No, I think it wasn't simply to...not to deal with it. I think we were trying to find a fair way to do this; at the same time promote efficiency by utilizing the other parts of LB1014, which deals with more efficient operation of the courts, county court, audiovisual equipment and all of that. I think it was a holistic effort to try to address the court system to make it more efficient. The other, at least in my mind, the other concern I had was Senator Fischer is right that to some extent or to a great extent this takes the judge selection out of the Legislature, out of the political process, but it's not a nonpolitical decision. And so I felt that the kinds of discussions I remember about the issue on the floor about where you put a judge, many times may have had political concerns but were not in the best interest of the judiciary and the administration of justice, and that it should be in the Supreme Court eventually but certainly at the Judicial Resource Commission first. They tend to be fairly conservative on how they move judges around. But that's my experience. So those are the motivations. There was nothing particularly radical in our thinking, I don't think, Senator Erdman. [LB1014]

SENATOR ERDMAN: Okay. Here's where I'm at, Senator Ashford, just so that you're aware. What I'd like to see as we go forward here is some better understanding or possible safeguards about how the rule-making process or how the public may have access to the court before they make this decision. From the standpoint of what's actually in law, as far as the limitations, are we talking about maybe going up to the two judge requirement? Because I can just tell you candidly, even if the Judicial Resources Commission would recommend to eliminate another judge in western Nebraska, even at the level that they're at, I don't know how you effectively provide a speedy trial and all of those things to individuals that are going to be before the court. And so I would like us to look at what the current thresholds are determining what we would ask the Supreme Court to be required to come back to this body before they would go below that level, two or three, you know, whatever the number is. I think one is problematic, because essentially when you get to that point you have devastated an entire district, as far as the judicial side, of being able to provide access. Now I've got Banner County and other counties in the state... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR ERDMAN: ...that they meet there once every few weeks anyway. So I'm going to be voting against the committee amendment and, if it's adopted, I'll vote against the bill, not because I'm opposed to it but because, until those safeguards are in

Floor Debate
February 25, 2008

place, I can't support it. And I'll look forward to working with you as we go forward on this bill to make sure that some of those things do get addressed. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Mr. Clerk, do you have items for the record? Senator Louden. [LB1014]

SENATOR LOUDEN: Yes, thank you, Mr. President and members. As I've listened to the discussion and looked this over, I would like to ask Senator Ashford a question, if he would yield, please. [LB1014]

PRESIDENT SHEEHY: Senator Ashford, would you respond? [LB1014]

SENATOR ASHFORD: Absolutely, Senator Louden. [LB1014]

SENATOR LOUDEN: Yeah. As I look through this thing, is it mostly Section 10, Section 11, and Section 12 is the part that...where most of this takes place? Was that a separate bill that you worked into this entire bill, or... [LB1014]

SENATOR ASHFORD: That was in... [LB1014]

SENATOR LOUDEN: ...how did this get folded into the 100 pages of... [LB1014]

SENATOR ASHFORD: Well, this was part of the original bill, Senator Louden. This was part of the original bill. The original LB1014 had that language in it. [LB1014]

SENATOR LOUDEN: Was it...I didn't look the green copy over that close after I started working on this amendment here. But this is the part that's in question. This is the part that...is this necessary in order to make the rest of your bill go forward? I mean is it...this, as I understand it, you're trying to make all mankind beautiful here with this bill. But I'm wondering if this is the part that was really necessary, because it's already in statute and it seems to be working quite well. We've done some judge moving around the way we have so far. So I'm wondering what...how much of an issue that this part of the bill is. [LB1014]

SENATOR ASHFORD: Senator Louden, it's an issue. But I think both you and Senator Erdman and Senator Fischer have raised have raised excellent points. And it is a small part, though it has a big impact, of the entire bill. And so we are more than willing and would like to sit down with the senators in your area and talk about a way to deal with it. I don't have an exact solution sitting here, but I think you make relevant points, good points; I think we need to consider them. [LB1014]

SENATOR LOUDEN: Okay. Thank you, Senator Ashford. Then at the present time then

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

Floor Debate
February 25, 2008

I would like to see this thing kind of put on hold at the present time until we can see if we can get some work done on this thing. Because I think this is the part that really affects the state of Nebraska, and I don't know if this is necessary at this time. There's other parts of the bill I don't have any problem with. And I'm sure the Judiciary Committee has work in there that they want to get completed. But it looks like to me that there is this one spot in there that really isn't necessary, and I would like to see if perhaps that this could be held back for a day or so until something else could be done on it and brought forward. I'm not a firm believer in going to Select File trying to take care of it, because it's been there before and it's promises and promises. But I would like to see the thing cleaned up a little bit so that it's a little bit...something that would work for all of Nebraska. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Louden. Are there additional members wishing to speak? Seeing none, Senator Ashford, you're recognized to close. [LB1014]

SENATOR ASHFORD: Thank you, Mr. President. I appreciate the comments, Senator Louden and Senator Fischer and Senator Erdman; are thoughtful comments. I would urge that we adopt the amendment, advance the bill, and we will, I promise you, we will work on the issues that you have raised prior to Select File. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing. The question before the body is on the adoption of AM2006 to LB1014. All those in favor vote yea; opposed, nay. We do have a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014]

CLERK: 35 ayes, 0 nays, Mr. President, to place the house under call. [LB1014]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Cornett, Senator Engel, Senator Raikes, Senator White, Senator Pankonin, Senator Chambers, the house is under call. Senator Ashford states that we may proceed. We will be taking call-ins. Mr. Clerk. [LB1014]

CLERK: Senator Kruse voting yes. Senator Adams voting...is that no, Senator? Thank you. Senator Adams voting no. Senator Pirsch voting yes. Senator Dubas voting no. Senator Engel voting yes. Senator Stuthman voting no. Senator Fulton voting yes. Senator Wightman voting yes. Senator Chambers voting yes. Senator White voting yes. Senator Cornett voting yes. Senator Janssen voting yes. [LB1014]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB1014]

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

Floor Debate
February 25, 2008

CLERK: 26 ayes, 10 nays, Mr. President, on adoption of committee amendments.
[LB1014]

PRESIDENT SHEEHY: Committee amendment is adopted. We'll return to discussion on LB1014. Seeing none, Senator Ashford, you're recognized to close. [LB1014]

SENATOR ASHFORD: I just urge the advancement of LB1014 with the understanding that we're going to work on it between now and Select File. Thank you, Mr. President.
[LB1014]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have the closing. The question before the body is, shall LB1014 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014]

CLERK: 33 ayes, 2 nays, Mr. President, on the advancement of LB1014. [LB1014]

PRESIDENT SHEEHY: LB1014 does advance. The call is raised. Mr. Clerk, do you have items? [LB1014]

CLERK: Mr. President, I do. I have a motion from Senator McDonald. She would move to suspend Rule 3, Section 13 to permit cancellation of a public hearing. []

PRESIDENT SHEEHY: Senator McDonald, you're recognized to open on your motion. []

SENATOR McDONALD: Mr. Lieutenant Governor and members of the body, I move to suspend Rule 3, Section 13 to permit cancellation of the appointment hearing of Patrick Thomas to the Nebraska Liquor Control Commission. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator McDonald. You have heard the motion to suspend the rules. Are there members wishing to speak? Senator Gay. []

SENATOR GAY: Thank you, Mr. President. I'd just like to know why we would be doing this? Would Senator McDonald yield to a question? []

PRESIDENT SHEEHY: Senator McDonald, would you respond? []

SENATOR McDONALD: Yes, Senator Gay. We received a letter from the Governor that he has withdrawn his nomination. []

SENATOR GAY: Thank you, Senator. []

PRESIDENT SHEEHY: Are there additional members wishing to speak? Seeing none,

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

Floor Debate
February 25, 2008

Senator McDonald, you're recognized to close. Senator McDonald waives closing. The question before the body is on the suspension of rules for the public hearing on a nomination. All those in favor vote yea; opposed, nay. And this is a 30 vote...please record, Mr. Clerk. []

CLERK: 39 ayes, 0 nays, Mr. President, on the suspension of the rules and cancellation of the public hearing. []

PRESIDENT SHEEHY: The motion does pass. Senator Heidemann. []

SENATOR HEIDEMANN: Just real briefly, thank you, Mr. President, fellow members. Real briefly, I handed out a General Fund financial status. We had a Forecasting Board that met on Friday, and it has changed our financial status somewhat and not in a positive way. I wanted you to be, everybody, alert to that fact. We have a lot of work to do in Appropriations, as this body, to help us in the current biennium and also as we look in the out biennium, what it has done to us and what we have to tackle to make this thing work. Just to let you know, in the year '07-08, the Forecasting Board took away \$51 million, which actually doesn't affect the financial status. What that affects is the Cash Reserve. We had anticipated the Cash Reserve, if you go down to the bottom of your box, to be \$540 million, we are now at \$489 million, not as much as we had anticipated. What really concerns, in the second year, it would be the '08-09 year, if you look on line 8b, we lost \$75 million. If you follow down, it would be to line 29. In the preliminary budget, when we passed that out, we was at a plus \$4 million. Because we lost the \$75 million and because of some things that the 3 percent Cash Reserve does to you, we now are at a minus \$68 million in the '08-09 year, something that we will have to address this year. What concerns me, and the Appropriations Committee just as much, some of you won't have to deal with this but something that I think we need to start addressing now is you go to the out biennium, in the preliminary budget we was at \$200...a minus \$286 million, now we're at \$396 million, something that I think we all need to pay attention to and to see what we can do. If there are any questions, please contact me or the Fiscal Office. Thank you. []

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

CLERK: I do, Mr. President. A new resolution: LR248 by Senator Fulton; that will be laid over. Appropriations Committee, chaired by Senator Heidemann, reports LB956 to General File. Judiciary Committee, chaired by Senator Ashford, reports LB15, LB36, LB37, LB38, LB45, LB180, LB215, LB828, LB839, LB957 as indefinitely postponed. Revenue Committee, chaired by Senator Janssen, reports LB777 to General File with amendments; LB888, General File with amendments; LB916, General File with amendments; LB1001, General File with amendments. Government, Military and Veterans Affairs Committee, chaired by Senator Aguilar, reports LB745, LB858, LB1067

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

Floor Debate
February 25, 2008

to General File; LB822, General File with amendments; LB838, General File with amendments; and LB1030 and LR225CA indefinitely postponed. Natural Resources Committee, chaired by Senator Loudon, reports LB986 to General File; LB1065, General File; and LB1066, General File; and LB1094, General File, all of those with Natural Resources Committee amendments pending. I have confirmation reports from the Business and Labor Committee; and from the Government, Military and Veterans Committee. I have a communication from the Governor withdrawing the appointment of Patrick Thomas. Amendments to be printed: Senator Langemeier, amendments to LB1096 to be printed. Motion by Senator Christensen to withdraw LR233CA; that will be laid over. Name adds: Senators Hudkins, Schimek, Aguilar, Kopplin, McDonald, and Pahls would like to add their names to LB786. (Legislative Journal pages 678-693.) [LR248 LB956 LB15 LB36 LB37 LB38 LB45 LB180 LB215 LB828 LB839 LB957 LB777 LB888 LB916 LB1001 LB745 LB858 LB1067 LB822 LB838 LB1030 LR225CA LB986 LB1065 LB1066 LB1094 LB1096 LR233CA LB786]

And I have a priority motion, Mr. President. Senator Adams would move to adjourn until Tuesday morning, February 26, at 9:00 a.m. []

PRESIDENT SHEEHY: You have heard the motion to adjourn until Tuesday morning, February 26, 2008, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.