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Floor Debate  
March 06, 2008

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[LB321 LB342 LB587 LB708 LB718 LB721 LB760 LB762 LB766 LB781 LB797 LB811  
LB884 LB920 LB948 LB949 LB973 LB1010 LB1014A LB1014 LB1049 LB1055 LB1088  
LB1115 LR4CA LR261 LR262 LR263 LR264 LR265]

PRESIDENT SHEEHY PRESIDING

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

SENATOR WALLMAN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Wallman. I call to order the thirty-sixth day of the One Hundredth Legislature, Second Session. Senators, please record your presence through roll call. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Do you have messages, reports, or announcements?

CLERK: Your Committee on Appropriations, chaired by Senator Heidemann, reports LB587 to General File, LB811 to General File with amendments. And those are the only items I have, Mr. President. (Legislative Journal pages 821-822.) [LB587 LB811]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to first item under General File.

CLERK: Mr. President, LR4CA, introduced by Senator Avery, proposes a constitutional amendment...proposes a change to Article IV, Section 5 of the Nebraska Constitution. The resolution was introduced in January and referred to the Judiciary Committee, advanced to General File. It was discussed on February 28, Mr. President. I do have an amendment to the resolution. [LR4CA]

PRESIDENT SHEEHY: Senator Avery, you're recognized to open on LR4CA. [LR4CA]

SENATOR AVERY: Thank you, Mr. President. I'll just briefly go over a little bit of what we did a few days ago. This bill clarifies constitutional language dealing with impeachment. The current language in the constitution allows for impeachment only for offenses committed in office. LR4CA will put additional language in the constitution that

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

Floor Debate  
March 06, 2008

---

will allow offenses committed in the election for office to qualify as grounds for impeachment. The argument underlying this is quite simple: Offenses committed while in pursuit of public office should be treated the same as impeachment offenses committed in office. When we last debated this issue, questions were raised about the precise wording of this additional language. Most of those questions implied that the language was too broad. The bill was laid over to give the interested parties time to draft more agreeable language. I understand that Senator White has an amendment that expresses his preferred wording, but this is not language that I feel improves the bill as proposed in your green copy. I will let others involved in the discussions last week speak for themselves on this issue, and as the discussion unfolds, I will explain in substantive detail why I oppose Senator White's amendment. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the opening to LR4CA. Mr. Clerk, as noted, you have an amendment on your desk. [LR4CA]

CLERK: Senator White would move to amend with AM2174. (Legislative Journal page 801.) [LR4CA]

PRESIDENT SHEEHY: Senator White, you're recognized to open on AM2174. [LR4CA]

SENATOR WHITE: Thank you, Mr. President, and thank you, Senator Avery. I appreciate the opportunity to have a conversation with you all regarding this matter, and this is a very important matter indeed. We are talking fundamentally about what are the bases that we should use in order to remove a person, a civil officer, from office. Senator Avery would have us expand the basis to remove officers to any misdemeanor committed while in the pursuit of office, as well as, as language stands now, any misdemeanor committed while in offense. I believe that that language is both over broad, the current constitution, and yet over broad and under inclusive--over inclusive and under inclusive. It is over broad, in that any misdemeanor would include, for example, as Senator Pirsch raised, failing to get your license plates put on properly at the right time. That is a misdemeanor. In our last discussion on the issue, Senator Chambers and others raised the fact, oh well, we would never...this body would never impeach for something like that. One of the fundamental principles of this country is we are a government of law, not men, and this is an example of where that comes into play. We do not rest our freedom, we do not rest our property, we do not rest our security on what men are likely to do; we rest it on well-crafted, properly drafted law. Our freedom rests on the law, not on what we think a consensus of citizens will do at a different time. That is why we are a constitutional republic; it is our trust in how we define our freedom in the law that matters. What my amendment would do is restructure the constitution to allow for impeachment, both for misdemeanors committed in the course of the duties of your office or in the course of achieving election to your office, if they're the kind of misdemeanor that indicates you are unfit to hold office. And please remember, any

Floor Debate  
March 06, 2008

---

felony disqualifies you now. We are talking about misdemeanors, and in this case the legal term that I would employ is called "moral turpitude." Moral turpitude is a term that has been used for centuries in the law. It has been used for centuries to describe people who should be removed from office. It's frequently used in the cases of judges, in the cases of attorneys to warrant taking away their license to practice law or remove them from the bench. Black's Law Dictionary defines turpitude, in part, as "although a vague term, it implies something immoral in itself, regardless of its being punishable by law, thus excluding unintentional wrong or an improper act done without improper or unlawful intent." Let's take the Hergert...Mr. Hergert in the Regents case. Had he simply signed unknowingly, or unintentionally signed a report that was in error, he would have committed a misdemeanor. But it would have been a misdemeanor without moral turpitude. When he intentionally falsified his reports in order to gain an advantage and win an election, that evinces moral turpitude. That is evidence, clear evidence of moral turpitude, and that is exactly the kind of misdemeanor that does warrant impeachment and removal. I submit to you, though, any of us who have ever filed a report that was inaccurate but signed it in good faith should not have to even worry about the specter of impeachment; that that is the essence of liberty. The essence of liberty is you do not have to worry about what 45, 47 people on this body will think; it is what the law says that is your protection. So I would submit to you that our constitution should provide as follows, and this is what the amendment states: A civil officer shall be liable to impeachment for any misdemeanor which evinces moral turpitude and which arose out of the election to or the discharge of the duties of his or her office. This allows us to remove from office those who are morally unfit to serve, and it allows those who have good morals, good character to make honest mistakes without fear of political reprisal. I therefore ask your support for the amendment, and I look forward to the conversation which will follow. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the opening to AM2174. (Visitors introduced.) Members wishing to speak are Senator Avery, followed by Senator Flood. Senator Avery. [LR4CA]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator White, for those eloquent words in defense of your amendment. I want to raise a few questions about his amendment. First of all, LR4CA does not alter the threshold of offenses that would warrant impeachment. It merely extends the context in which an offense could qualify for impeachment. And the importance of this is that existing case law, including the Hergert case, would still be precedent and controlling in any future impeachments. Case law would merely need to be applied to the context of campaigning. This is an important principle in the legal profession. Senator White's amendment more narrowly limits what qualifies as an impeachment offense by creating a higher standard of moral turpitude, and, as he pointed out, Black's Law Dictionary admits this is a vague term. If a future impeachment would occur, the Nebraska Supreme Court would likely void the existing Hergert case law, which would require the state's high court then to interpret the term

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

Floor Debate  
March 06, 2008

---

"moral turpitude." We can conclude from this that if the concern is judicial uncertainty and political abuse, then introducing a new term to the constitution would open the door to the very interpretation this amendment is attempting to avoid. A tremendous amount of work was done during the Hergert case to establish case law and precedent for any future impeachments. I think it's important that that be preserved, and it's important that we are sure that adding the additional term "moral turpitude" outweighs the loss of case law and precedent; otherwise, we should not do it. The second concern I have deals with the types of offenses that would qualify for impeachment. Senator White has stated in communications with me that he believes that his amendment captures what may warrant impeachment but excludes those offenses unrelated to election or office and not serious enough to support such a draconian measure. It's important to point out that Article IV, Section 5 of the constitution is already limited to acts committed in office, and LR4CA merely extends the context to acts committed in office or related to the election. It's not adding anything other than an extension to the election...to what is now limited to offenses in office. So LR4CA already excludes those offenses unrelated to election or office. So Senator White's concerns, I would respectfully suggest, are already addressed, so on this point this amendment is unnecessary. Already the threshold for impeachment in Nebraska is very high. Nebraska case law--and I'm going to keep coming back to this--Nebraska case law has established three criteria or three standards for impeachment, going all the way back to the, I believe it was, 1893 in the Hastings case, and including the Douglas case in '84. And these criteria are: 1) an act that violates a statute, constitutional provision or oath and is related to the officer's duties; 2) a simple neglect of duty committed for a corrupt purpose; 3) a neglect or disregard of duty that is so gross or flagrant the officer's willful and corrupt intent may be inferred. [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR AVERY: That's in the established law, our established case law. Therefore, in applying this standard to campaigns it seems reasonable to expect that the Nebraska Supreme Court would require either a statutory or constitutional violation in relation to the campaign. The other two criteria that I mentioned require a corrupt purpose or a gross or flagrant act committed with a willful and corrupt intent. We can conclude from this that the cumulative evidence suggests that existing case law already addresses the rationale that Senator White had for including the term "moral turpitude," which was to limit the impeachable offenses to intentional acts. I think it's hard to imagine that an unintentional error on a campaign statement or an unintentional late filing would qualify for impeachment under this threshold, especially since these mistakes already have occurred on campaign statements numerous times by officers, after taking office,... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

Floor Debate  
March 06, 2008

---

SENATOR AVERY: ...and have not prompted impeachment. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Chambers, followed by Senator Flood. Senator Chambers. [LR4CA]

SENATOR CHAMBERS: Mr. President, members of the Legislature, all that the original bill would do is make the current standards relative to impeachment apply, not only to this misconduct while in office but during a campaign. What Senator White would do is to change the standard for everything--during the campaign and while in office. When a change is made in the constitution by the Legislature, the court will say that when the change was made, it obviously meant something different from what is already there, so it is raising the standard that has to be met. Moral turpitude is a very high standard, it is imprecise, inexact, and even the definition Senator White read to you says that it is vague. That means it could mean A, B, C, or D, any combination of them, or all of them, because nobody knows. It is an imprecise term, without any definite meaning in the law. That term is construed and applied by courts on a case-by-case basis. There is no standard called moral turpitude which can be applied in every case where an allegation of misconduct is concerned. When you look at the current body of law dealing with impeachment, it embraces decisions at the federal level, various state courts, and the Nebraska Supreme Court. It is an extensive body of law, and it gives notice to any and every person as to what type of conduct is forbidden. When a specific case comes up, the court will look at the facts of that case. The standard is well-known, it is well-established in the law. Every case of impeachment is fact specific. That means that the occurrences which form the basis of the accusation will be examined, and if there is a mere error, even if the Legislature impeached or filed charges, the court would not convict. Harmless errors are not a basis for any sanction by a court. I say "harmless error" for a reason. That is a term which courts use when a person is filing an appeal and the court, the appellate court, will find that the lower court did, in fact, make an error, did not properly apply the law, allowed evidence in which should have been excluded. But the court will say, though error was committed, it is harmless error, which means it plays no part in the outcome or determination of the ultimate issue, and there will not be a new trial, there will not be a reversal of the decision. It's as though it did not happen. It would be like your writing an examination, and you're going to be graded on the answers, but you were in such a hurry--and in grade school, you write your name on your paper--you transposed some letters in your name,... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...you misspelled your name, left out a letter. That has nothing to do with the grade you get on the examination, because it played no part. What Senator White is talking about is not going to happen. I was challenged on the floor during our impeachment proceedings and told that what I was saying had no basis, it

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

Floor Debate  
March 06, 2008

---

wouldn't be upheld. And I acknowledged that I can't predict what a court is going to do, but I have as much certainty as a person can have that what we are charging will be upheld by the court and a conviction will obtain. This is going to take us awhile, so I'll turn my light on again. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Flood, followed by Senator Avery and Senator Chambers. Senator Flood. [LR4CA]

SPEAKER FLOOD: Thank you, Mr. President and members. I was here for the...I was a member of this body during the discussion and the issues surrounding Mr. Hergert. And I would be the first to tell you that that impeachment would not have happened but for the energy and the time and the research and the 55-page plus legal brief that Senator Chambers prepared on the issues relating to impeachment in Nebraska. Senator Chambers wrote a very lengthy brief, an analysis of the law that I used in making my decision and conducting my own research as to whether or not the evidence in Mr. Hergert's case warranted impeachment. I used his legal analysis as a basis and foundation on which to make my decision, in terms of what is and what is not impeachable and the process that we would go through. As a freshman senator, I looked to other members of the Legislature to determine how this should work, and I remember thinking at the time, "any misdemeanor" is broad and hard to define. In looking at the case law prior to Hergert, I would tell you that it wasn't as clear, in my opinion, as it is now, following the Hergert opinion. And to that end, the senators at that time in the Legislature I think can be credited with developing this case law by bringing this issue to the Nebraska Supreme Court. That being said, I do think there is value in two different parts of what Senator Avery is doing and what Senator White is doing. Senator Avery is extending this misdemeanor language into the time of the election, which was a major issue in the Hergert matter, and had he not signed his campaign statement when he did, I would not have voted to impeach him. So on that end, I agree with Senator Avery's bill. I also think that Senator White has brought forward a proposal that clarifies the language for the benefit of civil officers of this state and for the citizens of this state to focus the attention of the Legislature upon the issue at hand, and that being, do we have somebody here that's lying, do we have somebody here that's engaged in fraud, do we have somebody here that has willfully and intentionally broke the law in such a manner that they should be removed from office, whether during the campaign or during his or her term in office? And I think the use of the words "moral turpitude"...and looking it up in Black's Law Dictionary and the record that we're making here, I will say this, should this pass, this is my reason for voting for the bill. My reason is that moral turpitude, I think, as defined in Black's Law Dictionary, but more importantly the intent that I would place upon that language, is that it be an act of fraud, a willful or intentional conduct, a dishonest act to commit a fraud upon another person or the citizens of this state, or upon election process. And I'm sure that other senators will stand up and make their thoughts known regarding what the purpose of this amendment is that Senator White has offered in AM2174. I intend to support the amendment, and I

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

Floor Debate  
March 06, 2008

---

also support Senator Avery's bill. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Avery. [LR4CA]

SENATOR AVERY: Thank you, Mr. President. Let me address first Senator Flood's concern about the broadness of the word "misdemeanor." I'm looking here at the annotations in the Nebraska Constitution that defines misdemeanor, and I think this comes from past case law: A misdemeanor in office may consist of a violation of some provision in the constitution or a statute, willful neglect of duty done with a corrupt intention, or negligence so gross and disregard of duty so flagrant as to warrant an inference that it was willful and corrupt. This is pretty specific. It has to be intentional, so I don't see the real need for changing this to moral turpitude. Furthermore, if you go to Black's Law Dictionary, you find differing definitions of the term, depending on which edition of the dictionary you consult. I don't know which edition Senator Black (sic) used, but I did consult the two that are available here in this body. [LR4CA]

SENATOR ERDMAN: Senator White. [LR4CA]

SENATOR AVERY: Who did I say? [LR4CA]

SENATOR ERDMAN: Senator Black. [LR4CA]

SENATOR AVERY: Senator White, sorry. (Laughter) I did consult Black's--or White's edition--Black's sixth edition, and it's considerably different from that provided in the seventh edition. I could read those if you like, but I won't take the time. I also consulted American Jurisprudence. This is a standard reference source for the legal profession, and that describes moral turpitude as a term that is innately relative--relative--innately relative depending upon contemporary moral values. Also in a case in 1991, the Nebraska State Bar Association v. Veith, the Nebraska Supreme Court stated that the most common definition of an act of moral turpitude is one that is contrary to honesty and good morals. Well, what constitutes moral turpitude seems to me to be vague, subject to various interpretations, and is affected by changes in contemporary definitions of morality. So I would argue that this amendment does not clarify the language but actually introduces ambiguity and doubt into the debate. It seems to me that we can keep it like it is and without any concern that people would bring frivolous charges against elected officials. I think it's important to point out that elected officials are the only ones--or civil officers--are the only ones covered under Article IV, Section 5. The Legislature is covered under Article III, so we are not subject to impeachment in this body; we are only subject to expulsion by a vote of this body. So those who are concerned about the broadness of the definition "misdemeanor" should take these arguments into account. And I would also point out it's in almost every constitution in this country, the term "misdemeanor." It's in the U.S. Constitution. And I think it is placed in those constitutions for a reason, because there are some specific definitions that go

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

Floor Debate  
March 06, 2008

---

with the term "misdemeanor" that require intentional... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR AVERY: ...violation of law or intentional violation of the constitution, or intentional neglect of duty, or intentional dishonesty or misbehavior. With that, I will stop and come back to it later. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Chambers, followed by Senator Fulton and Senator Wightman. Senator Chambers. [LR4CA]

SENATOR CHAMBERS: Mr. President and members of the Legislature, here is a problem that we're confronting: Many people on the floor might consider this discussion to be too esoteric or theoretical or too legalistic and will not pay attention. There may be an allure to what they're hearing smatterings of, when stated by Senators White and Flood, who is our Speaker, but instead of putting a word into the constitution which is defined by a dictionary, and differing versions of Black's Law Dictionary can change a definition by adding to, taking from, or citing cases which elaborate on that definition or that term. If you're going to use a word and you're going to go after the meaning, rather than go to Black's Law Dictionary, you should go to the case law where the term "moral turpitude" has been construed, where it has been applied, and you will see the multivarious, multiplicity of definitions, descriptions, applications of that term. Members of the Legislature, what does the word "dress" mean as a garment? It doesn't say anything about the size, the length, the style, or anything. It is a term that means everything and nothing, or, as I would say, it covers everything and touches nothing. The term "moral turpitude" does not have a meaning which would allow that term to be placed in the constitution, in my opinion. We could have the people on this floor write out their understanding of the term, and you're not likely to have very much agreement on what that term means. Courts don't always apply that term to the same kind of conduct; in other words, one court may say this conduct rises to the level of moral turpitude, and another court will look at that same opinion, because a person may cite it. Court A makes a statement about a certain kind of conduct and says, that conduct constitutes or rises to the level of moral turpitude. Similar conduct is the source of a case in Court B. The person with the case in Court B will cite the decision in Court A to strengthen the case for having Court B say that this same conduct that was determined to be moral turpitude by Court A should be the same...it should reach the same result in Court B. Court B looks at it and says, this conduct does not rise to the level of moral turpitude. Courts looking at the identical conduct may arrive at different conclusions. There is not the necessity, there is no wisdom in overturning decades--well, now you can say centuries--of interpretation and construction... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

Floor Debate  
March 06, 2008

---

SENATOR CHAMBERS: ...of the elements that justify impeachment. It is there. It is not precise, because very few things in the law can be weighed with the precision of a jeweler's scale. Judges bring their view and understanding to the question, the two sides bring their arguments, and the court weighs the entire body of evidence presented and arrives at a conclusion. We are much better off with the guidance that exists in the law now than we would be to throw all of that out and introduce a term so vague that even courts don't agree what it means. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Fulton. [LR4CA]

SENATOR FULTON: Thank you, Mr. President. This particular amendment was brought to my attention here just recently, a couple of days ago, and it actually has become more applicable to my particular situation. Some of my colleagues have approached me with kind words about a recent accusation--I would characterize it a wild accusation--which was made against me and the work that I do here in the Legislature on behalf of my constituents by the Nebraska Democratic Party. I believe that it was an unfair accusation; it was not only unfair, it bordered on flat-out lying about what I'm actually doing on behalf of my constituents. Frankly, I'm not angered by it; I'm disappointed by the whole thing, because it brings politics, which should be a high and a noble thing in our society, to the level of a child's playground, and it's somewhat frustrating. That being the case, however, I look at this amendment and believe that the amendment could actually do something to stop these kind of childish tactics, perhaps before they happen. So thus far what I have heard in the debate has been the definition of moral turpitude, and what would be considered legitimate for grounds of impeachment before this legislative body. I'd like to ask...if Senator White would yield to a question, please. [LR4CA]

PRESIDENT SHEEHY: Senator White, would you respond to a question? [LR4CA]

SENATOR WHITE: Yes. [LR4CA]

SENATOR FULTON: I'd like to ask the question...well, it seems to me that by providing this clarification, introducing moral turpitude, another...a deeper element of volition on the part of the malefactor, introducing this into the law would dissuade the types of tactics which I have elucidated here. Is that something else, Senator White, that you contemplate by introducing this amendment? [LR4CA]

SENATOR WHITE: Absolutely, Senator Fulton. I had a complaint filed against me by the Republican Party, Mark Quandahl, for almost exactly the same thing that's the basis of you. Both of them, I don't think, are violations at all, and, in fact, I know that in my case I'm firmly convinced they were just a political effort to embarrass us by finding technical--if they are violations--technical violations made in good faith. I think this is incredibly destructive to the health of the political process and that we need to stop it.

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

Floor Debate  
March 06, 2008

---

There are people who do not and should not serve in office because of moral flaws, and those people should be promptly removed. But the vast majority of us will simply violate a statute. And unlike Senator Chambers, unlike Senator Avery, I believe the duty to control and protect liberty starts with us, because we draft the laws. Right now the Supreme Court has repeatedly stated the violation of any statute in the course of your office--any statute, and it need not rise to the level of an indictable offense--that means any statute can be the basis of impeachment. That is a recipe, Senator Fulton, for people to misuse it, and I believe that we need to stop it, and this is intended to do that. [LR4CA]

SENATOR FULTON: Thank you, Senator White. I will close here by saying that I am in favor of this amendment. It seems to make sense for reasons I've just laid out and for what Senator White has also laid out. I don't pretend to be a lawyer; I don't play one on TV,... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR FULTON: ...so I will be open to hearing what kind of interpretations could be applied to the language in this amendment. But just by way of conviction as well as judgment on what this do for the future, as a prudential judgment, I'll be in support of this amendment. Senator White, if you'd like to take any of my time, I'd yield it to you. [LR4CA]

PRESIDENT SHEEHY: About 40 seconds, Senator. [LR4CA]

SENATOR WHITE: Thank you. My colleagues, fellow colleagues, I really think what we have to do here is not to so much undo what the Nebraska Supreme Court has done, but to adopt a term that, in fact, has far more definition through opinions, literally centuries of opinions. Moral turpitude has been used regularly to define the line when a person has acted in a way that they are no longer to be trusted with public office, and that has literally been used in England and in the United States for centuries. It is extraordinarily well-defined. Black's Law Dictionary... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR WHITE: Thank you. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Wightman, followed by Senator Friend, Senator Avery, and Senator Ashford. Senator Wightman. [LR4CA]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. I have some questions, I guess, with regard to exactly what moral turpitude is, and I know it's been defined, and yet I read that really there is no legal definition. I think a lot of it is in

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

Floor Debate  
March 06, 2008

---

the eyes of the beholder, and so I would like to ask Senator White some questions, if he would yield. [LR4CA]

PRESIDENT SHEEHY: Senator White, would you respond to some questions? [LR4CA]

SENATOR WHITE: Certainly. [LR4CA]

SENATOR WIGHTMAN: Senator White, I know that it's been said here that you might be increasing the standards as far as acts that are committed while in office, because I gather that your definition or requirement of moral turpitude would apply to acts while in office as well as those that took place during a campaign. Is that correct? [LR4CA]

SENATOR WHITE: Yes. It expands what is impeachable, an impeachable offense, to beyond acts while in office to acts committed in the course of an election. [LR4CA]

SENATOR WIGHTMAN: And right now, that requires only the same misdemeanor requirement that Senator Avery proposes to have in his bill. Is that correct? [LR4CA]

SENATOR WHITE: That's correct. [LR4CA]

SENATOR WIGHTMAN: Or his resolution. Do you think that moral turpitude does vary as to the person that's considering it, what moral turpitude is? [LR4CA]

SENATOR WHITE: I think it does on some levels, but generally I think, Senator, there's a broad consensus in the law that it is...let's go back to the law. It is generally defined as malum in se, as opposed to malum prohibitum. In other words, moral turpitude is stealing. Stealing has been known to be and accepted as morally wrong long before this republic existed and a law against it was passed. However, accurately reporting every contribution and getting your report on file on the right day instead of a day later, that's malum prohibitum. It would be wrong because it's prohibited by statute. And moral turpitude is designed to get things that are, in a sense, morally wrong, things that we agree indicate a moral failing, as opposed to, gee, he or she got their report in late, or there's an honest disagreement about what was a contribution and what was not. If they're wrong, it was unintentional; it was just, they made a technical violation. And that's why moral turpitude is used, because it is a shorthand with a long, long history of being defined. So I would say, Senator, and certainly with this kind of discussion in the record, the meaning will be perfectly clear to the Supreme Court that it is designed to get intentional wrongdoing, fraudulent wrongdoing, wrongdoing to gather advantage or gain, as opposed to inadvertent violations of statutes. [LR4CA]

SENATOR WIGHTMAN: Let me ask you some specific acts as to whether you would consider these to be moral turpitude. Perjury--I think we'd all agree, probably, that that would be... [LR4CA]

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

Floor Debate  
March 06, 2008

---

SENATOR WHITE: Yeah, perjury is lying. That's malum in se, and it's lying under oath. Technically, it's also defined. It's also a felony, by the way, so if you are convicted of perjury, I mean, you're way past this. [LR4CA]

SENATOR WIGHTMAN: Well, let's take some moral acts--adultery. Would that involve moral turpitude? [LR4CA]

SENATOR WHITE: It can, yes. But it's not a misdemeanor. [LR4CA]

SENATOR WIGHTMAN: What about...let's just say that during the course of a campaign a candidate had illicit sexual relations with his...one of the campaign workers. [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR WIGHTMAN: And they were both married. Would that be...involve moral turpitude? [LR4CA]

SENATOR WHITE: Yes. But it's not a misdemeanor, so it's not impeachable anyway, Senator. But certainly it's moral turpitude. [LR4CA]

SENATOR WIGHTMAN: So you believe that that would be sufficient grounds for impeachment? [LR4CA]

SENATOR WHITE: No, it has to be a misdemeanor involving moral turpitude, and it is not a misdemeanor to have sex with someone you're not married to. Now if it were a minor, that would also be a felony, and you'd be gone anyway. But, yes, certainly, that does involve a moral failing, but it's not impeachable, by definition. [LR4CA]

SENATOR WIGHTMAN: Senator, filing a false tax return would be, as well. Is that correct? [LR4CA]

SENATOR WHITE: If it was a willful filing, as you know, Senator, yes. That's also a felony at that point, and you're gone anyway. If it was an unintentional...where you just simply signed an inaccurate one, no, it wouldn't be. [LR4CA]

PRESIDENT SHEEHY: Time, Senator. Senator Friend. [LR4CA]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I can't get the...Senator Langemeier just said you guys are all trying to take the fun out of campaigning. (Laughter) Now I don't remember what I was going to talk about. (Laughter) No, actually I wrote down some notes. You know, the funny thing about

Floor Debate  
March 06, 2008

---

this--not funny, ha-ha; funny, ironic--is that it's a little bit of deja vu, not on this subject matter, but deja vu because I, like Senator Flood, remember the Hergert hearings or trial or whatever we want to call that. And the funny part to me is, I'm going to try to regurgitate the same thing I said then, that we have a functionally flawed system, and it's not really our fault, but we're trying to fix constitutionally something that can't be fixed. Let me tell you why. Impeachment was created by folks that can be considered the founders of this nation, and citizens...those citizens created the beloved bicameral system, right? Impeachment was created for that. Two houses of Congress--the House is the sole power of impeachment, has the sole power of impeachment, the House of Representatives does. And in every other state but ours, that's how you deal with it. The Senate has the sole power to actually try the particular person or people involved, after the House sends them everything that they need to send them factually. What happened with Hergert and anybody else that's been involved in this is that we send it, when we're done, we send it over to the Supreme Court. Think about that for just a second--a political enforcement and penalties therein...excuse me, political enforcement of penalties for political or politically related behavior by a politician, or behavior by that politician when he or she is running for office, being shipped off to the judiciary branch, which is supposed to be insulated from some of this stuff. Members of the Legislature, we're trying to fix something, in my humble opinion, that we can't fix. There are...as long as there are political parties out there saying, in our state, that this particular person or this particular person or this particular person needs to be impeached, they are going to drum up enough people in a 49-person Legislature to do what they need to do and get it shipped off to the Supreme Court. I find the system flawed, not because of anything that we've done, and not because of what Senator Avery is trying to do, or Senator White. I find the system functionally flawed, and I also find the discussion fascinating, because I would argue that Senator Avery and Senator White and others that are discussing this right now are trying to fix it. What I'm telling you is, the only way you can fix it, and we can all smile and say, in unison, a bicameral, okay? Ernie, say it with me--bicameral. Yeah, that's the only way (laugh) you fix something like this. That's what I believe; I firmly believe that. And when I sat and also listened and participated in the Hergert trials, it became like a ray of sunlight--why are we doing this? And then the Supreme Court, I think, probably found it fairly disconcerting. I didn't talk to any of them, I don't know, but I bet they probably found it fairly disconcerting that they had to deal with it. [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR FRIEND: It was our job to deal with it. Thank you, Mr. President. It was our job to deal with it; it was the Supreme Court's job to deal with it. Everybody dealt with it. I'm just telling you what Senator Avery is doing won't fix it. What Senator White wants to do might make things more precise and more effective, but we're trying to make...never mind. We're trying to do something that can't be done. I'm not going to vote for LR4CA because I find it virtually irrelevant. Does that help? It helps me. Well, of course it

Floor Debate  
March 06, 2008

---

doesn't help Senator Schimek. She finds it totally relevant. I'm telling you that we're trying to fix a system that's broke, and we don't have the power to fix that system, neither do the people. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Friend. (Doctor of the day introduced.) Mr. Clerk, do you have an amendment on your desk? [LR4CA]

CLERK: Senator Chambers would move to amend, Mr. President. (FA191, Legislative Journal page 822.) [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on your amendment. [LR4CA]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would offer an amendment to Senator White's amendment. In Line 10 I would strike the word "evinces," and substitute "comprises." A lot of people who use the term "comprise" use it incorrectly. Even George Will did it when he was praising sesquipedalian...whoever that guy...who was that who just died not long ago and he used those big...Buckley, William Buckley. George Will says "comprised of." No, it's not comprised of. Even the dictionary says that comprised of is incorrect. The dictionary doesn't often tell you the correct way to use a term, but will tell you how it is popularly used and the meaning therefrom. But "comprises" is different from other words that people might use. Comprise has to do with comprehending or embracing. So if you were talking about the Legislature, you would not say the Legislature is comprised of 49 members. Substitute the word "embraced." The Legislature is embraced of 49 members. It would be, the Legislature comprises 49 members. The Legislature embraces or comprehends 49 members. The word "evinces" may have a meaning to some people, just as the word "comprises" has a meaning to some people, and the two people looking at those two words may feel that each is more precise than the other, based on his or her orientation with reference to the words. Senator Flood (sic) is too willing to try to impose his limitations on everybody else. He says that we as a Legislature cannot fix a system. He says the system is broken. He did not say in what manner it is broken. He is trying to suggest that a one-house legislature is automatically inferior to a two-house legislature. Senator Friend reads various publications, but he does not study the effect of these various things that he's talking about. If you look at the legislation that comes out of two-house legislatures, it is pretty poor stuff, and when it is brought here by other senators, I have to correct it. And they will say, but such-and-such a state or so many states have it this way. I say, that's because they don't have anybody who is careful and will see that it's done right. So it passes through two houses and comes out on the other side scrambled, bunglesome, and very poor legislation. What Senator White is trying to do is for him to say, but I can look at what the effect will be of what he is trying to do. This would have nothing to do with Senator Fulton's situation. Senator White, with all due respect to him, has not read the court's interpretation of the words in the

Floor Debate  
March 06, 2008

---

impeachment language in the constitution or statutes. The court has said over and over, not just in Nebraska, the word "misdemeanor" is not limited to the meaning it has in criminal law, and that was way back in the 1800s. And the first court that said it indicated that counsel for the person who was facing impeachment tells us that the term impeachment...the term "misdemeanor" means only...and then gave definitions in a criminal context and from the common law. And the court rejected that and said, this term in the impeachment statute does not have the same meaning as the term "misdemeanor" in criminal law. It is much broader. The purpose of a misdemeanor being prosecuted under the criminal law is to punish a person, to bring the coercive force of the state on that person and impose a sanction which is punitive in nature. Impeachment is not designed to punish. Impeachment is designed to purify the office, to remove a person who ought not to be there. And a person can be rendered unfit for that office without having committed a crime. So contrary to what Senator White said, a felony can constitute a misdemeanor in office. Not every bit of conduct which is felonious in nature will be prosecuted as a felony, but that very conduct which would constitute a felony under the law can be the basis for impeachment. Impeachment can proceed at the same time that a criminal prosecution is going forward, and it can be based on the same facts that the criminal prosecution is based on. If you read the process, the procedure in the Nebraska Constitution related to impeachment, you will see clearly what is entailed, but you have to read it. If people are not going to read it, I'm not going to stand up here and quote everything from the constitution. But I will tell you this much, my brothers and sisters, those who listen and those who don't--and those who don't will not be aware of what I'm saying, but my having said that might make them listen--that's how you get people's attention. Article V of the constitution relates to the judiciary. Section 30 of Article V, to the best of my recollection, sets out a procedure for disciplining judges, which includes reprimand, suspension, removal. Section 31, which follows it, points out that the provisions are cumulative when it comes to the removal of a judge. And it cross-refers all of the provisions in the Nebraska Constitution related to impeachment, the one related to civil officers, meaning a judge is a civil officer and subject to impeachment. It mentions specifically the article and section of the constitution that sets out the procedure for impeachment. There is everything in the constitution that lets you know that there are several ways for removing a judge, and in addition to the constitutional cross-references it adds "or other provisions of law related to the removal of judges." Judges can be removed in more ways than can a civil officer, certainly in more ways than can a legislator. So when you have three branches of government, you know that they perform different functions, and those functions are set out in the constitution. And it says that no person being a member of one branch shall exercise any of the powers of the other two branches, unless specifically authorized by the constitution to do so. And that implicates what they tell you in civics is the separation of powers. The judiciary does not do anything pertaining to the branch of which we are a part, or the branch of which the Governor is a part, unless there is something in the constitution which carves out a specific area where the judiciary can move in that way. There are activities performed by members of the executive branch which partake of the

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

Floor Debate  
March 06, 2008

---

nature of judicial actions,... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...and courts make reference to that. But those activities are authorized under the constitution. So what my amendment is designed to do is bring more clarity than what Senator White is offering us, and also to give me the opportunity to speak more on this issue. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening. Members wishing to speak on FA191 are Senator Avery, followed by Senator White, Senator Carlson, and Senator Chambers. Senator Avery. [LR4CA]

SENATOR AVERY: Thank you, Mr. President. Actually, I agree with Senator Chambers. I looked at that word "evinces" when I first saw this amendment and I thought, you know, that didn't quite, quite capture what I think was the intent. "Comprises" is better, maybe "constitutes" is even better yet. But it seems to me that we're dealing with the constitution here. We have to be very, very careful about the wording we use, because the words we use will be involved in court cases after court cases after court cases, if in fact we get into a situation where this particular provision of the constitution comes into play. Certainly we want to make sure that the words we use are the words that we can live with, 10 years and 20 and 30, 40 years from now. I'm going to make the case later, as this discussion unfolds, again, that misdemeanor is the preferred word, and show you why there is additional evidence that moral turpitude is not the best way to go. But at this point on this particular floor amendment, FA191, I am inclined to go along with Senator Chambers, because it is an improvement on the language that is currently there. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator White. [LR4CA]

SENATOR WHITE: Thank you, Mr. President. "Evinces" was a word carefully chosen for a particular reason, and it is fundamentally different than "comprises" or "composed of." Evinces is a broader term, actually allows impeachment for more offenses than that, I think, which Senator Chambers would say. To be comprised of, one must say then the misdemeanor must be comprised of moral turpitude. I'm not sure how you do that. At most, misdemeanor may have an aspect in it of moral turpitude, as the crime may be an intentional crime or an unintentional crime. Evinces is simply evidence--means it provides evidence. So if a conviction of a misdemeanor that shows an evidence of moral turpitude in the character, that is sufficient under my language to impeach a person. Comprise is much narrower. I would not go that narrow; I would keep it broader because I actually do wish to capture those who are morally unfit for office, but leave free from bedevilment those who are in their best efforts serving the public according to their conscience. Now Senator Chambers indicates that I have not read Hergert's

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

Floor Debate  
March 06, 2008

---

opinion. I would respectfully disagree, and I ask the members to please attend to what the Supreme Court actually said in Hergert, and it is very important, because my amendment comes up because of a problem the court itself first identified over 100 years ago as being a real trap for the public. And this is on page 41 in a computer-generated copy of the opinion. It's head note 39. And the court states, "Relying on the three-justice plurality in Douglas, Hergert contends that his violations were technical violations of the law, because many candidates make similar mistakes and the regulations are confusing." Well, that's exactly the point we're concerned with here. "It is not clear that this argument is directed towards the January 11, 2005, filing,"--that's the filing after he took office that they said you could be impeached for, as opposed to what Senator Avery wants to do, expand it to election, which I don't object to, by the way, expanding it to acts committed in the course of being elected--"and to that extent it is, we conclude, without merit." And they quote State v. Hastings, which was written in 1893. In State v. Hastings this court stated, "It is better that the state should be confined to the remedy afforded by the Criminal Code and civil action on the bonds of its officers, than an alternative so dangerous and so liable to abuse as impeachment for technical violations of law, errors of judgment, mistakes of fact, or even neglect of duty such as disclosed by the proofs in this case." The court then in Hergert stated, "We agree with this statement and recognize the danger of finding an impeachable misdemeanor for a technical violation of the law. However, evidence of Hergert's intent regarding January 11, 2005, filing does not show simple neglect or an error of fact or judgment. Rather, the facts show that Hergert was, 'willfully blind' to the actual date the Jackson-Alvarez expense was incurred, and that Hergert deliberately acted to misrepresent that date." What my amendment would do is embody the warning that the Supreme Court let go, first in Hastings and then Hergert. We have to note, the Supreme Court did not say--and that is really important, because they communicate with us... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR WHITE: ...through these opinions--the Supreme Court did not say, oh, Hergert is wrong; you have to have an intentionally committed misdemeanor. They acknowledged the risk still exists, and we have the obligation, I believe, to correct that, and we have that opportunity. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Carlson. [LR4CA]

SENATOR CARLSON: Mr. President and members of the Legislature, for me to step into the middle of a bunch of attorneys and a political science professor and an engineer, I run the risk of sounding like kindergarten next to graduate school, but I want to make the best vote that I can, so I'm going to ask for some clarification. And with that, I'd like to address a question to Senator Fulton. [LR4CA]

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

Floor Debate  
March 06, 2008

---

PRESIDENT SHEEHY: Senator Fulton, would you respond to a question? [LR4CA]

SENATOR FULTON: Yes. [LR4CA]

SENATOR CARLSON: Senator Fulton, you referred to...I don't know what the instance was and it doesn't really matter, but you referred to wrongdoing toward you on the part of a political party. Is that correct? [LR4CA]

SENATOR FULTON: Yes. [LR4CA]

SENATOR CARLSON: Not of an opponent? [LR4CA]

SENATOR FULTON: That's correct. It was not an opponent. [LR4CA]

SENATOR CARLSON: But the opponent is of that political party? [LR4CA]

SENATOR FULTON: That's correct. [LR4CA]

SENATOR CARLSON: Okay. And we're talking in LR4 about conduct of a civil officer and not a political party. Is that correct? [LR4CA]

SENATOR FULTON: That's right. [LR4CA]

SENATOR CARLSON: Okay. Thank you for that clarification, Senator Fulton. I'd like to address a question to Senator White. [LR4CA]

PRESIDENT SHEEHY: Senator White, would you respond to a question? [LR4CA]

SENATOR WHITE: Certainly. [LR4CA]

SENATOR CARLSON: Senator White, you also referred to a wrongdoing toward you on the part of a political party. Is this correct? [LR4CA]

SENATOR WHITE: Correct. [LR4CA]

SENATOR CARLSON: And not an opponent? [LR4CA]

SENATOR WHITE: Well, no, sir. But I think the point, Senator Carlson, is what they claim are technical violations, which I don't believe are. And a political party or any citizen can file a complaint. What the problem is, what have we defined as a wrong? In other words, we're all vulnerable--all of us, at any time--to having complaints filed against us for technical violations to the campaign acts. They're nothing more, at best, in Senator Fulton's case and in my case, I don't even think we did anything technically

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

Floor Debate  
March 06, 2008

---

wrong, but if we did, it was done in good faith, and certainly in the belief that we were complying with the law. And so people use the law sometimes not to correct wrongdoing, but to wrongfully beat people up with it. [LR4CA]

SENATOR CARLSON: Okay, and I would agree with you. But getting back to LR4 in relationship to the conduct of a civil officer or someone who wants to become a civil officer, and then we talk...you brought up moral turpitude. So it really has to apply to the conduct of an individual and not a political party, and how does that relate here? [LR4CA]

SENATOR WHITE: Well, what happens, Senator, is if the law is more...is written more strictly to make it clear, you're not vulnerable to impeachment for technical violations of the law made in good faith. But if you do something knowingly wrong, (inaudible) from you, the political parties won't have the opportunity to use the law to say, as Senator Erdman raised this last...when we were in the debate last time, every one of us, if we ever stood for other office, could be accused of having committed an impeachable offense, because any misdemeanor is impeachable. And that is just completely inappropriate. So what happens is, the law is written so broadly it allows for much mischief to be done on a partisan basis. [LR4CA]

SENATOR CARLSON: Okay, thank you, Senator White. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Chambers, followed by Senator Fulton and Senator Schimek. Senator Chambers. [LR4CA]

SENATOR CHAMBERS: Mr. President, members of the Legislature, first of all, a senator cannot be impeached. A senator cannot be impeached. Senator Fulton is singing to the wrong choir, he's barking up the wrong tree, because the Legislature is not going to expel him for what happened, and he cannot be impeached. So Senator White is befuddling our colleagues. There's a song: (singing) bewitched, bothered and bewildered. Well, he's bewitching, he's "bebothering" and he is bewildering our colleagues. (Laughter) There cannot be impeachment of a senator. Now (laugh), Senator White is messing with me, too. I can hear him, but others cannot. That's how wily he is. Senator White just made my point with his last presentation, to which nobody paid attention except moi. Senator White read that the Nebraska Supreme Court said that for mere mistakes, technical errors, that is not a basis to convict somebody. That is case law. The Nebraska Supreme Court has already said that the kind of things Senator White is talking about will not form a basis for conviction. He read language that the Nebraska Supreme Court quoted from an earlier Nebraska Supreme Court and said they adopt that position in the Hergert case and said, but what Hergert is charged with goes beyond mistake, it goes beyond technical error, because those would not be a basis for conviction. It goes into the realm of the dishonesty, the lying, and all the other things. That is case law. That is what the Nebraska Constitution means when it talks

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

Floor Debate  
March 06, 2008

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about an impeachable offense. You don't need the language that Senator White is putting in. What he is talking about has already been guaranteed by opinions of the Nebraska Supreme Court. Does that say the Legislature could not impeach a person? No. A prosecutor can charge me with a felony for having stared at Senator Carlson. It's not a felony, but he can charge me with it. That's why I filed the suit against God, to make it clear to people that anybody can file any suit against anybody he or she chooses, including God, and people missed the point. The fact that you file it doesn't mean that it's going to give you the result that you want. It doesn't mean that soon as a motion is made to throw it out it will not be thrown out. My point is that the doors of the courthouse must be open to everybody, and the court has said that on many occasions. That's why the Legislature cannot absolutely prohibit certain types of legal actions from being filed. The Legislature can talk about the type of evidence that would have to support that before you can win, but the Legislature cannot close the doors to the courthouse, because they are opened by the constitution. The Legislature could impeach or accuse anybody who is a member of the executive or the judiciary whose position would qualify him or her to be a civil officer. We could accuse anybody and get 25 votes, and what Senator White is putting in... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...can't stop that. What Senator Avery is offering can't stop it. The present constitution can't stop it. The present decisions handed down by the Supreme Court cannot stop it. We can do anything that we want to. We can pass an unconstitutional law, and that's when the court steps in and will say, you can do that, you have the power to carry something through your process and call it a law and the Governor can sign it, but it runs afoul of the constitution, so it's a nullity and means nothing. The Legislature, if it impeached a person for one of these technical or nonsensical reasons, the court would say, you brought it. But that person's lawyer would move to dismiss, just like any other action, and the court would dismiss it. Senator White knows... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR CHAMBERS: ...that these things...my time is up? [LR4CA]

PRESIDENT SHEEHY: Time, Senator. Yes. [LR4CA]

SENATOR CHAMBERS: Sorry, Mr. President. Thank you. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Fulton [LR4CA]

SENATOR FULTON: Thank you, Mr. President. In defense of Senator White, I'm not bewitched. I don't know if he was trying to bewitch, but I'm not bewitched, at least I don't

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

Floor Debate  
March 06, 2008

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think I am. I wonder if Senator Chambers would yield to a question. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, would you respond? [LR4CA]

SENATOR CHAMBERS: Yes, I will. [LR4CA]

SENATOR FULTON: Okay. I'm going to try...well, I'll just...I'll run down a line of reasoning and we'll see where it goes. If...let's take an example. If someone were to be late on a campaign filing, you know, they're three days late or whatever, they're late on a campaign filing, would that be a misdemeanor? [LR4CA]

SENATOR CHAMBERS: Well, would you have lied or tried to deceive the commission as to when you filed it? [LR4CA]

SENATOR FULTON: Well, I'm not... [LR4CA]

SENATOR CHAMBERS: That by itself, as you've stated, I don't believe would be. [LR4CA]

SENATOR FULTON: Okay, if someone breaks the letter of the law and files past a certain due date, you don't believe that would be a misdemeanor? [LR4CA]

SENATOR CHAMBERS: As construed by the Supreme Court, no. But the way you asked the question leaves a lot to be desired. [LR4CA]

SENATOR FULTON: Okay. [LR4CA]

SENATOR CHAMBERS: If you were deliberately late to prevent your opponent from receiving matching state funds, and it was shown that that was why you were late, that could be an impeachable offense, and it could result in a conviction. [LR4CA]

SENATOR FULTON: Well, I'm not here trying to identify the intention. I'm simply looking at the act itself, and I'm trying to establish whether or not the act itself could be considered a misdemeanor. I don't believe--again, I'm not a lawyer, so that's why I'm asking you--I don't believe that the intention of the actor comprises whether or not the act itself is a misdemeanor. Would that be correct? [LR4CA]

SENATOR CHAMBERS: Let me answer it this way, Senator Fulton. If you're limiting the significance of your question to the fact that a campaign statement would have to be filed Monday and you filed it Wednesday, would that in itself, without anything more, be an impeachable offense, is that what you're asking me? [LR4CA]

SENATOR FULTON: No, I'm asking whether it would be a misdemeanor. [LR4CA]

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

Floor Debate  
March 06, 2008

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SENATOR CHAMBERS: Well, it would have...no...well, it depends on whether the law calls it that. I don't know what all these things are under the Accountability and Disclosure Law. But not every misdemeanor would necessarily be an offense that would get a person convicted and removed from office. [LR4CA]

SENATOR FULTON: Okay. That's...I...that's where I'm going with this. I'm not positive, but I do believe that it would be considered a misdemeanor. Now the reason why that would be applicable to what we're discussing here is, is that considered an impeachable offense? [LR4CA]

SENATOR CHAMBERS: Not every misdemeanor, under the law...and when you say misdemeanor, you mean it's defined in the law as a misdemeanor, correct? [LR4CA]

SENATOR FULTON: Yes. [LR4CA]

SENATOR CHAMBERS: Okay. Not every misdemeanor under the law would constitute an impeachable offense nor be a basis to remove a judge or to expel a legislator. [LR4CA]

SENATOR FULTON: Okay. Why? Why is not every misdemeanor able to be the matter to be considered for an impeachable offense? [LR4CA]

SENATOR CHAMBERS: Because the court has judgment and common sense and is not going to take everything that the Legislature defined as a misdemeanor to be a basis to remove somebody from office because that renders that person unfit. That's why I say it depends on what the conduct is associated with it. And that's why the court has taken the word "misdemeanor" to mean more than just what it means under the criminal law. But by the same token, not every criminal misdemeanor is a basis for impeachment, I meant conviction, and removal from office. But the Legislature can impeach anybody... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...for any reason they want to. [LR4CA]

SENATOR FULTON: Okay. Well, thank you, Senator Chambers. It seems to me that if we have the language in LR4CA without the amendment, then the law itself states that...well, I'll just read it. "A civil officer"...no, I will go back and read the green copy, "A civil officer of this state shall be liable to impeachment for any misdemeanor in office or for any misdemeanor related to the election by which such officer was elected to the office." It seems to me that Senator White's amendment would clarify that not just any misdemeanor but those misdemeanors in which--and I think this would encompass the

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

Floor Debate  
March 06, 2008

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conduct--in which the moral agent has been shown to act with moral turpitude. I want to get back and cover the word "moral" later when I have more time, but I think... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR FULTON: ...that this clarifies the bill. So thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Schimek, followed by Senator White, Senator Janssen, Senator Avery, and others. Senator Schimek. [LR4CA]

SENATOR SCHIMEK: Thank you, Mr. President and members. I originally turned my light on to just issue a reminder that legislators cannot be impeached, but Senator Chambers took care of that. And I was going to give my time to Senator Chambers, but I'd like to ask Senator Chambers a question first. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, would you respond to a question? [LR4CA]

SENATOR CHAMBERS: Yes. Yes, I will respond. [LR4CA]

SENATOR SCHIMEK: Senator Chambers, would you like to revise your comment at all that nobody on this floor is listening? [LR4CA]

SENATOR CHAMBERS: I certainly would revise it, because I think once I got rolling, everybody was listening. [LR4CA]

SENATOR SCHIMEK: (Laugh) Okay, that satisfies me, then, Senator Chambers. I was going to lead you into a series of questions which would have ended with, can you really see into people's minds? I like to yield the rest of my time to Senator Chambers, please. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you've been yielded about 4 minutes. [LR4CA]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, not only can I see into people's minds and read them, most of them are short stories and very light reading at that. (Laughter) And everybody is listening. Members of the Legislature, this that we're talking about is something that I think ought to be parsed. We ought to cut it up into little pieces and chew it as fine as is necessary to make clear what it is that we're talking about. This is a very serious matter. However, certain aspects of it are clear-cut. Before a person will wind up before the Nebraska Supreme Court defending himself or herself, the Legislature, by a majority vote of the elected members--currently it would be 25, since the Legislature can comprise 50 members, if

Floor Debate  
March 06, 2008

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that ever happens it would take 26--so a majority of the elected members would have to file a resolution of impeachment. The constitution and the courts say there is no particular form that has to be followed. But as is the case whenever due process is at stake, you have to do it in such a way as to notify the person of what he or she is accused of, in order that a defense can be prepared. Once you're before the Supreme Court, every motion that can be made to attack a filing can be made in the matter of impeachment. You can say that the resolution does not state a basis for conviction or removal from office. And if the court reviewed that, and if it wanted to have a hearing, then that issue would be resolved. But the code of ethics of a lawyer requires that person to provide a zealous defense of his or her client. You are a defender, you are an advocate for your client. You owe that client your best effort, your best thoughts, your best judgment. So all of the attacks that can be made against any filing against a person should be made by that lawyer who is defending the one who has been impeached by the Legislature. If I were to be subject to an impeachment resolution that somebody drafted, I don't believe, as much as I'm disliked on this floor by some people, that they would vote for a resolution that would make them look like bigger fools than it would make me look like a wrongdoer. They would say, this is so lacking in merit, it is so flimsy and without basis that we are not going to give 25 votes to send this to the Supreme Court to have it certified that this legislative body constitutes a collection of fools.  
[LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: So these minor, piddling things that are being brought up would not result in impeachment by the Legislature, in my opinion. If the Legislature should come into existence which is so foolish, the court would not convict. And based on what Senator White himself read, if it's a technical violation, if it's a mistake, that is not going to lead to a conviction in an impeachment trial that can remove somebody from office. It might be a basis for that person to be prosecuted for violating the accountability and disclosure law, and the person may be convicted. But that would not be a basis to remove that person from office, even with the language... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR CHAMBERS: ...that Senator Avery is offering. Thank you, Mr. President.  
[LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator White, followed by Senator Janssen, Senator Avery, and Senator Chambers. Senator White. [LR4CA]

SENATOR WHITE: Thank you, Mr. President. Oh I wish I could sing like Frank Sinatra, bewitch, bother and bewilder, and alas, I cannot. No, I can't sing. But let me explain something that's very important here. There is a huge difference between impeachment

Floor Debate  
March 06, 2008

---

and conviction. Impeachment is the equivalent of being charged with a crime, being indicted. And under the law, as the Supreme Court has stated it in all of the cases and as it is flatly written today, any misdemeanor is a basis for impeachment. Okay? Now Senator Chambers says, well, the Supreme Court won't convict. Well, that's cold comfort after they've ripped a year out of your life, you spent several hundred thousand dollars, perhaps, in legal defense costs. And Senator Chambers says no Legislature will do this, and that is a fundamental difference in philosophy between what Senator Chambers proposes to you and what I do. That is a government of men. We will trust the men and women who is...are in this lawsuit. And again, Senator Schimek, bust me for small mistakes, but miss the forest. The point is not that we're impeachable, but that should any of us want to run for other office they can be vulnerable to impeachment. We can be vulnerable to removal on simple vote of the membership, but impeachment is an indictment to stand trial in/before the Supreme Court. That's what it is. And right now you can be forced to stand trial in front of the Supreme Court for a violation of any misdemeanor. That's wrong. The Supreme Court for over 100 years has warned this body it's dangerous, it shouldn't be there. We have an opportunity to correct that, we should correct that. You should not even have to worry about standing trial before the Supreme Court unless you have acted in a way that does evince moral turpitude. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator White. Mr. Clerk, do you have items for the record? [LR4CA]

CLERK: I do, Mr. President, a new A bill. (Read LB1014A by title for the first time.) Confirmation reports from the Education Committee, signed by Senator Raikes, as Chair. And an amendment from Senator Synowiecki to LB797. That's all that I have, Mr. President. (Legislative Journal pages 822-825.) [LR4CA LB1014A LB797]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Visitors introduced.) Senator Janssen. [LR4CA]

SENATOR JANSSEN: I'll give my time to Senator Chambers. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers. [LR4CA]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm enjoying this discussion with Senator White. And contrary to what he says, if he would...he sings a lot better than I sing, although it wouldn't take much to do that. If I were to really sing, it would sound like a rusty bucket being dragged over dry thorns. (Laugh) So I, every now and then, throw out a word or two, maybe a bar, but I will not try to sing a complete song. Members of the Legislature, this is something like Perry Mason and Hamilton Burger. That was the name of the prosecutor who was always wrong, and it comes out "Ham Burger." The guy who wrote about Perry Mason would

Floor Debate  
March 06, 2008

---

have plays on people's name in his books. But here is what Senator White is not grasping that I'm saying. The court, in construing the word "misdemeanor," has made it clear, and Senator White read a quote from them, that minor violations, they said technical or mistakes and so forth, are not a basis to remove a person from office. So even if a person committed what is described in statute and defined as a misdemeanor, the court has already said certain types of violation will not result in a person being removed from office. And it wouldn't matter what name you put on that conduct. Senator White pointed out correctly that under the jurisprudence of England, and the United States, and probably Canada, maybe Australia, and all these countries that might derive some of their jurisprudence from England or Anglo-Saxon jurisprudence, talk about two types or categories of offenses: those that are malum in se, or bad in and of themselves, like taking somebody's life; and others malum prohibitum, they are wrong only because the Legislature has said they are wrong. There is nothing intrinsically wrong or morally wrong with driving a vehicle 80 miles an hour on the interstate. But the fact that the Legislature has made it so, you can be given a ticket, tried, you can plead guilty, and punished for that. But that is an offense only because the Legislature said it's so. There are some things that are evil in and of themselves and they must be made a crime by the Legislature in Nebraska, otherwise they are not crimes. There are no common law crimes in Nebraska. Nothing is a crime unless the Legislature says it is so. The Legislature can take any conduct that it chooses and criminalize it, provided in doing so it does not violate the Nebraska Constitution or the U.S. Constitution. The Legislature could make it an offense for Senator Hansen to chew gum on the floor of the Legislature. Just take something that is very trifling, and it could be called a misdemeanor. And rather than hire a lawyer and go through all of those hoops, he'll say, I chewed gum, what is the penalty? And he would accept his punishment. The Legislature could not expel Senator Hansen for that and have the expulsion upheld. When you're in school, they emphasize the difference between the two words "may" and "can." Can means to have the power or the wherewithal to do something; may carries the notion of permission. [LR4CA]

SENATOR LANGEMEIER PRESIDING [LR4CA]

SENATOR LANGEMEIER: One minute. [LR4CA]

SENATOR CHAMBERS: You can do it, but you may not. I can break Senator Carlson's window, but I may not. I don't have permission to do it, but I have the power to do it because I can pick up a brick or anything that will cause glass to give way. I can break his window. So the Legislature can impeach or charge. But the Nebraska Supreme Court has said there will be no conviction for these minor offenses. So we don't need Senator White's language, because he read you a provision from the Nebraska Supreme Court which shows that his language is not necessary. Thank you, Mr. President. [LR4CA]

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

Floor Debate  
March 06, 2008

---

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator Janssen. Senator Avery, you're recognized. [LR4CA]

SENATOR AVERY: Thank you, Mr. President. To use a very clever phrase or word just coined by Senator Chambers, I am "bebothered." (Laugh) I am "bebothered" because it seems like we're talking past each other. The word "misdemeanor" has been interpreted by Nebraska courts as involving intent. It is clear, that is exactly what the court established in Hergert. The court said in their ruling that Hergert intentionally manipulated, intentionally manipulated and violated Nebraska's campaign finance laws in a...and to go on, during the campaign and significantly after he took office, Hergert intentionally, intentionally filed false reports of campaign spending in an attempt to cover up his conduct. The court went on to say, Hergert's various explanations for his actions contradict one another and are not believable when the clear and convincing evidence before this court is considered. During the campaign and significantly after he took office, Hergert intentionally filed false reports of campaign spending in an attempt to cover up his conduct. Hergert's various explanations of his actions contradict one another and are not believable when the clear and convincing evidence before this court is considered. It is clear that intentionality is what is involved in the definition of misdemeanor. And I think this is a key point in Senator White's argument. He keeps saying "any misdemeanor," as if to say that that is such a broad term that it could involve frivolous things, like an unintentional filing. Well, it does not, and the court is being clear on that. We can't ignore this. We have to take case law as controlling, certainly we have to take it as having some value. We can't completely discard it. Why is it that we so casually dismiss the court's opinions involving a definition of misdemeanor? More importantly, why would we remove language that is clear, already clear and already established in law, and firmly established at that, and replace it with language that is ambiguous? I have a question for Senator White, if he would yield. [LR4CA]

SENATOR LANGEMEIER: Senator White, would you yield? [LR4CA]

SENATOR WHITE: Yes, I'd be happy to yield. [LR4CA]

SENATOR AVERY: Senator White, current language in the constitution reads, "All civil officers of this state shall be liable to impeachment for any misdemeanor in office." And that's been around, I guess, since about 1875, is that correct? [LR4CA]

SENATOR WHITE: I don't know the date, but it's certainly been around since the Hastings case, 1893. [LR4CA]

SENATOR AVERY: It was established...it's Article IV, Section 5, in 1875. [LR4CA]

SENATOR WHITE: I will accept that representation, Senator. [LR4CA]

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

Floor Debate  
March 06, 2008

---

SENATOR AVERY: Your amendment, and this might be an oversight, your amendment reads: a civil officer shall be liable. You leave out and you strike the words: a civil officer of the state. Was there some reason for eliminating the words "of the state"? [LR4CA]

SENATOR WHITE: Only because that's how it came out of drafting, after I put it in. And it uses the civil officer because that mirrored your language, Senator. [LR4CA]

PRESIDENT SHEEHY PRESIDING [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR AVERY: The drafting office made that correction? [LR4CA]

SENATOR WHITE: Yes, Senator. [LR4CA]

SENATOR AVERY: And there was no explanation for that? [LR4CA]

SENATOR WHITE: No, no, I mean, I don't really care whether it's civil officer of the state or a civil officer. I mean, if you think it's better that it be of the state, I'm certainly okay with that. [LR4CA]

SENATOR AVERY: Well, if there's some justification for it I wouldn't oppose it. But I would presume that in 1875... [LR4CA]

SENATOR WHITE: No... [LR4CA]

SENATOR AVERY: ...they had a reason for using the language. [LR4CA]

SENATOR WHITE: As far as I know it's just inadvertent. I know of no reason. [LR4CA]

SENATOR AVERY: How much time do I have, Mr. Speaker? [LR4CA]

PRESIDENT SHEEHY: Thirty seconds. [LR4CA]

SENATOR AVERY: Thirty seconds? Let me ask Senator White one more question. [LR4CA]

PRESIDENT SHEEHY: Senator White. [LR4CA]

SENATOR WHITE: Yes. [LR4CA]

SENATOR AVERY: You may not have time to answer this but I'm...I wonder, do you

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

Floor Debate  
March 06, 2008

---

have any concern about negating existing case law? Maybe you don't agree that your amendment would overrule existing case law or at least make it ineffective. [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR WHITE: Yes, it absolutely does not overrule existing case law. What I would tell you, Senator, is in fact,... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator White and Senator Avery. (Visitors introduced.) Members wishing to speak on FA191 are Senator Chambers, followed by Senator White, and Senator Avery. Senator Chambers, this is your third time. [LR4CA]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I will have to contrive additional means of speaking as long as this issue is before us because I think what we're talking about is very important. We ought to kill Senator White's amendment. I think Senator White's amendment, however, gave us the opportunity to explore aspects of this issue which we may not otherwise have explored, because without his amendment we would have dealt only with things that are rational, sensible, and substantive. (Laugh) Thanks to Senator White we have gone far afield, into the absurd. This has become almost a theater of the absurd, but I believe there are questions that were put forth that might have been on other members minds, but they did not want to get involved in the discussion itself. So we are compiling a legislative history. I cannot support Senator White's amendment. I'm going to say again what I've said before. Senator White read language which the Supreme Court of Nebraska adopted. And that language defined the areas of misconduct which would provide the basis for convicting a person and removing him or her from office. The only thing impeachment does, as Senator White pointed out, is to bring the charge, the allegation, or the indictment. The only thing the Nebraska Supreme Court will do if it convicts is remove the miscreant from office and prohibit that person from seeking any other office in this state. There is no punishment in the criminal sense, there is no fine, there is no jailing, none of that. The only purpose of impeachment is to provide a broom to sweep a miscreant out of office. That is why the standard of proof is not beyond a reasonable doubt, which is the criminal standard. Senator White is offering us language which he says is designed to eliminate certain trifling or technical violations as a basis for impeachment and conviction, I will add. The statute that is being amended talks about impeachment, or bringing an accusation against a person by the Legislature. We don't need his language. With his language or without it, the Legislature can vote a resolution of impeachment for any reason or no reason. So let's say that all of the senators, save me, had gone to one of these lobbyist functions and partaken too heavily of John Barleycorn and came back over here and decided to have a little fun and they drafted an article impeachment, voted it, and had the Clerk deliver it to the Supreme Court. Now you have triggered action that you cannot untrigger. It is in the court's domain. Let's say

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

Floor Debate  
March 06, 2008

---

that the charge was brought against me. I could defend myself, I wouldn't even need a lawyer. And I would attack the resolution as failing to state a basis for my removal from office. I would acknowledge... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...that a Legislature, whether drunk or sober, a Legislature, whether sane or insane, a Legislature, whether in its mind or out of its mind, can vote a resolution of impeachment with 25 votes. But the court knows its responsibility and that is to prevent foolishness by the Legislature from resulting in an obvious and blatant injustice. I would ask the court to dismiss this thing out of hand. And the court would say, Senator Chambers, we don't need to take this under advisement, we don't need a hearing, there is no argument that can be made which would make this a basis for throwing you out of office; as much as we don't like you, we have to rule in your favor and we kick this thing out. And that's what would happen and Senator White knows it. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator... [LR4CA]

SENATOR CHAMBERS: Was that my third time, by the way? [LR4CA]

PRESIDENT SHEEHY: That was your third time, Senator. [LR4CA]

SENATOR CHAMBERS: Thank you. [LR4CA]

PRESIDENT SHEEHY: Senator White, and this is your third time. [LR4CA]

SENATOR WHITE: Thank you, Mr. President. Senator White does not know that. Senator White does not know what courts will do, because Senator White has spent his life in courts and has (laugh) seen opinion after opinion that ignore law or fact. I don't know where...whence this great trust in an institution manned by fallible people springs? That is why we have multiple divisions of government. We write the laws. It is our obligation to write laws that protect liberty, that protect the innocent, that punish the guilty, that keep them from going through the hell that would be an impeachment. Imagine any of you who were an officer, not in the Legislature, Senator Schimek, but an officer who wasn't (sic) impeached. Not only do you have to eat the humiliation of that event, you then will spend extraordinary amounts of money defending yourself or you will likely lose. And while Senator Chambers may be able to defend himself, I would not defend myself, heeding that old admonition that he who acts as his own lawyer has a fool for a client. It is not a trivial matter to be impeached, it is a deadly serious matter that would ruin not only your reputation but your fortune. And I am finding it deeply ironic that Senator Avery and Senator Chambers, who profess such huge respect for the court and their language and their precedent, don't recognize the obvious warning the court

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

Floor Debate  
March 06, 2008

---

has been sending this body for over a century, that the current provisions are dangerous, and they're subject to enormous abuse. No, they may not convict, Senator, but one should never even be charged, one should not be brought to the dock to stand and defend your honor for nothing more than an innocent violation of a statute. That's morally wrong. That, to me, is in fact moral turpitude, that a citizen of a free republic need fear that from the process because the political winds may be blowing against them at that moment. That is inimical to our history as a republic. And what I propose reads very carefully the precedent of a century and seeks to correct what the court has warned us is an obvious and dangerous flaw in our laws. Thank you. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator White. We have Senator Avery, followed by Senator Schimek, Senator Aguilar, Senator Fulton. Senator Avery, and this is your third time. [LR4CA]

SENATOR AVERY: Thank you, Mr. President. Senator White, we checked with the Bill Drafters and they simply put the language in your amendment that you proposed. So leaving out "of the state" was not their decision, so we might want to put another amendment on that, to include that. I figured there was a reason for it in 1875, not that they are wiser than we are. I want to go back to what I...a point I made earlier, and that is using the phrase moral turpitude. Moral turpitude is, I would argue, a far more fuzzy term, a more ambiguous term than misdemeanor. Misdemeanor is clearly established in law, it's clearly established in Nebraska case law. And moral turpitude is a moving target. In fact, the courts are right now engaged in numerous cases involving deportations of illegal aliens. And often the cases involve moral turpitude as the means for deportation. And if you look at the cases, the definition of moral turpitude is changing almost with every case. I think that this is a dangerous thing to do to put into our constitution a vague term like that, one that is subject to so much changing interpretation. If I may, I'd like to ask Senator White if he would yield to a couple of questions. [LR4CA]

PRESIDENT SHEEHY: Senator White, would you respond to some questions? [LR4CA]

SENATOR WHITE: I will certainly try. [LR4CA]

SENATOR AVERY: Senator White, would you consider a DUI that occurred on the way to a campaign event as impeachable? [LR4CA]

SENATOR WHITE: Now? [LR4CA]

SENATOR AVERY: Yes. [LR4CA]

SENATOR WHITE: Am I in office? [LR4CA]

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

Floor Debate  
March 06, 2008

---

SENATOR AVERY: No, you're a candidate? [LR4CA]

SENATOR WHITE: Now, no, it's not a discharge of my duties in the office. [LR4CA]

SENATOR AVERY: I agree, you're right. I don't think so. Would you have been... [LR4CA]

SENATOR WHITE: Thank you, I'm delighted I passed your test, Professor. [LR4CA]

SENATOR AVERY: (Laugh) I've got another one, though. Would you construe a DUI on a suspended a license while on the way to a campaign event to constitute an impeachable offense? [LR4CA]

SENATOR WHITE: Again, am I in office? [LR4CA]

SENATOR AVERY: No, the same circumstances. [LR4CA]

SENATOR WHITE: No, because it's definitionally excluded, and you know that. [LR4CA]

SENATOR AVERY: Well,... [LR4CA]

SENATOR WHITE: And so my amendment and your bill would include it to acts done in the course of your election, so then it would be. [LR4CA]

SENATOR AVERY: Could you...could you interpret such action, driving under the influence while on a suspended license, to involve intent? Because you know you don't have a valid license to drive. [LR4CA]

SENATOR WHITE: Yeah, it could be. It certainly...driving under a suspended license is an intentional act, as is DUI, even though you are intoxicated. [LR4CA]

SENATOR AVERY: But you're impaired on a DUI. [LR4CA]

SENATOR WHITE: Doesn't matter. Your intent before you took the first drink transfers. [LR4CA]

SENATOR AVERY: So... [LR4CA]

SENATOR WHITE: It's an intentional act, it's an intentional crime. [LR4CA]

SENATOR AVERY: So you would dismiss both of these as impeachable? [LR4CA]

Floor Debate  
March 06, 2008

---

SENATOR WHITE: They certainly are both intentional. Do they involve moral turpitude? Personally, I think driving under a suspended license certainly does. I don't think DUI does. [LR4CA]

SENATOR AVERY: Well, the Ninth Circuit Court has grappled with this and they have actually ruled that it does involve moral turpitude. Now I don't believe that... [LR4CA]

SENATOR WHITE: And so does the state of Alabama defines constant use of intoxicating spirits in a way that brings disrepute on a body as involving moral turpitude. There are cases that do find that. [LR4CA]

SENATOR AVERY: I understand that the Nebraska high court is not bound by... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR AVERY: ...the Ninth Circuit, we don't have to follow their precedence. It's just that I bring this up because it does demonstrate that this whole term "moral turpitude" is not clearly defined in law, it is still being defined, and it will probably still be defined for some time to come. And I am concerned that we have to be very careful about the precise wording of our constitution. We already include the word "misdemeanor," it's clearly established in law what that means. And I don't see any point in trying to introduce something else in there that would introduce more ambiguity. Seems to me that if we introduce the word...the words "moral turpitude" that we are opening the door for so many different interpretations that we might actually decide at some point in the future that we made a mistake. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Schimek. [LR4CA]

SENATOR SCHIMEK: Thank you, Mr. President and members. I don't know if there is a sense here...there is...I guess, I have a sense that maybe folks who have been in the Legislature for a while might have more trust in the Legislature itself. The articles of impeachment have to be brought by the Legislature. And I can tell you, from having been here when we debated the impeachment of Regent Hergert, that we took it extremely seriously. We were not going to do anything lightly. And there...besides the debate on the floor, which was very good and very prolonged and very serious, there was a lot of study and thought put into that impeachment process ahead of time. I don't really think, if you guys are doing your jobs after we leave, that you're going to lightly bring impeachment charges against anyone either. I have faith in the Legislature and the legislative process. So I just thought I'd offer that as something to think about. And, Senator White, I don't know how I'm going to vote on this yet. But I've always wondered about that saying, can't see the forest for the trees. I've always thought you had to see the forest first before you could actually see the individual trees. (Laugh) With that, Mr.

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

Floor Debate  
March 06, 2008

---

President, I'd like to give Senator Chambers the rest of my time. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you're yielded about 3 minutes. [LR4CA]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. I agree with what Senator Schimek has said. And I'm going to be a bit repetitious. Courts have pointed out that impeachment is an extraordinary procedure, it should not be lightly invoked. And Senator Schimek used that term. Nothing that we did during our debate was done lightly. And there were hard feelings that developed along the way. But the fact is this, from my position, as I see it--the Legislature is not going to give 25 votes to send an accusation against somebody to the Supreme Court and the purpose is to have that person kicked out of office. Even with Senator Avery's language we could be asked hypothetical questions, would such and such constitute an impeachable offense? And if I were to answer completely honestly, I'd simply say, I don't know. We don't know anything that will wind up in a court until after the court has made its declaration. I was sure that Hergert would be convicted and removed from office, and he was. But I wasn't as sure of that as I am that this pillar is made out of glass. See who's listening, other than "Wonder Woman." (Laugh) What we have before us here is something so clear, not in Senator White's amendment, it's worthless, except as a basis for discussion. The more you try to define something which is clear on its face, the more unclear... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...it becomes because the clearest way to say it is to say it the way that it is. Senator White is arguing a lost position in the same way that "Ham Burger" argued lost positions when he was up against Perry Mason. I'm not saying that the Supreme Court is correct in everything it does. Just the other day it reversed itself, reversed a decision that had been handed down about 15 years ago. The court got new information and realized that earlier decision was incorrect and corrected it. What we're dealing with here is not an ordinary case; we're dealing with something which is extraordinary, it is not often invoked, impeachment I'm talking about... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR CHAMBERS: ...and the trial. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Aguilar. [LR4CA]

SENATOR AGUILAR: Thank you, Mr. President. My time to Senator Chambers. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you're yielded about 5 minutes. [LR4CA]

Floor Debate  
March 06, 2008

---

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator White quoted that cliché, that's what I'll call it, that a person who represents himself or herself has a fool for a client. That might be the general rule, but the exception proves the rule, and I'm the exception. I have defended myself, and I've won cases in the Nebraska Supreme Court that others couldn't win. In fact, I've won so many traffic tickets against radar, VASCAR, and airplane clocks that when the Omaha city prosecutor, Marty Conboy, would go to these prosecutor meetings, they'd ask him, who was this Chambers fella? And he'd tell them and ask, why do you say that? They'd say, well, he has written the law on traffic violations, because when they run things now, like on radar, the State v. Chambers, who won? Chambers. State v. Chambers, VASCAR, who won? Chambers. Did I win every one of them? No, but I won the majority of them. Here's what I'm trying to get to. There are ordinary cases which don't require much of anything in the way of knowledge of the law, and those are just run through, something like cattle call. There are other cases which require a lot of research, argument, and mental acumen. There are still others where the outcome is not easily determined because you are raising a legal theory that is untested and untried. You're trying to get the court to change a position it has taken. When we come to impeachment we're not trying to get the court to change a position it has taken. The court, through its decisions, has laid out a clear road map. When the court has stated that something in the law may be confusing, the court, if it is not so confusing as to make it unconstitutional, will construe or interpret that provision. And from that point onward, that provision means what the court said that it meant in its interpretation. That's why you have to research the law, and not just read what's in the law book. The Nebraska Supreme Court, and I'm repeating again, the Nebraska Supreme Court has laid out the basis for impeachment in general terms. Neither the Nebraska Supreme Court nor any individual can predict with precision every type of offense that will result in the Legislature accusing a person by way of impeachment. But when you have that kind of issue brought before the court, the court is going to look at each case on its merit; is going to review the facts of that case. Somebody perhaps could have done everything that Hergert did and not be convicted. If the person did not lie, if the person did not engage in fraud then you'd have a different set of circumstances. Courts are not as shallow as some people think they are, they are not as venal as some people may give the impression that they are. I don't believe a soul... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...in this state has been more critical of the courts than I have been. There might be people who defend the courts as much as I will, but I don't think there's anybody who will defend them more in terms of what it is they are supposed to do, the need for a court system, the need for that court to be independent, and the realization that, as Senator White said, everybody on the court is fallible. They make mistakes. That's why a higher court will overrule a lower court and why the highest court will sometimes reverse itself. Thank you, Mr. President. [LR4CA]

Floor Debate  
March 06, 2008

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PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Nelson, followed by Senator Langemeier. Senator Nelson. [LR4CA]

SENATOR NELSON: Thank you, Mr. President, colleagues. I rise in support of Senator White's amendment. I rise in support of almost everything that he's said today, which I think is right on. With regard to Senator Chambers' amendment, I suspect that he brought that just so we had a little more time to talk about these things. I'm just simply going to say that I think the word that Senator White uses, "evinces," is much more accurate. It means to show or demonstrate convincingly; whereas, "comprises" means to include, to consist of, to compound. So I think "evince" is the word that we probably want here. I'm not basically in favor of Senator Avery's legislative resolution. It may be well-intended, but I think it just opens up a complete new field that's going to cause a lot of problems for candidates unnecessarily. I followed the Hergert case from afar, just what I read in the papers and everything. I do recall that I think the Legislature acted against the advice of the counsel that it retained, saying that you really don't have any cause of action against this man. But nevertheless, there were enough charges that the Legislature felt, with 25 votes, that they could forward it to the Supreme Court. And from what I've heard today, the Supreme Court decided that very narrowly, mainly on his actions after he was in office, and I'm not going to go into all that detail. But I simply feel that if we're going to change the constitution here and we're going to broaden it to the effect that it's going to include actions that are taken while you're campaigning, then I think we ought to make it fairly difficult for charges to be brought. And that's why I feel that the words...the choice of the words "moral turpitude" are probably what we ought to include here in this legislative resolution. The words "moral turpitude" appear a number of times in Nebraska statutes, at least 29; twice in reference to removal of judges from the bench, once in connection with what it takes to disbar an attorney or suspend an attorney if moral turpitude is involved. It even talks about the State Board of Education, that among other things they can remove the commissioner for acts including moral turpitude; many involve licensing. So this is nothing new in the statutes. And I'm fairly certain through the years that the Supreme Court has had to consider what constitutes moral turpitude. I don't see any problem with that. If we make it a little more difficult, if we make it a little more certain for the Supreme Court to make its determination, then I think that's what we need to do here. I don't share the confidence of some of the members of this body with regard to the decisions that the Supreme Court are going to make all the time. They are human beings. I concur with Senator White and with Senator Chambers that you don't always know what they're going to do. I simply am in favor of, if we're going to pass a legislative resolution and it's going to encompass candidates for office, that we don't put them in jeopardy, that we don't force them to have to defend themselves and come into court, even to come as far as into the Legislature to defend themselves just on minor charges. They may be minor, this body may decide that they are not impeachable... [LR4CA]

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

Floor Debate  
March 06, 2008

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PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR NELSON: ...offenses, but nevertheless they are here. And I'm not certain that we need to take an action at this time which basically is going back to the Hergert case, it appears to me. It would have made it a lot easier, I think, to impeach him and have the Supreme Court support that if we'd had something like this in place. So I'm going to support Senator White's amendment, and then I still will listen to the conversation, if we do pass that, as to whether we should go ahead and pass the legislative resolution. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Langemeier, followed by Senator Aguilar, and Senator McDonald. Senator Langemeier. [LR4CA]

SENATOR LANGEMEIER: Mr. President, I'd yield my time to Senator Chambers. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you've been yielded 5 minutes. [LR4CA]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Langemeier. Members of the Legislature, I did have a lot to do with our ultimately getting the Hergert case before the Supreme Court. And I'm going to do a little back patting right now. (Pats his back.) When it was necessary to have somebody read Hergert's deposition, the lawyer wanted me to do it. I asked him, why did he want me to do it? This is what the lawyer said: When it comes to honesty and integrity, you are the less questioned than any other politician in the state. I'm as clean as Clorox, and people know that. They don't like me, they don't like what I do, they don't like my approach, but they know that I'm not dishonest, I'm not going to lie, I'm not going to steal. And if I had done any of those things, there are prosecutors who'd be on me like...well, like flies on a piece of carrion. Here's the point that I'm trying to get across. When it comes to skepticism about the Legislature, who has been more inclined to excoriate the Legislature for flaws, and some of you all will say imagined, than me? I'm not somebody who blindly has confidence in this or any other Legislature. But I'm not blind to the way people behave individually and collectively, and I'm not blind to the fact that the Legislature is responsive to things they read in the newspaper and in editorials. And if the editorials came forth with a fusillade of criticism of the Legislature for trying to impeach somebody for a trifling reason, the Legislature would fold. As far as what the counsel, that Senator Nelson made reference to, saying we didn't have a basis, I stated, when I read his so-called report, that this is not a legal document; this is not the result of legal reasoning. He put things in it like this, when he was supposed to lay out the legal issues: The Legislature shouldn't waste its time; the Legislature has more important things to do. That's crazy. So I had the Executive Board create a subcommittee, of which I was the Chair. And the people on that subcommittee had confidence in me and my judgment and authorized me to select a lawyer. And I selected David Domina, one

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

Floor Debate  
March 06, 2008

---

of the best lawyers in the state, and his record establishes it. I did not select David Domina because I liked him, not that I dislike him, but we needed somebody with a good analytical mind and he was the man. Here's what he would do. He had thick books, thick books, and he would open that book to a certain page and let the court know where he was, and he'd behave like an android. Through the tips of his fingers, as he passed them over the text in the book, those words would go up his arm and imprint themselves on his brain and then come out of his mouth and he read. Now I don't know if he had written in Braille and he knows how to read Braille, but he passed his hands over that book and what he said was in the book. Now the first lawyer did not do the job that needed to be done. [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: I'm not a lawyer. I'm trained in the law, but I'm not an attorney. Let me say I am a lawyer in the sense of one who has some degree of knowledge about the law and the ability to apply it. Because of that and my exposures to court opinions and the decisions they were supposed to support, I do not have just blanket confidence in courts. I'm the one who said if judges in Nebraska wore wigs they'd never come off, because they'd be nailed on. Lawyers don't say things like that. But there is a standard that courts, in general, will apply and that the Nebraska Supreme Court will apply, and I do not think it's going to hand down something that would make it look ridiculous, just as the Legislature, in my opinion, is not going to impeach for a ridiculous or absurd reason. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Time, Senator. Senator Aguilar. [LR4CA]

SENATOR AGUILAR: Thank you, Mr. President. My time to Senator Chambers. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you've been yielded 5 minutes. [LR4CA]

SENATOR CHAMBERS: Thank you, Senator Aguilar. Thank you, Mr. President. Senator Nelson raised a question: Should the underlying amendment be adopted by the Legislature? By that, I meant Senator Avery's bill. I'm not discussing that because it ought to be discussed on its own, apart from what we're discussing with Senator White's amendment. I don't want the things that are having to be said about his amendment to be confused or intermingled with what will and can be said when we discuss Senator Avery's bill. The discussion might be wide ranging, but I don't think we'd have as many absurd issues raised. We have dealt with them at this point, maybe not to the satisfaction of the people who raise the issues. But to try to discuss the underlying proposition that Senator Avery is presenting at the same time that we're discussing Senator White's amendment is not what I choose to do. Others might be able to do it. But I don't want there to be confusion, if somebody should happen to read what we're

Floor Debate  
March 06, 2008

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talking about, between what I'm saying with reference to Senator White's amendment and what I will say with reference to Senator Avery's underlying proposition, even though there might be some overlap. The word "comprises" that I'm offering was utilized, as I stated the first time I spoke, because it would be more precise, in my opinion, and would give me an opportunity to speak more. I wasn't going to try to rewrite his amendment. I wanted us to be able to discuss his amendment basically the way he had written it. I don't think there's any way it can be rewritten that will make it any better. And contrary to what Senator White is saying, contrary to what I think I understood Senator Nelson to say, this language, if adopted, would turn the impeachment procedure in Nebraska on its head. The language employed by the court prior to language such as Senator White is giving us would not be apropos of Senator White's language in a case. Courts, to the extent that they can, will say that when the Legislature makes a change in the law, that change must mean something, even though it may not be clear on its face. It could seem to be merely repeating what's already there. But the court will say, and I've seen cases where they've said it, we have to give meaning to every word in the statute. So these words must have a meaning, and they cannot be put there to simply restate what preceded them or what followed them in the existing law, so this is what we're going to have to construe these words to mean, to give them meaning and a meaning which is in addition to or different from what is there now; otherwise, the Legislature wouldn't have done it. So the court ascribes to the Legislature a sense, s-e-n-s-e, in the sense of brains and intelligence that the Legislature is not entitled to when you read its legislation. The courts, not only in Nebraska but around the country, will bail out foolish legislatures wherever they can. That's why they've said that anything the Legislature enacts is presumed to be constitutional. And if it's to be overturned, it is fully the responsibility... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...of the person making the challenge to carry the burden of showing that that legislation, as passed by the Legislature and signed by the Governor, violates the constitution, either the state constitution, the federal constitution, or both of them. There are judges who take their work very seriously. Some of them I've been very critical of, but nevertheless, other than those areas where I'm critical of them, I can see where they even have taken their work seriously. Some have been on the bench too long and some people feel I've been in the Legislature too long. And, Senator Carlson, as others feel I've been on this Earth too long. But the joy that I get is knowing that my mere existence gives some people such heartburn, I delight in that. So when I read in the "Bible" where it says, vengeance is mine, I shall repay, saith the Lord; I say, well, Lord, that's not strictly true; I'm getting vengeance every day just by living. [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR CHAMBERS: (Laugh) Thank you, Lord. [LR4CA]

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

Floor Debate  
March 06, 2008

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PRESIDENT SHEEHY: Thank you, Senator Chambers. [LR4CA]

SENATOR CHAMBERS: I mean, Mr. President. (Laugh) [LR4CA]

PRESIDENT SHEEHY: (Laugh) Senator McDonald, followed by Senator Wallman, and Senator Wightman. Senator McDonald. [LR4CA]

SENATOR McDONALD: Mr. Lieutenant Governor and members of the body, I yield my time to Senator Chambers. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you've been yielded 5 minutes. [LR4CA]

SENATOR CHAMBERS: Thank you, Senator McDonald. Thank you, Mr. President. I think that this discussion is very wholesome. If we, by chance, should put anything on the ballot, this discussion will come into play, especially if we put something like Senator White is talking about on the ballot. Somebody will be impeached, let's say, so that we can get it before the court, and the other side is going to challenge the articles of impeachment. And the other side will say, the language in the constitutional amendment is so vague and indefinite that my client does not have notice of what he or she must defend against, because this provision that the Legislature is bringing as a charge says that my client did such and such which constitutes moral turpitude. Is my client being charged with moral turpitude or the act which the articles say constitutes moral turpitude? So the court scratches it head--now what did them fellows over...what did those fellows and ladies mean over there when they put this on the ballot? There is no way we can determine what the public means or what they were thinking when they voted to put it in the constitution. But since it originated with the Legislature, there is a legislative history and we can try to go through that and see what the Legislature meant. And we have combed through it, we have searched diligently for sense, and we don't see it in a way that makes it clear how we are to construe this term "moral turpitude." But since the matter is before us, we're going to do something, so we think we'll just throw it out. (Laugh) I don't know what they would do. And all of us who have had any experience with the courts, either being there or observing them, understands, as Senator Nelson pointed out and Senator White and I have, too, you can't predict with precision what the court is going to do, even if you present a case that seems on all fours with an opinion that the court had written in support of a decision. I'm sure that the person who brought a case and in the context of that case the Nebraska Supreme Court reversed an earlier decision, I'm sure that person thought that in relying on that earlier decision this case is slam-dunk, I've won this one. But the court said, not so, we've got more information, we see it differently and what the court said at that time was incorrect. Courts should not for light and trifling reasons reverse themselves. But courts also ought to be mature enough, respectful of the law and the constitution enough to reverse, in whole or in part, an earlier decision if the evidence presented convinces the

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

Floor Debate  
March 06, 2008

---

court that the earlier decision was wrong. It should not be upheld simply because it's there, but it should not be overturned for light and trivial reasons. What Senator White is asking us to do is, with one fell swoop, sweep away... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...virtually all that the court and other courts have said on this issue. I'd like to ask Senator White a question, the answer to which he may not have and I certainly don't have it. [LR4CA]

PRESIDENT SHEEHY: Senator White, would you respond? [LR4CA]

SENATOR WHITE: Certainly, if I'm able. [LR4CA]

SENATOR CHAMBERS: Senator White, do you know of any other state constitution with the term "moral turpitude" provided as the basis for an impeachment? [LR4CA]

SENATOR WHITE: Well, I haven't done an exhaustive research. I think Alabama has language similar, although I'm not sure it uses "moral turpitude." It, for example, would allow for impeachment for the habitual use of intoxicating spirits that may lead to disrepute of the state (inaudible). [LR4CA]

SENATOR CHAMBERS: So there would be other things that they have in addition to it, but not just moral turpitude alone? [LR4CA]

SENATOR WHITE: I do not know. [LR4CA]

SENATOR CHAMBERS: Okay. And I don't know of any either. Thank you. That wasn't to be a trick question. I just haven't seen any state opinion by a court where they discussed moral turpitude alone. Now under existing provisions... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR CHAMBERS: Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Wallman. [LR4CA]

SENATOR WALLMAN: Thank you, Mr. President. I'd yield my time to Senator White. [LR4CA]

PRESIDENT SHEEHY: Senator White, you've been yielded 5 minutes. [LR4CA]

SENATOR WHITE: Thank you, Senator Wallman, for your courtesy. Mr. President, I'd

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

Floor Debate  
March 06, 2008

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just like to wrap up just a couple of points at this juncture. First of all, nothing we do here will change what the Nebraska Supreme Court has determined is in fact the basis for what they will remove a person from office. The Nebraska Supreme Court does not determine what is impeachable; we do. And one of the things I would tell you, my colleagues, impeachable is defined as we define it. The Nebraska Supreme Court has said that existing law, the existing constitution provides technically that you can be impeached for violation of any statute, doesn't even have to be a misdemeanor, according to the Hergert case, any statute that you violate. It does not need to rise to the level of an indictable offense, it doesn't even need to be a crime, even a misdemeanor. If you read the Hergert case, the first line says, the basis shall be the violation of any statute associated with the discharge of your duties in office. And in Hergert they flatly state such a broad provision is dangerous. Now one of the really important principles in our country's history has been we are a nation of law, not men. And what this amendment, my proposed amendment, would say is in fact we should not impeach, that is charge with a crime and force someone to stand trial before the Supreme Court for removal from office, unless it is a serious violation of a misdemeanor evincing moral turpitude of serious moral failing. Now that is much more consistent with what the Nebraska Supreme Court ruled in Hergert. They said, we're not going to go to whether you should have been impeached or not because we find what you did while in office was so serious that you should be removed from office. And they specifically identified and left open the problem, which they called very dangerous, of you could be impeached for violation of any statute. Now we may not convict, but you still can be hauled in front of the Supreme Court. That is recipe for mischief. In our own Criminal Code a prosecutor who would knowingly charge or indict a person for a crime without a good faith belief that he had evidence to actually convict them would be seriously in violation of his oath of office. And all my amendment does is say we should not indict, we should not impeach, we should not force to stand trial anyone who has not committed acts that would also be sufficient to be removed from office. In other words, we're not going to throw you into a court to stand trial for violation of any statute when we know the Supreme Court has already said they won't convict you. This law change simply restricts this body's ability to impeach. It does not affect the court's decision for the basis of what is an offense meriting removal from office. Remember, we trust not in men, we trust in the law. And the lack of trust in the Legislature is in the best traditions of the American country, our system of government. [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR WHITE: The founders of our system of government didn't trust government at all. That's why they had three divisions. That's why they have separation of power. That's why we have a written constitution. That's why imbedded throughout our entire system of law are restrictions on the use of government power, because we do not trust men; we trust law. Thank you. [LR4CA]

Floor Debate  
March 06, 2008

---

PRESIDENT SHEEHY: Thank you, Senator White. Senator Wightman, followed by Senator Nelson, and Senator Stuthman. Senator Wightman. [LR4CA]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. First of all, I think the debate has been most interesting here and been helpful. It seems to me, though, where we are, we start out with a proposed change to make more inclusive the constitutional amendment we have, presently talks about misdemeanors. We bring with that a body of law that certainly is encompassed in the Douglas case, the Douglas impeachment, and then later in the Hergert impeachment. We know where we stand with that law. So all this initially started as was an attempt to be able to include the same acts that were of a violation or whatever, same acts of violations that we had when a person was in office and make it apply to somebody who is seeking office. With that we have, I think, some certainty. I don't know that I am quite willing to include in there or limit it to acts of moral turpitude. I'm fairly comfortable with what we have at the current time and just extending that to someone who is a candidate for office. I thought maybe we could take a look at the federal constitution and they define an impeachable offense, at least as far as the executive branch, in Article II, Section 4, as being conviction of treason, bribery, or other high crimes and misdemeanors. Well, maybe that would have been a possible solution to define it in terms of theirs. But I see they have the same problem of interpretation. On both President Nixon's and President Clinton's impeachment there was a lot of question as to whether a particular act constituted a violation, an impeachable violation. I think whatever we have, we're going to have the same problem of interpreting exactly what that section means. I guess at this point I'm quite willing to leave it where it is, in which we refer to misdemeanors, but we bring with it the entire body of law, and I'm talking about case law in the interpretation of that particular provision. With that, I would yield the remainder of my time to Senator Chambers, if he wishes to take it. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you're yielded about 2:30. [LR4CA]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Wightman. Members of the Legislature, Senator White had said that people in this country trust the law, not men. Men interpret the law, men and women; they interpret the law. The Legislature writes the words; the court construes, interprets, and applies. What the Legislature says is not the last word as to what the law means. When Senator White mentioned a person being dragged before the Supreme Court, if the person is not convicted, guess who pays the costs for that person? The state, the state. And Hergert's lawyer tried to emphasize that point and some of the members on the floor argued it--it's going to cost the state a lot of money if he's not convicted. And I just argued, well, he's going to be convicted, so the state's not going to be out of any money in that regard. Ironically or coincidentally, it was my resolution that led to the impeachment of former Attorney General Paul Douglas. And a majority of the court did vote to convict, 4 did, 4 of the 7, but the constitution requires a super majority of 5, so Paul Douglas got off the

Floor Debate  
March 06, 2008

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hook. But then he was suspended for other inappropriate conduct. [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: The idea is this: At least credit those people who sit on the Supreme Court with ordinary common sense. We're not talking about blind faith. We're not talking about men and women who you just pull off the street, put a robe on them, sit them up behind the bench and say, now rule on this matter. And it's not going to be something that the court will take lightly. So serious was the case of Hergert that it constitutes the first time anywhere in the world where a person was removed from office for violating campaign laws and the requirements thereunder. But he committed such egregious acts in the process that there was no alternative other than to tell him, get to steppin'... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR CHAMBERS: ...in the language of the street. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Nelson. [LR4CA]

SENATOR NELSON: Thank you, Mr. President, colleagues. It's always great when we learn something of historical significance. And I was really happy to learn that Senator Chambers was here in the earlier part of this century when the Paul Douglas case came up. I had no idea, that's back in the mist of time that he was in the Legislature and gave us a resolution at that time. So that was a good start. I simply want to speak again to what I feel is a necessity of making it a little more difficult to determine that someone should be impeached from office. The wording of Senator White's amendment, it said it has to involve a misdemeanor which evinces moral turpitude. When we're talking about campaigns and tactics there, generally we are probably talking about fraud. Here are some crimes involving moral turpitude, fraud: making false representation, knowledge of such false representation by the perpetrator, reliance on the false representation by the person defrauded, an intent to defraud, the actual act of committing fraud. Now it seems to me with definitions of that sort and descriptions that it shouldn't be too difficult to figure out what moral turpitude is. It's not fuzzy, it's not hard to decide. And I don't think our Supreme Court, in my opinion, is going to have any problem deciding what moral turpitude is because I'm confident that they've had to deal with that meaning and interpretation a number of times, and I will cite only one--giving of false testimony by an attorney is an act of moral turpitude and justifies suspension or disbarment. Now that was the state as it related the Nebraska State Bar Association v. Butterfield that was decided in 1959. So when we say that it's going to change the body of law and it's going to do away with what the court has always decided when they've been considering what constitutes a misdemeanor, we can still rely on that. But by adding this amendment,

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

Floor Debate  
March 06, 2008

---

where we have to involve moral turpitude, then it raises the bar, as far as I'm concerned, and it lends itself much more aptly to a consideration by the Supreme Court as to whether we really have an impeachable offense. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Stuthman. [LR4CA]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. This discussion this morning is very interesting to me. I'm very seldom ever involved in court actions or any legal things like that. So it is very interesting to me because of the expertise that we have here in the body. I would like to give the balance of my time to Senator Chambers. [LR4CA]

PRESIDENT SHEEHY: Senator Chambers, you've been yielded about 4:40. [LR4CA]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Stuthman. And, Senator Nelson, you're correct, my tenure does go way back into the mists of time. In fact, sometimes I look back that long road, look down that long road and wonder how in the world I could have come here that long ago and still be here functioning at such a high, (laugh) effective level. Anyway, well, modesty is my strong suit, but usually I'm too modest to say how modest I am. But let me get back to what we were talking about here. Senator Nelson is completely correct when he mentions the numerous times that the term "moral turpitude" may appear in the statute. He is correct if he said that there are innumerable times that the court has had occasion to apply those terms in a given lawsuit. I don't question or challenge any of that. The court deals with what it is given. If we put words into the constitution, the court is compelled to construe and interpret those words in the context of the constitutional setting that the Legislature places those words. If you're talking about moral turpitude in the context of lawyer discipline or judicial discipline it would have a different meaning from what would be the case if it were not in either one of those contexts. Moral turpitude for a banker may be entirely different from moral turpitude when you're dealing with a minister or somebody else in a position of trust or authority over another person. Moral turpitude for a conservator or a guardian could be different from moral turpitude ascribed to a prison guard dealing with an inmate or another guard. So that word is flexible, meaning it has no single meaning. I'd like to ask Senator Carlson a question to try to demonstrate what I'm talking about. [LR4CA]

PRESIDENT SHEEHY: Senator Carlson, would you respond? [LR4CA]

SENATOR CARLSON: Yes, I will. [LR4CA]

SENATOR CHAMBERS: Senator Carlson, do you...where you come from in the state do they have stones? [LR4CA]

SENATOR CARLSON: Do they have...? [LR4CA]

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

Floor Debate  
March 06, 2008

---

SENATOR CHAMBERS: Rocks, do they have rocks? [LR4CA]

SENATOR CARLSON: Oh yes, yes. [LR4CA]

SENATOR CHAMBERS: Senator Carlson, how big is a rock? [LR4CA]

SENATOR CARLSON: The...used to hear a term the more it goes the higher. [LR4CA]

SENATOR CHAMBERS: Say it again. [LR4CA]

SENATOR CARLSON: The more it goes the higher. [LR4CA]

SENATOR CHAMBERS: That's the meaning of rock? [LR4CA]

SENATOR CARLSON: Well, you asked how big. [LR4CA]

SENATOR CHAMBERS: Okay. How big is a rock? [LR4CA]

SENATOR CARLSON: As big as you want it to be. [LR4CA]

SENATOR CHAMBERS: But I want you to tell me how big that is. [LR4CA]

SENATOR CARLSON: Well, it could be from a pebble to a mountain? [LR4CA]

SENATOR CHAMBERS: How heavy is a rock, Senator Carlson? [LR4CA]

SENATOR CARLSON: From an ounce to an infinitive...an infinite amount. [LR4CA]

SENATOR CHAMBERS: So you could say that a rock is biggish. [LR4CA]

SENATOR CARLSON: It may be big, it may be small. [LR4CA]

SENATOR CHAMBERS: It could be "largish." [LR4CA]

SENATOR CARLSON: Yes, it could be. [LR4CA]

SENATOR CHAMBERS: It could be smallish. [LR4CA]

SENATOR CARLSON: It sure could be. [LR4CA]

SENATOR CHAMBERS: And every one of those terms could describe a rock. [LR4CA]

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

Floor Debate  
March 06, 2008

---

SENATOR CARLSON: Yes, they could. [LR4CA]

SENATOR CHAMBERS: But there is no one definition that would fit every rock, correct? [LR4CA]

SENATOR CARLSON: Other than it's hard. [LR4CA]

SENATOR CHAMBERS: Is pumice a rock? [LR4CA]

SENATOR CARLSON: Yes. [LR4CA]

SENATOR CHAMBERS: Is it hard? [LR4CA]

SENATOR CARLSON: Not as hard as some. [LR4CA]

SENATOR CHAMBERS: See? Thank you, Senator Carlson. You are so helpful. He is so helpful. That's the point that I'm making. There are some terms which... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...will require additional elaboration in order for you to understand what you mean by them. And Senator Carlson told us the range, from as small as a pebble to the size of a mountain, the Rock of Gibraltar. And the reason I asked the question is to show what the term "vague" can mean. That's not saying it has no meaning, but almost any meaning can be ascribed to it. And those kind of words should not be placed in the constitution. You see how we're around here trying to say what it means. And I would venture to say that if you took the 29 citations that Senator Nelson had looked at and made reference to, you could find that in applying that term in those situations you'd be talking about different conduct, not the same conduct. So you're taking, once again, one of those terms that... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR CHAMBERS: ...covers everything and touches nothing. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Are there additional members wishing to speak on FA191 to AM2174? Seeing none, Senator Chambers, you're recognized to close. [LR4CA]

SENATOR CHAMBERS: Thank you. Mr. President, the way that question was phrased it gave me an opening that I could hardly resist. The Chair asked, are there any other members wishing to speak? But under the rules, I had spoken the number of times that

Floor Debate  
March 06, 2008

---

I had, so maybe the Chair should say, are there any wishing to speak who have time, under the rules, to speak? But I wish to speak again and again and again (laugh), and here's why: Senator White has presented us with an amendment. I have offered an amendment to his amendment. Senator Nelson...excuse me, Senator Hansen, I mean, Senator Carlson. I offered a one-word change--"comprise" in place of "evince," or "comprises" in place of "evinces." Senator White has pointed out; Senator Nelson has agreed. What I have to do by process of elimination, I see the name of the senator that I refer to as "Parson," I look across the aisle and I know I'm not talking to either Carlson or Nelson...(laugh) or Hansen, so his name must be Nelson. But if I'm ever addressing a particular senator and give the incorrect name, understand to the one to whom I'm referring, just as I often refer, I say Senator Flood when I mean Senator Friend. But they understand now. Old people are allowed certain privileges and prerogatives. And whenever an old person makes a mistake or gets ready to do something or say something outlandish they say, I feel an old folks' way or mood coming on. Old folks are allowed to have moods and just say any old crazy thing that they choose, and they can say, I'm too old for it to make me any difference. And people say, that sure is clever, I can't wait until I'm that old. But you have to live a long time to get here and earn your stripes. But what Senator Nelson had pointed out is that in his view Senator White's amendment will raise the bar. And I agree. However, nothing that we put in the constitution can prevent the Legislature from impeaching anybody for any reason or no reason. I'm saying that I don't think the Legislature will give 25 votes for articles of impeachment on the basis of nonsense. Senator White had said this language is directed to the Legislature, to prevent the Legislature from impeaching, and I'm paraphrasing, prevent the Legislature from impeaching for light or trivial causes. Since we don't agree on what the term "moral turpitude" means, we'll just throw some articles together and send them to the court and let the court hash it out anyway. These words are addressed to the court. The Legislature does not construe the constitution, the Nebraska Supreme Court does. Lower courts can do it, too, but the Supreme Court has the last word. And in the same way that the Legislature cannot close the doors to the courthouse, nothing that we put in the constitution is going to take away from the Legislature the power of impeachment. The constitution says that the Legislature has the sole power of impeachment, only the Legislature. And it doesn't tell us what we're limited to. The court is the one limited... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR CHAMBERS: ...when it comes to finding whether there is enough evidence to remove somebody from office. We can accuse anybody, who is a civil officer, of anything we want to. We can accuse somebody who's not a civil officer, and the court would simply say, that person is not amenable to impeachment. But we can impeach somebody who's not in office. We can impeach somebody who's never been in office, but there will be no conviction. We can impeach somebody who is dead. Senator Carlson, I even sued somebody who never lived. (Laugh) I saw Senator Carlson start

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

Floor Debate  
March 06, 2008

---

trembling. I think that little bit of tremor was picked up on the Richter scale in California. (Laughter) But I didn't say whom I sued, did I? And by virtue of my having said I sued somebody who never lived, I couldn't have been talking about the One he believes in, could I? But I understand human nature. I know my friend Senator Carlson, so I can say what I say... [LR4CA]

PRESIDENT SHEEHY: Time, Senator. [LR4CA]

SENATOR CHAMBERS: ...and know what the response will be. Thank you, Mr. President. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator... [LR4CA]

SENATOR CHAMBERS: Oh, by the way, I will withdraw that amendment so we don't have to take a vote on it. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Chambers. FA191 is withdrawn. We will return to floor discussion on AM2174 to LR4CA. Are there members wishing to speak? Seeing none, Senator White, you're recognized to close. [LR4CA]

SENATOR WHITE: Thank you, Mr. President. I would have to disagree with Senator Chambers' characterization of what the constitution does. Fundamentally, our ability, our power, our moral authority to govern flows from the people, and that is expressed in the constitution. Now it is true that a Legislature can flaunt that will, can flaunt the constitution. The constitution says we shall make no law with respect to the establishment of religion. And, I guess, we could pass laws trying to establish a statewide religion, but we can't do that and keep faith with the traditions of our country, the traditions of the constitution. The constitution exists for one purpose--to control the Legislature and what laws it can and cannot pass. That's the point of it. So if it is in the constitution that we may not impeach unless it is a misdemeanor evincing moral turpitude, yes, Senator Chambers is correct, we could ignore that and so break faith, not only with the voters but the generations who came before them and the generations who would come after. So I will always disagree that the constitution does not control the Legislature. It is true that is only words on paper when we no longer have the moral character to obey it. When we no longer have the strength to fight to defend it, it is nothing but words on paper. But until that day, it controls us. And I would submit to you that one of the functions of a Supreme Court is to communicate with the Legislature. Senator Schimek said she once, early on, tried to talk to the Supreme Court, and they said, we don't talk about cases. And they don't, but they do communicate with us through their opinions. And I would like carefully to submit what they have said over a century to us one more time. It is better that the state should be confined to the remedy afforded by the Criminal Code in civil actions on the bonds of its officers than an alternative so dangerous and so liable to abuse as impeachment for technical violations

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

Floor Debate  
March 06, 2008

---

of law, errors of judgment, mistakes of fact, or even neglect of duty such as disclosed by the proofs in this case. That was in 1893. And then Hergert court stated, we agree with this statement and recognize the danger of finding impeachable misdemeanor for a technical violation of the law. That is the Supreme Court talking to us, that is them telling us this is a flaw and that we have an obligation to uphold liberty just as much as the court. And, no, we can't just punt the ball and tell them they'll take care of it. We took an oath, too. And I submit to you when the Supreme Court tells us, this is a dangerous problem, we should correct it in good faith or submit it to the people in good faith so that they can correct it, because after all the authority comes from them. And until the day that we no longer trust in the law, that we no longer trust in controlled power provided to us by the people and that we will responsibly, as a body, look to the constitution to determine what we do, I would say this is an important law and it is an important control. Once again we are a free people. And part of being free is not having to stand trial for pointless, harassing crimes. That is the essence of freedom. It is embodied throughout our constitution, it is embodied, for example, in the fact that coming to and from this session we may not be stopped and halted by the police, that we be free from that kind of harassment so that we can express our conscience... [LR4CA]

PRESIDENT SHEEHY: One minute. [LR4CA]

SENATOR WHITE: ...as best we can. I ask you please to support the amendment. I thank you for your courtesy. I thank Senator Chambers, Senator Avery, Senator Nelson, Senator Schimek, and all who contributed to this discussion. We cannot remind ourselves enough about why we're here, how we're here, and when and if we can act. Thank you. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the closing. The question before the body is on the adoption of AM2174 to LR4CA. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LR4CA]

CLERK: 26 ayes, 10 nays, Mr. President, on adoption of Senator White's amendment. [LR4CA]

PRESIDENT SHEEHY: AM2174 is adopted to LR4CA. Mr. Clerk, do you have items for the record? [LR4CA]

CLERK: I do, Mr. President. Your Committee on Agriculture, chaired by Senator Erdman, reports LB1115 to General File with amendments. Revenue Committee, chaired by Senator Janssen, reports LB708 to General File with amendments; LB1088, General File with amendments; and LB718, LB762, LB949, LB1010 indefinitely postponed. Senator Stuthman has an amendment to LB766 to be printed. I have a name add. Senator Dubas would like to add her name to LB920. (Legislative Journal pages 826-828.) [LB1115 LB708 LB1088 LB718 LB762 LB949 LB1010 LB766 LB920]

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

Floor Debate  
March 06, 2008

---

And a priority motion, Mr. President: Senator Johnson would move to recess until 1:30 p.m. []

PRESIDENT SHEEHY: You've heard the motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We stand at recess. []

RECESS []

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: (Recorder malfunction)...ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence through roll call. Please record, Mr. Clerk. []

ASSISTANT CLERK: There is a quorum present, Mr. President. []

PRESIDENT SHEEHY: Thank you. Do you have messages, reports, announcements? []

ASSISTANT CLERK: Mr. President, two items: your Committee on Enrollment and Review reports LB1049 to Select File with amendments. And I have a corrected committee report on LB781. (Legislative Journal pages 828-830.) [LB1049 LB781]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will move to first item under General File, 1:30 p.m. []

ASSISTANT CLERK: Mr. President, LB973 was introduced by Senator Raikes. (Read title.) The bill was read for the first time on January 15 of this year, referred to the Education Committee, which reports the bill to General File with committee amendments. (AM1849, Legislative Journal page 619.) [LB973]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Raikes, you're recognized to open on LB973. [LB973]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. LB973 is a follow-up measure dealing with community college funding. You may recall that last year in LB342 we made a major revision of the funding formula for community colleges. We anticipated at that time this would be a two-part effort--the part last year and that there would need to be a follow-up effort this year. There were certain parts of the funding formula, the equalization formula that we developed, that we did not completely spell out in last year's bill. And this is an attempt really to do two things. One is to complete that last year's process. The other thing is to address some issues that have

Floor Debate  
March 06, 2008

---

arisen since last year, during the interim, items that we need to address. So very quickly, the green copy of the bill, and I'll focus for the moment on that, the green copy of the bill includes both some technical and some substantive changes. The technical changes deal with a couple of things clarifying the data to be used in the calculations for state aid to the community colleges. The second one is the role of the Coordinating Commission. You may remember that we included the Coordinating Commission in the process of gathering data to determine the funding amounts for each of the six area...community college areas. But there was found to be a need to clarify a little bit exactly what role they were to play. They still are included, but the role is changed slightly. There are also some substantive changes in the green copy which I'll mention quickly. First, the property tax revenue that's used in the calculation of the resources that the spending...the resources available to the community college are limited to the local effort rate. There is a little story behind this. There was discovered, I'll put it that way, an opportunity for manipulation or adjustments by an individual community college to up the levy or to transfer certain parts of their funding needs into a levy which worked to increase the share they got of the state aid. We found that a way to address that concern was to limit the growth recognized in the aid calculation to the local effort rate. And that serves both to correct that potential misuse of the...or misincentive, I guess I'll put it that way, and also to limit the total amount of growth that is available to area community colleges. So limiting the tax revenues that are considered in the formula calculations to the local effort rate as the max is one substantive change that was made. A second substantive change dealt with enrollment numbers that are used. In last year's version, we had single-year enrollments that fed into the formula. Because those enrollments can spike and plunge from one year to the next, that created to instability and also created to an opportunity for variations that didn't really make a whole lot of sense. So we addressed that by including three-year average enrollment numbers rather than single-year enrollment numbers. So a second change dealt with using three-year averages for enrollment growth. A third substantive change dealt with the use of reimbursable educational units in the...basically the calculation of needs for each area community college or community college area, I should say. And the reimbursable educational unit is...I think it has a couple of important advantages. One is that it is something that has been around in community college funding formula for a long time so it's familiar to the colleges and the way they calculate student units. It also takes into account the type of coursework that a student is taking and recognizes the fact then that, in terms of the cost incurred by a community college in educating a student, it differs greatly depending upon whether it is a straight academic course versus a vocational course that may require a lot more auxiliary equipment and that sort of thing. So the third substantive change is to use reimbursable educational units in the calculation of the needs for each area community college. A final thing is that in implementing this formula we found that there was a particular area that was going to be impacted negatively financially; namely, Central Community College area. So we decided the way to address that was with a stabilization factor. This is, as you may know, something that is not unusual to include in the formula while you're making a

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

Floor Debate  
March 06, 2008

---

transition from one formula to another. So there is a 95 percent, in the green copy there's a 95 percent stabilization included in this to address that transition issue for Central Community College. So with that, again to quickly summarize, this is the update of our work on community college funding. And I will, I think, commend the body that that has been not only a substantial revision of that formula, but also a very good revision. It is heavily based on equalization, and it's something that I think as a state policy addresses the need and role for us to provide educational opportunity at the community college level on a basis, on a statewide basis, and in a manner that equalizes the burden among different regions in the state, the burden that is on taxpayers. So there are some additional points I want to talk about regarding the committee amendment, which will come up in a second. But for the moment, I would like to, number one, thank Senator Wightman for prioritizing this bill because I think it's essentially...it's a very essential piece of work for the Legislature this year. And I'll also give him an opportunity, the remainder of my time, as much as he would like. [LB973 LB342]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Wightman, you're being yielded about 3 minutes. [LB973]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. I did adopt this as my priority bill, partly because it does help Central Community College in the funding and I think probably creates more equity with regard to the allocation of the state funds than we have previously had. As Senator Raikes explained, one of the methods of creating additional stability is, instead of looking at only the last year's increase or decrease in enrollment, we will look at a three-year running average. What happened a year ago is that...and I don't know that overfunding is the correct statement, but Western Community College probably ended up more because of the funding formula--and I think Senator Harms would agree to this--than probably they should have been entitled to because of the fact that because of the base they had a decrease in enrollment. They really weren't penalized for that because of the base that had been established. And then they had a fairly substantial increase where they didn't take any cut as a result of the decrease in enrollment to speak of the year before and then ended up with a substantial increase based upon the following year's increase in enrollment. So I do think that it creates a lot more stability by having a three-year running average than to make it subject to a one-year downturn or a one-year upturn in the enrollment numbers. I think, generally speaking, it will...statistics will show or the projections will show that Metro and Central Community College will be the ones that end up with probably an increased amount this year, this coming year but...and some of the others will be reduced. But in fact, if you will review the fiscal note, there is no fiscal impact to the state of Nebraska. What we are doing is really sharing a pie and we're reallocating those shares. We're cutting the slices slightly different. [LB973]

PRESIDENT SHEEHY: One minute. [LB973]

Floor Debate  
March 06, 2008

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SENATOR WIGHTMAN: So I would ask you to take into account that there is no fiscal impact to the state. I think Senator Raikes mentioned the fact that it does change the duties of the Coordinating Commission somewhat in that now the community colleges have an obligation to bring that data forward in an audited financial statement. And so the duty isn't quite as much on the Coordinating Commission to go out and search for this information. Thank you, Mr. President. Thank you, Senator Raikes. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Wightman. (Visitors introduced.) You have heard the opening to LB973. As noted, there is an amendment filed by the Education Committee. Senator Raikes, you're recognized to open on AM1849. [LB973]

SENATOR RAIKES: Thank you, Mr. President and members. The committee amendment actually addresses a couple other technical changes and then makes a few adjustments to the substantive changes that are dealt with in the green copy. In technical changes, there is an effort to better define the annual average percentage growth calculation and apply it to future calculations. We needed to strike a date reference and to change some wording to make sure that it would not be or we wouldn't require the 2007-2008 aid to be recalculated. So those changes I think are truly technical and ones we missed in the first time through. The substantive changes in the committee amendment deal with applying a three-year average growth in students to the 2009-2010 year, funding year for community colleges. I mentioned earlier another substantive change was to include a stabilization. The rate in the green copy was 95 percent for a stabilization factor. In the committee amendment, we increased that to 98 percent. The reason was, once we played out some scenarios and looked at how the various community college areas were affected, the 98 percent seemed to be a more reasonable adjustment than what we had before. And I might add, and I don't think I have before, that these changes, including the changes I'm mentioning in the committee amendment, are ones that we have worked closely with the community college areas on. And I don't...you know, whenever you're dealing with distribution of the amount of state money and the distribution of state money you're not going to get everybody that's totally pleased with everything. But I think we have had general agreement regarding these changes and so we're proceeding on that basis. A third substantive change in the committee amendment deals with the basic growth rate that we're allowing community colleges. And we're going from 2 percent to 3 percent. And part of the reasoning for this, first off, 3 percent is very much in the range of the allowable growth that we use for political subdivisions. The increase here is I think especially warranted because you may remember I mentioned that we limit the property tax funding that can go into the formula to the local effort rate, so that also provides a significant reduction in the total allowable growth. So we've increased the growth rate from 2 percent to 3 percent. Finally, the way this formula works, there is a calculated local effort rate for each community college. And again, to remind you very quickly, there is a state appropriation. The Appropriations Committee recommends and the Legislature approves a funding

Floor Debate  
March 06, 2008

---

level for community colleges. And the way this formula works, the higher that amount of state funding the lower will be the property tax funding and vice versa. That is translated through the determination of a local effort rate, which is a statewide artificial, if you will, property tax levy. Each individual college then has flexibility as to how they want to set their own levy in their own college area compared to that local effort rate. Before it was 20 percent below to 15 percent above. In the committee amendment, we change that to make it 20 percent below or 20 percent above, which gives each individual community college area a slight bit more flexibility regarding their property tax levy but still keeps it within an appropriate bound. I would remind you also that tuition policy and tuition receipts are counted in the funding formula, but tuition policy is up to the individual community college area as well. So if you have any questions on the committee amendment, I would certainly be happy to address them. But I do believe that these are appropriate changes and ones that, at least generally speaking, we have agreement with by all the community college areas. So thank you, Mr. President. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the Education Committee amendment, AM1849. Members wishing to speak: Senator Harms, followed by Senator Pahls, Senator Stuthman, and Senator Wightman. Senator Harms. [LB973]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM1849, as well as LB973. Last year when we changed the major funding formula, which was badly needed, we knew that there would be some cleanup that we'd have to do, but we had to go through the experience to see just for sure where all those issues might very well be. I will tell you, I think that Senator Raikes has done an absolutely great job last year in getting this thing on target because we were in the midst of controversy within the community college system. That has now since really basically settled down and they have found that the formula works very well. And what this simply is, as Senator Raikes has said and as Senator Wightman has said, is really some cleanup things that need to be done that will make it a better system and will function well. So I would urge you to support AM1849 and then LB973 because it's the right thing to do. Thank you, Mr. President. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Pahls. [LB973]

SENATOR PAHLS: Lieutenant Governor, members of the body, could I ask Senator Raikes a question or two? [LB973]

PRESIDENT SHEEHY: Senator Raikes, would you respond to questions? [LB973]

SENATOR RAIKES: Yes. [LB973]

SENATOR PAHLS: Senator, this is just for clarification on my part, and I'm reading on page 1 of your committee discussion outline. What I'm just curious about--I don't know if

Floor Debate  
March 06, 2008

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people really understand this--but I'm just going to read one of the sentences: The calculation of aid in 2009-10 shifts to an average per reimbursable education unit essentially...this is essentially a weighted student based on the type of coursework. Would you sort of explain to us what that really means. [LB973]

SENATOR RAIKES: Senator, I'll try. [LB973]

SENATOR PAHLS: Okay. [LB973]

SENATOR RAIKES: One of the important parts of the role and mission of community colleges as compared to state colleges or the university system in our public higher education system is dealing with, I don't know what the modern phrase is, but the vocational technical type of training versus the, for lack of a better description, academic...core academic work. So if you have a course being offered in my community college, for example, that has 30 students that are learning or taking coursework in, you know, literature, reading or something like that, whereas in your community college you have that same group of 30 students that are learning, say, about auto mechanics, about repair of computers, or something like that that would require laboratory equipment, facilities, and so on, the idea of a reimbursable unit is that you weight the students, my 30 versus your 30, so that we reflect the cost that it costs the community college more to educate the 30 students that you're serving. [LB973]

SENATOR PAHLS: Okay. I thank you. That did make it a little clearer to me. So then when we look at the expenses or what a community college needs, we actually ought to be taking a look at their student body because at some of the schools it's going to cost more simply because they're offering different types of classes or courses. [LB973]

SENATOR RAIKES: That's true. [LB973]

SENATOR PAHLS: Okay. Because I do see a discrepancy in...when I look at the fiscal note, I do see, to me, some major discrepancy in the size of the community college and the money that they get. So I am to assume that it has an awful lot to do with the type of courses that they offer. Would that be a fair assumption? [LB973]

SENATOR RAIKES: It does, Senator. And I'll also point out that you've got differences in cost per student served at community colleges that reflect the areas being served. For example, traditionally Southeast Community College, the one that serves Lincoln and, oh, I think they've got a campus at Milford and at Beatrice, they have a very low cost per student served compared to, say, Central Community College further west in the state. Part of the reason for that, part of it would be the type of coursework that's being offered. But there's also...there's a scale effect and there's the fact that you've got a concentration effect of the students. They're all very close. The campuses can be larger and that sort of thing so that's reflected in those differences too. [LB973]

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

Floor Debate  
March 06, 2008

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SENATOR PAHLS: Okay. And that leads me to believe then you don't really count the student. You count the coursework when you factor this in. I mean so you have 20,000 students, but you're really not concerned about the number of students. You're concerned about their coursework. [LB973]

SENATOR RAIKES: When...you're basically correct. When it comes to growth, when you're reflecting growth in the funding needs, I think we use straight FTEs for growth. But when we're counting the rest of the student body, if you will... [LB973]

PRESIDENT SHEEHY: One minute. [LB973]

SENATOR RAIKES: ...we use reimbursable education units which reflects the type of coursework being offered. [LB973]

SENATOR PAHLS: Okay. Then really, if I'm in charge of one of these community colleges, I want to see growth because I will get more money by more growth. Am I to assume that? [LB973]

SENATOR RAIKES: That's true. You'll get more money. You'll also incur more expense. [LB973]

SENATOR PAHLS: Yes, yes. Okay, thank you. [LB973]

SENATOR RAIKES: Yeah. [LB973]

SENATOR PAHLS: Thank you. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Stuthman. [LB973]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would like to engage in a little conversation with Senator Raikes. [LB973]

PRESIDENT SHEEHY: Senator Raikes, would you respond? [LB973]

SENATOR RAIKES: Yes. [LB973]

SENATOR STUTHMAN: Senator Raikes, as I distinctly remember last year and you mentioned it before that prior to last year you went with a one-year enrollment number, and we switched that last year to hopefully a better average of a three-year enrollment. Have we allowed that to work yet to figure out if that's going to work? Or since we've come back so quick already and are changing some of the percentages and dollars that different community colleges get, is this the reason that we have to come back because

Floor Debate  
March 06, 2008

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we're utilizing that factor of the three-year enrollment? Does that affect this? [LB973]

SENATOR RAIKES: Well, let me add this in the way of trying to answer your question. This formula is sort of a quick-acting formula in that we, for the current school year, say that begins in September, we're looking...we're using the student numbers and so on from that immediate past school year. So it has a very short time period during which it becomes implemented. In terms of making the adjustment for student growth, I think frankly, as I recall, this involved, if I'm not mistaken, Western Community College. And Western Community College had a situation where, as is not uncommon for community colleges for one reason or another, serving a student body that they serve, they had a drop from one year, a significant drop in student enrollment, but it was for only one year. And then they went back up the next year. Well, because you don't reduce funding proportionately when student enrollment drops, but you do increase it when it goes back up, that becomes problematic in terms of if you wanted to game it--and that is not what Western Community College was doing--but if you wanted to game the formula, you might figure out a way that student enrollment could drop sharply one year so that you would have a lower base from which to calculate student growth the next year. So this is simply a way to smooth, if you will, or provide a fair accounting of student growth so that the funding remains stable and fits the student numbers that you're actually dealing with. It isn't so much that it had to be implemented to address a problem that we needed to correct, but rather we could see looking forward that it would become a problem. And it was a type of correction that everybody agreed was an appropriate one. [LB973]

SENATOR STUTHMAN: Thank you, Senator Raikes. Also since we're coming back to the subject of the enrollment factor and figure, if we adopt this bill this year, will this take care of it for the next three years, four years so that we shouldn't have to revisit it again? Another concern that I have also is the fact that Central Community College, you know, is still going to be getting 1.7 percent less if this bill is enacted, where Metro College will be getting 12.5 percent more. Can you explain some of the reasoning behind that? Give me some of the factors as far as would it be enrollment, would it be valuation, or how is that calculated? [LB973]

SENATOR RAIKES: Okay. I'll try on both scores. Last year we adopted that measure knowing, I think, full well... [LB973]

PRESIDENT SHEEHY: One minute. [LB973]

SENATOR RAIKES: ...in fact, it was a part of our discussion that we would need to come back this year because we left certain things unspecified in what we did last year. It was starting, but not the complete package. With this bill, I'm not suggesting to you that nobody ought to even try any change if it's needed, but we're not proceeding on the basis that, well, we will need to come back next year because we're clearly leaving things undone. That's not the case. This is a completely specified formula. As to Central

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

Floor Debate  
March 06, 2008

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Community College versus Metro, there's a couple of things to consider. Number one, Central, for example, does experience, as you say, a 1.7 percent reduction in state aid. Now keep in mind that's state aid. That's not total resources available to the community college. And as in any equalization formula, you're concerned about the total resources made available. Central Community College certainly does have fewer students, and I don't remember the numbers, but less growth I think than the Metro Area Community College. Metro Area... [LB973]

PRESIDENT SHEEHY: Time, Senator. [LB973]

SENATOR STUTHMAN: Thank you. [LB973]

PRESIDENT SHEEHY: (Visitors introduced.) Senator Wightman, followed by Senator Louden, Senator Fulton, Senator Harms, and others. Senator Wightman. [LB973]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I just rise to inform you that I do support the amendment, as well as the bill. I had not spoken on the amendment yet. I think it does take care of some changes in the funding formula that are probably advantageous overall anyway. And so I do urge your support of both the amendment and the LB973. Thank you. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Louden. [LB973]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I've looked over this LB973, I will probably support it because it's probably been some of the better community college legislation that we've looked at here in the last four or five years. I do have some questions for Senator Raikes. I wondered if he would yield for questions, please. [LB973]

PRESIDENT SHEEHY: Senator Raikes, would you respond to questions? [LB973]

SENATOR RAIKES: Yes. [LB973]

SENATOR LOUDEN: Senator, as I look at the...I guess your distribution of the money from the state monies on your amendment, why, we still have Metro, you know, getting about \$22.8 million or about 26 percent of the total state monies that's going to be divided. Why do they get 26 percent of it or why do they get over a fourth of it? Is that because they have a fourth of the students? Or is that because of the expenditures or what? How is that figured for them to get that figure? [LB973]

SENATOR RAIKES: Senator, I got a chance to get started on this last...on the last comment but not to finish it. The driver on this equalization formula is the total resource available to the community college area. And the need for that area is based on all the

Floor Debate  
March 06, 2008

---

factors you mentioned. There's a certain base need that occurs just because they have a community college area. There's a need because of the number of students they served based on REUs. And then there...well, actually those are the two main ones. And you do have included in it a growth factor, so how many additional students are they going to serve and reflecting the cost of those additional students. [LB973]

SENATOR LOUDEN: Well, then while you're going at that, can you answer then why is their mill levy down, you know, at 6.75 cents when like Western is nearly 9 and, of course, Central and Mid-Plains and Northeast are all over 8? If that was the case then, shouldn't their mill levy or shouldn't there be more local taxes contributed rather than taking the state monies? [LB973]

SENATOR RAIKES: Senator, in terms of the operational funding which is dealt with in this bill, the levy authority for each community college area is between...the range is from 20 percent below the local effort rate to 20 percent above. So one of the big changes that occurred with this formula is that you'll recall before you had certain community college areas that had a very high levy for community college because of a low valuation and others that had a much lower rate because they had a very or relatively high valuation for students. This formula equalizes that so you don't have those kinds of variations. Now you may be asking, well, doesn't that mean that everybody across the state has to have exactly the same levy? Well, no, they don't. We allow that local flexibility just like we do for school districts. And also I would remind you that community college areas have an opportunity for, I think it's, up to a 1-cent capital levy which may also impact the differences you're talking about. [LB973]

SENATOR LOUDEN: Now at Metro then, when they receive some of this state money, do they use some of that to put into some type of a reserve fund or do they have a reserve fund that they also service with part of this... [LB973]

PRESIDENT SHEEHY: One minute. [LB973]

SENATOR LOUDEN: ...money that comes from the state? [LB973]

SENATOR RAIKES: You're talking about a General Fund Cash Reserve or when you say reserve fund I don't quite... [LB973]

SENATOR LOUDEN: Yeah, on Metro do they have a cash reserve or anything like that? [LB973]

SENATOR RAIKES: Well, I would think that the reserve policy of Metro probably would not generally be any different than any other areas, as far as I know. If I'm wrong, I'll try to present correct information for you, but I think that's the case. [LB973]

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

Floor Debate  
March 06, 2008

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SENATOR LOUDEN: Yeah. Well, I guess what brought my attention...was my attention was the fact that Metro has a \$48 billion valuation and yet they've got the lowest mill levy of the community colleges. And I'm wondering...I thought here as we put state monies into there the idea was to get them all a little bit closer to that 6-cent levy. And that's what I was wondering, why they and Southeast were the two lowest ones... [LB973]

PRESIDENT SHEEHY: Time, Senator. [LB973]

SENATOR LOUDEN: ...and they're the two highest. Thank you, Mr. President. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Fulton. [LB973]

SENATOR FULTON: Thank you, Mr. President. Seems to be static electricity in the air. Would Senator Raikes yield to a question? [LB973]

PRESIDENT SHEEHY: Senator Raikes, would you respond? [LB973]

SENATOR RAIKES: Yes. [LB973]

SENATOR FULTON: Senator, I won't be on this too long. I just want to get some clarifications for the record. Southeast Community College, the fiscal note that I have here, Revision 0...I assume that's...will this fiscal note be operative in the event that we do adopt AM1849? [LB973]

SENATOR RAIKES: Senator, I think that's true. And if I'm wrong, I'll correct. I'm not sure that this includes the committee amendment, which would change the stabilization factor. But I think your statement is correct. [LB973]

SENATOR FULTON: Okay. That's something that I'll keep an eye on that also as we move to Select File. Of course, my interest will be Southeast Community College, but also the policy with regard to all the community colleges. Could you give...you may have touched on this already. I know you have touched on it, but I don't know if you've touched on it by way of explicating what necessitated this. But in the amendment, page 1, line 15 where we move the maximum levy for each community college area from 115 percent to 120 percent, I didn't catch what was it that necessitated the move from 115 to 120. [LB973]

SENATOR RAIKES: Basically, Senator, we had some...one, I think in particular, community college area that did not have quite enough levy authority for their own community college area to serve what they considered to be their need. And again, I think it's clearly in the interest of state policy not to allow the levy to go on forever because it is an equalization formula and I think you need to cap it. On the other hand,

Floor Debate  
March 06, 2008

---

you also need to allow the community college area the flexibility to address whatever needs they have. We already were 20 percent below for a minimum, and this simply made it symmetric, if you will, 20 percent above. And it also served the needs, the short-term need of one particular community college area, and I can't remember exactly which one that was. If I find out, I'll tell you. [LB973]

SENATOR FULTON: Okay. That had been my next question. Is, by way of policy, and I probably won't get into the math of the bill here, but by way of policy in a certain amount of years...I assume what's driving this is that there's a proliferation in the cost for providing education in the community colleges which the maximum levy has not been able to meet. And so we come back and legitimately probably make an adjustment here in this amendment. What can we expect...we adopt this policy, what can we expect in five years? Is it reasonable to assume that we'll come back and revisit the symmetry, which now exists, and maybe expand that symmetry? [LB973]

SENATOR RAIKES: Senator, it's a good question. I don't think you can preclude that. But by the same token, compared to what we've done in the past on community college funding, I don't think you're guaranteed that that's going to happen. What we had in the past, and you may not remember this, was a formula that was somewhat equalized but not completely. So, for example, the operating levy in community college in western Nebraska was 11 or 12 cents, whereas in southeast and in some of the eastern or some other community college areas was much lower, maybe 5 or 6 cents. This equalizes. I mean the big change with this is to put everybody within that same range--20 percent below that local effort rate to... [LB973]

PRESIDENT SHEEHY: One minute. [LB973]

SENATOR RAIKES: ...20 percent above. It also puts the Appropriations Committee in the position that, in deciding what they want to do or what they want to recommend about community college funding, this is the amount of money, for example, whatever it might be, that will fit into state budget in terms of state funding of community colleges. If we do more than that, we can have lower property taxes. If we do less than that, we're going to have higher property taxes. And the impact of that decision is going to be fairly uniform across the state. [LB973]

SENATOR FULTON: Okay. That does answer my question. I think then...thank you, Senator Raikes. It's reasonable to say that this decision is more about policy than it is about funding, the policy by which we equalize the community colleges, which I believe I heard. So I do believe I'll support this amendment. Thank you, Mr. President. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Harms, followed by Senator Kruse, Senator Stuthman, and Senator Pahls. Senator Harms. [LB973]

Floor Debate  
March 06, 2008

---

SENATOR HARMS: Thank you, Mr. President, colleagues. A couple things maybe I can help you clear up. Senator Pahls, the question you asked in regard to the reimbursement units that we use, and actually this was really started by Senator Jerry Warner. In 1973 when they created the community college system, when it was found unconstitutional in 1973, we were put in the state system for a short period of time and then we worked out a funding formula. And Senator Warner is the one who really carved this out and directed it. And the reason that we have a weighting system like we have right now is because he was committed on the basis that a community college's number one priority is vocational technical education, training for business and industry. And on that basis, he decided that, along with the Legislature, that we would weight that. And we would maybe put a weight on it like 2.0 to force the community colleges to understand that that's what the intent of this Legislature is. And I will tell you the community colleges have not walked away from that. The heaviest weighted programs that we have are heavy vocational technical which could be welding and automotive mechanics, some technology, and then from there it goes down to business classes, nursing classes. And then the least weight is the academic transfer because...and it was designed for that on the simple fact is that we don't want you to become mini universities. And I'd have to tell you after all those years we aren't mini universities. We're a comprehensive community college balancing (inaudible). And that's really what the purpose behind that was. And for Senator Stuthman, the issue that we had in regard to and the question that he asked about the three-year averaging, the three-year averaging is really important. And let me tell you because I can give you a great example of what I experienced. At Western, and they're the ones who create some of the issues, they have a huge training program for business and industry. And before we report, a business could come to us, Senator Stuthman, and say, you know what? We'd like for you to do this training and I have 150 people. And all of a sudden we take on this 150 people before we report. And what happens to us is then we just shoot straight up. And here we already had agreed earlier this is what our FTEs, we anticipated they would be, nothing dishonest, but we had anticipated this is what it would be. And all of a sudden this company comes. And so we do the training and it shoots it up. And what happened to the other community college simply is that we were starting to take money away from them. And it was creating them hardships in their budget because they already had worked with their boards just like we had to develop our budgets. And so that's really what that's about. You average that thing out and you're not going to have this up-and-down issue. And quite frankly, it's a lot better for the community college system I think in general. This formula that we have here, to answer Senator Fulton's question about will we come back or will they--I shouldn't say we because I'm not there anymore--will they come back? I think the only time you'll see them come back, Senator Fulton, is they have to have some fine tuning. We used the present piece of legislation and funding for about 25 years or 29 years, whatever it was. And the only time we ever came back is just for minor tuning. What Senator Raikes and his staff have done, to me, is just unbelievable. We have a much better funding formula, a better formula that I think will equalize and present a better and a fairer opportunity for our taxpayers. And I can

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

Floor Debate  
March 06, 2008

---

tell you now I think the only time the community colleges will come back on this funding formula, if they have to fine tune it. And so I think that's really what that's about. So I don't think you'll see them in hopefully very often. And I thank you, Mr. President. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Harms. Speaker Flood, you're recognized for comments. [LB973]

SPEAKER FLOOD: Thank you, Mr. President. Members, one quick announcement regarding today's agenda: After we resolve LB973, as you'll note, the agenda would then take us back to LR4CA, followed by LB895. In the event that we get to LB895, it is the introducer's intent that we pass over that bill today. And we will...I'll be placing a Speaker's hold on LB895 at this time, and I will let you know when that's been lifted. So we would then proceed to LB721, just a note regarding the agenda. Thank you, Mr. President. [LB973]

PRESIDENT SHEEHY: Thank you, Speaker Flood. Senator Kruse. [LB973]

SENATOR KRUSE: Thank you, Mr. President and colleagues. Would Senator Raikes respond? [LB973]

PRESIDENT SHEEHY: Senator Raikes, would you respond? [LB973]

SENATOR RAIKES: Yes. [LB973]

SENATOR KRUSE: Senator Raikes, I'd like to follow up on Senator Pahls's questions about REUs. And I can't help resist asking, though Senator Harms isn't here to hear this, he just gave a very erudite explanation of the history of REUs. Why didn't you do something like that? [LB973]

SENATOR RAIKES: I don't do erudite, Senator. [LB973]

SENATOR KRUSE: (Laugh) He also brought in "St. Jerome," which kind of helps you pass anything you want to do around here, so just a word of advice. To be far more serious, I have been very interested in this, have followed it with intense interest and say thank you, thank you for the work that you and the committee but you and your staff in particular worked on this because community college is just critical factor in my district. In the REUs, it talks about tribal factor, tribally controlled back in the...not in the bill but in the REU section. How does a tribal factor come into REU? [LB973]

SENATOR RAIKES: There are, I think, three tribal colleges, I believe, that have been funded for a number of years through the community college funding formula. And I don't know that the REUs calculated for them are different in some way. I suspect that's

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

Floor Debate  
March 06, 2008

---

what it is, but I'd have to check on that to find out. [LB973]

SENATOR KRUSE: Well, it shows a factor of four for tribally controlled community college class II course, which is really getting up there to count so. [LB973]

SENATOR RAIKES: Yeah. And I think...I appreciate that piece of information because, you know, they are clearly weighted more heavily. There are not very many. I'm not sure what the student...total student enrollment is for those tribal colleges. But compared to, say, Metro or even the smaller community college areas, it is a very small number of students. [LB973]

SENATOR KRUSE: Thank you very much. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Stuthman. [LB973]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I'm not opposed to the amendment. I'm not opposed to the bill. The reason I got into the debate is I wanted some of the questions answered, and Senator Raikes has answered those questions for me. The other thing that I am considering and looking at is, is the changes, you know, in the '07-08 versus '08-09 on the fiscal note part of it where Central Community College would be getting about 1.5 percent less and Metro would get about 12 percent more. In my opinion, that relates to either a property tax increase or a property tax decrease. And in the conversation that Senator Louden had a few minutes ago was that Metro, their levy was I believe the lowest of all the community colleges, the six of them. And then by giving them another 11 percent, 11 or 12 percent additional state aid, that will go even lower in my opinion, unless I am wrong. But it would translate to lower, lower property tax assessment, and they're lowest on the list already. And I think Central Community College, I believe, I don't have the facts in front of me, but they were one of the higher ones and their tax is going to increase if there is the need for it, mainly because we're going to get about 1.5 percent less in the state aid according to this formula. Those are the questions that I have. And it's not that I don't support it, but I'm very interested to see, you know, how this is going to work out in years to come or are we going to have to retool it again next year? And I hope it don't continue to go in that same direction as to what I am seeing right now. So with that, thank you, Mr. Lieutenant Governor. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Pahls. [LB973]

SENATOR PAHLS: Lieutenant Governor, members of the body, I want to thank Senator Harms because he did explain to me...gave me an idea about the weight factor and the need of that. I do have a question for Senator Harms right now, please. [LB973]

PRESIDENT SHEEHY: Senator Harms, would you respond? [LB973]

Floor Debate  
March 06, 2008

---

SENATOR HARMS: Yes, I'd be pleased to. [LB973]

SENATOR PAHLS: Senator, earlier you gave a definition of or the purpose of the community colleges. Just...would you reiterate that, the mission, just so I grab that? [LB973]

SENATOR HARMS: Yes, I will. The purpose of the community college is just what it is. It's to serve its community and its region. And in law, its number one priority is vocational technical education. And from that then it goes to the liberal arts, it goes to community services, then it goes to business services. It provides the opportunity for people who live in a particular region or district to go to college. It is particularly sensitive to people who need English for a second language, people who need to have a new skill to go on and work for business and industry. It's a comprehensive offering. And to be honest with you, without the community college system in Nebraska, it's our only hope to regear and to reshift and to reeducate our work force. It's the only hope, it's the only college that does that. And without the community colleges, we could not keep abreast with what's changing in training for business and industry. So it's a comprehensive environment, and we pay a lot of attention to people who come to the institution, quite frankly, who academically are having some difficulties. We have a wonderful ABE program, GED program. We have a program for English for a second language. We have a program that's designed specifically to help people who have academic difficulties to find a skill and to be able to go to work. That's the beauty of a community college. It's one of the most exciting pieces of higher education in the state and the nation. And so I would just tell you we're really fortunate to have the kind of system we have. And I hope I answered that. [LB973]

SENATOR PAHLS: Yes, you did and I appreciate your passion. Thank you. And that's one thing I think we need to keep in mind when we take a look at the cost because I've heard from Senator Raikes that there are certain courses are going to cost more. So just do not look at the size of the school because they may be providing services that actually cost more than another school. So I think we need to keep that in mind. Another thing that I'd also like to find out maybe not...maybe we do not have the information on the floor here, but I would like to know how the university system works with the community colleges. Now I know at Metro in Omaha, they work very well with UNO. I'm curious what happens here in Lincoln. I'm curious what happens in the other parts of the state because I do think they need to have a strong relationship, which I'm sure in some parts of the state that does happen. The reason why, for those students to get that basic foundation I would say it would be financially a benefit to you to go to a community college because I've heard that from some of the pages here that have gone to the community college located in this area. It's much cheaper than the university system. So that part I do like, and I see that being a very, very important value to those people who need that additional help financially. Thank you. [LB973]

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

Floor Debate  
March 06, 2008

---

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Harms, this is your third time. [LB973]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Pahls, I would ask you...I would answer your question in regard to the relationship with the University of Nebraska. I'd go even further with that and go into the state college system as well. The relationship is really very good. We have an articulated agreement with the university and with the state colleges in regard to the transferability of our credits, and that no longer really is an issue. You'll hear sometimes that some credits won't transfer, but it's because students got a D or an F and those credits just don't go anywhere. So that's usually what the issue is. Every time I've ever had to go back and look at and answer a parent about their son or daughter's credit, I usually found out that most likely they got a D or an F and it just isn't going to go anywhere. But we have a very good relationship with higher education. Number one, we're a major feeder for the state colleges and a major feeder for the University of Nebraska. So that system works pretty well. Every now and then you will have some difficulties, but we always work those out. We never bring them to the Legislature. They was always worked out. We always found a solution to it. But we do have articulated agreements. We do sit down with those people and we look at exactly what we're teaching academically from English to English, to math to math, to whatever it might be. So we do have a good relationship. Thank you, Mr. President. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Harms. Further discussion on AM1849? Seeing none, Senator Raikes, you're recognized to close. [LB973]

SENATOR RAIKES: Thank you, Mr. President and members. I appreciate the discussion. I urge your support for the committee amendment. Thank you. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the closing. The question before the body is on the adoption of AM1849, the Education Committee amendment to LB973. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB973]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB973]

PRESIDENT SHEEHY: AM1849 is adopted. We will now return to discussion on advancement of LB973. No members wishing to speak, Senator Raikes, you're recognized to close. [LB973]

SENATOR RAIKES: Thank you, Mr. President, members. This is the bill as amended, makes the changes that we've talked about I think in a good and complete discussion,

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

Floor Debate  
March 06, 2008

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so I hope you will support it to advance from General File. Thank you. [LB973]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the closing. The question before the body is on the advancement of LB973. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB973]

ASSISTANT CLERK: 36 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB973]

PRESIDENT SHEEHY: LB973 does advance. Mr. Clerk, do you have items for the record? [LB973]

ASSISTANT CLERK: Mr. President, I do. Your Committee on Business and Labor reports LB948 to General File with amendments. New resolution, LR261 by Senator Fischer. That will be laid over. (Legislative Journal pages 830-831.) [LB948 LR261]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will return to floor discussion on the advancement of LR4CA. Senator Avery would like to give...Senator Avery. [LR4CA]

SENATOR AVERY: Thank you, Mr. President. Senator Chambers and I met over the lunch hour and we have decided not to oppose advancing this bill to Select File at this point. We will give more attention to it between now and when it comes up again on Select File if you decide to advance it. We do recognize that the amendment that we adopted before lunch was a substantial amendment and we need a little more time to contemplate all the implications of that. So at this point I intend to vote for it. And if Senator Chambers gets back to the floor, I think he will as well. Thank you. [LR4CA]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Kruse. [LR4CA]

SENATOR KRUSE: Mr. President and members, thank you. I also will be supporting advancing it. I cannot help but respond to some of the questions about man and law that we had earlier here and just remind us as a body that we probably don't respect law as much as we think we would. A few years ago the question came up about a member of this body and whether he should stay on the body because he hadn't lived on his district for six years. Some of you remember that--you were here. It is not only a violation of statute, it's a violation of the constitution. But the constitution, as already been noted in some of the debate, protects us. So the public can't be out there picking at us while we're doing our job. Therefore, the issue could be resolved only within the Legislature. And so a group of citizens protested to the Legislature and the Legislature, in Executive Committee, took it under advisement. And they said what, you know, we all need to be humbled by: They said he is one of us and we really can't move against him. So do understand that when we talk about law and man, as in mankind, we are saying it with a lot of human factor still on our side of it. Thank you. [LR4CA]

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

Floor Debate  
March 06, 2008

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PRESIDENT SHEEHY: Thank you, Senator Kruse. Additional discussion from the floor on advancement of LR4CA. Seeing none, Senator Avery, you're recognized to close. Senator Avery waives closing. The question before the body is, shall LR4CA advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LR4CA]

ASSISTANT CLERK: 27 ayes, 4 nays on the motion to advance the resolution, Mr. President. [LR4CA]

PRESIDENT SHEEHY: LR4CA advances. Next item under General File. [LR4CA]

ASSISTANT CLERK: Mr. President, LB721 was introduced by Senator Schimek. (Read title.) The bill was read for the first time on January 9 of this year, referred to the Government Committee. That committee reports the bill to General File with committee amendments. (AM2039, Legislative Journal page 706.) [LB721]

PRESIDENT SHEEHY: Senator Schimek, you are recognized to open on LB721. [LB721]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. This is the bill that I would refer to as the Capitol courtyards bill. And it would reinstate language regarding the completion of the landscaping of the courtyards within the Nebraska State Capitol Building. I would like to, for purposes of information, give you a little bit about the history of this topic because this really started in 1999 when LB297, reestablishing the Capitol Commission, was passed. And the duties of the commission as laid out by this bill included the establishment of policies and guidelines for the implementation of the Capitol landscape restoration master plan. And that plan called for at least 70 percent of the landscaping to be done by the time the masonry project would be completed. Then fast-forward to 2003. In that year, former Senator Chris Beutler introduced LB755 that created the Office of the Capitol Administrator. That bill was advanced to the floor by the Government, Military and Veterans Affairs Committee and controversy developed during the debate. Agreement was finally reached on LB755 and the bill was amended into another bill, LB439, which was Senator Hudkins' bill, which enabled the State Patrol to acquire Capitol Security responsibilities from DAS. LB439 was amended at the very end of that session in 2004. And we also, I believe, in that same bill amended in Senator Chambers' bill which provided for space usage of the Capitol and how the Legislature would have control of that. In the process of adopting that amendment, now remember, this was in the final days of the session, important language deleting the landscaping that was contained in LB721 was deleted. This may have been inadvertent. I don't recall that the issue was ever raised on the floor of the Legislature. And as you'll see in the handouts that you're getting in a letter from now Mayor Beutler, who was then senator, he didn't recall that the issue was ever raised on the floor. It was discovered last year in the debate on the budget bill, LB321, that language regarding the

Floor Debate  
March 06, 2008

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landscaping had been deleted. I was very surprised to say the least and decided to rectify the problem. This bill simply reinstates that language that was deleted so that it is clear what the legislative intent was when it comes to finishing of the Capitol masonry project. Last November I went to the Capitol Commission and briefed them on the issue. I found most of the commissioners to be receptive and sympathetic to the original legislative intent. Funding was one of the issues that came up at this meeting, and I explained there may be a few options. For example, the so-called 901 funds may be available for this project. My understanding at that time was that there was about a half a million dollars appropriated for the second year that had not been entirely allocated. The project could also be funded by private monies, which would take a fairly significant fund-raising campaign. I asked the commission to give it some consideration and I also told them that there was also the legislative route. LB721 is this legislation. And even though I think that there might be the opportunity to do fund-raising, I felt that introducing the bill was necessary. Now let me tell you this; that when the Capitol was financed, it was during the Depression. It started actually a little bit before the Depression began, but the final years of funding were in the beginning of the Depression in 1930, '31, even a little bit before that. In your packet in the letter...in the one with the letter from Senator Beutler on it, you have a copy of the landscape restoration master plan. And it gives you some background on this. We had a professionally trained landscape architect at that time, Ernst Herminghaus, who was commissioned by the Capitol Commission to develop the plan. And some of this plan...some of the planning was actually done, but what wasn't done, never was done, was the installation of the fountains for the courtyard. One of the things I should tell you about the landscaping plan for the Capitol is that the landscaping plan for the exterior of the Capitol was to be subdued. It wasn't supposed to be flashy or showy. It was to reflect the outside of the Capitol and allow the outside of the Capitol to shine so to speak. And it was to be of a nature that it would not obstruct the view of the Capitol. The landscaping plan, which you'll see on the third page of the handout, was for the interior. And it was supposed to be much like the inside of the Capitol. It was supposed to be beautiful. It was supposed to be colorful. It was supposed to be showy like the murals are in the Capitol. And you can see that the configuration is much as you see it today, but none of those plantings or few of those plantings are in there nor is the fountain in there. If you will look at the next page, you will see the landscape architecture's drawing for the courtyard fountain. And on the next page, you'll see an article from 1999 that tells about the bill that did pass at that time. Before I go any further, and I do want to go back a little bit into some of the research we've done on this issue, Mr. President, I believe there is a committee amendment, and that will change the nature of the bill somewhat. So I think I will stop for now and maybe we can take up the amendment. Thank you.  
[LB721 LB321]

PRESIDENT SHEEHY: Thank you, Senator Schimek. You have heard the opening to LB721. As noted, there is an amendment from the Government, Military and Veterans Affairs. Senator Aguilar, you're recognized to open on AM2039. [LB721]

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

Floor Debate  
March 06, 2008

---

SENATOR AGUILAR: Thank you, Mr. President and members. The committee amendment narrows the scope of the bill from the implementation of the Capitol landscape restoration master plan to the design and installation of the four courtyard fountains. With the committee amendment, the Office of the Nebraska Capitol Commission will secure services to design and install fountains within each of the four courtyards of the State Capitol. The fountains will be consistent with the recommendation contained in the Capitol landscape restoration master plan. Installation of the fountains will be completed not later than June 30, 2011. Thank you for your consideration of this bill, and I urge your support of the committee amendment and the underlying legislation. Thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Aguilar. You've heard the amendment from Government, Military and Veterans Affairs, AM2039. Members wishing to speak from the floor: Senator Wallman, Senator Fulton. Senator Wallman. [LB721]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Schimek yield? [LB721]

PRESIDENT SHEEHY: Senator Schimek, would you respond? [LB721]

SENATOR SCHIMEK: I would. [LB721]

SENATOR WALLMAN: Are you comfortable with this amendment? [LB721]

SENATOR SCHIMEK: Yes, I am. I do have my light on to say that, in fact, Senator Wallman. I think it will get us started on where we need to go and it will take some time to develop those fountains. So I think it's a reasonable approach. [LB721]

SENATOR WALLMAN: Thank you, Senator Schimek. I, too, am in favor of this. I think when you go to look at beautiful homes, large homes, number one, location; number two, landscape. If you have a terrible landscaping scheme, your house isn't worth as much money. It's plain and simple. And this Capitol was designed to be finished but it wasn't. And if you see these fountains and that, it's going to cost money. But I think volunteers, landscapers, we have to ask. This is one of the most beautiful buildings we have around the state. I think it is the most beautiful building. So it's a tourist attraction as long as a place where we work. And, you know, we left this building, as you can see on the walls, we didn't keep it up the way we should have. It takes money to keep up buildings, old or new. So I think we should finish the project the way it was designed by the original architect and really, really make a nice building, nice grounds. And I know it's going to cost money, but I think through the state there would be money available through volunteers, through civic groups. And thank you, Mr. President. Thank you, Senator Schimek. [LB721]

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

Floor Debate  
March 06, 2008

---

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Fulton. [LB721]

SENATOR FULTON: Thank you, Mr. President. Would Senator Schimek yield to a question? [LB721]

PRESIDENT SHEEHY: Senator Schimek, would you respond? [LB721]

SENATOR SCHIMEK: Yes, thank you. [LB721]

SENATOR FULTON: Senator, I have concern over the fiscal note. I'm curious, have you investigated where the funds could come from for this bill? I mean it shows on the fiscal note General Fund dollars, but is the potential there for..I guess have you investigated other funding sources? [LB721]

SENATOR SCHIMEK: Yes, I have to some extent, Senator Fulton. And I mentioned in my opening remarks that there is always the possibility of some kind of private-public fund-raising. And that's one of the reasons I went to the Capitol Commission. However, the A bill on this takes the money out of the State Building Fund, and it takes out \$123,000 in '08-09 and then about \$400-some thousand each of the next two years. So that by the time we're done with the masonry project, we will have those fountains installed. There is other...there are other kinds of landscaping details that need to be attended to, but they are not covered by this particular bill. And it's really to get us the most difficult part done so that we can follow later with the rest of it. [LB721]

SENATOR FULTON: Okay, thank you, Senator Schimek. I'll just...I'm not necessarily arguing for or against the amendment or the bill. I'm not saying it's not important. I think it is important. I just want to point out that any of the bills that we move forward from this point forward that have A bills attached to them I just hope that we all recognize that we're not going to be able to afford all of them. So it will be important that we prioritize which bills indeed we want to have funded with the budget. So as we make our deliberations on this bill particularly and other bills generally, I just hope members will bear in mind that hopefully we could tailor arguments or tailor questions such to encompass where this should fall with regard to our priorities overall within the budget. So I won't argue for or against the bill necessarily. I just want to point that out and we get that through the A bill, through the fiscal note on this bill and also other bills. So thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Schimek, followed by Senator Carlson and Senator Loudon. Senator Schimek. [LB721]

SENATOR SCHIMEK: Thank you, Mr. President. And thank you, Senator Fulton, for your questions. I know that and this is the time of the year when we all have to be very

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

Floor Debate  
March 06, 2008

---

cognizant of our responsibilities to the budget. However, I would like to tell you that the Capitol was built and paid for during the Depression. And some of the research that I've had done gives you some idea of what they actually did at that time. First of all, I want to go back to the handout. And I would say I am in favor of the amendment because I think that makes the bill doable this year. If you go to the page that says 1919 and you'll see that they have from the House Journal a report on the roll call vote on the actual first bill for the construction of the Capitol. And you will see that the vote in the House was 93 for, 2 against, and 3 people excused, and 3...or 2 people, I guess, absent and not voting. So you can see that there was overwhelming support for building a Capitol in 1919. Now the times were a little bit better then. But you go to the next page and you'll see that the Senate vote was equally as strong, 27 yeas and 2 nays, and that was still in 1919. Then...and I should actually thank the Legislative Research Division for getting this information for us. Bernie Scherr down there was very helpful. In 1925, you will look at again a House vote on more appropriations, and it was, I'm trying to see, it looks like 79 in favor and 20 against and 1 absent and not voting. And then you turn to the next page and you have 1925 the Senate vote, and the vote was, down at the bottom of the page, 28 in favor, 1 against, and 4 absent and not voting. I should also mention, just for your edification, that my great-grandfather was in the House in 1919 and voted in favor of the expenditure and he also voted in favor in 1925, I believe it was. And Senator Hansen's grandfather was in the House and voted in favor in, what was it, Senator Hansen, 1925 or maybe it was a little bit later? I should have highlighted those for myself. But anyway, I think we have great tradition here and we should carry on the tradition. The 1931 vote in the Depression era is the last thing I'd like to have you look at. And at that point, there were 86 members of the House that voted in favor of the expenditure and 6 members voting no. I don't know that there's anything...oh, and then in the Senate, yes, they also voted by an overwhelming vote to go ahead and expend the money. Now if you read this carefully, you'd notice that they were doing it all through property taxes... [LB721]

PRESIDENT SHEEHY: One minute. [LB721]

SENATOR SCHIMEK: ...at that time. And the total expenditure for the Capitol was, over the period of about eight years, was \$10,000 to construct this building, which became very, very famous. Did I say \$10,000? I didn't mean \$10,000, Senator Carlson. I meant \$10 million, a bargain--a bargain not at that time but at least it looks so in retrospect today. The other articles that Nick from my staff got for you I think are just several of the articles from state papers at the time. And if you take time to read these, you will see what a gem Nebraska has in its Capitol. It was at one time, and I think it's the last article in here... [LB721]

PRESIDENT SHEEHY: Time, Senator. [LB721]

SENATOR SCHIMEK: Time? [LB721]

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

Floor Debate  
March 06, 2008

---

PRESIDENT SHEEHY: Time. [LB721]

SENATOR SCHIMEK: Oh, I'm sorry. Thank you. [LB721]

PRESIDENT SHEEHY: Senator Carlson. [LB721]

SENATOR CARLSON: Mr. President and members of the Legislature, I stand in support of the amendment and LB721. And in listening to Senator Schimek, I did catch the \$10,000 instead of the \$10 million. And I think that we would all agree that this is a wonderful, wonderful building and one that we should take very, very much pride in. My wife Margo, she absolutely loves this building and likes to be here and take people through it and has a great deal of pride in our Capitol. To put a little perspective into what that cost would look like today, if we were here debating whether or not to build the Capitol today, if you put a 5 percent interest figure to \$10 million since 1932, we would be talking about over \$400 million. And if we had that kind of a decision to make today at 5 percent interest, that would be \$20 million a year of interest on this building. That amounts to \$12 a year for every person that lives in the state of Nebraska. And the A bill on this asks for about \$1 per person in Nebraska to take care of the project. And we want this place to continue to be one that we take great pride in. So I stand in support of the bill. Thank you. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Carlson. We have Senator Louden, followed by Senator Erdman, Senator Schimek, Senator Gay, and Senator Friend. Senator Louden. [LB721]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. I've looked over this bill and I would have some questions to ask Senator Schimek if she would yield, please. [LB721]

PRESIDENT SHEEHY: Senator Schimek, would you respond? [LB721]

SENATOR SCHIMEK: I will certainly try. [LB721]

SENATOR LOUDEN: Okay. Senator Schimek, here when you say the courtyards, now you mean these courtyards next to the buildings here, right? You don't mean that thing going down Centennial Mall (inaudible). [LB721]

SENATOR SCHIMEK: That is correct, the interior courtyards. [LB721]

SENATOR LOUDEN: Now when you talk about fountains, have you priced what fountains cost? I mean Alliance out there where they promote fountains, they were working on theirs and they spent way over \$300,000 on their fountain and they thought

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

Floor Debate  
March 06, 2008

---

they got a bargain. So when you're talking about four of them, I don't see in your A bill that you're going to be anywhere near close to having it done by 2011. [LB721]

SENATOR SCHIMEK: Well, that's a very good question, Senator Louden. And the first one was good. This is not about Centennial Mall. That's a whole nother problem. This is about the interior courtyards. But these figures actually are some that have been developed by the Capitol architect, Capitol administrator over the years. And I can tell you that they just keep growing, the figures keep growing. He took it back to 2006. At that time they would have cost totally about \$690,000. And if you do that 4.5 percent or, as Senator Carlson was talking about, 5 percent per year, it keeps adding up. And now it's up to about \$823,000 for the four fountains. [LB721]

SENATOR LOUDEN: Two hundred thousand dollars apiece,... [LB721]

SENATOR SCHIMEK: Yes. [LB721]

SENATOR LOUDEN: ...two hundred and some thousand dollars apiece. And that now when you talk about the fountains, you know, what size, because all of that material has to be brought in through the building and the Legislature, unless you drop it in over the top with a helicopter or something like that. And I don't know if Loran Schmit is that good of a helicopter driver or not. But nonetheless, I'm wondering if this isn't a little bit more of an extensive project than what we're really thinking it could possibly be. My second question is, in Nebraska do you really want fountains? Because I know some of the towns that have fountains, you know, we have such severe winters at times that they are a real maintenance problem to get them through the winter. And so I question if you've got all your railroad on the rails or not I guess. [LB721]

SENATOR SCHIMEK: Well, (laugh) probably a lot of people would say I personally don't have. But, yes, I think so because this is something that's been looked at for some time. In fact, it was 1999 when we first started talking about reviving this plan. And there have been some inquiries made by Bob Ripley. There are some foundries here in the United States that specialize in these kind of things. So he has a fairly good idea. [LB721]

SENATOR LOUDEN: Well, I see Bob Ripley testified in the neutral on this so his position was either way. But if you told him to do it, he guessed he would go ahead. Is that what his testimony was? [LB721]

SENATOR SCHIMEK: I think, Senator Louden, you're well aware that agency heads often come in, in a neutral capacity. [LB721]

SENATOR LOUDEN: I see. [LB721]

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

Floor Debate  
March 06, 2008

---

SENATOR SCHIMEK: Okay? [LB721]

SENATOR LOUDEN: And I'm wondering if in 1919 and in 1931 or wherever and clear back in 1999 if that wasn't probably what...the reason they're not built, because every time we think about it we find out that it's probably a rather large undertaking to do. I'll give you the rest of my time. [LB721]

SENATOR SCHIMEK: Well, thank you very much. And I do appreciate your questions. I'm...I was going to point out... [LB721]

PRESIDENT SHEEHY: One minute. [LB721]

SENATOR SCHIMEK: ...in one of the newspaper stories in here that they...in 1932 or '33, when they finally finished the Capitol, they still had some expenditures to make. And one of those expenditures would have been \$10,000 for these four fountains, (laugh) \$10,000. And the longer we put it off the more it's going to cost us in the long run. I think your question about, how do we get those fountains into the courtyard is a good one, and I'll investigate that. But I'm sure that's been thought about. But, you know, fountains would probably have to be covered in the wintertime here in Nebraska. We've had fountains in our yard here in Lincoln, and we've had them for a long time. We've since moved from that house. We didn't even cover our fountains and they did okay. [LB721]

SENATOR LOUDEN: Well, those in Centennial Mall haven't worked for a long time now. [LB721]

SENATOR SCHIMEK: They haven't, and so I think that we... [LB721]

PRESIDENT SHEEHY: Time, Senator. [LB721]

SENATOR SCHIMEK: Thank you. [LB721]

SENATOR LOUDEN: Thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Erdman. [LB721]

SENATOR ERDMAN: Mr. President, thank you. Senator Schimek, could you yield to a question, please? [LB721]

PRESIDENT SHEEHY: Senator Schimek, would you respond? [LB721]

SENATOR SCHIMEK: Yes. [LB721]

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

Floor Debate  
March 06, 2008

---

SENATOR ERDMAN: I apologize for catching you mid-drink there. But I have a question about the funding mechanism here. We're taking it out of the building fund, not General Fund as the fiscal note would previously have stated. The money, which is still approximately \$1 million, comes out of the Building Renewal Fund, not out of the General Fund, correct? [LB721]

SENATOR SCHIMEK: That would be the way this A bill is written, yes. [LB721]

SENATOR ERDMAN: And then based on the projects that are already in place for that fund, how does this fit in? Is there sufficient funds to do this or does it take the place of something else out of that fund? That money comes out of the cigarette tax and other sources, but how does this generally fit into those existing projects that are in place? [LB721]

SENATOR SCHIMEK: And that's a good question, and I don't know the answer to that, Senator Erdman. And I...the Fiscal staff is over here, and I will find out the answer for that. [LB721]

SENATOR ERDMAN: Okay, I appreciate that. [LB721]

SENATOR SCHIMEK: Thank you. [LB721]

SENATOR ERDMAN: Members, the...I think this is a novel idea. I think back to when we...when the state of Nebraska had to renovate the Governor's Mansion. I think that was a project that was privately funded. There was a fund-raising effort, people donated money and we did it. I would think that a similar effort may be able to be undertaken here. But I'm struck by what I thought was going to be Senator Gay's priority bill, at least that's why I voted for it out of committee, at least I was under that impression. Senator Gay brought a bill before the General Affairs Committee that made some pretty obvious observations about the State Library which is on the third floor of the State Capitol. We have documents and books that date back to the...before the state was formed, and even goes back to a time before the United States was a country, that these documents are being preserved, but the climate and the environment in which that's currently found is incompatible. And so Senator Gay brought a bill to create a task force to get the people that I think are supposed to be doing this job now to do some planning about how they would handle it. And what we were told was that project is in the works for the masonry project at the Capitol, but we need to do the building...the roof first before we can stop the water from running in, similar to what we're doing up here. If you remember when it rained the other day water was running in this ceiling here, in the Chamber. I'm interested in why we want to build exterior facilities when it's clear that if the money is available we should be trying to figure out how to make sure the house is in order before we go landscape the yard. And I'm not saying that this is a bad idea. I'm just simply bringing up the point that there are other needs at the Capitol than fountains. The

Floor Debate  
March 06, 2008

---

roofs leak, the climate is poor in certain areas, especially the State Library. And I'm interested, maybe between General File and Select, about maybe if Senator Gay and Senator Schimek and others that have that conversation, I know Senator Chambers has been a strong advocate for making improvements at the Capitol. We have projects in the works, this is a new project. And if there is extra money available to do fountains, I'm just going to be candid, I'm thinking that maybe that money should be better used on making sure that the roofs don't leak and that we go pursue those private partners to help us maybe do some of these other projects that I think would be fantastic but maybe aren't as essential as preserving the historical documents of the state of Nebraska from before its inception. Thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Schimek, followed by Senator Gay, Senator Friend, and Senator Kruse. Senator Schimek. [LB721]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. And, Senator Erdman, I did talk to Phil Hovis from Fiscal and he says that, essentially, these building funds are from the General Fund and you just transfer it over to the building fund. So, I guess, you could make the building fund as big as you want to. And I certainly don't disagree about the library needing renovation. In fact I told Senator Gay that I would sign onto that bill with him, if he was going to introduce it. They are precious documents. But the fountains are absolutely the last thing that we have never done on the original Capitol plan. When the building was completed, we stopped and we didn't do some of the murals out here in the hallways that are finished now and are so beautiful. We didn't do the murals up in the towers. We have since completed those and done them. I mean we could have said at the time, you know, we've got leaks in the building, we need to do these kinds of things, but...so we'll put off doing the murals. I think at some point (laugh) we really do need to confront this and do it. But I think that some of the...some of the expense of taking care of those documents will be completed with the masonry project. And, hopefully, you won't have some of the leaks taking place anymore. I would like to call your...I will go back and call your attention to the...to the cost to the taxpayers back in 1931, I think, is when they figured it. And they said that the taxes from 1919 to and including 1931, at \$3.50 per \$1,000 valuation for the entire time, would mean the payment of...following sums upon different valuations, and they go clear through the valuations. The most that they even hinted at here was if you had \$100,000 in valuation you would have to pay \$315. But the one thing I really wanted to mention to you is that this Capitol Building was recognized as one of the three most outstanding buildings in the United States in 1932. It's the next to the last article in your packet, and it says: the Nebraska State Capitol at Lincoln has been ranked by a jury of 50 prominent architects as third in the list of structures whose architectural design was felt to be most satisfactory and appealing. The Lincoln Memorial in Washington, D.C., was ranked first, and the Empire State Building in New York City received one more vote than the Nebraska Capitol. And if you go down to the bottom of that article, you'll see all the other buildings that were in competition. I don't think we know what we have here. Often

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

Floor Debate  
March 06, 2008

---

times we look at it and we see some of the damage from the moisture over the years, or we see some of the damage from the lighting that the TV...that the TV lights caused a few years back, and maybe it doesn't look quite as up to snuff as it should or as it will once we get the Capitol restoration done. But I don't know if everybody realizes how exquisite this building is. And I... [LB721]

PRESIDENT SHEEHY: One minute. [LB721]

SENATOR SCHIMEK: ...he'll probably kill me for saying so, but if you've never had a really good tour by Bob Ripley, of this State Capitol, you should because (laugh) it could take all day. The detail in this Capitol is phenomenal. And the more you're here, the more you see the detail. I was at the State Dinner...the Statehood Dinner, last Saturday night as some of the rest of you were, and sat in front of all those murals going down the north hallway, and had a chance to really sit there and look at them for a while. And they're magnificent. We have a fabulous Capitol and I think that we need to appreciate it, and we need to find the money to spend on it, if we need to. And I'm all for it. So thank you very much. Support the committee amendment. Thank you. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Schimek. Senator Gay. [LB721]

SENATOR GAY: Thank you, Mr. President. I'd just like to...I agree with Senator Schimek. As I was reading the...I'm reading a book right now about building a landmark, the Capitol. It is quite amazing, we all know that. The one thing...I appreciate Senator Erdman bringing up my bill. But anyways, the one thing I was looking at on the fiscal note on this was that grants were trying to be secured. And I know Senator Schimek has been working on this for some time. And I think it's a worthwhile project. But I would question maybe we should go out and explore a little more of grants, have those in hand and then maybe come back. When we look around Nebraska, there are many...last night some of you may have attended the community foundation event. And they talked about the generosity of Nebraskans, which I believe we see that all the time. But maybe there is a...maybe need to look a little more to see what's out there, who could we...who would like to participate, explain this. The Historical Society, they're always...seems like they never have enough money either. But maybe this is one of those things that we look into and say, well, is it...can we receive a grant, can we receive, you know, a gift from a Nebraskan? Because I'm sure we're not the only ones that appreciate this Capitol and all that goes with it. I would like to see, you know, some improvements. But I'm not so sure now...working all day on a project about...and all we talked about was money or lack of money, and here we are going to discuss this. And like I say, I don't know when the best time is on a lot of these things. You're all going to make a judgment there. But there's a certain point where I do agree with Senator Erdman, you know, what is the priority? Is this a top priority or where are we at? The bill I had was to study the library. And because right now some of these books are getting ruined and doing other things, and I don't mean to take away from what she's doing, but

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

Floor Debate  
March 06, 2008

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that was just a study to see what the cost was, and then explore opportunities, much like we're doing here for grants or private donations to help out with that cause. So, I guess, that's what I'm looking at. I do have a question for...if Senator Schimek would yield to a question or two. [LB721]

PRESIDENT SHEEHY: Senator Schimek, would you respond? [LB721]

SENATOR SCHIMEK: I'm sorry, I was having an off-the-mike conversation with the Chair of the Appropriations Committee. I'd be happy to answer whatever it might be. [LB721]

SENATOR GAY: Thank you, Senator. Senator Schimek, I know you worked and you love this Capitol. You've been working on this for a while. I saw your handout back in '99, even, it looks like you've been trying to do this. But on the fiscal note it says, and we're looking for grants. Where are we at in that process? Have we explored any grant opportunities or gifts from some Nebraskans? [LB721]

SENATOR SCHIMEK: No, we haven't. I just brought it up to the Capitol Commission as a possibility. And, I guess, I don't have a problem with trying to do it that way. After all, we did restore the Governor's Mansion that way. Diane Nelson lead that fund-raising effort. But, I guess, I...I guess this body would need to make a decision as to whether it thought this Capitol should be taken care of by the people of Nebraska as a whole or not. It is the people's Capitol. And you could make a very good argument that it really should come out of state funds, it's a state building and really maybe should. I don't have a particular bias one way or the other, Senator Gay. But I do think it needs to be done. And there are other things that need to be done, too. [LB721]

SENATOR GAY: And I know we were looking at the other...at the mall. And I can see where the city of Lincoln, you know, was looking at that. They were looking at private donations as well with help of the state, is the way I think I remember... [LB721]

PRESIDENT SHEEHY: One minute. [LB721]

SENATOR GAY: ...that bill. But I guess on this I'm just looking at, you know, where are we at, what's the priority of some of these issues? So I just wanted to bring that to the forefront. I think there would be people out there...another question, Senator, quickly. Right now can we get out to all four courtyards? Because I do see people in a few of them, but can we access those courtyards right now? [LB721]

SENATOR SCHIMEK: Yes, we can. I mean... [LB721]

SENATOR GAY: We can? All of them or... [LB721]

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

Floor Debate  
March 06, 2008

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SENATOR SCHIMEK: ...we have been able to in the past. I'm not absolutely sure, because of the masonry project right now, but, yes, they are very accessible. [LB721]

SENATOR GAY: Okay. Because I can see the...I couldn't see the use. I'm just trying to get in my mind, you know, where we're at in the whole thing; how much we've looked into options other than just, you know, tax funding on this. So thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Friend. [LB721]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I've already taken little ribs and jibes about if you look at the committee statement, I was one of the three. I mean there's eight people on that committee, and three of us voted not to advance this bill. To me...and I responded by saying, hey, you know, it's one of those situations where you pick your battles and say what's important, what's not. Is it important to discuss this? Look, I guess my thing is this building means a lot to everybody in here. We all know that. It means a lot to the people of this state, we all know that. But prioritization was important to me, you know, dealing with this during the committee. And simply put, I just didn't feel like this was the right priority at the right time. Talking about almost half a million dollars and some things don't require that much analysis. Look, we can...you can look at committee statements and some of them speak for themselves. A Judiciary Committee statement, depending on what's going on, tends to get a little bit complicated. You can't just see a bunch of votes and then come to some determinations, or at least make a good value judgment. You're staring at something that Ron Raikes and the Education Committee kicked out. If you think you're not going to have to go through TEEOSA and read and try to figure out where that money is going to go, and you can just look at the committee statement and try to follow a particular senator, you're probably mistaken. Even from Urban Affairs, if you get a strange natural gas measure, all natural gas measures are strange, but if you get a particularly strange one even that can become a bit problematic. So, I guess, all I'm saying is don't read much into this committee statement here. I don't necessarily have a problem, an inherent problem, with what Senator Schimek is trying to do here. But I will vote against it because I think it's prioritization, it's as simple as that. I'll vote against the bill because I just think what Senator Fulton...and maybe nobody else on the Appropriations Committee has spoken to it yet, but there's care that we have to show. And to me it's as simple as that. I don't want to submarine anything. I don't want to get...go in any deeper than this. I just think, to me, it's not really a...I don't think...I don't have enough gray matter to go around; I don't need to expend much more on this. I'm just a no vote, and make up your own minds on it. Thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Kruse, followed by Senator Schimek, Senator Stuthman, and Senator Hansen. Senator Kruse. [LB721]

Floor Debate  
March 06, 2008

---

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the bill, the amendment, and would respond to the question that Senator Erdman rose...brought up a few minutes ago, quite a while ago actually now, about whether or not this would impede the funding of the ongoing construction costs of the...of this structure. I would affirm with others that have said this is a beautiful structure. It is a very important thing to keep it into proper care. And I'm speaking from quite a few years on Appropriations where this decision is made and passed on, but basically that's where we discuss it. We've discussed it every year. We have never held back on the construction of and the reconstruction and the renovation of this building. In fact last year we voted more money to increase it and to make it go. We agreed with them. Do understand, we have an architect for the Capitol that...who's been referred to. But that person has that responsibility. And they...we had planned to renovate the east entrance next, and then they came to us and said, we need to renovate the west entrance next so that we can take care of the things that you've been talking about, so we can take care of this roof and the walls and the ceilings in our Chamber. So all of this is looked at, all of it is under careful consideration. And we who look at that funding, there's just never been a negative vote to this. Everybody says, this is what we've got to do, this is an important building. We stand for doing what is needful. And I assure you that we, and I would assume the future, will say we will do the funding that is needful to do what's being done here. This particular project is not in competition with it. Thank you. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Stuthman. [LB721]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I think we should take a lot of things into consideration about maintaining this building. This is my sixth year that I've been down here and we've discussed this many times. And I think that before we decide to put something outside, like some fountains or anything like that, looking at the walls there, they don't look any better today as they did six years ago when I came down here. Yes, this is a short session, but I think we will possibly be able to visualize the fountains this spring, or I guess I misspoke, maybe the tarps and the buckets for the water that comes in when you get the rain. It happens about every year. I think we should...I would like to see some progress done as far as maintaining what we have here. And I've heard comments saying, yes, we have money. Well, why don't we get some action? Why don't we have something done? I've been here six years, and I'm sure it's looked like that for many years before that. I would like to see something done there before we add something else that needs maintenance, continual maintenance as those fountains would do. Yes, it would look nice from the outside and driving on the street. But I would like to see this place look nice looking from inside out. Seeing what we have, the beautiful stone that we have, we need to preserve that. We need to...we need to spend money on that. And I think we should take action on that portion of it first. So I can't support the bill as it is right now. I would like to see something take place. I would love to see that taken care of in the next year or two. Thank you, Mr. Lieutenant Governor. [LB721]

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

Floor Debate  
March 06, 2008

---

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Hansen. [LB721]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Could I ask Senator Aguilar a question, please? [LB721]

PRESIDENT SHEEHY: Senator Aguilar, would you respond to a question? [LB721]

SENATOR AGUILAR: Yes, I'll try. [LB721]

SENATOR HANSEN: Do you have any idea what the balance is for the Capitol improvement fund, that the money would...for the courtyards would come out of this? Where they're at now? [LB721]

SENATOR AGUILAR: I don't have a clue. I don't know if Senator Schimek can answer that or not. [LB721]

SENATOR HANSEN: Okay. Senator Aguilar, I'll ask Senator Schimek, since she was here in 1919 and started this whole thing. (Laughter) [LB721]

PRESIDENT SHEEHY: Senator Schimek, would you respond? [LB721]

SENATOR HANSEN: Senator Schimek. [LB721]

SENATOR SCHIMEK: I'm probably too feeble to respond, Senator Hansen. [LB721]

SENATOR HANSEN: I apologize for that. Do you have any idea what the balance is in the Capitol improvement fund, the Capitol Restoration Fund? [LB721]

SENATOR SCHIMEK: No, but I think probably one of the members of the Appropriations Committee could answer that for you, Senator Hansen. [LB721]

SENATOR HANSEN: Okay. I think that we're going to...we need to find out what the balance is, what all these repairs in this Chamber alone would cost. And then... [LB721]

SENATOR SCHIMEK: Senator Hansen,... [LB721]

SENATOR HANSEN: Yes. [LB721]

SENATOR SCHIMEK: ...I can answer that part of it. [LB721]

SENATOR HANSEN: Okay. [LB721]

Floor Debate  
March 06, 2008

---

SENATOR SCHIMEK: I mean I don't know exactly what it's going to cost. But it is money that's already in the Capitol restoration project, and it's my understanding that they're going to start the work on that this summer. These, I think, are two separate issues. The money is in the Capitol restoration project; I mean, it's been allocated already. And I think Senator Kruse had his light on to talk a little bit about that. But this is going to happen this summer, I think as soon as we all clear out of here. [LB721]

SENATOR HANSEN: Great. That's good news. I know the offices are bad, too, because the paint is peeling and they're waiting for the roof project to finish on that. I have an outside office. It's a little bit embarrassing to have constituents come in, sit at my desk, and offer them a cup of coffee, and then we have to a piece of paper over the coffee so the paint doesn't come down off the ceiling. So I think there's a lot of things we need to look at. But I think that we need to look into a private-public cooperation, some type of fund-raiser that goes on. I think the amendment ties us down to 2011, and I think that's too short a period, until we find out what the balance is in this fund and how long this is going to take. In this Chamber we pass bills. And certainly the greatest bill we've ever had in the state is Buffalo Bill. And I've talked to Senator Schimek off the mike, and I think that you know when you talk about public and private, we can get some private funds probably, you know, out there in Lincoln County. And I see Buffalo Bill in one of these fountains, his hat lowered, his gun up in the air, and water coming out. That's in the summer time. And then in the fall...in the winter we can turn it into a fire pit. Thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Kruse. [LB721]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I'd like to respond to Senator Stuthman's question and actually Senator Hansen's and others in terms of the funding for the present that's going on. In terms of Senator Stuthman, he's tired of looking at these walls. Well, they take on a little bit of character after a while. (Laugh) But to look at it directly, this is part of the project, this is to be taken care of, the west entrance had to be taken care of first, then the roof. This is to be taken care of this summer. It's been on schedule for a long time and it will be done. And everything will be taken care of as long as we stay out of here for a few months. There is that little proviso, we have to leave the room available for that kind of work. Now as to the funding, I pause because I want to get everybody's attention on this. All of the Capitol restoration work, all that's left is provided for, is funded. Now the funding comes through our General Fund and general budget. But there...we...that's kind of what we moved up last year, we moved up the schedule on it. But at all times we have projected out over the next few years what it will be. There is nothing left over. Everything is taken care of. Beginning...not beginning, but continuing with this, this summer, continuing with the east entrance, which is the entrance that's left to do with, and continuing with a lot of things that you really can't see, understanding that we've done all that work on the tower, but all of this has been appropriated and is cared for. So the present project that we're

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

Floor Debate  
March 06, 2008

---

looking at is not in competition with the funding for the stone work and the cleanup.  
Thank you. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Are there additional members wishing to speak on AM2039? Seeing none, Senator Aguilar, you're recognized to close on your committee amendment. Senator Aguilar waives closing. The question before the body is, shall AM2039 be adopted to LB721? All those in favor vote yea; opposed, nay. Senator Aguilar. [LB721]

SENATOR AGUILAR: I'd request a call of the house. [LB721]

PRESIDENT SHEEHY: There has been 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. [LB721]

ASSISTANT CLERK: 30 ayes, 0 nays to go under call, Mr. President. [LB721]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Chamber. All unauthorized personnel please leave step from the floor. The house is under call. Senators, please record your presence. Senator Janssen, Senator Pankonin, the house is under call. Senator Aguilar, all members are present or accounted for. The question is on the adoption of AM2039 to LB721. Senator Aguilar has requested a roll call. Mr. Clerk. [LB721]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 831-832.) The vote is 25 ayes, 12 nays, Mr. President, on adoption of the committee amendments. [LB721]

PRESIDENT SHEEHY: AM2039 is adopted. The call is raised. We will return to floor discussion on the motion for the advancement of LB721. Senator Wallman, followed by Senator Kruse, and Senator Flood. Senator Wallman. [LB721]

SENATOR WALLMAN: Thank you, Mr. President. Members of the body, I think this is a very important issue for our state and to show that we care about our Capitol, care about architecture, what was started long time ago. It's a beautiful thing if you see what it is. And we all know now the fountains are in. And you look at the teachers' fountains on 27th Street, you look at the Ridge, you look at some golf courses, and it just enhances the property. And I think this is a wonderful tourist attraction the way it is, but it could be much better, just add little things. You know the Elephant Hall, I think we do not promote our state near enough. This building, Elephant Hall, university things, tourism, if we're truly serious about tourism let's finish the project and find a way somehow to fund it. I think there are volunteers out there who are willing to help us and we have to ask. You don't get anything without asking. Even the Bible says, ask and

Floor Debate  
March 06, 2008

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you will receive, or knock and the door will be opened. So let's open the door to people to improve our state, improve our Capitol and finish it off. Thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Kruse. [LB721]

SENATOR KRUSE: Thank you, Mr. President and colleagues. As I reflect on what I hear being said around and looked at, it occurs to me I should say a bit more about the construction project on this building, not speaking really to the thing before us, though again I would affirm that this project is not in competition with the construction project. But I realize as I sit here and reflect that this is an item which we wrestle with long and hard sometimes in the committee, but it's not really reported out to the floor. You need to understand that this is a long-term contract. The entire project is contracted out with the same firm for several years to come. It started out with this firm, while on a shorter contract, while those who review and analyze and evaluate, evaluated the job they were doing. They found that they were doing a good job, they report to us an excellent job. We have a very fine contractor that has served us well, has saved us money, has found places that needed to be done as they were working at it. There are add-ons, especially in the tower. There is a lot of work that we did not know about until we got into the tower and saw what was happening to some of the steel work within that. They took care of this, they were fair with us. And so recently we contracted with them for the rest of the construction, all of the rest of the construction. It is fully appropriated, it is committed, it is within the contract to them. Last year they offered us a reduction in this amount if we would shorten the time line. So we took the reduction, we shortened the time line. Again, it's very important to a firm like this that they know what their work is going to be for the next several years; we have helped them to do that. Again, the construction project, anything that you're looking at around the building, any of the cleanup, any of the follow-through, anything on this room is a part of that contract. They have done a good job. It is funded and it is planned for within that contract. We are in good hands in terms of the construction project. Thank you. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Flood. [LB721]

SPEAKER FLOOD: Members, Mr. President, I wanted to rise and make a comment on the record, and this has to do with the Legislature as an institution and I think it's important and fair to Senator Schimek that we talk about this. The restoration project...and as a member of the Capitol Commission, as Speaker I serve on that Capitol Commission. The restoration project for this Legislative Chamber is set to take place following adjournment in April. Something that I've been working with our Clerk and others, including our Assistant Clerk, on is the possibility of us dealing with a special session, in light of the issue surrounding the death penalty, in light of the fact that the U.S. Supreme Court currently has under consideration a case that deals directly with the issue of lethal injection. And I'm not advocating one way or the other on this

Floor Debate  
March 06, 2008

---

important issue right now. I am simply saying if a special session was to be called by the Governor, I am concerned that we would have scaffolding up in this room and we would be forced into the Warner Chamber of the Capitol. Now that isn't entirely bad in that it is a, you know, it is a Legislative Chamber in this building. However, if we are to go into a special session, and I'm not saying there's been any affirmative discussion as to whether or not that will be called, I think we find ourselves in a different Chamber of this building that does not have the microphones, does not have the voting system, does not have the queue system. And when you start talking about the death penalty in any regard, lethal injection or any issue related to that, we have to create a very good record to signal to the court what the intention of the Legislature is with regard to any matter that's considered. And earlier, a few minutes ago I heard, I believe it was, Senator Hansen and Senator Schimek discuss the issue of the monies available for the restoration project. The answer that Senator Schimek gave was the correct answer in that it is planned to start as soon as we adjourn in April. I just think it's important that we know, as a Legislature, that I am right now working with our Clerk and others to make a decision as to whether or not we will proceed with the restoration at the conclusion of this session. I do not want to handcuff the Legislature in such a way that we do not have all of our technology, in the event that we discuss an issue as important to the state and in terms of policy as the death penalty. I'm not saying this to alarm anybody. I'm certainly not wanting to send a message that there's going to be a special session, but I want you to know that's something that we're working with. And I have a memo that has been prepared that looks at some of the costs related to operating in a different Chamber and what could be set up. There are significant financial considerations in addition to, I believe, just the real interest that we should have as legislators in making a quality record. So I raise this issue so that it's on the table. I didn't intend to do it today, but when I heard the discussion about the restoration I thought that I owed a duty to all the members of the Legislature to share with you some of the considerations that are currently in play given the prospect of a special session. If you have any questions you can certainly come up, I'd be happy to answer them. Thank you, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Speaker Flood. Further discussion on the motion to advance LB721? Senator Schimek. [LB721]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. If I might, I'd like to ask the Speaker a question or two. [LB721]

PRESIDENT SHEEHY: Senator Flood, would you respond? [LB721]

SPEAKER FLOOD: Yes. [LB721]

SENATOR SCHIMEK: Thank you, Senator Flood, for the explanation. I don't think any of us were thinking along those lines at all. And I sincerely hope that doesn't happen because I do think that will put us back monetarily. It will eventually end up costing us

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

Floor Debate  
March 06, 2008

---

more money if we have to put it off for a year. But let me ask you this. That money has already been appropriated. Would it be appropriate or would it even be possible, in your opinion, if that does come to pass, that some of that money then could be used for fountains? Or is there...is there any kind of a mix that can be done with that money? And maybe you're not the right person to ask. [LB721]

SPEAKER FLOOD: I would...I would decline to answer that because I don't have the answer. I think Senator Heidemann or a member of the Appropriations Committee would be better suited to answer that question. [LB721]

SENATOR SCHIMEK: All right, I thank you. Mr. President, if I might, I think Senator Heidemann is talking to Fiscal staff right now, but I would like to ask him that question as well. [LB721]

PRESIDENT SHEEHY: Senator Heidemann, would you respond? [LB721]

SENATOR HEIDEMANN: Was there...yes, yes. [LB721]

SENATOR SCHIMEK: Yes. Senator Heidemann, I just asked Senator Flood if this were to come to pass that we couldn't have the restoration going on in here this summer, does any of that money then become available for any other purpose, or is that dedicated to the Capitol masonry project? [LB721]

SENATOR HEIDEMANN: It would be dedicated to what's already stated. You would have...there would have to be some kind of an amendment, the way I understand it, to change what is put forth before us now. And if you take that money away, then if you ever got to this project, then we would have to come up with some more to finish this at that time. [LB721]

SENATOR SCHIMEK: And that's what I thought your answer would be. But would you agree that if we do not...if we are not able to get in here this summer and continue this renovation, that eventually it's going to end up costing us more money? [LB721]

SENATOR HEIDEMANN: Any time you delay something, a lot of times it costs more money. It's not a certainty, but it's a possibility. [LB721]

SENATOR SCHIMEK: Well, and that's kind of the assumption we were going on regarding the fountains, that there would be like a 4.5 percent inflation rate every year, so it ends up costing more money. Well, that's all I needed to know. [LB721]

SENATOR HEIDEMANN: That's an argument. [LB721]

SENATOR SCHIMEK: Thank you very much. Mr. President and members, I appreciate

Floor Debate  
March 06, 2008

---

all of the discussion on this issue. And I think this has thrown another element into it. I would very much like to keep this bill alive. And I appreciate all the concerns over monetary parts of the bill. But as with every other bill that has an A bill attached to it, what we would do, if we advance this bill to Final Reading, is let it lie until we've had a chance to advance the budget and talk about the budget. And then all those bills would be considered. So, you know, you do as you want. But I think that if we don't do it now the cost just continues to go up. And this is the last piece of the puzzle, the last part of the Capitol construction project. It's been waiting 70 years... [LB721]

PRESIDENT SHEEHY: One minute. [LB721]

SENATOR SCHIMEK: ...to be completed. And I think we're the Hundredth Legislature, we ought to see that the Capitol gets finished, that we have...that we have the will to go ahead and do that expenditure. I don't come to this Legislature with money bills very often. Any of you who have been here for a while know that. But I think this is a good expenditure of money and one that the people of Nebraska would approve. With that, Mr. President, thank you very much. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Schimek. Are there additional members wishing to speak on the motion? Senator Schimek. Senator Schimek waives. Other members wishing to...on the advancement of LB721? Seeing none, Senator Schimek, you're recognized to close. [LB721]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I very much appreciate...appreciate your attention and your consideration, your thoughtful consideration of this matter. I think that it's a project that would add a lovely touch to the building when it's finished. I have been at receptions in the courtyard in the springtime, they're just...they're fantastic. I think the courtyards would get a lot more use if they were completed. And certainly the fountains are a big element of that. I would like to offer to you a quote from John Ruskin that I've heard the Capitol administrator repeat when he gives talks about the Capitol. And it says, and I quote: "When we build, let us think that we will build forever. Let it not be for present delight, nor for present use alone, let it be such work as our descendants will thank us for, and let us think as we lay stone on stone that a time is to come when these stones will be held sacred because our hands have touched them, and that men will say as they look upon the labor and wrought substance of them, 'See, this our fathers did for us.'" John Ruskin. I don't think there's anything nicer we could do as the hundredth legislative body than try to complete this last piece of the puzzle. Anything that's worth doing is probably going to cost money. And as you could see from the handout regarding the estimated cost, this will just go up \$30,000, \$40,000 a year from now on. If we had completed it back in 1933, it would have cost us about \$10,000. So I think it...it's penny-wise and pound-foolish not to do something now at the same time that we're completing the restoration. I thank you very much for your attention and I would simply ask for the

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

Floor Debate  
March 06, 2008

---

advancement of LB721 to Select File. Thank you. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Schimek. You have heard the closing. The question before the body is, shall LB721...Senator Schimek. [LB721]

SENATOR SCHIMEK: Yes, I think we better have a call of the house, Mr. President. [LB721]

PRESIDENT SHEEHY: Thank you, Senator Schimek. There has been 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. [LB721]

ASSISTANT CLERK: 28 ayes, 1 nay to go under call, Mr. President. [LB721]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Johnson, the house is under call. Senator Schimek, once all senators are present, how would you like to proceed? [LB721]

SENATOR SCHIMEK: Machine vote. [LB721]

PRESIDENT SHEEHY: Senator Schimek, all members are present. The question before the body is on the advancement of LB721. Senator Schimek has requested a machine vote. All those in favor vote yea; opposed, nay. Have all voted who wish? Senator Schimek. [LB721]

SENATOR SCHIMEK: Yes, Mr. President. I would like to request a roll call vote. [LB721]

PRESIDENT SHEEHY: We do have a request for a roll call vote. Mr. Clerk. [LB721]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 832.) 23 ayes, 14 nays, Mr. President, on the motion to advance. [LB721]

PRESIDENT SHEEHY: The motion to advance fails. The call is raised. Mr. Clerk, we'll move to next item under General File, LB1055. Mr. Clerk, do you have items for the record? [LB721]

ASSISTANT CLERK: Mr. President, I do. Amendment to be printed to LB1014 from Senator McGill; and from Senator Rogert to LB884. New resolutions: LR262 by Senator Dierks and LR263 by Senator Rogert. (Legislative Journal pages 833-836.) [LB1014 LB884 LR262 LR263]

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

Floor Debate  
March 06, 2008

---

Next bill, Mr. President, LB1055, which is legislation introduced by Senator McDonald. (Read title.) The bill was read for the first time on January 18 of this year, referred to the Judiciary Committee, which reported the bill to General File with committee amendments attached. (AM1876, Legislative Journal page 622.) [LB1055]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator McDonald, you're recognized to open on LB1055. [LB1055]

SENATOR McDONALD: Mr. Lieutenant Governor and members, I have a very short opening. LB1055 amends Nebraska's dangerous dog laws to tighten up definitions used in the statutes to add new requirements when a dog has been declared dangerous and to stiffen penalties for dog owners who violate the law. The content of this bill are the result of an interim study and hearings held by the Judiciary Committee last September. The bill's provisions include: mandatory sterilization and "microchipping" of dangerous dogs; a prohibition on moving dogs from one county to another, city or village, except for reasonable veterinary purposes; specific confinement requirements for pen construction, location and signage. All counties will be required to designate an animal control authority. In addition, the Judiciary Committee amendment and my amendment make several changes to the bill that have my support. I will save the rest of my comments for the amendments and the bill itself. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator McDonald. You have heard the opening to LB1055. As noted, there are committee amendments. Senator Ashford, you're recognized to open on Judiciary Committee amendment, AM1876. [LB1055]

SENATOR ASHFORD: Thank you, Mr. President. AM1876 makes the following changes to the bill. It adds Section 54-607 to Section 1 of the bill, which provides that the owner of any dog running at large for ten days without a collar shall be fined an amount not to exceed \$25. This change in fine amounts brings the level of the fine in this section back to the amount currently in statute. The amendment also amends Section 54-608 by exempting counties of less than 80,000 population from that portion of the law dealing with dogs unleashed, running without a leash. This section was changed to exclude counties with fewer than 80,000 residents because it was believed by...that applying the bill statewide would make it hard to enforce in the rural areas. I think that's somewhat self-explanatory. The amendments also amend Section 5 to make clear that a county adopting regulations in accordance with this subsection shall provide for an appeals process with respect to the regulations. And finally, there's an amendment to Section 9 of the bill to provide that the cost of a...that the cost involved in the spaying or neutering of a dangerous dog and the implanting of a microchip, as provided for in the act, will be done at the cost of the owner of the dangerous dog. So that cost would be borne by the owners. I believe that takes care of most of the amendments and I would...or of the amendment, and I would move their adoption.

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

Floor Debate  
March 06, 2008

---

Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the Judiciary Committee amendment, AM1876. Mr. Clerk, you have an amendment to the committee amendment. [LB1055]

ASSISTANT CLERK: Mr. President, Senator McDonald would move to amend the committee amendments with AM2099. (Legislative Journal page 801.) [LB1055]

PRESIDENT SHEEHY: Senator McDonald, you're recognized to open on AM2099. [LB1055]

SENATOR McDONALD: Mr. Lieutenant Governor and members, AM2099 to the committee amendment addresses concerns raised by the city of Lincoln at the committee hearing. The amendment does two things. It adds a requirement that a dog owner found guilty of violating 54-601 or 54-608 will be responsible for the reasonable costs incurred for a court-ordered disposition of a dog. The bill itself establishes a process by which a dangerous dog may, with permission from both animal control authorities, be moved from one location to another if the dog owner is permanently relocating. The process requires the dog owner to work with the animal control authority at both the old location and the new location. The amendment clarifies that the dog owner must deal with the animal control authority in the county, city, and village where they currently reside, and the animal control authority in the county, city, and village where they want to move the dog. If either jurisdiction says no, the dog cannot be moved. The city of Lincoln has indicated in writing that this amendment resolves their concerns about LB1055. I urge you adopt this amendment. Thank you. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator McDonald. You have heard the opening of the amendment to committee amendment, AM2099. Are there members wishing to discuss this item? Seeing none, Senator McDonald, you're recognized to close. Senator McDonald waives closing. The question before the body is on the adoption of AM2099, amendment to committee amendment. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1055]

ASSISTANT CLERK: 29 ayes, 0 nays on the adoption of the amendment to the committee amendments, Mr. President. [LB1055]

PRESIDENT SHEEHY: The amendment to committee amendment, AM2099, is adopted. Are there members wishing to speak on the Judiciary Committee amendment, AM1876? Senator McDonald. [LB1055]

SENATOR McDONALD: Yes, Mr. Lieutenant Governor, I rise to support the Judiciary Committee amendment to LB1055. In its original form, LB1055 makes it unlawful for a

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

Floor Debate  
March 06, 2008

---

dog to run at large. This provision is unenforceable in rural areas and many farmers and ranchers don't confine their dogs and don't recognize property lines. I, as a rural member, could not support this amendment...or this part of the bill myself because I understand how it is, how important it is as we rural people allow our dogs to have the freedom to run on our property, as well as many other people that move to the county and move to the county for that reason, to allow their dogs to be able to have a little more freedom. So this part of the committee amendment I certainly do support, removing that. The Judiciary Committee amendment does several things. It removes the statewide running-at-large prohibition because it's unenforceable in rural Nebraska. It allows counties to regulate dogs running at large if they choose to. It gives animal control authorities some discretion over whether to file a complaint in county court. It adds a requirement for an appeals process to be included when counties adopt regulations governing dangerous dogs. It clarifies that the dog owner is responsible for the cost of the mandatory spay/neutering and "microchipping." The Judiciary Committee amendment is supported by the groups that I worked very, very hard on this bill with and I encourage your adoption of this committee amendment. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator McDonald. Senator Nelson. [LB1055]

SENATOR NELSON: Thank you, Mr. President. Would Senator McDonald yield to a question or two? [LB1055]

PRESIDENT SHEEHY: Senator McDonald, would you respond? [LB1055]

SENATOR McDONALD: Yes, I will. [LB1055]

SENATOR NELSON: Thank you, Senator McDonald. I'm looking at the committee amendments. The second one there says in counties having a population of 80,000 or more inhabitants and cities of the first class contained in such counties. If we're at 80,000, what counties are going to be affected by this here in... [LB1055]

SENATOR McDONALD: That have over 80,000? [LB1055]

SENATOR NELSON: Yes, have over 80,000? Do you know? [LB1055]

SENATOR McDONALD: Would be probably Sarpy, Douglas, I don't know, Lancaster maybe. [LB1055]

SENATOR NELSON: Okay. And by adding in the first-class cities, does that add to the 80,000 or is that included within the 80,000? [LB1055]

SENATOR McDONALD: It's already in the statutes. We're not changing that. [LB1055]

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

Floor Debate  
March 06, 2008

---

SENATOR NELSON: Oh. All right. All right. Thank you very much. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Additional members wishing to speak on AM1876? Seeing none, Senator Ashford, you're recognized to close. [LB1055]

SENATOR ASHFORD: Thank you, Mr. President. I would just want to commend Senator McDonald and her staff. She's worked very hard on this bill. We had an interim study and I know she cares very deeply about the issue, and it is an important issue. And with that, I would urge the adoption of the amendment and advancement of the bill. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing. The question before the body is on the adoption of AM1876 to LB1055. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1055]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of committee amendments. [LB1055]

PRESIDENT SHEEHY: AM1876 is adopted. We'll return for discussion on the advancement of LB1055. Senator Kopplin. [LB1055]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. May I speak with Senator McDonald, please? [LB1055]

PRESIDENT SHEEHY: Senator McDonald, would you respond? [LB1055]

SENATOR McDONALD: Yes, I may...yes, I will. (Laughter) [LB1055]

SENATOR KOPPLIN: Well, I need just a little clarification in my own mind of the description of a dangerous dog: A dangerous dog means any dog that, according to the records of animal control authority, has done any of these things. In other words, first offense doesn't count, right? [LB1055]

SENATOR McDONALD: What? [LB1055]

SENATOR KOPPLIN: The first offense doesn't count because he doesn't have a record. Is that correct? [LB1055]

SENATOR McDONALD: That's correct. [LB1055]

SENATOR KOPPLIN: Okay. Then we...you've taken the word "severe" out and it just

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

Floor Debate  
March 06, 2008

---

simply says "inflicted injury on a human being." I guess what concerns me a little, it isn't a big concern, but it does talk about tormenting dogs and so on later on, but sometimes children do tease dogs, they get a little nip because of it. That's an injury. Is that dog then considered a dangerous animal? [LB1055]

SENATOR McDONALD: Not unless a complaint is filed. [LB1055]

SENATOR KOPPLIN: Well, knowing some of the people that I do, a complaint would be filed, even though that young man was pulling its tail or whatever. [LB1055]

SENATOR McDONALD: It...one time is not going to create that. It's going to have to be a pattern. [LB1055]

SENATOR KOPPLIN: Okay. I'm just concerned that that...is that really clear enough what an injury is. That's just in my own mind. That's something I'm thinking about, and probably doesn't bother anybody else, but it did bother mine. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Senator McDonald. [LB1055]

SENATOR McDONALD: Yes, Mr. President and members of the body, LB1055 amends Nebraska's dangerous dog laws. This is a direct result of the committee's amendment. Let me tell you why I brought this bill. It's very much a concern of mine. It's a family concern of mine. And living in rural Nebraska, we think there are no issues out there. As a farm girl, many of the times when there were dogs that were running all over the place, you know, killing animals and whatever, farmers took care of them. But as we have had a change in population, a lot of acreages, a lot of rentals of our farmsteads, we have more people living in the country and not taking very good care of those animals. And so this was in direct relation to what happened to my daughter. They live in the country. A dog next door came in one day, killed all their cats; two days later slaughtered their puppy in their garage, and when my three- and five-year-old granddaughter came home, saw all this. The dog has...is still there. It's not been removed because we have nobody in their county that's a dog authority that takes care of those issues. And so this was brought to my attention and know that it's happened. Since I brought this bill to an attention to the media, I've had various other phone calls and e-mails saying that they've had the same situation. So what we're trying to do is remedy that. And I worked with the Humane Society, city of Lincoln, NACO county officials. That's why we have a couple of amendments because, in order to make sure that everybody agreed on this, I work with everybody. I rarely bring a bill to the floor that hasn't been worked out behind the scenes. We did an interim study and worked very, very hard to bring the city of Lincoln on board and various other departments. So this is the amended version. This has worked for everyone that I've worked with. This bill changes and is intended to tighten Nebraska's dangerous dog statutes and to stiffen

Floor Debate  
March 06, 2008

---

penalty for dog owners who violate the law. The statutes currently have different requirements for large counties and medium counties. LB1055 makes the following changes for counties with a population of 80,000 or more. Currently, a dog must be at large and do damage to public or private property before a complaint can be investigated. LB1055 removes the damage requirement. If a dog is at large, the complaint can be investigated. We've added sterilization, seizure, permanent assignment of a dog to a court-approved animal shelter or humane destruction to the list of reasonable options for disposition of a dog whose owner is convicted of a violation of Sections 54-601 and 54-608. The penalty is increased from a Class V to a Class IV misdemeanor. LB1055 makes the following changes which apply to all counties. Any county may collect a license tax and enforce the tax with appropriate penalties. If the dog owner doesn't pay the license tax, a county may impound the dog. If a county...a county may regulate dogs running at large and may authorize the destruction, adoption, or...adoption or other disposition of dogs when running at large. A county may impound a dog running at large. The dog's owner is required to pay the reasonable cost of impoundment and the penalties. Every county is required to appoint an animal control authority, and I think that's very, very important for our rural areas, because no one wants to be responsible for our dog laws. The bill changes the definitions relating to dangerous dogs in Section 54-617. The definition of animal control authority is expanded to include any law...any local law enforcement agency or any other agency designated by a county, city or village to enforce animal control laws. [LB1055]

PRESIDENT SHEEHY: One minute. [LB1055]

SENATOR McDONALD: A dangerous dog is defined as a dog that: one, has killed or inflicted injury on a human being; has killed a domestic animal without provocation while running at large; has previously been determined to be potentially dangerous dog and then bites, attacks or endangers the safety of animals or human beings. A domestic animal currently means a dog, cat or livestock. The definition of livestock has been expanded to included buffalo, deer, antelope, fowl and other animals in zoos, wildlife parks, refuge, wildlife areas or nature centers intended to be on exhibit. A potentially dangerous dog is defined as: a dog that injures a domestic animal when unprovoked, chases or approaches a person in menacing fashion or apparent attitude of attack; any dog with a known propensity, tendency or disposition to attack, when unprovoked, to cause injury or to threaten the safety of animals... [LB1055]

PRESIDENT SHEEHY: Time, Senator. [LB1055]

SENATOR McDONALD: ...or domestic animals. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator McDonald. Senator Ashford, followed by Senator Chambers, and Senator McDonald. [LB1055]

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

Floor Debate  
March 06, 2008

---

SENATOR ASHFORD: If I might--yeah, thank you, Mr. President--to answer Senator Kopplin, the bill, as presented to the committee, did attempt to deal with the issue that you raised. On page 6, line 15: A dog shall not be defined as a dangerous dog if the threat or damage was sustained by a person who, at the time, was committing a willful trespass or any other tort, or assaulting the dog, or who has been in the past observed or reported to have tormented, abused or assaulted the dog. I think (inaudible) if that exactly gets to the point, but if it's...if the child were bitten as a result of, quote, unquote, tormenting the dog, which is not uncommon, they would not fall under this act. But that may or may not answer your question. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Chambers. [LB1055]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I listened very closely to what Senator Kopplin said, and if we want to deal with the notion of injury perhaps we could look at a definition. I don't have anything right now, but between now and when the bill comes up again--and naturally I talked to Senator McDonald, who's looming over my shoulder--and we'll see if we can come up with something to make it clear that it would take more than a dog perhaps nipping somebody or just doing anything that could be called an injury if the skin is broken. Some dogs don't have their toenails clipped or trimmed and they could, you know, do something that does not indicate what we might call in a human being a malicious intent, but nevertheless an injury might have occurred; so maybe in the realm of a definition. And I would ask Senator McDonald a question, if she would yield to the question. [LB1055]

PRESIDENT SHEEHY: Senator McDonald, would you respond to questions? [LB1055]

SENATOR McDONALD: Yes, I will, Senator Chambers. [LB1055]

SENATOR CHAMBERS: Senator McDonald, would you be willing to look at the possibility of a definition for "injury"? And if we can't come up with something then we can't, but maybe we can and then we won't have to adjust the whole bill or any significant part of it. [LB1055]

SENATOR McDONALD: Senator Chambers, I will work with you if this is a concern of you and members of the body. [LB1055]

SENATOR CHAMBERS: Thank you. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator McDonald, this is your third time. [LB1055]

SENATOR McDONALD: Yes, and I will continue to talk about the bill, Mr. President, members of the body. Under current law, a dangerous dog must inflict a severe injury.

Floor Debate  
March 06, 2008

---

Severe injury is defined as an injury resulting in disfiguring lacerations requiring multiple sutures or cosmetic surgery or one or more broken bones or that creates a potential danger to the life and the health of the victim. I believe that this sets an injury that level is way too high, does not protect the public, and may result in an action not being taken against the dog because the person wasn't severely injured enough. LB1055 removes the severe injury requirement. If a dog attacks and injures a human, the dog is potentially dangerous or dangerous, depending on individual circumstances. There is a protection for the dog if the person is committing willful trespass or any tort on the property of the dog's owners, if the person is tormenting, abusing or assaulting the dog or has done so in the past, or if the person is committing or attempting to commit a felon...or a crime. LB1055 sets new requirements for dangerous dogs. A dog must be spayed or neutered within 30 days of a declaration of a dangerous dog. A dog must be implanted...a microchip must be implanted within the dog within 30 days of a dangerous dog. These procedures must be carried out by a licensed veterinarian and paid for the dog owner. The dog's owner must provide written proof of both procedures and the microchip ID to the animal control authority. Dangerous dogs cannot be taken from one county to another, city or village, except for a reasonable veterinary purposes. And this one happens many times. Dogs are moved from one area to the next. The dog that I'm concerned about is now in Lincoln and it's a dangerous dog and it's been declared that by my...the county that my daughter lives in, but now it's in Lincoln and no one knows that it's already a dangerous dog. So they continue to move those around and we need to make sure that the community of Lincoln is protected just as much as the community where my daughter lives. The bill establishes a process that may allow a dangerous dog to move from one county to another if the owner is relocating. The owner must receive permission from the animal control authority of current residence and the animal control authority in their...to their new permanent address. Any city, village or county which already has ordinance against relocation can't grant permission. A dangerous dog declaration can't be rescinded. The bill requires a dangerous dog to be confined either inside the home or in the outside pen or structure. This is intended to protect the public from injury. The statutes contain minimal standards for the outdoor pen or structure. LB1055 adds the following requirement. The sides of the pen or structure must be buried in the ground to the depth of at least one foot. The pen or structures must meet the adequate space requirements by the commercial dog breeders found in Section 54-640(6). The pen or structure must be at least ten feet from any property line. Warning signs must be posted and visible from all areas of public access. The warning signs must be no less than 10 inches to 12 inches, and contain the word "warning" and "dangerous dog" in high-contrast letters at least 3 inches high on a black background. Persons convicted of violations of dangerous dog laws will be allowed to own...will not be allowed to own another dangerous dog for ten years after the conviction. A person who violates the prohibition against owning a dangerous dog will be guilty of a Class IIIA misdemeanor. The dangerous dog will be confiscated and humanely destroyed. LB1055 requires every county to designate an animal control authority to enforce the state's dangerous dog laws and any local ordinances or laws adopted by the county. LB1055

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

Floor Debate  
March 06, 2008

---

substantially... [LB1055]

SENATOR LANGEMEIER PRESIDING [LB1055]

SENATOR LANGEMEIER: One minute. [LB1055]

SENATOR McDONALD: ...improves Nebraska's dangerous dog laws without setting standards so strict that it's impossible for a responsible dog owner to comply with them. LB1055 targets the right end of the leash. It forces...it's focused on responsible dog ownership. It sets out clear requirements for dog owners, punishes the dog owner who doesn't obey the law, protects the public, and helps protect the dog from committing additional biting incidents through specific confinement, signs and requirements, "microchipping" and sterilization. And I think that's what we have to do--make sure that the dog owner is responsible. At this point in time, we don't have any responsibility for the owners and I think that's very important because once the dog owner is allowed to disobey the laws, the dogs also will disobey the law. Thank you. [LB1055]

SENATOR LANGEMEIER: Thank you, Senator McDonald. Senator Wallman, followed by Senator Stuthman. [LB1055]

SENATOR WALLMAN: Thank you, Mr. President. Senator McDonald, will you yield to a question? [LB1055]

SENATOR LANGEMEIER: Senator McDonald, would you yield? [LB1055]

SENATOR McDONALD: Yes, I will yield to you. [LB1055]

SENATOR WALLMAN: Thank you. Senator McDonald, that means in our area some people raise pit bulls. Would you classify that as a dangerous dog? [LB1055]

SENATOR McDONALD: You know, I have not put dog-specific on it. As I listened to everyone that was...that had input into my bill, dog-specific legislation doesn't work. How are you going to know whether that's 100 percent pit bull, 5 percent pit bull? Looks like a pit bull but it's not a pit bull? We can't do that. I think the dog's actions require it to either be a potentially dangerous dog or dangerous dog not by breed specific. [LB1055]

SENATOR WALLMAN: Do you think--I'm going to just throw a hypothetical thing out there--if I have a dangerous dog and it hurts your child and I don't admit whose dog it is, does that give you the permission then, or the county, to put the dog away? [LB1055]

SENATOR McDONALD: Well, if we don't know whose dog it is, we can't do anything to the owner. [LB1055]

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

Floor Debate  
March 06, 2008

---

SENATOR WALLMAN: Uh-huh. [LB1055]

SENATOR McDONALD: I think the...that probably what would happen if we don't know who the owner is, it would be taken and hopefully the owner would be found. Now if the owner didn't come forward within a reasonable time, I'm sure the dog would be destroyed, depending on the amount of injury. But if there's no owner that comes forward then, you know, the dog is basically abandoned. [LB1055]

SENATOR WALLMAN: Okay. Thank you. Thank you, Mr. President. [LB1055]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Stuthman, you're recognized. [LB1055]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to engage in a little conversation with Senator McDonald, if she would answer, please. [LB1055]

SENATOR LANGEMEIER: Senator McDonald, would you yield? [LB1055]

SENATOR McDONALD: I will yield, Senator Stuthman. [LB1055]

SENATOR STUTHMAN: Senator McDonald, in your bill, you have the dangerous dog for dog running at large to be \$50 first time, \$75, and \$100. Is that correct? Is that what you're trying to address in this bill? [LB1055]

SENATOR McDONALD: That was changed in the committee amendment. That was removed. [LB1055]

SENATOR STUTHMAN: I'm sorry, what have you got it in the committee amendment now? [LB1055]

SENATOR McDONALD: It's back to what it was originally, \$25, I think it's \$25. [LB1055]

SENATOR STUTHMAN: Pardon? [LB1055]

SENATOR McDONALD: It's back to the original statutes to \$25. [LB1055]

SENATOR STUTHMAN: Just \$25. Well, I'm going to give you a little bit of experience that I have had, that I have noticed. I know of an individual that got picked up for a dog at large, second offense. The fine was \$400 and cost. Now how can that happen if it's only supposed to be \$25 if there's a dog at large? And I do not know whether this was a vicious dog or mean dog or anything. I am aware that this individual does have some, you know, fairly aggressive dogs. But I am concerned that, you know, this individual

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

Floor Debate  
March 06, 2008

---

was fined at...I know it was at least \$400 and cost for dog at large, second offense. And here we're trying to establish in a bill and going back to the \$25 for a dog at large, so maybe that's what it should have been. Senator McDonald, would you respond to another question? [LB1055]

SENATOR McDONALD: Yes, and I'll respond to that one. This is the state statutes. Now if it's...a community can have tougher laws than that and I don't know what that dog did. But the state law is \$25. And if you have...if it happened in a community, maybe they have tougher laws than these, and any city can have a tougher law than what the state law is. [LB1055]

SENATOR STUTHMAN: In the bill, and it's the green copy where I'm reading, I don't have... [LB1055]

SENATOR McDONALD: What page are you on? [LB1055]

SENATOR STUTHMAN: In the green copy, I'm on page 2, line 14: Nothing in this section... [LB1055]

SENATOR McDONALD: That's taken out by the committee amendment. [LB1055]

SENATOR STUTHMAN: That's all taken out. [LB1055]

SENATOR McDONALD: It's all taken... [LB1055]

SENATOR STUTHMAN: So we go back to the amendment: A county adopting regulations in accordance with this subsection shall provide for appeal process for (inaudible) subsection. But according to what it is now, a county or village, anyone can adopt their own regulations. Is that true? [LB1055]

SENATOR McDONALD: They can now. This doesn't change that. [LB1055]

SENATOR STUTHMAN: That doesn't change that. [LB1055]

SENATOR McDONALD: No. [LB1055]

SENATOR STUTHMAN: So in the situation that I just was discussing, the \$400 fine, if that was a county guideline or county regulations for the sheriff's department, I suppose that would have been correct. But I just thought that was an excessive fine, and when I saw what you were going to put in here, you know, was very minimal. [LB1055]

SENATOR McDONALD: Yeah. And I have no way of knowing anything about what the county was, did or what the, you know, it could have been some damage that the dog

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

Floor Debate  
March 06, 2008

---

did, I don't know, but that's not in the state guidelines, \$25. [LB1055]

SENATOR STUTHMAN: Yes. And I realize that, Senator McDonald, and I'm going to research that a little further before we move...I mean when it's brought up again some time, so...but I am...I am in support of the bill, so I'll let it go at that. Thank you, Mr. President. [LB1055]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Erdman, you're recognized. [LB1055]

SENATOR ERDMAN: Thank you, Mr. President. Would Senator McDonald yield to some questions, please? [LB1055]

SENATOR LANGEMEIER: Senator McDonald, would you yield? [LB1055]

SENATOR McDONALD: Yes, I will. [LB1055]

SENATOR ERDMAN: Senator McDonald, I may have missed this, and if I have I apologize, but I'd like to get a clarification about adding the term "livestock" to your bill. I see that in the green copy. I'm trying to coordinate that with the committee amendment, and maybe that's been addressed, but can you explain to me why that was included and if that's still in the bill? [LB1055]

SENATOR McDONALD: Yes, and it's expanded by Game and Parks, and the Henry Doorly Zoo. [LB1055]

SENATOR ERDMAN: So the livestock definition or what is referred to as livestock stays in the bill after the committee amendment? [LB1055]

SENATOR McDONALD: Yes, and it also expands the definition of livestock. [LB1055]

SENATOR ERDMAN: And why are we doing it in this section of law? Because I searched the word "livestock" in the green copy and there was no other reference to livestock in the dangerous dog statutes. [LB1055]

SENATOR McDONALD: I'm sorry, would you repeat that again? [LB1055]

SENATOR ERDMAN: I searched your bill on line, using the technology that we have, for the word "livestock." It only shows up one place in the dangerous dog statutes and it's where you're adding the term "livestock." Can you direct me to where it's necessary to expand the definition of livestock for the purposes of dangerous dog statutes? [LB1055]

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

Floor Debate  
March 06, 2008

---

SENATOR McDONALD: It's already in 54-617. It's in that statute and then also it's on page 6, actually, of the bill. [LB1055]

SENATOR ERDMAN: Can you give me the line number? [LB1055]

SENATOR McDONALD: Line 23. Line 23, page 6: A domestic animal shall mean a dog, cat or livestock is already in there... [LB1055]

SENATOR ERDMAN: Okay. So... [LB1055]

SENATOR McDONALD: ...and we just add livestock, we just define livestock in pursuit to what the zoo wanted and Game and Parks. [LB1055]

SENATOR ERDMAN: And "livestock" is also defined elsewhere in statute, is it not? [LB1055]

SENATOR McDONALD: Yes. [LB1055]

SENATOR ERDMAN: Is this consistent with that same definition? [LB1055]

SENATOR McDONALD: Does...I don't know that it has to be. [LB1055]

SENATOR ERDMAN: Well, I... [LB1055]

SENATOR McDONALD: We're dealing with dangerous dog livestock, what livestock would be and defined in what dangerous dogs would kill. Livestock could be anything, they could be sheep or anything, but in this situation we're dealing with the animals that would be killed by...could be killed by a dangerous dog, and it could be any livestock. [LB1055]

SENATOR ERDMAN: Understood. My point still remains, however, that this may be inconsistent with other definitions of livestock. Typically, when we define an item for the purposes of a section of law, we state that for this section of law livestock means X or something means X. Is it clear, in your opinion, the way that this is written that livestock is only being defined in this section for this purpose? [LB1055]

SENATOR McDONALD: Uh-huh. [LB1055]

SENATOR ERDMAN: Go ahead. [LB1055]

SENATOR McDONALD: If you need me to clarify that, I certainly will as we move this bill forward. [LB1055]

Floor Debate  
March 06, 2008

---

SENATOR ERDMAN: And I'm just looking at this because, technically, you're defining "livestock" as an animal that's in a zoo or a deer or an antelope, and last I checked they may be nondomesticated animals but they may not be found in the definition of "livestock" elsewhere. Livestock generally would be referring to cattle and horses and pigs and sheep and other animals that are generally domesticated in some form. And I'm just not...I'm not saying this is wrong. I'm just seeking to make sure that it's consistent. [LB1055]

SENATOR McDONALD: Well, in the way we wrote the bill was in purpose of this act and we included livestock, which includes these animals. It doesn't say it necessarily excludes it, but it includes these animals in the livestock definition. If you feel that this is not clarified enough, I will be glad to work with you to make sure that it is clarified... [LB1055]

SENATOR LANGEMEIER: One minute. [LB1055]

SENATOR McDONALD: ...to your satisfaction. [LB1055]

SENATOR ERDMAN: And I'm just asking the question because obviously the words matter, and if we're going to define something as something, if there's already a definition somewhere else, we at least need to consider that. I believe there is. I don't have the exact reference in front of me, but I think you can clarify that or we can visit about that as well. And I may have some other questions about the rest of the bill here in a second. [LB1055]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Erdman, you're recognized. [LB1055]

SENATOR ERDMAN: Thank you, Mr. President. Senator McDonald, again, I apologize if I had missed this. We're updating both the dangerous dog statutes, which deals with potentially dangerous dogs and dogs running at large. What was the...what was the rationale or what was the motivation, I guess, for bringing the bill? Was there a specific case? Has this been an ongoing discussion with your office or with your interest? [LB1055]

SENATOR McDONALD: Yes. I mentioned that before. We did an interim study in Judiciary. I've received various letters from people that have been bitten and have been concerned about their children walking to school, and dogs being dangerous dogs that are barking and being held by a leash, and their safety. Also, I think I mentioned that my daughter's...all of their cats and their puppy was killed by a dog, a neighbor's dog, and the saga still goes on. And the dog has been taken; the dog continues to come back because there's no animal authority in the dog...in the county to do any changes in what they're going to do with that dog. The other thing is the dog owners...and our statutes

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

Floor Debate  
March 06, 2008

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are not strong enough. They do not require the dog owner any liability at all. And I think that we need to make sure that the liability of our owners is foremost in requiring dangerous dog laws. [LB1055]

SENATOR ERDMAN: Okay. And I would concur. The issue about implanting the microchip into the animal, is that something that's available statewide, something that's common? Have you looked into that? [LB1055]

SENATOR McDONALD: I'm sorry, would you repeat that again? [LB1055]

SENATOR ERDMAN: Section 54-618 would now read that a dangerous dog has to be implanted with a microchip identification number. Are those implants readily available statewide? [LB1055]

SENATOR McDONALD: Yes, they are, and I called various veterinarians. It runs around \$35 to \$50. I talked to Gothenburg, I talked to Aurora, I talked to Grand Island, I talked to Lincoln. And St. Paul does not do the "microchipping" but do send them to Grand Island. It's no more than a small incision in the back of the neck and no hurt or harm to the dog whatsoever. [LB1055]

SENATOR ERDMAN: Okay. The last question that I have: I'm aware of a case or a situation where an individual was approaching a property that the owner was home, the dog was barking because the individual was not familiar to them. The individual then attempted to enter the yard without going to the home or making any attempt to avoid the confrontation, and was...one could argue that the dog was then provoked by having the individual on the property. We're also changing those provisions of law and we're striking what severe injury is and leaving in the terminology of nonsevere...no, excuse me, that we're striking all of that. And so any time that a dog would, unprovokingly, injure an animal or approach an individual to cause injury or to threaten the safety of human beings, then they would immediately or they would have the potential to be labeled a potentially dangerous dog by the appropriate entity within the animal control authority, correct? [LB1055]

SENATOR McDONALD: Well, if it's on the owner's property and the person goes onto the property, the owner could very rightfully say it was in protection of the owner's property. If that dog was off of the property, then I could see that there could be an issue. But if it's on the dog's property, it could be very well provoked. It's just there to protect the property. [LB1055]

SENATOR ERDMAN: And the issue that we're talking about is not those scenarios. It's the scenario where a dog is on its own, either due to its behavior, its breeding,... [LB1055]

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

Floor Debate  
March 06, 2008

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SENATOR LANGEMEIER: One minute. [LB1055]

SENATOR ERDMAN: ...or some other feature of its anatomy, is inclined to attack individuals or to be menacing towards individuals, but not the cases where somebody is actually approaching the animal, and as the example that I gave, on a property. That's not what we're talking about here. We're talking about trying to make sure that those animals that are dangerous, that are unprovoked and cause damage, are held accountable and those owners are liable. The case that I gave, that's not what we're talking about here, where the owner has the animal on their property in a pen and the situation like that happens. [LB1055]

SENATOR McDONALD: I guess I'm not sure what your question is. I'm missing something here. [LB1055]

SENATOR ERDMAN: We're running out of time. Let me clarify on my own time. [LB1055]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Howard, you're recognized. [LB1055]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If I may ask Senator McDonald a brief question. [LB1055]

SENATOR LANGEMEIER: Senator McDonald, would you yield? [LB1055]

SENATOR McDONALD: Yes, you may. [LB1055]

SENATOR HOWARD: Thank you. If I could just maybe give a scenario that would make it easier for me to ask the question, I have a dog, Eddie, who actually is a very friendly, well-mannered dog 99 percent of the time, but there's occasion when I'll be intending to take the trash down to the curb, I'll open the door, Eddie will bound out all excited because it's his job, too, to take the trash down, and there will be a dog at the end of the driveway and Eddie will get insulted and take issue with that dog and seem really ferocious. Now if the owner of that dog would feel that Eddie was a threat, could that owner file a complaint against me or the dog for that incident? [LB1055]

SENATOR McDONALD: How...did the dog do any damage to you, to the other dog? [LB1055]

SENATOR HOWARD: No, I caught it in time, fortunately, because he needs a little reminder that he's a house dog. [LB1055]

SENATOR McDONALD: You know, most of those things are done on a case-by-case

Floor Debate  
March 06, 2008

---

basis. If the dog ran out and attacked and did bodily damage to that dog, yeah, it's going to...they're going to probably file a complaint. Now every complaint that's filed, you can go in and say, you know what...say, you know what, this is what happened, and the authorities have the decision to decide whether that was a viable complaint or not. [LB1055]

SENATOR HOWARD: Okay. [LB1055]

SENATOR McDONALD: Because, let's face it, sometimes there are complaints that aren't viable. [LB1055]

SENATOR HOWARD: Yeah. Well, that certainly helps me to better understand those one-time incidents where it may be a little overly enthusiastic on the part of the family pet and that that's not what this is intended to do. [LB1055]

SENATOR McDONALD: No, it's not intended to do that at all. And every city has their own ordinances against the dog issues. I worked with every entity that I could and make sure that everybody felt the same way about this bill, and it was Humane Society in Omaha, Lincoln, our counties, NACO, so that I knew what my...what the rural counties needed and wanted, I knew what the urban counties needed and wanted, and they were all very welcome to the changes and they all agreed that we needed to do some changing in our dog laws. And because of that, I was able to get a compromise from everyone that everyone agreed to and said, you know what, this is what we need to do because we're having more and more irresponsible owners and we need to make sure that if they own a dangerous dog that they're held accountable. These are not as restrictive as some states' dangerous dog laws. They require that you have insurance policies. They require a lot more things than what we're requiring here. [LB1055]

SENATOR HOWARD: Okay. Thank you. I appreciate the explanation. Thank you. [LB1055]

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator McDonald, your light is on. You have spoken your three times. There are no other lights on so I would...Senator Schimek, you're recognized. Senator Schimek waives her time. Senator McDonald, you'd be recognized to close on LB1055. [LB1055]

SENATOR McDONALD: Because of all the work that I've done on this bill and we've done a lot of interim studies on it to find some common ground for our issues of dangerous dogs and potentially dangerous dogs, if you support this, of course, and I hope that you do move it to Select File, I will certainly work with anyone that has questions on this. Because it's an important thing to me, it's an important thing to anyone that could be potentially hurt, killed or damaged, children, grandchildren, our animals by dangerous dogs. And I think that we need to make sure that, number one,

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

Floor Debate  
March 06, 2008

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we have, in our rural counties, we have someone that maintains the authority and knows the dog laws and, number two, that our owners are responsible for making sure that those dogs are protected from anyone that...if they happened to get out. And I think that that's why this bill needs to move forward. I will certainly work on it with anyone at Select File and I hope that we will pass this. Thank you. [LB1055]

SENATOR LANGEMEIER: Thank you, Senator McDonald. You have heard the closing on LB1055. The question before the body is, shall LB1055 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1055]

ASSISTANT CLERK: 29 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB1055]

SENATOR LANGEMEIER: LB1055 does advance. Mr. Clerk, items for the record. [LB1055]

ASSISTANT CLERK: Mr. President, new resolutions: LR264 and LR265 by Senator Heidemann will be laid over; amendments to be printed to LB760 by Senator Erdman; a name add to LB920 by Senator Howard. (Legislative Journal pages 836-838.) [LR264 LR265 LB760 LB920]

Finally, Mr. President, a priority motion: Senator Schimek would move to adjourn until Friday, March 7, 2008, at 9:00 a.m. []

SENATOR LANGEMEIER: You have heard the motion to adjourn until March 7, Friday, at 9:00 a.m. All those in favor say aye. All those opposed say nay. The ayes have it. We stand adjourned. []