

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

Floor Debate  
April 07, 2008

---

[LB171A LB171 LB179A LB179 LB198 LB245 LB467 LB467A LB575 LB609A LB647  
LB710 LB720 LB727 LB741 LB764 LB765 LB766 LB777 LB789 LB798 LB810 LB813  
LB821 LB830A LB838 LB845 LB846 LB846A LB848 LB875 LB888 LB889 LB895  
LB902 LB904 LB912 LB952 LB956 LB959 LB972 LB973 LB988 LB993 LB1011  
LB1027A LB1027 LB1035 LB1045 LB1048A LB1048 LB1049 LB1067 LB1072 LB1082  
LB1103 LB1108 LB1116 LB1116A LB1130 LB1145 LB1147A LB1153 LB1157A LB1157  
LB1162 LB1174 LR93 LR320 LR325 LR379 LR380 LR381 LR382 LR383 LR384]

PRESIDENT SHEEHY PRESIDING

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

SENATOR KRUSE: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Kruse. I call to order the fifty-fourth day of the One Hundredth Legislature, Second Session. Senators, please record your presence by roll call. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements.

CLERK: Mr. President, your Committee on Enrollment and Review reports LB710, LB727, LB764, LB789, LB798, LB821, LB838, LB845, LB848, LB895, LB902, LB904, LB972, LB993, LB1011, LB1045, LB1048, LB1048A, LB1067, LB1103, LB1108, LB1145, LB1162, all of those reported correctly engrossed. Enrollment and Review also reports LB1153 and LB956, LB830A, and LB1147A to Select File. And that's all that I have, Mr. President. (Legislative Journal pages 1313-1316.) [LB710 LB727 LB764 LB789 LB798 LB821 LB838 LB845 LB848 LB895 LB902 LB904 LB972 LB993 LB1011 LB1045 LB1048 LB1048A LB1067 LB1103 LB1108 LB1145 LB1162 LB1153 LB956 LB830A LB1147A]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will move on the agenda to Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, the first bill is LB765. [LB765]

ASSISTANT CLERK: (Read LB765 on Final Reading.) [LB765]

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

Floor Debate  
April 07, 2008

---

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB765 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB765]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1317.) The vote is 44 ayes, 4 nays, 1 excused and not voting, Mr. President. [LB765]

PRESIDENT SHEEHY: LB765 passes. We will now proceed to LB766. [LB765 LB766]

ASSISTANT CLERK: (Read LB766 on Final Reading.) [LB766]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB766 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB766]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1317-1318.) The vote is 44 ayes, 5 nays, Mr. President. [LB766]

PRESIDENT SHEEHY: LB766 passes. Members, the treats that were passed out to your desks this morning are in recognition of Senator Erdman's birthday. Senator, happy birthday. Mr. Clerk, we will now proceed to LB777. [LB766 LB777]

ASSISTANT CLERK: Mr. President, I have a motion on the desk. Senator Raikes would move to return the bill to Select File for a specific amendment, that being to strike the enacting clause. (FA269, Legislative Journal page 1318.) [LB777]

PRESIDENT SHEEHY: Senator Raikes, you are recognized to open on FA269. [LB777]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. I do not plan to take this motion to a vote. However, I do want to take a moment to speak to the policy issues raised in this bill. Before I do that, though, I want to point out that I misspoke on an issue that was raised during discussion of this bill on Select File. Land within a city can be designated as ag land, but it cannot receive special valuation, commonly referred to as greenbelt, unless the land is in a conservation easement approved by the city. I left out that latter qualification and I apologize for my error. On to the policy issues: Just two years ago the Legislature passed a measure that narrowed the definition of agricultural and horticultural land, and with it eligibility for special valuation. The change made qualification for ag land status continued upon the primary use of the parcel as a whole for commercial agricultural purposes. The intent of this change was to limit the tax benefits of agricultural land status and special valuation to those for which it was intended: people engaged in the business of farming and ranching. Under the previous definition, people who owned acreages could qualify for

Floor Debate  
April 07, 2008

---

greenbelt if a portion of their property was used to produce an agricultural product even though the primary use of the property was clearly residential. In fact, when the original bill to address this situation was being considered, it was dubbed by the media as the Bill Callahan bill because the former coach was able to receive greenbelt on a portion of his parcel that was, if I remember correctly, baled twice a year for prairie hay. This bill, if passed, would largely undo the efforts made by the Legislature in LB808 to address this situation. The bill would require county assessors to take out of consideration any land associated with a building in determining the primary use of the remainder of the parcel. Because of that, the owner of a 7-acre parcel, with 2 acres dedicated to a large house and the lawn, and 5 acres set aside and baled twice a year for prairie hay, would be eligible to receive greenbelt on those 5 acres even if the primary purpose of the parcel unequivocally is to serve as a home site. The policy issue before us today is eligibility for ag land status and greenbelt. If you feel that acreage owners, whose primary interest in their properties are residential, ought not to be excluded from the benefits of the tax...or excluded from the tax benefits, rather, of ag land status and greenbelt, then the proper thing to do is to support this bill. On the other hand, if you feel as I do that eligibility for ag land status and greenbelt ought to be reserved for those with legitimate interests in agriculture, then this bill...this is a bill you might want to oppose. Furthermore, extending the tax benefits of ag land status and greenbelt to those whose primary interests are residential only serves to narrow the property tax base for other taxpayers in the political subdivision. Taxpayers in the city, as well as true farmers and ranchers, are going to have to pay more in taxes to make up for the benefit provided to acreage owners if that's the way it works out. Having said all of that, I think the best approach is to stick with the system we have now, and allow the county assessor to make the determination on the primary use of the parcel. Under the current approach, those with true agricultural interests are able to receive the benefits of ag land designation and greenbelt appropriately due to them. Furthermore, the current process has been in place for just two years. I think we need more time to let the system work before making wholesale changes. Mr. President, I would like to yield the remainder of my opening time to Senator Hudkins. [LB777]

PRESIDENT SHEEHY: Senator Hudkins, you are yielded 5 minutes, 40 seconds. [LB777]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. Obviously, I disagree with Senator Raikes. Yes, he's correct in that two years ago we made this change, and that was to do away with what the Callahans did and the Nelsons did. We have done that with this bill. If you are an acreage owner, whether that acreage is 3 acres, 5 acres, 20 acres, 80 acres, the assessor is the one who determines the primary use. If you've got a rather large \$300,000 house sitting out there, chances are the assessor is going to say, well, pfft, the primary use of this whole parcel is residential, never mind the fact that the other 15 or 20 or however many acres are being used for agricultural purposes. The problem is, how do you define primary? That is a very

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

Floor Debate  
April 07, 2008

---

subjective term. Unfortunately, some of the assessors in this state have decided that because of this big house out there sitting on a piece of ground, disregarding the fact that there is corn on the other 20 acres or 80 acres, or there are grapes on the other 5 acres, or whatever it is, that land is being used for agricultural purposes. That is the purpose for the ag land valuation status. Senator Raikes said that ag land status and greenbelt should be reserved for those with a legitimate interest in agriculture. I think that someone who is growing 3 acres of grapes has a legitimate interest in agriculture. I think that those who are feeding 20 bucket calves or 75 acres of corn have a legitimate interest in agriculture. Corn, this morning, was at \$5.60-something. That's a legitimate interest in agriculture. If you're feeding bucket calves, you don't go out there every morning and every night to feed those calves because you don't have anything better to do. The county assessors are doing what they think is the best, and most of them are doing a good job. They are looking at that ag use on that parcel. What my bill does is to remove from consideration the house and the buildings. Those will be, are, and have been valued at full market value. But if the rest of that parcel is being used for growing agricultural or horticultural crops, then it deserves and should be valued at that lesser value. We have taken out the house and the buildings. Those are set aside. What we're doing with LB777 is looking at the rest of the land. And I would return the rest of my time back to Senator Raikes. [LB777]

PRESIDENT SHEEHY: Senator Raikes, 2 minutes, 15 seconds. [LB777]

SENATOR RAIKES: Thank you, Mr. President and Senator Hudkins. I withdraw this motion. [LB777]

PRESIDENT SHEEHY: The motion to return to Select is withdrawn. (Visitors introduced.) Mr. Clerk, we will now proceed with Final Reading of LB777. [LB777]

ASSISTANT CLERK: (Read LB777 on Final Reading.) [LB777]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB777 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB777]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1318-1319.) The vote is 25 ayes, 15 nays, 9 present and not voting, Mr. President. [LB777]

PRESIDENT SHEEHY: LB777 passes. We will now proceed to LB889. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB777 LB889]

ASSISTANT CLERK: 36 ayes, 5 nays to dispense with the at-large reading. [LB889]

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

Floor Debate  
April 07, 2008

---

PRESIDENT SHEEHY: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB889]

ASSISTANT CLERK: (Read title of LB889.) [LB889]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB889 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB889]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1319-1320.) The vote is 49 ayes, 0 nays, Mr. President. [LB889]

PRESIDENT SHEEHY: LB889 passes. We will now proceed to LB952. [LB889 LB952]

ASSISTANT CLERK: (Read LB952 on Final Reading.) [LB952]

PRESIDENT SHEEHY All provisions of law relative to procedure having been complied with, the question is, shall LB952 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB952]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1320-1321.) The vote is 49 ayes, 0 nays, Mr. President. [LB952]

PRESIDENT SHEEHY: LB952 passes. We will now proceed to LB973. [LB952 LB973]

ASSISTANT CLERK: (Read LB973 on Final Reading.) [LB973]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB973 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB973]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1321.) The vote is 48 ayes, 0 nays, 1 present and not voting, Mr. President. [LB973]

PRESIDENT SHEEHY: LB973 passes. We will now proceed to LB1157. [LB973 LB1157]

ASSISTANT CLERK: (Read LB1157 on Final Reading.) [LB1157]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB1157 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1157]

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

Floor Debate  
April 07, 2008

---

ASSISTANT CLERK: (Record vote read, Legislative Journal 1321-1322.) The vote is 33 ayes, 15 nays, 1 present and not voting, Mr. President. [LB1157]

PRESIDENT SHEEHY: LB1157 passes. We will now proceed to LB1157A. [LB1157 LB1157A]

ASSISTANT CLERK: (Read LB1157A on Final Reading.) [LB1157A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB1157A pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1157A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1322-1323.) The vote is 36 ayes, 9 nays, 4 present and not voting, Mr. President. [LB1157A]

PRESIDENT SHEEHY: LB1157A passes. Mr. Clerk, do you have items for the record? [LB1157A]

CLERK: I have one, Mr. President, a new resolution, LR379, offered by Senator Johnson. That will be laid over. And that's all that I have at this time, Mr. President. (Legislative Journal page 1323.) [LR379]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will move to the first item under General File, LB1082. [LB1082]

CLERK: LB1082, by Senator Cornett. (Read title.) The bill was introduced in January, referred to Business and Labor, advanced to General File. It has been discussed on two separate occasions. Committee amendments have been presented. An amendment to the committee amendments by Senator Cornett has been adopted. When the Legislature last left the issue, Senator Lautenbaugh had pending FA239 as an amendment to the committee amendments, Mr. President. (FA239, Legislative Journal 1117.) [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you give us a summary on LB1082? [LB1082]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. I'd like to just briefly recap the main components of LB1082, with the main committee amendment. The bill would allow employees with mental injuries unaccompanied by physical injury to receive workers' compensation benefits if the injured worker is a first responder as defined in the bill or if the injured employee is a victim or witness to a violent criminal act. We've spent a considerable amount of time discussing Senator Lautenbaugh's floor amendment, FA239. As introducer of the bill, I'm opposed to

Floor Debate  
April 07, 2008

---

FA239. A worker who is injured due to her own negligence or that of her employer's typically is entitled to the same workers' compensation benefits as a worker whose injury did not result from negligence at all. The idea behind workers' compensation is not to right a wrong or punish negligence. Rather, it is to protect employers from negligent lawsuits and injured workers from destitution. The goal is to return the injured employee to work efficiently and economically without damaging the employer's business. During the debate, I have heard arguments that an employer should not be liable for criminal acts of others. Senator Fulton argued that, as an employer, one cannot mitigate the damages caused by an unexpected violent criminal act. Not only do I not believe that employers can mitigate against many types of crimes that their employees might face, Senator White raised a very good point during the debate. If a criminal comes into the workplace and holds a gun to your employee's face, if your employee has a bruise from the gun or her physical injury and any resulting mental injury is compensable, so victims of criminal acts are already compensable under workers' compensation. This bill merely acknowledges and recognizes that mental injuries are real and every bit as debilitating and worthy of treatment as mental injuries which are tied to physical injuries. Lastly, I want to stress to the body that if you adopt Senator Lautenbaugh's amendment, you are ensuring that some workers will not receive any counseling or therapy of any kind. I am talking about part-time workers and those hourly employees who do not have health insurance. If you don't have health insurance, they cannot get help through workers' compensation. We have essentially prevented these victims and witnesses of criminal acts from getting any form of help. I would ask you to do the right thing for the workers of this state, and vote against FA239. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Lautenbaugh, would you like to give us a summary on your FA239. [LB1082]

SENATOR LAUTENBAUGH: Thank you, Mr. Lieutenant Governor and members of the body. Briefly, the amendment that I have put in would limit this expansion of workers' compensation coverage to simply first responders as defined in the underlying bill and amendment, not to all employees in the course and scope of their employment. And I introduced this amendment for the simple reason that I believe it represents a much needed stopping point, if you will, on this expansion of the workers' compensation coverage. With limiting the coverage to simply first responders, if this should advance, it will at least be a definable population that will receive this expanded benefit, and we will have some sort of a history with that expanded population to determine if any further expansion is due. So for that reason I did throw in this amendment to limit the coverage of this to simply first responders as defined therein, and I would ask for your support of the amendment. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Members requesting to speak on FA239 to AM2252, Senator Lathrop. [LB1082]

Floor Debate  
April 07, 2008

---

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm glad to return to this issue for the third time on General File. It has, because it has been broken up, the scheduling of this, the discussion has been a bit fragmented so I'd like to take a minute just to talk about work comp, generally, and what we're talking about with Senator Lautenbaugh's amendment. Very briefly, what we're talking about is whether or not we're going to cover people...include in work comp's coverage those people who have been mentally traumatized because they have, at work, witnessed a traumatic and criminal...violent criminal action. We might refer to it as the discussion of whether or not we will include or provide for the employees of Von Maur or not. But it's not just the employees of Von Maur, we won't be able to help them, but we will be able to help those people who are similarly situated into the future. And you might ask, why should we expand work comp? Doesn't work comp have a lot of trouble? Aren't there problems with work comp? I would like to take a few minutes, having done work in this area, to talk about work comp, generally, before I get up on another occasion and talk about mental injuries. There is a perception, a misperception in the country perpetuated by people with a political interest on this subject, to cast work comp as sort of a jackpot for an employee. And I must tell you, it couldn't be further from the truth. The benefits available to someone if we expand work comp, the benefits available currently to people who take advantage or who have an opportunity that they would rather not have to be hurt at work and to take advantage of work comp are these: They have very, very modest benefits. They go from earning a living to receiving two-thirds of their pay if they can't work at all. That is nobody's jackpot. It also, and most importantly, and most people who are hurt at work take advantage of only...or are afforded an opportunity to take advantage of only one benefit, and that benefit is the medical benefit. The most important piece of work comp--the most important piece of work comp is that it provides insurance coverage, health insurance. It provides for the treatment of the employee because they were injured at work. Now, if they're not getting this benefit through work comp, one of two things is going to happen. Either they're going to use health insurance so the employer is going to pay for it in most cases anyway, or they go without the care. Now, when you talk about mental injuries, is that a good idea to have people who have suffered posttraumatic stress disorder go without care? We're talking about a very few people who will come under the expanded definition of coverage in this instance. And so shall we exclude from work comp those people who witness a traumatic, violent criminal act at their place of employment, and as a consequence have some malady like posttraumatic stress disorder? That's the issue presented by Senator Lautenbaugh's amendment, and you must know that treatment of these injuries is very, very important. Treatment early is very, very important. And if you have coverage under work comp, you will get quick treatment. You will get timely care. If you don't, many of these people have exclusions that won't cover this kind of care in their health plan. Many of the very people we're talking about will have no care at all... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

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

Floor Debate  
April 07, 2008

---

SENATOR LATHROP: ...because it's not covered or they don't have health insurance. And what's the consequence? They will, if left untreated, statistically they're more inclined to self-medicate with alcohol, with drugs. There is a social price to pay. Those who tell you they do not want these folks covered by work comp are also saying, in effect, we'll let society pick up the bill because we don't want our work comp premiums to go up by 3 cents or something like that. This is an important amendment on a very important subject. I hope you'll take advantage of an opportunity to ask questions if you have any. This amendment should fail and I would encourage you to vote against it. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Other members wishing to speak on FA239 are Senator White, followed by Senator Fulton and Senator Cornett. Senator White. [LB1082]

SENATOR WHITE: Thank you, Mr. President. Fellow senators, workers' compensation laws first passed at the turn of last century. Well over 100 years ago now, the whole concept of workers' compensation was developed. The whole driving force behind workers' compensation was employees should not have to show that their employers were negligent. Employers shouldn't have to worry about their employees suing them and saying they were running their business improperly. In exchange for that, the primary benefit to both was that the worker would get good care and be trained to come back to full employment. A hundred years ago we had, at best, a rudimentary understanding of the workings of the mind. We did not understand the vast majority of mental diseases, and we certainly did not understand the impact of stress, of a traumatic stress event and what it could do, not only to the worker but to all those that love him and who are around them. It is time and past time that we update workers' compensation laws to match what we now understand to be science. There is no question that these injuries are real. No psychiatrist, no psychologist, no neurologist would deny the absolute reality of a posttraumatic stress injury and the devastation it can cause. The concept of workers' compensation was to return the worker to work. They do not pay them large sums of money. As a matter of fact, going on workers' compensation disability is a guaranteed trip to bankruptcy for the vast majority of the workers who are so unfortunate as who must rely on it. But what we can do here is recognize the law must keep pace with science, and that injustice, if we're going to keep the basic commitment, that is that if you get injured in the course of employment in a manner that can affect your ability to earn a living, we will, as a group, pay to rehabilitate you. And that's all this is. We now recognize a new injury that is brutal, it's insidious, it can destroy not only the worker but also the workers' families. There is no good reason, financial, moral, ethical, legal, to limit this only to first responders. They are all human, they are all workers, they all deserve decent medical care when injured in the course of work. Accordingly, I ask you to vote against the amendment, and I urge you to look, if you're concerned about the fiscal impact, at the experience of both Maine

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

Floor Debate  
April 07, 2008

---

and Arkansas. The cost was absolutely minimal in dollars, but the failure to act will cost us so much more in social services, in jails, in counseling, in schools, and trips to the ER. This is a good bill. It should be passed, not diluted, but as it has originally proposed. Therefore, I ask you to vote against the amendment and for the bill. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator White. (Visitors introduced.) Senator Synowiecki. [LB1082]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor, members. This discussion, in many ways, and particularly with what Senator Lathrop discussed in his last discussion with us, parallels the parity issue, and what I'm speaking of there is private health insurance plans and the lack of benefits for mental health treatment within our private insurance carriers and our private insurance programs here in the state of Nebraska. In fact, it is indeed a nationwide program. I just can't help but wonder, as I listen to the debate, if we had legitimate and adequate mental health parameters within our insurance plans within the state of Nebraska, if these employees that we are talking about diminish to the point where they are forced to be on workers' comp or where their capacity in the mental health is deteriorated to such a pointed that they cannot go to work, it makes me wonder if we're not looking at this in the wrong direction. The Legislature, under both Senator Jim Jensen and now Senator Joel Johnson, has attempted to be responsive to this problem. Senator Johnson introduced LB647 last year, only after an in-depth actuarial study was done to see what the costs would be indeed for mental health parity in our health insurance plans. And the results of that were very interesting. They were very mitigating in terms of the cost, just as we're talking here, on the workmen's comp side of things. For us to deliver adequate mental health benefits and to mandate those mental health benefits within insurance plans to help prevent individuals from deteriorating to the point where they're looking at workmen's compensation benefits would cost .3 to 1 percent more-- .3 to 1 percent more according to the actuarial study conducted. That actuarial study was conducted pursuant to the passage of LB1248 in 2006. And Senator Johnson, armed with the results of that actuarial study, introduced LB647 last year, and from what I understand it stalled in the committee. I would actually...if Senator Johnson would be available to answer a question or two. [LB1082 LB647]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB1082]

SENATOR JOHNSON: Yes, sir, I'd be happy to. [LB1082]

SENATOR SYNOWIECKI: Senator, just so people know that what I'm saying here is bona fide, maybe you can affirm some of thoughts that I mentioned. [LB1082]

SENATOR JOHNSON: Yes. Actually it was in the last session of the Legislature that it

Floor Debate  
April 07, 2008

---

was authorized to do this study. I believe the study was for \$50,000 to study the issue of mental health parity. This was part of the ongoing program of going from an institutional-based mental health to community-based. And it was felt that this was one way that would help with the funding of the community-based mental health aspect. So that's why the study was done. And, yes, Senator Synowiecki, you are correct. Basically what this showed is, contrary to the common notion that this was just one more mandate that would add to the cost of insurance... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR JOHNSON: ...and, therefore, make it so that there was less insurance policies that were sold, and so you ended up negatively; this actually showed that it was just about a break-even standpoint and that the workers did go back to work, and this was essentially a complete offset for the cost. [LB1082]

SENATOR SYNOWIECKI: Thank you, Senator Johnson. I know I'm low on time. I'll wait...I'll turn my light on again. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB765, LB766, LB777, LB889, LB952, LB973, LB1157, and LB1157A; also LR320 and LR325. (Doctor of the day introduced.) Members wishing to speak on FA239 are Senator Lathrop, followed by Senator McGill and Senator Synowiecki. Senator Lathrop. [LB765 LB766 LB777 LB889 LB952 LB973 LB1157 LB1157A LR320 LR325 LB1082]

SENATOR LATHROP: Thank you, colleagues. Once again, I wanted to talk just a little bit about mental injuries. And I think Senator Synowiecki makes a great point when he talks about where mental injuries are in relationship to how they're treated on a health plan and whether or not that coverage is available to people in the state of Nebraska, even those that have a health plan. Many health plans, most health plans have not gotten to the place where you can receive emotional care the same as if you had a physical injury. That leaves people who have an emotional kind of an injury at the mercy of their policy, if they have one. Most of those policies exclude mental healthcare to some degree or another, oftentimes limiting the number of visits you can have a year, having copays that are half of the cost of the care, effectively discouraging people to receive this kind of care. And that's important because the employee who is the subject of or witnesses violent criminal activity and now has an emotional injury, first of all, these people will be few and far between. We're not talking about a large expansion of the work comp system, only a very small expansion, but it is an important expansion. And it is important because these people will not get necessary care in a timely manner. And what's that do to us as a society? If we say we're not going to provide care for those who suffer an emotional injury and make an emotional physical distinction, as this amendment would have you do, what happens is these people will not get timely care.

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

Floor Debate  
April 07, 2008

---

And you must understand, you must understand that someone who suffers an emotional injury bad enough to warrant care, needs the care. And they're not going to get the care if we don't provide for them and the care through this bill. Senator Lautenbaugh's amendment would exclude these clerks and these people who have, in the course of their employment, see the worst things that the mind can try to put its hands around. And when these people don't get care, we all pay. Or if they get care and have Medicaid billed, the state is now paying for something I think the employer rightfully should pay for. And why? Senator Fulton, the last time we discussed this bill, talked about the employer is not in a position to mitigate the risks. That couldn't be further from the truth. We are talking about those employments where you are likely to see some violent criminal activity. And if you think about it, that probably is, in most instances, a store clerk. In most instances it's going to be someone at the liquor store or at a Kwik Shop or a convenience store where a robber, somebody with a gun, comes in and shoots somebody standing next to the clerk, or puts the gun to the person's forehead and demands the cash. Now, the reason all of that happened, the reason that person was exposed to that risk in the first place, is the employment. There is no distinction between that mental trauma and a back injury somebody suffers lifting up a pipe or lumber in the scope and course of their employment. It is appropriate that the employer be responsible, but recognize that if you agree with Senator Lautenbaugh and limit the scope of this narrow expansion of work comp, you are passing the costs back to society. Medicaid will pick up the costs of those... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR LATHROP: ...for that mental health care. Charities will pick it up. That's not necessarily appropriate and shouldn't be where people have to go to get care. But recognize that if these folks do not get the care they need when they need it, they're going to self-medicate, they're going to become problems, and they may seem like they're functioning for a few years, and then we have the guy that goes postal. And that is what posttraumatic stress disorder is about. It is something that is responsive to early treatment. Compared to 30 years ago, science knows much more about this condition. They're much more able to treat it. Help these people out. We don't know who they are but they're going to be there. Assuredly, as we will have violence in our society, we're going to have people that suffer from witnessing and from being participants, unwilling participants at that. I would encourage you once again to vote against Senator Lautenbaugh's floor amendment. [LB1082]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Lathrop. Senator McGill. [LB1082]

SENATOR MCGILL: Question. [LB1082]

PRESIDENT SHEEHY: Do I see five hands? I do. The question is, shall debate cease

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

Floor Debate  
April 07, 2008

---

on FA239 to AM2252? All those in favor vote yea; opposed, nay. Senator Lathrop. [LB1082]

SENATOR LATHROP: Can we have a call of the house, please? [LB1082]

PRESIDENT SHEEHY: I do have a request for the call of the house. The question before the body is, shall the house be placed be under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1082]

ASSISTANT CLERK: 28 ayes, 0 nays to go under call, Mr. President. [LB1082]

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 Janssen, would you please check in? Senator Hudkins, Senator Dubas, Senator Erdman, Senator Christensen, Senator Aguilar, the house is under call. Senator McGill, all members are present or accounted for. As we continue with the question on shall debate cease, do you want roll call or call-in? [LB1082]

SENATOR MCGILL: Call-in. [LB1082]

PRESIDENT SHEEHY: Senator McGill indicates she will take call-ins. Mr. Clerk. [LB1082]

ASSISTANT CLERK: Senator Hudkins voting yes. Senator Ashford voting yes. Senator Aguilar voting yes. Senator Kruse voting yes. Senator Pankonin voting no. Senator Johnson voting no. Senator Howard voting no. Senator Engel voting no. [LB1082]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB1082]

ASSISTANT CLERK: 20 ayes, 9 nays to cease debate, Mr. President. [LB1082]

PRESIDENT SHEEHY: Debate does not cease. The call is raised. The next speaker is Senator Synowiecki. [LB1082]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Senator Lathrop, would you yield to a question? [LB1082]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB1082]

SENATOR LATHROP: Yes. [LB1082]

SENATOR SYNOWIECKI: Let me be clear, I will probably support the committee

Floor Debate  
April 07, 2008

---

amendment and the underlying bill, but I can't help but think all the arguments you very articulately put forward could...are very much parallel to the parity situation with the health plans of the state of Nebraska relative to accessibility of mental health treatment. You would affirm that. [LB1082]

SENATOR LATHROP: Yes. [LB1082]

SENATOR SYNOWIECKI: My question is really a public policy question on why then, in the public policy direction, will we begin at what I perceive to be the back end of this problem, rather than getting out ahead of it? In other words, an individual experiences a trauma event. They deteriorate to the point of not even being able to go to work, whereas perhaps, as a public policy matter, if we had a certain level and certain degree of parity in our health insurance plans, we could mitigate that situation while they are still a viable employee, and maintain them as a viable employee under adequate mental health programs in our insurance that provide legitimate accessibility to mental health treatment. So my question is more from a public policy perspective. Why do we begin this process on what I perceive the back end rather than front end, particularly when we did with Senator Johnson's bill and the actuarial study? Everything is in place to do it on the front end. [LB1082]

SENATOR LATHROP: Well, you know, my response may be...certainly you've made a good point. And it goes back to something Senator White brought up just a little bit ago, and that is when the law started to make distinctions in workers' comp in tort law and in insurance policies, we didn't understand mental disease, mental health as we do today. And so much of it was a mystery, that care that was being provided, you know, how effective it was wasn't well understood. It would...the fear in the courts was that it could be easily faked. And now we've come so far in mental health care, we recognize the importance of treating someone with posttraumatic stress disorder, someone with depression. We know what the consequences are of leaving those maladies untreated, and the difficulty is many people are still trying to defend a policy that started back when we misunderstood and did not well understand or even well-treat mental injuries. We were filling campuses up with people that had mental disease, and now we bring them into the community. We are much better at the care, and we also understand better the importance of that care for allowing that person to get back into society and be productive. So certainly the battle today is against those who want to be...defend a policy that was started back when we didn't understand mental health well, and certainly that's true with health insurance plans, as well. [LB1082]

SENATOR SYNOWIECKI: I appreciate that, and it just...it bothers me to a certain degree that when the Legislature decides to take it upon themselves to begin to address these huge array of problems relative to mental health illness, that we decide to begin on the very back end of this. Relative to the actuarial study on the cost to provide adequate mental health benefits on the private insurance, the actuarial study conducted

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

Floor Debate  
April 07, 2008

---

by the committee under Senator...I think it was Senator Jensen's bill two years ago that the study was completed, we're looking at an increase of .3 to 1 percent, and... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR SYNOWIECKI: ...with an increased utilization management, the increase even is lowered to .2 or 50 cents per member per month according to this actuarial study. Furthermore, if it applied to mental health benefits only and continued to exclude substance abuse, the cost would even go down another 5-15 percent, as I'm reading the results from this study. So while I'll probably vote to, you know...it will take what we can get, I guess, Senator Lathrop, but I think we're kind of misstepping here and maybe taking on a public policy issue from the back end of things, and maybe should have gotten out in front of this with the comprehensive parity legislation that was introduced by Senator Johnson, which showed much of the same results that you're speaking of in terms of very minimal costs to tackle this huge problem. [LB1082]

PRESIDENT SHEEHY: Time, Senator. [LB1082]

SENATOR SYNOWIECKI: Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Members wishing to speak on the amendment to committee amendment, FA239, are Senator Howard, followed by Senator Dubas, Senator Nelson, and Senator Cornett. Senator Howard. [LB1082]

SENATOR HOWARD: Thank you, Mr. Speaker and members of the body. What this amendment asks us to do is really a "Sophie's Choice." We're being asked to turn our backs on one segment of the population that has experienced extreme trauma while recognizing the needs of another. Those that will benefit from this amendment are, through training, better able to handle this type of trauma. Additionally, typically these individuals are offered counseling following a traumatic event, whereas the average person does not have this available to them other than at their own expense. I would vote against this amendment. I feel this amendment really is very punitive. It separates out individuals that have equally severe needs and leaves one group of individuals without any type of redress for this horrible situation. I stand with Senator Cornett. I support her bill, but I can't support this amendment. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Dubas. [LB1082]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor and members of the body. Would Senator Cornett yield to some questions, please? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

Floor Debate  
April 07, 2008

---

SENATOR CORNETT: I'd be happy to. [LB1082]

SENATOR DUBAS: Thank you, Senator Cornett. Forgive...I probably don't have a complete understanding of this entire issue, but the bill refers to employees. What is offered through this bill to communities that just have volunteer responders? [LB1082]

SENATOR CORNETT: If you're talking about volunteer fire departments, they are covered under workmen's compensation if they are injured in the line of duty, so they would be...volunteers in regards to volunteer firefighters and EMTs would be included under this. [LB1082]

SENATOR DUBAS: Okay. And then who decides if the criteria is met for their extraordinary circumstances? [LB1082]

SENATOR CORNETT: That would be the Workers' Compensation Court. [LB1082]

SENATOR DUBAS: Okay. And what is currently in place for fire, police, EMT, emergency personnel to...is there anything currently in place to help them address these issues? [LB1082]

SENATOR CORNETT: There is currently in place, depending contractually on each agency, what they have available, there is what's called the critical incident stress debriefing which is a statewide policy. But we have documentation from the police psychiatrist for the Omaha Police Department and from other professionals in this area that one debriefing does not work; that if someone is actually suffering from a mental trauma, that they might need counseling. I do have some information that was very pertinent to that, that if someone receives counseling within the first few weeks after an incident...within the first 30 days, excuse me...what's called ASD, basically acute stress disorder, is completely treatable and the person can return to work without problems. If left untreated, they develop what's called posttraumatic stress disorder, which requires quite a bit more therapy and may be a problem that plagues the individual for a lifetime. [LB1082]

SENATOR DUBAS: Thank you very much, Senator Cornett. I, too, agree with Senator Howard, this is kind of Catch-22 choice. Especially volunteer responders often...very often know the people that they're going out and dealing with in these types of situations. But I've also visited with some of these people who say, you know, we know this a part of the job and accept that as a part of the job. So it's not to say that they couldn't or shouldn't have these services available to them, but there is a large segment of the population who, through no fault or choice of their own, don't have access to the mental health services that they so desperately need. And the community-based approach is definitely struggling in many parts of the state, and we're trying to find ways

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

Floor Debate  
April 07, 2008

---

to get these services and to get these people addressed. And so, you know, it's a difficult choice, saying that these people who put their lives on the line for us everyday don't deserve this, but, by the same token, there are many, many citizens across the state who need these exact same services and, for a variety of reasons, aren't able to access them. Thank you very much. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Dubas. (Visitors introduced.) Senator Nelson. [LB1082]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to ask a few questions of Senator Lathrop, if he's willing to yield. [LB1082]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Nelson? [LB1082]

SENATOR LATHROP: Yes. [LB1082]

SENATOR NELSON: All right, you've got your exercise there for just a moment, Senator. Senator, I'm looking...I know we're addressing the floor amendment right now, but I'm looking at the language of Section 1 here in the bill. And it...passing...it's going to apply to someone who is a victim or a witness to a violent criminal act and for an employee who is a first responder. Is that correct? [LB1082]

SENATOR LATHROP: Yes. [LB1082]

SENATOR NELSON: All right. Let me pose a situation here. Someone walks into the lobby of a bank, tries to rob the bank. There are gun shots and someone is seriously wounded. What about the employee who is in a back room or in the basement who hears the shots but doesn't actually witness? Are they a victim? [LB1082]

SENATOR LATHROP: No. [LB1082]

SENATOR NELSON: Why would they (inaudible)? [LB1082]

SENATOR LATHROP: Because they're not a witness to or a victim of. A witness would be somebody who actually observes somebody subjected to a violent criminal act. That would be my interpretation. [LB1082]

SENATOR NELSON: Well, but that's prefaced by words, "is a victim," unless that's been deleted. I show that...it talks about someone who is a victim or victim of or witness of a violent criminal act. So your response would be that they are not a victim of a violent act when they hear the shots and they have a mental trauma as a result of that. [LB1082]

SENATOR LATHROP: That would be my interpretation. [LB1082]

Floor Debate  
April 07, 2008

---

SENATOR NELSON: All right. Let's go to Von Maur, which is in my district and which was a tragic situation. All of the violence happened on the third floor at the customer service desk, if my understanding is correct. What about the employee on the second floor who heard the shots, who came up the escalator and then witnessed the people lying on the floor, dead? Are they a victim? [LB1082]

SENATOR LATHROP: Well, they...you know, what we're doing now is going to the fine lines and the fine distinctions, and work comp has a lot of them. I would say, I can give you my own judgment and I'd be happy to do that in just a second, but I would qualify that by saying I'm not sure what jurisdictions that have this say about the subject. But my own view would be that we use the term, or this is meant to be, those who have witnessed it or have been a victim of it. And so are you victims of violent criminal activity if you are not in proximity to a shooting, for example? I don't think so. [LB1082]

SENATOR NELSON: Well, I disagree. I certainly think that the courts are going to expand it. If someone rushes up from the second floor and witnesses blood on the floor, someone who has just been killed by several shots, they're going to experience trauma, and they are a witness to a violent crime. And this is my problem with the bill itself and this is why I'm probably going to support the amendment here. I think this just lends itself to a lot of expansion to the point where all of the Von Maur employees, for instance, would be covered by this. Certainly only a few of them might have trauma, but nevertheless I think it's...we're kind of going out on dangerous ground here. And I...you know, I feel that the impetus behind the bill is good, but I think in some respect it's got flaws. And if we're going to, as I think, encompass... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR NELSON: ...all the employees at Von Maur who, by the way, came forward and have done a lot for those particular persons who were on the scene of the crime, I can see it going to even patrons in the store eventually down the road who, through no fault of the employer...and this would be outside work comp, I understand. But I just have some real reservations about the bill and I think I will...I know I will support the floor amendment. Thank you, Senator Lathrop. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Cornett, followed by Senator Gay. Senator Cornett. [LB1082]

SENATOR CORNETT: Yes. And in the past when I originally introduced the bill, I pointed out on the floor that we had real questions about the fiscal note. And as we discussed the last time on this, we have a fiscal impact statement from the National Council of Compensation Insurance which indicates they expect this bill to increase premiums rates up to .4 percent. I want to make it clear that NCCI data is based on

Floor Debate  
April 07, 2008

---

private insurers and does not include data from the public sector, which is typically self-insured. But on the private sector I want to stress again, .4 percent to help people that have been injured. Since last week we received data from another state which has similar mental-mental statutes in place. That state is Maine. They have on an average of only 2 percent of their overall claims, that is both private and public sector, are mental-mental variety. That 2 percent reflects, again, both private and public sector mental-only claims. I'd like to read a little bit of information from the Legislative Fiscal Office reasonings on the amendment and the fiscal note, including the original fiscal note. The impact on the state: The Department of Administrative Services Risk Management Division, DAS, estimated a fiscal impact, the first time you received a fiscal note, between \$3.7 million and \$26.7 million. See the DAS response for details on their estimate and how they arrived at that. The Legislative Fiscal Office analysis, LFO, notes that the total workers' compensation claims paid by the state average, total workmen's compensation claims for the state, average only \$12.3 million per year over the last three fiscal years. The high estimate of DAS is over two times the total amount on all workers' compensation claims by the state. That is why originally I said that the fiscal note seemed unreasonably high. The low estimate of \$3.7 million is still 30 percent or almost one-third of all workers' compensation claims paid in this state. I will again go over the numbers. They believe that this will only encompass 2 percent. The Legislative Fiscal Office received information from the National Council of Compensation Insurers, NCCI. The NCCI analysis for the private insurance market estimated that mental-mental claims to all lost time claims is only 0.2 or 2 point percent, on average. And that cost could increase by .4. See the fiscal note dated March 10, 2008, for more information on the NCCI estimates. Further, the Legislative Fiscal Office received information from the Workers' Compensation Court that both the state of Arkansas and Maine has provisions in their workers' compensation law that are similar to this bill. This bill was drafted off South Carolina's current legislation and is more restrictive than either Maine or Arkansas. The experience of Arkansas over a three-year period, 2005-2007, shows the claims average 1 percent of total compensation claims. The experience over Maine over a four-year period, 2002-2005, shows claims consistently average about 2 percent of total time lost reports. Based on this information, the Legislative Fiscal Office made a new fiscal note. I would ask the body to look at that. We are looking at a total of \$130,542 to help our workers in this state. [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Gay. [LB1082]

SENATOR GAY: Thank you, Mr. President. I was listening to the discussion. I'm glad we're continuing the discussion on whether we should define this as first responders or

Floor Debate  
April 07, 2008

---

not. So they were still discussing this amendment. During the discussion I'm hearing different things and my mind is turning on what we should cover because we're talking about health plans and parity and issues that were covered in a committee I'm on, Banking and Insurance. And we had had some studies done there. And now we're...as we discuss the possible benefits and access to...what I wanted to say is the access to healthcare and affordability maybe should come first before we discuss this issue, because right now, if we don't even have...provide it for those people, now we're going on and expanding this to workers' comp, so...and I'm no expert on workers' comp. Some of the quotes Senator Lathrop made is we are talking about...he had talked about, you know, other people, that they should be included in this as well if something happens and don't pass Senator Lautenbaugh's amendment. But what he said, and maybe I misheard him, but he said, we don't know who those people are but they'll need the help. I'm not so sure that that was...if we don't know who those people are, maybe that's why we should define this a little more narrowly than to leave it open. Because Senator Cornett discussed from the fiscal notes...we had on that fiscal note it had, the first one I was reading was very large. And now we narrowed it down to \$130,542, but it was \$13 million or \$15 million. It included Health and Human Services workers, prison workers, State Patrol, some of these people. So I'm kind of at a loss of where we are in this thing. And I've been in and out, like we all are, on the discussion. I'm trying to pay more attention, so that's my fault, maybe I missed it. But there's a certain point here, if we define it just to first responders or open it up, how that affects the fiscal note. I'd like to ask if Senator Cornett would yield to a question. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR GAY: Thank you, Senator Cornett. You described the fiscal note and I was listening to what you were saying. First question is this: How many states now are in there...are defining mental illness or mental injuries as part of workers' comp? How many states do that? [LB1082]

SENATOR CORNETT: Thirty. [LB1082]

SENATOR GAY: Thirty states are doing that? So on the fiscal note, the prior one though that said \$15 million... [LB1082]

SENATOR CORNETT: It was actually \$3.7 million to \$26.7 million. [LB1082]

SENATOR GAY: Okay, I must be looking at a different... [LB1082]

SENATOR CORNETT: We've had a number of fiscal notes. [LB1082]

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

Floor Debate  
April 07, 2008

---

SENATOR GAY: Yeah, yeah, and that's what bothers me, I guess. What you're taking...you described that fiscal note. But can you go again? How could it be that far off of from... [LB1082]

SENATOR CORNETT: Well,... [LB1082]

SENATOR GAY: ...there to here? They're looking at wrong data, is that what you're saying? [LB1082]

SENATOR CORNETT: No. DAS, the person in charge, I'm trying to think of a nice way to say this, took all state workers that were exposed to any criminal act, whether it was violent or not, multiplied that by two, because she assumed that there would be two people involved, and then "timesed" it by the maximum number of weeks that was average for mental healthcare and came up with a fiscal note that was more than we pay, more than twice than we pay as a total in workers' comp in this state. The Fiscal Office actually based their numbers on hard data. They went to the states that have enacted legislation similar to this, looked at the percentage of employees that have fallen under their legislation, and you have to remember, our legislative bill in its language is more restrictive than either of these states on who would be able to apply for this. And they came up with the \$130,000,... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: ...\$130,500 based on data received from states that have already enacted this legislation based on their percentages of numbers and based on the national...the insurance statistics. [LB1082]

SENATOR GAY: Okay, thank you, Senator Cornett. But I guess, as I listen to this I wonder. Senator Nelson brought up some different issues. I just brought up some different issues. As violence increases, more and more people are being exposed to some of these situations, whether you like it or not. It's just unfortunately society is going that way. But, you know, just in a hospital, I had a hospital workers' bill in Judiciary that dealt with how we deal with that. But just recently in a hospital a guy went in and started shooting up the hospital, and unfortunately it's becoming more and more common. I just kind of wonder how we're going to get our arms around the thing and narrow it down. So I'm going to continue to listen to the debate and try to learn a little bit more about this bill. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Gay. Thank you, Senator Cornett. Are there additional members wishing to speak on FA239? Seeing none, Senator Lautenbaugh, you're recognized to close. [LB1082]

SENATOR LAUTENBAUGH: Thank you, Mr. Lieutenant Governor, members of the

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

Floor Debate  
April 07, 2008

---

body. Briefly, I believe the amendment is very straightforward and I don't intend to belabor the point. It would limit the bill, as amended by the committee amendment, to only covering first responders, as defined in the bill and committee amendment, rather than to anyone in the course and scope of his or her employment. I believe it's a warranted limitation on an expansion of workers' compensation coverage, and I'd ask your support for this amendment. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. You have heard the closing. The question before the body is on the adoption of the amendment to the committee amendment, FA239 to AM2252. All those in favor vote yea; opposed, nay. Senator Lautenbaugh. [LB1082]

SENATOR LAUTENBAUGH: I'd request a call of the house. [LB1082]

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. [LB1082]

CLERK: 33 ayes, 0 nays, Mr. President, to place the house under call. [LB1082]

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. Senators, please record your presence. The house is under call. Senator Johnson, Senator Burling, Senator Erdman, the house is under call. Senator Lautenbaugh, all members are present or accounted for. Would you like to continue with call-in or role call? [LB1082]

SENATOR LAUTENBAUGH: Call-ins are fine. [LB1082]

PRESIDENT SHEEHY: Senator Lautenbaugh will accept call-ins and the question is on the adoption of FA239 to AM2252. Mr. Clerk. [LB1082]

CLERK: Senator Preister voting no. Senator Schimek changing from yes to no. Senator Loudon voting yes. Senator Harms voting no. Senator Howard voting no. Senator Heidemann voting yes. Senator Stuthman voting no. Senator Pankonin voting no. Senator Christensen voting yes. Senator Burling voting yes. Senator Erdman voting yes. Senator Pirsch voting yes. Senator Pedersen voting yes. Senator Dierks voting no. [LB1082]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB1082]

CLERK: 22 ayes, 17 nays, Mr. President, on the amendment. [LB1082]

Floor Debate  
April 07, 2008

---

PRESIDENT SHEEHY: FA239 is not adopted. The call is raised. [LB1082]

CLERK: Mr. President, at this time I have nothing further pending to the committee amendments. [LB1082]

PRESIDENT SHEEHY: We will return to floor discussion on the Business and Labor committee amendment, AM2252. Members wishing to speak: Senator Lathrop. [LB1082]

SENATOR LATHROP: Thank you, Mr. President and colleagues for that vote. I think it was the right thing to do. I would like to use this opportunity to talk to those of you, like me, who have rural or who have not only rural but volunteer firemen in your district. This bill...the volunteer firemen I think cover, I'm told, something like 80 percent of the geography of the state of Nebraska, has as its force against fire and response to emergency situations the volunteer firemen. And the volunteer firemen are already covered by the Workers' Compensation Act. And so we now have an opportunity and an important opportunity to provide a benefit to our volunteer firemen. They probably are the strongest argument for this bill. Our volunteer firemen come to us through a variety of different walks of life, many of them uninsured because they come to us from places where health insurance isn't provided. And so we ask them...they're well trained, but they are accountants, they are factory workers, they are moms and dads and soccer coaches and people who give back to their community, and we ask them to do the most gruesome task that we can call upon someone to do and that is to go into burning buildings and take out bodies, to go to auto accidents, and respond to terrible, terrible things that no one should see a human being go through, and they are the people who respond because we ask them to. They volunteer to do it, and they run into problems occasionally. They get no benefit. There's no health plan for being a volunteer fireman. When they come upon an experience in the course of their duties as a volunteer fireman that cause them emotional injury, and it doesn't take a lot of imagination to think of those experiences that they might encounter, when they run into those, right now we say to them, good luck, good luck, I hope you have a health plan, I hope you have the money to pay for your care, by all means go get it, but we can't help you. The community doesn't help that sends them out, the community doesn't help that benefits from their service. This is an important measure for volunteer firemen, a very important measure for volunteer firemen. You have an opportunity to say to those volunteers in your district I did something for you. Today, today we expanded work comp to take care of those rare instances where one of you experience something so traumatic that you suffer an emotional injury. That is important because they have no benefit right now that takes care of that. And if that mental trauma is so bad, so bad that that volunteer in your district can't go back to work, he'll have a little, or she, will have a little stipend in the form of some disability benefits while they're off work to help them through. Now somebody can get up here and talk about why this isn't a good bill. I'd like those people who don't think it is to tell us why we shouldn't cover the volunteer firemen and the

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

Floor Debate  
April 07, 2008

---

volunteers who help the police departments as well. I think this is a good amendment and I would appreciate your support on LB1082. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Additional members wishing to speak on the committee amendment are Senator Carlson, followed by Senator Karpisek, and Senator Gay. Senator Carlson. [LB1082]

SENATOR CARLSON: Mr. President and members of the Legislature, my no vote on the amendment was in no way meant to be a vote against first responders and certainly when it comes to volunteer firemen and so forth. I believe that they deserve coverage. I don't think this bill is really about that. And if that's what we really wanted to focus on, we should narrow it to volunteer firefighters and perhaps first responders. I also have a question really as to why this bill was in the Business and Labor Committee. I think maybe it deserved to be in the Insurance and Banking Committee. And as I look at various items that we discussed in our committee, many of them now are serious conditions that either aren't covered or they're covered on a limited basis. And I...this is not an exhaustive list, but I started to put down some of those things that we've had hearings on in the committee--prosthetics, that's a huge problem for many, many families, and particularly when it involves a youngster that's growing. We had that presented. That would be something that's nice to cover; we didn't do it. We heard...hearing...we had a hearing on cochlear implants, some very compelling testimony as to why these things should be covered. We didn't forward it out of committee. And certainly we're talking about mental conditions. But in the past, generally, health plans have limited coverage on mental illness and emotional circumstances. Fertility is another area either not covered or very limited coverage. Cosmetic surgery, another area not covered or very limited, depending on how...what the need was. TMJ, temporal mandibular joint problems, sometimes covered, sometimes not. Optical coverage, sometimes covered, sometimes not; dental same way. Smoking cessation, ED, vasectomy reversal, these are all conditions that are important to people in our society. We either don't cover them or we cover on a very limited basis. We do have a thought by some people in our culture that seem to define insurance in what I believe is an inaccurate or wrong way. Insurance really is a sharing of risk, not the elimination of risk. And we can't cover everything. Mandatory coverage is a serious matter and it deserves serious consideration. Generally, when we pass a law to cover something and make it mandatory, it remains covered. Coverage is seldom taken away or reversed. So we've got to be very serious about this matter, think through what we're voting for and make sure we vote the right way. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Karpisek. [LB1082]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I would just like to say that I struggled with this bill a little bit until I did think about the volunteer firemen, EMTs, ambulance drivers, police officers that come up on some of these

Floor Debate  
April 07, 2008

---

terrible things that happen. I think, especially in our smaller rural communities, these people many times have to work on or find their friends, neighbors, or even relatives in horribly bad accidents, fires, farm accidents. It's probably the biggest reason I've never done any of that work, because I don't think that I could take it. I think that would really mess me up to have to try to pull a neighbor or a friend out of a PTO, or a grain elevator, or see bodies in a car, someone that you just talked to the day before, have known your whole life. Those are the reasons that I will vote for this bill. And I think that it's a good bill. Senator Carlson brings up many, many good instances that they did turn people down coming out of committee. And I guess that's their committee. I would have not turned most of those people down, I suppose. But I think that this is very important for our volunteers and our professionals that are in those sorts of jobs. We're having trouble to get volunteers to do these sort of things. They give up their time, time away from family, time away from business, and see some very horrendous things, but they save a lot of lives, they save a lot of money by people not being in worse shape. So again I want to thank them, and I will support this because of them. And I think that anything we can do, I think if we can treat them right away we'd have less problems with them later on. You know that if something happens that you can't get over, it affects your whole life, your family, your job, everything. So I think that this is not a huge cost to the system. I don't like to pay my workers' comp insurance any more than anyone else, but it's there for my employees. And I think that we need to do this, especially for our volunteers. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Gay, followed by Senator Cornett, and Senator Kruse. Senator Gay. [LB1082]

SENATOR GAY: Thank you, Mr. President. I'm hearing a lot about volunteer firefighters and if you are against this you're against them. I think that's absolutely false. We just voted on something, that amendment, to deal with first responders. Now, you know what? Everyone in this body, I'm sure, appreciates the hard work, dedication of volunteer firefighters, professional firefighters, paramedics, police, you know. They're on the front lines and everyone here...so I think to throw that in there, that if you're against this bill you're against them, is absolutely wrong. I commend Senator Karpisek. Earlier I think this session he had a bill, helped volunteer firefighters on work-related issues. That was a help. There are issues in the Health Committee that I think we're working on to help support volunteer firefighters. So to frame this whole discussion that if you're going to vote for or against this bill on first responders I think is absolutely wrong. What we're trying to do is expand this and look at the whole picture here. Senator Carlson brought up a good point of the other issues. There are a lot of issues we'd like to take care of, I think, as a legislative body. They tug at your heartstrings, you want to go fix those issues. This debate is about where we're going with workers' comp. Senator Cornett did a great job last year changing workers' comp. It's a difficult issue. We need to look at all the facts. Those fiscal notes, you know, read them; they're much different. The one that came out...and I know we all have struggled with fiscal notes in the past

Floor Debate  
April 07, 2008

---

that, you know, they're not always perfect, I will admit to that. But I think we're framing this discussion on volunteer firefighters and first responders. And just because you're not supportive of this bill, let's say, if that's your choice, you're not against those firefighters because I think we do many things along the way to help. There are other issues going to be...that have come up before. Should we pay the volunteer firefighters? Should we give them benefits? Should we do...you know, those are tough issues. Somebody is paying them. So somebody is paying them, if we're going to do it. It would be the taxpayers or whatever the case may be. On this case it's going to be employers paying workers' comp. So I think we got to look at the broader issue here. We're expanding workers' comp, is what we're doing here. And if you want to do that, fine. And let's listen to the debate. But I don't like the way this is turning, that if you're not for this you're against volunteer firefighters, because I look on the committee statement and at that point, when the hearing was held, they didn't even testify in favor of this. So there's a certain point, I know they're coming along. And I've had discussions with them, and I said, hey, you know, let me listen to what's happening. But they didn't even...weren't even proponents when this was heard, according to this committee statement. Maybe that's wrong. So I just wanted to put that out there. I think if we just continue to focus on that one specific issue, we're not doing justice to the whole bill. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Cornett. [LB1082]

SENATOR CORNETT: Yes. I rise to respond to Senator Carlson's remarks. If Senator Carlson doesn't think this is a Business and Labor bill, he needs to read the Rules Book on referencing. Workers' comp is most specifically a Business and Labor bill. Regardless, though, whether it went to Business and Labor or whether it went to Health and Human Services, health insurance or workers' comp, when you're comparing TMJ and some of the other things he mentioned to a life-altering, debilitating incident, I just don't see that they compare. TMJ, I have TMJ; it's uncomfortable. Take a couple Tylenol, call it good. I've had friends that I've worked with that have been permanently disabled because they did not get the help they needed when an incident occurred. I hear from Senator Gay that he's concerned about opening the scope up, and that he felt more comfortable with just police officers and firefighters and emergency responders. Those people work full-time. If...and they are trained to have coping skills, occasionally that fails. Very, very few from data statistics show that a first responder ever needs help. But private individuals that work part-time, that are covered under workmen's comp if they fall and break their leg or if they are robbed and the person that is robbing them punches them in the face and they have posttraumatic stress from that injury, are covered under workers' comp insurance. What we are doing, and I'm not trying to tell anyone any differently, we are expanding workers' comp benefits. We are expanding them for people that have witnessed violent...witnessed or been victims of violent criminal acts. And we are expanding it to cover first responders that have had that one incident in their life that they just can't cope with. I have some notes written from John

Floor Debate  
April 07, 2008

---

Wineman. He is the police psychiatrist. Critical incident is an event that is outside the typical experience for first responders, has the potential for overwhelming the responder's ability to cope at that time. I'm going to give you some examples, and this covers your volunteer firemen, your volunteer EMTs, your police, your fire: horrific death, abuse--and these are actual examples with the names left out of his patients--horrific abuse, death of children, especially when perpetrated by an adult; one incident, the private plane crash in a metro Omaha area coming virtually straight down to the ground, the responders had to search for hours for individual body parts and pieces of tissue; having shot an armed, threatening adolescent; searching for survivors in a smoke-filled apartment and encountering a deceased woman who was wearing the same clothing as the firefighter's wife was wearing the last time he saw her; believing your partner was shot dead at the moment that a car accelerates towards you to run you over. These are just a few of the real-life examples. To deny that posttraumatic stress and acute stress disorder are real medical issues is, at best, foolish in this day and age. Now I understand if people in here are ideologically opposed to expanding workers' comp benefits. [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: But no one can deny that mental illness is real. No one can deny that mental trauma is real. We are asking the businesses and the state to step up to the plate, so to speak. Keep in mind .02 percent for private pay, 2 percent overall. We're not talking a lot of money to help the people that help us and the people that may not have coverage on their own. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Kruse, followed by Senator Janssen, Senator Erdman, and Senator Carlson. Senator Kruse. [LB1082]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the bill and have only one quick comment. It is amazing to me that after 40 years of discussing the really basic question here whether mental health is a part of a person's health, in terms of insurance or anything else, that we are still debating that. There is no reasonable way to separate mental health from physical health. We know that and it's time to declare it within this bill. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Kruse. (Visitors introduced.) Senator Janssen. [LB1082]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. You know, I've been listening to the debate and something came to me that I was wondering about healthcare providers, those people that work in nursing homes, retirement areas. Now there are a lot of things that happen in nursing homes that we, as people who have never worked in there, don't understand. I'm concerned that quite

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

Floor Debate  
April 07, 2008

---

possibly this could lead to more compensation from those facilities. If Senator Lathrop...is he on the floor? Senator Lathrop,... [LB1082]

PRESIDENT SHEEHY: Senator Lathrop. [LB1082]

SENATOR JANSSEN: ...if I could have a little conversation with you, please. [LB1082]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Janssen? [LB1082]

SENATOR LATHROP: I would be happy to. [LB1082]

SENATOR JANSSEN: Thank you, Senator Lathrop. I don't know whether you were listening to what I was talking about, the nursing homes. And how would you...how would you portray this bill affecting those necessary facilities that we have? [LB1082]

SENATOR LATHROP: Yeah, thanks for bringing that up again because I know that the nursing home industry has e-mailed a number of the senators on the floor about this issue, and so this gives me an opportunity to respond to that again. Remember, that the purpose of the bill is to allow for coverage for volunteer firemen and police officers, so nursing home people don't fit in that class. It also expands, for those people who have been witness to or victim of a violent criminal act. So there may be many things about the nursing home industry, the fact that they are treating people who may be at death's doorstep to start with, who may have Alzheimer's, there may be very many heart-wrenching things that a person could see at a nursing home, this does not affect the coverage. They don't have coverage for emotional injuries from watching that. Now if somebody came in and shot one of the residents and you were standing right there and witnessed it, perhaps. But as I said last week, I think that the one industry that I can think of that is least likely to be touched by this bill in its current form and as I expect it would pass is the nursing home industry. I mean, I just can't imagine that they are going to witness a violent criminal act and then result in a claim. [LB1082]

SENATOR JANSSEN: Thank you, Senator Lathrop. I understand that. But you know, being a lawyer yourself, what would be a violent act to one person wouldn't necessarily be a violent act to someone else. Restraining someone in a nursing home and quite possibly physically hurting that person through the violence of that patient--now we all lose our tempers from time to time--could there be a situation, could there be a situation where they may be in violation there? [LB1082]

SENATOR LATHROP: Well, first of all, it's not every...it's not every violence that is covered. It's only criminal violence. So if you are, because of your job, your responsibilities and where appropriate you place someone in restraints and they thrash around violently, that would...that still wouldn't bring you under the coverage of this bill because it's not a criminal act. Now if someone took a resident and beat them in front of

Floor Debate  
April 07, 2008

---

another employee, if that employee developed an emotional injury, perhaps. But I got to tell you, I got to tell you that I think this is a one in a million in a nursing home situation. [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR JANSSEN: Well, thank you, Senator Lathrop. And thank you, Mr. Speaker. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Janssen. Senator Erdman. [LB1082]

SENATOR ERDMAN: Mr. President and members of the Legislature, this is obviously an important issue to a lot of people. People obviously have strongly held opinions on both sides of this. But the comments that were made towards Senator Carlson, I think, are more off the cuff than they are of reality. And just from a perspective of how this place works, bills get referenced to a committee by a majority vote of the Reference Committee. I would strongly encourage Senator Cornett to read the Rule Book, because there is nothing in the Rule Book that say which bills go to which committee, contrary to what she tried to chastise Senator Carlson about. It is true that workers' comp bills traditionally have gone to the Business and Labor Committee. That part is true. But you also have to realize that because a bill goes to a committee is not because of some precedent, although that generally is utilized. And those of us that sit on the Reference Committee can tell you that bills go wherever the majority vote goes. And so you can't get up on the floor and make an unequivocal statement that bills go to a committee because they're in the rules. It is not that way and that is not a fact. If you want to go after a member of the Legislature because of their position on a bill, because of a comment that they may have made, that's fine. But in doing so don't misrepresent this process, don't misrepresent how the rules are written, and don't misrepresent the flexibility in there. I can read you the rule. Rule 3, Section 4, sub (e), Reference Committee. The rule says the appropriate committee is that committee which has subject matter jurisdiction over the issue which has traditionally handled the issue. That's all it says. And if you read the rules, and if you didn't know that, you wouldn't have gotten that by reading the rules. You would have only gotten that by being here in the Legislature. And just so that you're aware, there were bills this year that were referenced to certain committees that had the exact same items in them that were referenced to completely different committees. We're going to hear about one later today, I have a feeling, that there were components of a bill that got referenced to a specific committee for what was perceived or thought or argued to be a rational reason, when in reality it may not have been, because the exact same triggers were in other bills that went to completely different committees. So recognize that our process isn't as obvious as some would have you to believe. If you want to argue against the bill, argue against the bill. If you want to argue for the bill, argue for the bill. But don't utilize some other reason as a basis for going after other members of the Legislature. That's

Floor Debate  
April 07, 2008

---

inappropriate. We can have plenty of time here to discuss the merits of the bill without arguing with each other or trying to put people in their place based on what someone's perception of the rules are. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Carlson, followed by Senator Pirsch, Senator Gay, and Senator Nelson. Senator Carlson. [LB1082]

SENATOR CARLSON: Mr. President, members of the Legislature, I'd like to thank Senator Erdman for his comments. Senator Cornett, I appreciate your instructions to me as to what I need to read. I was elected to represent my district, I intend to do that. If I wasn't brave enough to speak up until I'd read everything, I never would speak. There's also room for disagreement. Senator Chambers tell me my skin needs to thicken, and maybe that's happening this morning. But there can be disagreement as to what committee a bill should be assigned to. This is insurance and maybe it and some other bills should be heard by more than one committee, as Senator Erdman alluded to. This bill is an expansion of workers' compensation, Senator Cornett indicated that. Before we expand it, let's make sure it's the right thing. This bill is not a temporary trial for a specified period of time. It's a bill; if passed, is a permanent decision. I appreciate the discussion. I will speak my mind. I will give my opinion. I won't be covered into silence until I know everything. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Pirsch. [LB1082]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I wonder if Senator Lathrop might yield to a couple of questions. I don't know if he's... [LB1082]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Pirsch? [LB1082]

SENATOR LATHROP: Yes, I will. [LB1082]

SENATOR PIRSCH: I appreciate that. In listening to the debate thus far I understand that there is a section that applies to first responders. But there's also a provision...a second section that provides benefits for those who are not first responders. Is that correct? [LB1082]

SENATOR LATHROP: I think that's right. [LB1082]

SENATOR PIRSCH: Okay, great. Could you tell me, if you know, was the language...and I ask you this question because you've been a proponent here today on the floor and sounded very knowledgeable about many provisions of the amendment. But do you know, I think someone referenced a South Carolina bill earlier as the model for this act. Was the language for this bill, specifically with regards to the part of the bill

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

Floor Debate  
April 07, 2008

---

that deals with provisions for nonemergency responders, for laypeople so to speak, was that taken from the South Carolina bill, or from what was that taken, if you know? [LB1082]

SENATOR LATHROP: Well, I know that when Senator Cornett was working on this bill and it was moving through Business and Labor, we looked at some statutes from other jurisdictions. I recall looking at a statute from North or South Dakota or South Carolina, rather, as to how they approached the subject. But honestly, I couldn't tell you today that this is a...that we followed the example of another state down the line. And so I can't tell you if that language was something we came up to tailor it to a more narrow situation, which was our goal,... [LB1082]

SENATOR PIRSCH: Yeah. [LB1082]

SENATOR LATHROP: ...or if we followed the North Carolina language. [LB1082]

SENATOR PIRSCH: Let me ask Senator Cornett then. Perhaps she'll have an answer for me with respect to that. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR PIRSCH: And I'm not sure if you followed by questions or not. [LB1082]

SENATOR CORNETT: I only caught about half...that last half of your question. [LB1082]

SENATOR PIRSCH: Let me ask it...reask you again. There's a provision...there's two provisions in the bill. One provision deals with first responders. But a second provision doesn't have anything to do with first responders, just deals with the general public out...laypeople. With regard to that specific provision only, was that...where was that language derived from? Did that come...you...someone had mentioned South Carolina statute. Is that derived from a South Carolina statute? [LB1082]

SENATOR CORNETT: What we did was we looked at South Carolina's language and we modeled our language after South Carolina. We divided first responders out from every...from individual employees or private employees to narrow the language further. [LB1082]

SENATOR PIRSCH: Okay. And with respect then to that second...specifically the language that is found in, say, we're dealing with the layperson provision, which is the amendment to LB1082, that's AM2252, found in lines 3 through 6. And I'll read those here to you: Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who, in the scope and course of his or her

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

Floor Debate  
April 07, 2008

---

employment, is a victim of or witness to a violent criminal act, and for an employee who is...and then the other provision. So...is a victim of, a witness to a violent criminal act. Was that... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR PIRSCH: ...was that language, and we may have to continue on the next light, but was that language taken from South Carolina, do you know? [LB1082]

SENATOR CORNETT: No, that is our language. We drafted that to amend our bill down further from the South Carolina bill to make it more restrictive so we would have a more narrow definition, a lower fiscal note, and a lower fiscal impact to the private insurance. [LB1082]

SENATOR PIRSCH: Very good. Rather than...I guess, that is of relevance, that particular phrase to me, and I don't think we have enough time to further investigate here. But I'll put my light on. I don't know if there are any other speakers in the meanwhile, but we'll...I'll readdress that with you, if you don't mind (inaudible). [LB1082]

SENATOR CORNETT: And I was going to say, if there's anything we can answer off the floor, I'd be happy to. [LB1082]

SENATOR PIRSCH: Okay. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Thank you, Senator Cornett. Senator Gay. [LB1082]

SENATOR GAY: Thank you, Mr. President. I was watching TV last night and Warren Buffett came on the television and was discussing economic policy. And a question he always asks is, and then what? He goes, in any economic problem, there's always some trickle effect. And he always asks the question, and then what? I was thinking, I go, that's a great question to ask. And this bill would be a prime example, a lot of bills we do. Senator Carlson again talked about things that are out there. Well, a lot of times if we wanted to take care of people, I think, you know, everyone on this bill is very compassionate on what they want and what they want to have done. But what I'm saying, at this point, and then what? We do this now on first responders, but what about Health and Human Services' workers are now in this, and they view a lot of horrific scenes and deal with a lot of horrific problems. Senator Howard talks many times about her service in Health and Human Services. I'm sure she has a lot of stories she could tell us that aren't very pleasant. But now...but I'm just saying, where do we go from here? We deal...there's a...there's a organization in Omaha, Project Harmony. It's a nonprofit. They deal a lot with kids' issues and some of the stories I have heard are terrible. County attorneys' offices that tried, prosecute cases, they take in all these

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

Floor Debate  
April 07, 2008

---

details. And there are some stories I've heard from them that are terrible. So what I'm saying, there's a certain part, we do this now and then what next year or the following year? And I'm just afraid that we do this now today, and we go on, and it continues to be added into the future. Then how do we say no to those people? So sometimes, I think, when we look at these bills they have...they are tough votes because of that. We want to support what we're going to say is our volunteer firefighters or police officers or whatever the case may be, but then what? So I just wanted to put that out there. I think at these things we're...it's been said it's an expansion. I'm just wondering where it would end in the future. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Nelson, followed by Senator Pirsch. Senator Nelson. Senator Nelson. [LB1082]

SENATOR NELSON: Thank you, Lieutenant Governor. Is Senator Lathrop on the floor? There he is. [LB1082]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB1082]

SENATOR NELSON: (Laugh) Yes, would you yield to a question? [LB1082]

SENATOR LATHROP: Yes, I will. [LB1082]

SENATOR NELSON: Senator Lathrop, I used to do some work comp years ago, but you certainly are better informed than I am about how things are right now. I don't know much about the Zach case. Did I understand that, you know, this might have been one of the reasons that this bill was brought forward. Are you familiar with that case? [LB1082]

SENATOR LATHROP: It was mine. [LB1082]

SENATOR NELSON: Oh, it was? All right. [LB1082]

SENATOR LATHROP: So I...to answer your question, I'm very familiar with the Zach case,... [LB1082]

SENATOR NELSON: All right. [LB1082]

SENATOR LATHROP: ...and was it the reason? I think that, you know, what people experienced over at Von Maur was as much the reason this bill is here today as the Zach case. [LB1082]

SENATOR NELSON: Well, it's my understanding that this was a patrolman who made a mistake and because of that he was traumatized and took his own life. Is that correct?

Floor Debate  
April 07, 2008

---

[LB1082]

SENATOR LATHROP: Yeah. I should say that there was a question about whether somebody had given serial numbers to a dispatcher on a gun when they stopped these people that were the bank robbers a week or two earlier. It wasn't necessarily his fault, but that was certainly one of the issues and one of the things that he thought might have led to him being responsible for the bank robbery. [LB1082]

SENATOR NELSON: He was about 35 years of age, left a widow and two or three children. I'm not sure. [LB1082]

SENATOR LATHROP: He left a widow and more than that. I think he had about seven kids, if I remember right. [LB1082]

SENATOR NELSON: Had he been successful on the case, and it came under workmen's comp, do you know about what the payout would have been over the years until the youngest child... [LB1082]

SENATOR LATHROP: Never got to that, never got to that. And I should add, if you won't mind, the suicide thing is not what we're here to talk about. Work comp already recognizes suicide in a very limited circumstance, so we're not expanding this into suicide. But the general principles of a mental stimulus causing a mental injury were the subject matter of that case. [LB1082]

SENATOR NELSON: All right. Now if we take this situation and it had not resulted in his death but he had died as a result of a violent crime or whatever that comes under the purview of this bill, at age 35, if he were awarded permanent disability because of mental trauma, he would receive for the rest of his life about one-half of the average weekly wage. Is that correct? [LB1082]

SENATOR LATHROP: No. [LB1082]

SENATOR NELSON: No? [LB1082]

SENATOR LATHROP: It would...well, it would depend, Senator, whether he had...let's start out and I can give you three scenarios, if you don't mind me chewing up a little of your time. First, if he would have received treatment, which probably most people will only need, which is a little bit of care, that he would have been fine and back on the job. If he had suffered a permanent injury, absolutely with all the best care we have available to treat his injury, we couldn't get him better and he couldn't ever go back to work, then he would be entitled to total disability benefits for...which is two-thirds of your average pay for the rest of his life. On the other hand, if he just had some kind of a disability where maybe he had to go get a different line of work, but he could return to

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

Floor Debate  
April 07, 2008

---

work, then he would get a small check called permanent partial disability benefits, and only for 300 weeks. [LB1082]

SENATOR NELSON: All right. But I'm looking at the worst case scenario. And if, let's say, his average wage was about \$850, and he did have permanent disability and that went on for another 30 years, he would receive in the area of over \$700,000, according to my calculations. So my point is we look at the fiscal note and it says, you know, maybe 2...I don't remember the exact figure, \$240,000 or something like that. That may be the case, but we have to also think in terms of maybe an occasional permanent disability and what the eventual cost would be. And my... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR NELSON: ...my point on this is that it may seem like a small amount right now and not many people involved. But I can see down the future, if we expand this to the extent that the bill is, that we might, five years from now, find ourself in the position where we're actually looking at ways to contain the cost. And it's going to have a lot more fiscal impact down the years. So sorry to keep you standing so long, but thank you very much for your response. Thank you, Mr. Lieutenant Governor, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Thank you, Senator Lathrop. Senator Pirsch, followed by Senator Howard, and Senator Nelson. Senator Pirsch. [LB1082]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I wonder if Senator Cornett might yield to a couple of follow-up questions? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: I would be happy to, Senator Pirsch. [LB1082]

SENATOR PIRSCH: Thank you, Senator. In following up with our prior line of discussion here, we were talking specifically about...there was two provisions in the bill. One dealt with first responders, police and fire. The second unrelated section dealt with...not with first responders, but with just laypeople and the general public. And it's in that second provision that I have some questions. The applicable language I'm looking at in the amendment, which becomes the bill, I believe, is that anyone...the general public who, in the scope and course of his or her employment, is a victim of or witness to a violent criminal act would then be covered. Correct? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

Floor Debate  
April 07, 2008

---

SENATOR PIRSCH: Okay. And it's with respect to that language we're not...this was kind of homegrown language or organically created language here. [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR PIRSCH: And with regard to that language, violent criminal act, would the fact that something was a crime then, a criminal act, be a condition precedent for someone being able to successfully claim this workers' compensation then? Would that be one of the conditions, precedent, that it be a violent act, I mean criminal act? [LB1082]

SENATOR CORNETT: Violent criminal act, not just a criminal act. [LB1082]

SENATOR PIRSCH: Sure. [LB1082]

SENATOR CORNETT: An example of that would be if you dismissed an employee...or an employee brought marijuana to work, that would not be considered a violent criminal act, but if they assault...or someone was assaulted in the workplace. [LB1082]

SENATOR PIRSCH: Okay. A criminal act though, however, is...violent is another condition. But... [LB1082]

SENATOR CORNETT: Correct. [LB1082]

SENATOR PIRSCH: ...criminal act is a condition. So it is, you'd say, a condition precedent to somebody being able to claim it. The nature of workers' compensation, its creation was conceived of as an immediate...as a way to avoid long-term litigation. Workers were being injured. The thought was, hey, why get into this prolonged litigation? It doesn't help the workers to wait that long to collect on immediate medical needs, so let's devise a system that provides immediate care and doesn't have punitives then encapsulated on it and there would be no fault as part of that. But the criminal justice system on the other side, in opposition to that, in contrast, is a system that is one that has safeguards and delay, long lengths of delay built into this system on purpose so that procedural safeguards and rights can be observed. If...most criminal acts, or oftentimes violent crimes can take quite a long period of time to go through the system, sometimes years. And so I guess what I'm asking is, does it...is a criminal conviction necessary, or would this be a determination then that the Workers' Compensation Court would take up, whether or not an act was actually a crime, and thus put themselves in the role of a criminal court, trying to determine if guilt beyond a reasonable doubt would exist? [LB1082]

SENATOR CORNETT: The Workers' Compensation Court would not have to determine the guilt of the act, just whether it was... [LB1082]

Floor Debate  
April 07, 2008

---

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: ...violent and could be considered a criminal act. It is not upon conviction. It is that if the person is injured they can receive immediate treatment for that injury, regardless of what the outcome of a criminal case is. Because as we both know, if someone isn't Mirandized correctly, even if they're on videotape committing murder, they can be found not guilty of that crime. [LB1082]

SENATOR PIRSCH: Um-hum. But in circumstances where, for instance, there are often times that people, prosecutors can say that...can differ as to...reasonable people can differ as to whether a crime has been committed or not. Does it put the judge, in Workers' Compensation Court, in the position of deciding whether a crime has taken place? [LB1082]

SENATOR CORNETT: I would say, yes, by preponderance of the evidence that they would have to determine that an event had occurred... [LB1082]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Pirsch. Thank you, Senator Cornett. (Visitors introduced.) Senator Howard, followed by Senator Pirsch. Senator Howard. [LB1082]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I appreciate Senator Gay's reference to Health and Human Services case manager and the concern that he expresses for the hard job these case managers are called upon to do. I'm also gratified that Senator Gay has heard my words when I've spoken out in regards to the needs of the Health and Human Services case managers. The differences, as I see them, are that case managers, social workers do receive training to prepare them for the difficult job. All case managers handle stressful conditions. And case managers, being human beings, handle stress differently. But the department does recognize the stress, the violence and the, in some situations, trauma that case managers experience, and they do offer support systems through an employee help line, through an employee assistance program. And this is to be utilized when it is needed. And I think that's forward-thinking of the department because they realize that the situation that these individuals are placed in, and in many cases new case managers who may not have the experience that seasoned case managers do, need assistance in handling this. But we are looking at here is the violent, extraordinary act or situation where innocent people are subjected to the most horrific of events. I support this bill. I don't know that we have to concern ourselves at this moment with the what-ifs or, if we do concern ourselves with that, possibly we should look at every bill we vote on. This is certainly addressing the needs of people who are placed in situations they are not...they are not prepared to address. Thank you. [LB1082]

Floor Debate  
April 07, 2008

---

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Pirsch, followed by Senator White. Senator Pirsch. [LB1082]

SENATOR PIRSCH: I'm going to waive. [LB1082]

PRESIDENT SHEEHY: Senator Pirsch waives. Senator White. [LB1082]

SENATOR WHITE: Thank you, Mr. Lieutenant Governor. Again, I think one of the things we need to focus on in this case, first, is cost savings. It is my firm opinion that we will save money because we will have adequately intervened early and treated, and we will save that directly in social costs on conditions like this that are not treated. If you look merely at the cost of educating and training a first responder, whether it's a volunteer or a full-time employee, that cost and the burnout cost from people who, after a time, can't take it anymore, that alone, I believe, will go far to offsetting the actual cost of this bill. Keeping our professional first responders on the job longer, keeping them mentally healthier, and as a result physically healthier, is a savings, not an expense. Second, I know that there is concerns that somehow these costs will run amuck and it will become far too expensive. But the reality is that has not been established in any state that has passed this. The states that have passed this have found the additional cost is very, very modest. I know that Senator Gay has repeated concerns about the fiscal note. But as the process worked as it should be, and actual experience was consulted over baseless fears, the fiscal note dropped to almost nothing. It is truly a nominal cost. But the human cost of not treating this is overwhelming. It is a substantial personal cost and it is one we understand more now. It is one thing when we did not know and could not do anything effectively to alleviate this suffering. But now we know better. We know exactly what can happen to families when this occurs to them, and we have the ability to prevent the injury from going further. I, like Senator Synowiecki, would much prefer that we have a comprehensive mental health plan and treatment program. But the fact that we have not been able to solve all things at once doesn't make this a bad bill. You do what you can with what you have when you have it. Today we are given an opportunity to do the right thing by many employees, by many of our volunteer firefighters, by many of our emergency response units. We can do right by them today. That we cannot do right today to everyone is no excuse not to do right by the ones that we can. And for those who fear the continued costs, I respect that, I deeply do. But I also recognize that there are certain fundamental things that society has taken on for over 100 years, and one of those has been we will limit what you can sue for, if you're an employee, but we will not in this case treat what is an injury we know you get. That is a disconnect. The original deal on work comp was we'll limit the employee's right to sue, but we will give you fair and complete treatment for the injuries you suffer. We now know these are real injuries. But we want to hang onto the idea you can't sue for them,... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

Floor Debate  
April 07, 2008

---

SENATOR WHITE: ...but we won't treat for them. That's not right. That is not the basic deal that we struck. The employee whose mind has been damaged because of a risk they took on the job is no less deserving of treatment than the employee who's physically injured because of a risk they took on the job. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator White. Seeing no additional requests to speak, Senator Cornett, you're recognized to open on...or close on the Business and Labor Committee amendment, AM2252. [LB1082]

SENATOR CORNETT: Thank you, Lieutenant Governor. I want to urge the body to pass this amendment because it does clarify the language in the bill and brings us into compliance with a number of statutes. What I want to go over again in closing is this body, whether you choose to vote for the bill or not, needs to recognize that mental illness is real. They need to recognize that it can be caused by a significant event. For first responders, they are separated out from the general public because they do see things that the rest of the world doesn't see. They do jobs that the rest of the citizens do not want to do. Looking at the statistics, very, very, very few first responders will ever apply for this help. We separated the general public out because they are not trained to be able to cope with these incidents. We want them to be able to receive the medical care that they need. If they are injured at work, again I'm going to go over how work comp works...operates in this state. If you are working and you slip and hurt yourself, you are covered under workmen's comp. If you are the victim of a violent criminal act where you have been injured, no matter how slight the injury, if you have mental illness or trauma resulting from that incident, now it can be as small as a bruise that you're treated for medically, you are covered in this state on workers' comp. But currently under our laws, and this bill was being worked on before Von Maur occurred, if you go to work and you experience something that is outside the scope of your normal job performance and is violent and criminal in nature, and you need to see someone for help, you are not covered. If you do not have health insurance, you're out of luck. What is the goal of workmen's compensation in this state? It's to return the employee to work. What is the cost to society if we don't treat these individuals? People keep...people have brought up the fiscal note a number of times, \$130,000 fiscal note for the state, .02 percent for private pay on insurance, 2 percent overall for private and public to treat our individual citizens that have experienced a traumatic event and to care for our first responders who do jobs that none of us are willing to do. I urge the body to support this amendment because we need the clarifying language for the overall bill. Thank you very much. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of AM2252 to LB1082. All those in favor vote yea; opposed, nay. Senator Cornett. [LB1082]

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

Floor Debate  
April 07, 2008

---

SENATOR CORNETT: I would request a call of the house and a roll call vote, please. [LB1082]

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. [LB1082]

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call. [LB1082]

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. (Visitors introduced.) Senator Cornett, all members are present. We will continue with the adoption of AM2252 to LB1082 by a roll call. Mr. Clerk. [LB1082]

CLERK: (Roll call vote taken, Legislative Journal page 1325.) 22 ayes, 26 nays, Mr. President, on the committee amendments. [LB1082]

PRESIDENT SHEEHY: Committee amendment, AM2252, is not adopted. Mr. Clerk. The call is raised. Mr. Clerk, do you have items for the record? [LB1082]

CLERK: I do, Mr. President. Bills read on Final Reading this morning were presented to the Governor at 10:20. (Re LB765, LB766, LB777, LB889, LB952, LB973, LB1157, and LB1157A.) An amendment by Senator Johnson to LB245 to be printed. And Enrollment and Review reports LB1116 and LB1116A to Select File. (Legislative Journal pages 1325-1327.) [LB765 LB766 LB777 LB889 LB952 LB973 LB1157 LB1157A LB245 LB1116 LB1116A]

Mr. President, I now have amendments to the bill. Senator Cornett, AM2514. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, you are recognized to open on AM2514. [LB1082]

SENATOR CORNETT: I'll withdraw that amendment, and I believe we just filed an amendment. [LB1082]

PRESIDENT SHEEHY: AM2514 is withdrawn. [LB1082]

CLERK: Senator Cornett would move to amend with AM2670. (Legislative Journal pages 1327-1329.) [LB1082]

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on AM2670. [LB1082]

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

Floor Debate  
April 07, 2008

---

SENATOR CORNETT: Mr. President, or pardon me, Lieutenant Governor and members of the body, the members of this body have spoken loudly and clearly they do not want mental injuries to be covered under workmen's compensation. I want to make sure that this body and the people standing on the other side of the glass know that their voice has been heard. I'm offering AM2670 to follow through, to make sure that workers' compensation does not bear the cost of mental injuries in the state of Nebraska. This amendment is exactly what the body has asked for by voting against the committee amendment. I am asking you now to support your own position and support your own ideologies that you used to convince this body that workers' compensation should not be an avenue for revenue...or recovery for mental injuries sustained in the workplace. Thank you very much. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening of AM2670 to LB1082. Members wishing to discuss from the floor: Senator Lathrop. [LB1082]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm going to rise in support of Senator Cornett's amendment. You may find it strange that I stand up here after you have chosen, as a body, to not accept the committee amendments and not to provide coverage to just a handful of first responders who might suffer posttraumatic stress disorder or some like condition. But Senator Cornett is on to something here. Basically, what this amendment is going to do is to except these people from work comp coverage so they're not provided benefits, nor are they subject to any of the limitations. And I would expect the body to be in full support, as I am. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Are there additional members wishing to speak on AM2670? Senator Fulton, followed by Senator Pirsch. [LB1082]

SENATOR FULTON: Thank you, Mr. President. Would Senator Cornett yield to a question? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: Yes, Senator Fulton. [LB1082]

SENATOR FULTON: Haven't had a chance to review the amendment. Could you explain what's...what is contained therein? [LB1082]

SENATOR CORNETT: It excludes mental injuries from workers' compensation and removes them from the workers' compensation altogether. [LB1082]

SENATOR FULTON: So what necessitates this amendment and the bill then? I guess

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

Floor Debate  
April 07, 2008

---

I'm...this seems to militate against the position you took earlier, so can you explain that, why this would be needed? [LB1082]

SENATOR CORNETT: Well, basically, that if they're not going to be covered under workmen's compensation, that then they can sue their employer for coverage for damages incurred,... [LB1082]

SENATOR FULTON: Okay. [LB1082]

SENATOR CORNETT: ...which they cannot currently do under workers' compensation. They are not allowed to collect under workers' comp, but they would now be able to collect. [LB1082]

SENATOR FULTON: Okay. Thank you, Senator. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Thank you, Senator Cornett. Senator Nelson. [LB1082]

SENATOR NELSON: Thank you, Mr. President. Would Senator Cornett yield to a question, please? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: Yes, I would. [LB1082]

SENATOR NELSON: Senator Cornett, the amendment just came up on the screen. I haven't read the whole thing yet. But from what you just explained, let's return to Von Maur. The employees there then would be in a position to sue Von Maur for the mental difficulties that they had as a result of that incident? [LB1082]

SENATOR CORNETT: Only if the employer was found negligent. [LB1082]

SENATOR NELSON: Well, that's a new aspect here. You didn't mention that before. There has to be negligence... [LB1082]

SENATOR CORNETT: I apologize on that. No, there has to be negligence. [LB1082]

SENATOR NELSON: ...negligence on the...and that could be construed, if there were not guards at the door or protecting the elevator, then we could argue as attorneys that there was negligence on the part of Von Maur. Is that correct? [LB1082]

SENATOR CORNETT: The argument would have to be made in court and determined by a judge. But currently under workmen's comp statutes, whether there is negligence

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

Floor Debate  
April 07, 2008

---

on the part of the employer or the employee, there is no ability to collect or sue individually, only to collect under workers' compensation. This amendment would remove that. And if the employer was found negligent by a court, they would be able to sue for damages. [LB1082]

SENATOR NELSON: Okay, thank you, Senator Cornett. Members of the body, I object strenuously to this amendment. Von Maur was a fine store. They had protections in place. No one ever anticipated that anything in the nature of the tragedy that occurred there would occur. And now we're saying that if a court could find them negligent in any respect that they would be responsible for the trauma that the employees there or, for heaven's sakes, even other...well, the amendment doesn't cover that. But there again, I can see expansion down the road here. As I say, I object to this amendment and I certainly will not support it. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Thank you, Senator Cornett. Additional members wishing to speak on AM2670: Senator Howard, followed by Senator Wightman, Senator Lathrop, Senator Lautenbaugh, and Senator Cornett. Senator Howard. [LB1082]

SENATOR HOWARD: Thank you, Mr. Lieutenant Governor. If Senator Cornett would yield to a question. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: I would be happy to. [LB1082]

SENATOR HOWARD: Thank you, Senator Cornett. My question is basically along the same lines as Senator Fulton and Senator Nelson. And if I understand the amendment, this addresses the current workers' comp law. And if I'm on the right track, currently, the workers' comp law prevents the employee who has been a victim of a horrific circumstance from suing. So basically, this would take down a barrier that's now in place. Am I understanding this correctly? [LB1082]

SENATOR CORNETT: Yes, you are, Senator Howard. Basically, what I am trying to put forth to this body as an idea is you have injured workers that are going to have expenses from their injuries that could be covered under workmen's compensation. We as a body today have said that they do not deserve to be covered. So even if they're...under this amendment, if their employer is negligent or careless and it leads to that violent criminal act, they can sue for recovery of expenses and damages in court, which currently they cannot do under the workmen's comp laws. [LB1082]

SENATOR HOWARD: This explanation is very helpful to me. And if I could give an example that comes to my mind, and you can tell me if this would fit into this scenario,

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

Floor Debate  
April 07, 2008

---

say a convenience store sells a large amount of liquor and so consequently there is cash in the till, there is money on hand, and it's a well-known fact that they do handle volumes of a product that produces a substantial amount of money coming into that store. And yet there is no security guard on hand to act as either a deterrent or a preventative in case someone comes in with a gun and threatens a clerk who isn't trained to deal with an armed robbery. Would this give that clerk the opportunity to sue in that situation? [LB1082]

SENATOR CORNETT: That would have to be determined by the court. But, yes, it would be an instance that they would be able to look at. [LB1082]

SENATOR HOWARD: All right, I appreciate that very much. That certainly helps me better understand the amendment and I certainly support it. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Howard. Mr. Clerk, do you have items for the record? [LB1082]

CLERK: Mr. President, one: Senator Fischer would like to add her name as cointroducer to LB895. [LB1082 LB895]

And I have a priority motion. 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 are in recess.

RECESS

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please return to the Chamber and record your presence. Mr. Clerk, please record. []

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

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Do you have any items for the record? []

CLERK: I have nothing at this time, Mr. President. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. It is 1:30 and we'll proceed with the first item on this afternoon's agenda, a motion to override Governor veto, LB959E. Mr.

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

Floor Debate  
April 07, 2008

---

Clerk. [LB959]

CLERK: Mr. President, Senator Heidemann, as Chair of the Appropriations Committee, would move that LB959 become law notwithstanding the objections of the Governor. [LB959]

SENATOR LANGEMEIER: Senator Heidemann, you are recognized to open on the motion. [LB959]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. This is probably one of the more tougher things that I probably have...going to try to accomplish in my fourth year up here and I do not take this very lightly at all. It seems like we've come almost full circle from a year ago. We had a fight on the budget when it comes to roads and we're back again, and I've determined that the right thing to do is to increase the appropriations to road, which would result in a 1.2-cent gas tax increase. Since last year, there has been a lot of work done on roads funding issues and we studied different ways that we could fund roads, and everything that we come up with was going to cost a little bit more money. We worked on and because of our work through the summer LB846 was introduced and it will change the funding mechanism on how we fund our roads, to a point. I am handing out a sheet that...it says the "Nebraska Tax Rate" history, and I found it very interesting, since 1993, that the gas tax was 24.6 cents. What I really focused on, though, was in 1996 the gas tax rate was 26.4 cents. If we override this veto, we are estimating that the gas tax rate will be 26.5 cents and that's been approximately 12 years ago. And I'm trying to call by memory, but I remember in the 1990s that gas would drop below \$1 a gallon. And you look at where gas is at now and you look at the tax that we collect, and then you look at about what has costs...increased costs in highway construction, and if you look at the overall picture, and this is not easy for me to stand up here and say that we need to raise taxes, but this is the right thing to do. This is the responsible thing to do and that's why I'm standing up here and making this motion and I'm urging you to support this, because I believe it's the right thing to do. I went back to my district this week and, as I've been told, a lot of you did, too, and you got a lot of e-mails and phone calls and correspondence, and I'll have to tell you that there was one or two phone calls that I got that they weren't happy with what we was going to try to do. The majority of the people that talked to me, though, said that this is the right thing, this is the responsible thing, and I got more correspondence asking me why, if the gas tax rate was 27 cents the 1st of January and there as a roads funding problem, why in the world did we ever drop it to 23? And that's what we did, but that's the way our system works. That's the variable rate and that's what I tried to explain it to them. We have an opportunity now to go back a little bit. We're not asking to go back to 27.1 cents. We're asking to go back to about 26.5. I can go back into my district and say that, under our leadership in the Legislature, we was able to drop the gas tax by a half a cent, and we really will. If we enact this, we will still have a gas tax that is a half a cent lower than we was at the 1st of January. If

Floor Debate  
April 07, 2008

---

we don't do this, in the fiscal year '08-09 the state appropriations to roads will be \$3.7 million less. This state has realized that it has a funding problem for roads and I say to you that if we appropriate \$3.7 million less we are not headed in the right direction. Through the weekend there has been work on what we are trying to accomplish here and some other things when it comes to roads funding, and through various compromises, I worked with Senator Fischer, Senator Flood and some others, but we have come up with something that hopefully we can sell or we can put out before you and see if you can agree to it, that maybe as we go on with this and with LB846, as it comes up, that it might be just a little bit more agreeable. And because of the work that I've done this weekend, the rest of my time I want to hand over to Senator Fischer, give to...yield to Senator Fischer, to let her explain what we plan to...what she plans to go ahead with on LB846. Thank you. [LB959 LB846]

SENATOR LANGEMEIER: Thank you. Senator Fischer, 4:36. [LB959]

SENATOR FISCHER: Thank you, Mr. President and members. Thank you, Senator Heidemann. Senator Heidemann explained, I think explained it well to you, that we're going backwards with highway funding. Maintaining the highway construction budget at a stagnant level is actually a step backwards. It's been well documented that inflation has averaged an estimated 11 percent a year over the last three years based on the highway construction price index. Over the same period, our revenue has increased by 1 percent a year. The federal government is not going to be saving the day for us. I had the opportunity to have a conversation with Senator Ben Nelson a little over a week ago in Omaha and at that time I plainly asked him whether there will be money coming from the federal government. His response was there won't be any money. I believe that the small increase that we're talking about today is a small step that shows good faith on the part of this body that the highways of this state are a priority. What we're talking about is a 1.2-cent increase. Four months ago, as Senator Heidemann said, we had 27-cent gas tax. It dropped 4 cents January 1. Today we're at 23 cents. How much of that 4-cent increase helped the public? How much of it was passed on to our consumers? The answer is none of it. In the last week of December of 2007, the average price of gas in Nebraska was \$3.09. The gas tax decrease went into effect January 1. That same week, the average price was \$3.09. The week after it jumped to \$3.14. There has been much talk about the fact that this gas tax override, coupled with the A bill in LB846, will lead to a large gas tax increase at a time when gas prices are the highest in our history. Everyone in here has received e-mails, letters, phone calls from constituents voicing their opposition to a gas tax increase. Some of us also have received tremendous support. Being the introducer of LB846, I understand the opposition better than anybody and I'm willing to make a compromise. I will have an amendment filed to my bill. If this override passes and that amendment is adopted, I will ask the Speaker to leave LB846A off the agenda, which negates the additional gas tax that the bill calls for. The amendment pushes back the effective date for LB846 from January 2009 to July. This will allow us to go through a legislative budget cycle and

Floor Debate  
April 07, 2008

---

determine the appropriate funding level for the Department of Roads with the LB846's funding mechanism in place. In place of the A bill, \$15 million will be transferred out of the Cash Reserve Fund to the Roads Operations Cash Fund, \$5 million each over the next five years. The Department of Roads will be required to use this money to leverage for appropriated federal highway earmarks. During debate on the budget and on LB846, it was questioned whether the department has maximized the funds available to it. [LB959 LB846 LB846A]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR FISCHER: This \$15 million will allow the state to match up to \$75 million in those federal earmarks. I want to make it clear at this time that I do not presently or in the future support earmarking funds for certain highways. It's spelled out in our constitution and statutes that building highways and setting priorities is a job left to the Governor and his Department of Roads. Our sole job in this body is to provide the necessary funds to allow them to do their job. However, we do have approximately \$73 million in unused federal earmarks on many projects that are not high up on the department's priority list. This \$15 million will allow us to maximize the return we will see on our construction dollars. I believe it's a good faith effort on our part to the citizens across the state who have patiently waited... [LB959]

SENATOR LANGEMEIER: Time. [LB959]

SENATOR FISCHER: ...for their projects to be realized. Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Fischer and Senator Heidemann. (Visitors introduced.) You have heard the opening on the motion to override the Governor's veto of LB959. The floor is now open for discussion. Those wishing to speak, we have Senators Erdman, Kruse, Wallman, Fulton, Chambers, Johnson, Flood, Wightman, and others. Senator Erdman, you are recognized. [LB959]

SENATOR ERDMAN: Mr. President, I rise in opposition to this motion because, candidly, it is unnecessary. You will have a fifth opportunity this session to not vote to raise the gas tax and still fund roads, five separate times. You've already had four and you're going to get another one. You've had four chances to not raise the gas tax and every time you've decided overwhelmingly that that's what you want to do. This is not about need. This is not about responsibility. This is not about being the right thing to do. This is what you want to do, and if you want to do it, go for it, but recognize that it has been clearly demonstrated on this floor that this is not a need to be done this way. This is one idea. This is the way. This is the Appropriations Committee's way of funding the highways, fair enough. How many times will it take for me to offer amendments, or now Senator Fischer or whoever, to point out that there are alternatives that are viable, that

Floor Debate  
April 07, 2008

---

provide us, as a Legislature, the opportunity to fund roads? Here's what you're hearing. You're not hearing, gosh, vote for the gas tax; that's a fantastic idea. You're hearing, we need money for roads. That's what you're hearing. And the people that are e-mailing you are saying, we think that this is the only way, because that is the only way that they've been told throughout this entire session. And in spite of the four amendments that I have offered, and which every time I offer them I get a few more votes, they're not being told, hey, there are other ways. In fact, there's \$700 million laying around in some funds that we could use that are General Fund or minimum Reserve Funds that we could utilize as a Legislature to fund \$30 million. Now Senator Fischer is going to offer you a compromise on LB846 and, if I were you, I'd take the deal in a heartbeat because it accomplishes a goal that I had, and I think a goal that we all have, and that is it provides additional funding for roads. And the way that she has explained it, it provides us the opportunity to access 80 percent more funds than we would have if we would simply expend the money on our own. In other words, there's a 1 to 5 match for those federal dollars if we will expend the money. And ironically, that was Senator Louden's idea--LB1035. I'd encourage you to look it up. It does exactly what that compromise would allow. So there have been other ideas that have been offered this session. But here's what you're missing from this whole conversation. When you vote to raise the appropriations for the Department of Roads, you're not saying we're raising the gas tax 1.2 cents. That's the effect, based on projections. When you vote on a tax, such as a sales tax or an income tax, you are literally writing in statute what the percent is. You know that. What happens if the price of gas goes up another 20 cents this next month as it did this month? People will buy less gas. That 1.2 cent becomes more because, unlike those other taxes, what you do in this case is you're not setting the rate, you're setting the money. So now you're going to say we're adding \$14.5 million to what the Department of Roads was going to previously spend. It may be 1.2 cents. It may be 5 cents. It may be more. It may be less. That's the variable part of our gas tax. So what you're voting on here today isn't a 1.2-cent increase in the gas tax. You're voting to authorize the Department of Roads, over the objection of the Governor, to spend another \$14.5 million that will be generated by whatever amount is needed to fund that when it is absolutely abundantly clear that it is not necessary. And you say, well, you're just up here because your amendments didn't get adopted. To be honest with you, I don't know why they don't get adopted. I really don't. I have been in this Legislature for eight years and if there's anything that I can always point to is that when the Legislature had the opportunity to do what they had to do, they did it. It is abundantly clear to me, going through the two largest increases in sales and income tax in the history of the state, that we do not have to do this. Let me offer you this other amendment, in addition to what Senator Fischer offered. If you vote this down, you're not guaranteeing yourself that there's not this \$14.5 million, because we can come back and amend LB846 to take this out of the Cash Reserve as well. And if you do vote to override the Governor on this \$14.5 million, we can still come back on LB846 and offer an amendment to do that anyways. [LB959 LB846 LB1035]

Floor Debate  
April 07, 2008

---

SENATOR LANGEMEIER: Time. [LB959]

SENATOR ERDMAN: Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Kruse, you're recognized. [LB959]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the motion that is before us, as others do so thoughtfully. We have been asked respectfully by the Governor to look at this again and, as a respectful senator, I look at it again. I still come to the same conclusion, as has already been stated, this is not a tax cut. We're trying to restore to a figure where the calculations were not correct, so it could more precisely be called a restoration of funds. The question before us does relate to costs at the gas pump and I'm very sensitive to that. At the same time, let's keep it in perspective. On the main street near me are five major gas stations, all of them busy. Yesterday the price at those stations varied by 15 cents. Every one of them was busy. So I'm not thinking that a penny is what's guiding the people's concern. Finally, I would want to take some time to respond to Senator Erdman's question--what's going on here; how come we keep turning it down one, two, three, four times and maybe we'll even give it a fifth chance? Well, I can give an answer for myself. His option is raising taxes. All of them have to do with taxes. Senator Erdman and I came in preceding a tough time and we and the other senators that were here at that time made a promise that when we raised sales tax by a half cent we would take that off by '05. It wasn't a guaranteed type of a thing, but we would take that off. I still want to take that off. This is comparable to the amount of money that he's talking about. If there is that kind of money there, I want to take it off of the sales tax. Therefore, as I look at it in my mind, we are comparing a tax on sales with a tax on gas. It is a choice of the two taxes. I much prefer to reduce the tax on sales and, therefore, I will be making my decision on that basis, both now and if there come other alternatives, because I think we are all conscious that all of the funds we deal with are tax funds. All of the funds we deal with either use a tax decrease or increase or shift, usually a shift. We've watched all kinds of shifts. Well, this is a shift and we need to consider what we are doing as we balance these various funds, but especially I would urge my colleagues to restore the cut that we inadvertently gave a year ago. Thank you. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Wallman, you're recognized. [LB959]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I appreciate Senator Kruse's comment about a tax shift. I think we all know where the tax shift will be. It will be on your house, on your farmland. Cash Reserve: I remember we didn't have enough money to fully educate, fully fund education, so we took it away from the kids. And I drive a car. The farmers use probably as much fuel as anybody, and I don't

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

Floor Debate  
April 07, 2008

---

like to pay the taxes either but I use it and I should pay it. And my trucks go on the road, I use the roads, so a fuel tax is not very popular and I realize that. And I respect the Governor for overriding it. It's his prerogative. But it's also our prerogative to try to do what's right, like Senator Fischer said and Senator Heidemann, try to do what's right for our constituents and vote within your heart how you would. But I think this is the right way, to override this. And I thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Those still wishing to speak, we have Senators Fulton, Chambers, Johnson, Flood, and others. Senator Fulton, you're recognized. [LB959]

SENATOR FULTON: Thank you, Mr. President. I'm opposed to this motion. We voted this in the Appropriations Committee and we had some good debate, and I do not want to see an increase in the gas tax. I'll explain why. We have an opportunity here to address the broader policy behind our roads infrastructure, how we fund roads. It has been done in a particular way for many years and this way has served us well. Senator Fischer has done an immense amount of work on this and I have great respect for that. This past summer I also did some work on this, this issue. We reflected on past policy, we reflected on the potential for new policies, and I simply cannot get past the math. Let me explain. We all understand that we have a proliferating increase in the cost of building a road. The inflationary pressures in the industry by which we build roads, double digits, 11 percent, 15 percent, I've heard 23 percent. It's increasing. In order for us to meet the present shortfall, what we would have to do with the gas tax, we would have to more than double it and then we would have to expect that gas tax to increase by at least 15 percent every year. Now if we are seeing a political difficulty raising the gas tax by 1.2 cents, imagine doubling it and then increasing it by 15 percent every year. Clearly, this is going to be a political impossibility. It is, therefore, also a mathematical impossibility to continue funding roads with the gas tax. We have to find an additional way because we can't keep coming back to the gas tax. If we are able to increase the amount of revenue derived from the gas tax this year, next year we are going to have to do it again and again and again, and it's difficult every year, politically, because our constituents will have none of it. And it, therefore, seems that we have to come up with another policy, an additional policy. So that's my rationale for not supporting this motion. I would like to see this Legislature, with language I'll use here, drive the stakes in the ground now, create a situation where we recognize that the gas tax has served us well but in the future we have to find another policy. I have proposed another idea. There are some others who have proposed other ideas. But at some point we have to recognize that the gas tax is not the appropriate policy by which the future of our roads can be recognized. There's an underlying psychology that we have to understand here also. Why do people become incensed at raising the gas tax by 1 or 2 cents when, in fact, the price of a gallon of gas increases by 5 or 10 or 15 cents over the course of a week? If one were to look at this simply by way of logic, one would say, well, you wouldn't miss 1 cent, you're going to be increased by 10 cents anyway just for

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

Floor Debate  
April 07, 2008

---

what's...by what's happening, by virtue of what's happening in the oil sector. We're talking about a psychology, a deeper underlying psychology that we are seeing manifest itself through these e-mails and contacts that we're getting from our constituents. When one experiences the wild fluctuations in the price of gas that everyone experiences--and everyone, rich and poor alike, experiences this--then... [LB959]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR FULTON: ...it introduces an element of doubt in what goes on behind the price of a gallon of gas. And then introduce into the media...into the media consciousness of people that we in the Legislature are contemplating raising it some more. Then you begin to understand the underlying psychological doubt that exists on the part of our constituents. And so for that reason, I believe we should oppose this motion. We have to drive the stakes in the ground now and communicate an urgency to future legislators...Legislatures that we have to find an augmenting way to fund roads because the gas tax cannot cut it going forward. Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Chambers, you're recognized. [LB959]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I shall dub Senator Fulton the "Secretary of Stakes." At any rate, I'm going to agree with his position in not supporting the override. There are things the public understands. There are things which the public does not understand. Senator Fulton laid it out. When the government appears to be ignoring the pain that people are feeling at the pump, it takes on a political facet. And as scared as my colleagues are, you won't even vote against the death penalty because you say what you're constituents say. They don't know whether there's a death penalty or not. I've done more work on the death penalty than anybody has done on the gas tax. I didn't make you give me a vote, so just cast that out of your mind, Senator Carlson, like the devils were cast out of those...that guy and into the swine, right? People talk about the issue being how the road building will be funded. There is an issue preliminary to that which nobody will look at and that has to do with why there are roads being built. A guy from Creighton who is a...I think he's an economist, his last name is spelled G-o-s-s, said that as you build roads then there is economic development. You have to make sure that the road is going from somewhere to somewhere and on that road is going to be the type of traffic that results in the generation of revenue. The construction industry is driving the road building program in Nebraska. That's why roads go from nowhere to nowhere. They are shabbily and shoddily constructed. They are composed of differing substances, concrete and blacktop made from I don't know what, and they go nowhere. And there are a couple of big companies that get the contracts. In fact, as I've said, Hawkins paints its trucks the same color as the state Department of Roads' trucks. Now I don't know which one is an adjunct to which. What Senator Erdman talked about a few minutes ago was simply

Floor Debate  
April 07, 2008

---

information overload. It was too complex. Senator Erdman, if I were to sing a song to him would be: We're two lost souls on the highway of life, / We don't even got a sister or brother; / But ain't it grand and ain't it sweet (claps twice), / We got each other? They don't like Senator Erdman. That's why people aren't adopting his amendments. You all know you don't like him. You listen to him. He comes off abrasive, critical, complaining. Kid reminds me of myself (laughter), and you don't like either one of us. But it makes me no difference; I've earned the right to do those things. And he does not season his harshness with humor so he comes off as a scold, but he's too young to be a scold and get away with it. He cannot get away with what I get away with. He is not Ernie Chambers; in fact, nobody is. So what he's going to have to do is gear what he says and the way he says it to his audience. He should know by now, though he hasn't been here as long as I've been here, that you have to know how to package something when you want people to accept it. You cannot get many people who understand the symbols of this society to take a container that has a liquid in it and on the label... [LB959]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR CHAMBERS: ...is a skull and crossbones and get that person to consume that liquid. It might be an elixir that will turn back the years, but the skull and crossbones symbolizes poison so they're not going to accept it. We need to go, in my view, a step at the time. The first step is to defeat this override motion. Then, when we get to LB846, let everything be discussed at that time. You can be told something today and be assured that tomorrow down the line this next thing is going to occur, but in a political setting you don't know whether that is going to pan out or not. [LB959 LB846]

SENATOR LANGEMEIER: Time. [LB959]

SENATOR CHAMBERS: Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Chambers. (Visitors introduced.) Returning to discussion on the motion to override LB959, those wishing to speak, we have Senator Johnson, Flood, Wightman, Friend, Erdman, and others. Senator Johnson, you are recognized. [LB959]

SENATOR JOHNSON: Thank you, Mr. President. Senator Chambers certainly did touch on some points that we need to talk about this afternoon and I'm going to put on my light again and talk about those specific things that I think that our Roads Department needs to start addressing them. Let me say at this time that we have to start having decent priorities of where we build roads so that they bring about economic development. Rather than just building a road here and a road there, let's make it worthwhile. I did save yesterday's newspaper by Ernie Goss and John Deskins, two economists that were talking about roads, and I think they're particular apropos today. Let me quote a little bit here to start off this discussion: The link between highway

Floor Debate  
April 07, 2008

---

spending and economic growth is likely to be high in Nebraska compared to other states because Nebraska depends more heavily on industries that demand good quality highways. Using economic modeling tools, we found that the trucking industry generates nearly \$2 billion of total economic impacts in the state of Nebraska. Advanced logistics systems deployed by the manufacturing and distribution centers--a place where Nebraska can succeed because of our position on I-80 and other areas, the success of which is not possible without a reliable highway system. Now we'll get into the meat of what they had to say. The same study found that individuals place similar value on reliable transportation networks as unreliable commute times directly impact the quality of family life. In other words, outstate, nonmetro highway systems are important if we intend to grow nonmetro Nebraska. Given that Nebraska's economic health is highly dependent on good quality roads, it is certainly important that Nebraska remain competitive in its supporting highways, something it is not doing at present. Between 1992 and 2005, Nebraska expanded its highway spending by about 48 percent, while surrounding states did it at 58 percent. South Dakota, if we had spent at a same increased rate, we would have built \$187 million more roads last year. A more competitively funded highway system would advance Nebraska's economic development and reduce the state's tax burden. If we grow, in other words, we will have more to tax and the tax burden itself will go down. In this context, Nebraska cannot afford to view highway capacity... [LB959]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR JOHNSON: ...improvements as optional. Let me repeat that statement. In this context, Nebraska cannot afford to view highway capacity improvements as optional. Let me just have you call your attention to one other thing, and that is also in yesterday's World-Herald, an article out of the Grand Island Independent that says: The economies of Nebraska, South Dakota, and Kansas, and Colorado continue to expand with job growth, investment, and steady increases in land and real estate values. Who says that the gas tax is the only thing important? What it is, it's the place where people can specifically... [LB959]

SENATOR LANGEMEIER: Time. [LB959]

SENATOR JOHNSON: ...look at the problem. Thank you. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Flood, you're recognized. [LB959]

SPEAKER FLOOD: Thank you, Mr. President, members. I'm in support of overriding the Governor's veto on LB959. And through the context of all of these discussions we've had about the gas tax, I want to make something clear that I think is pretty important. This isn't a personal decision. This is a policy decision. And if Senator Gay or Senator

Floor Debate  
April 07, 2008

---

White or somebody else or Senator Erdman doesn't want to raise the gas tax, I respect their opinion, but I believe the roads in this state are in serious trouble if we don't stand up and look at the problem and identify the solutions, and right now this is one of many solutions. Last year the Governor vetoed \$19 million out of roads in last year's budget. This year he vetoed \$14.5 million. Next year how much is it going to be? How much is it going to be the year after? And then you can walk away from here after eight years in the Legislature and say, gosh, I'm really proud, we did a lot for roads; we managed to lose about \$200 million over the course of eight years. The federal government is going to send the state \$80 million less this year. They're going to send cities and counties \$34 million less; \$80 plus \$14 plus \$19 plus \$34, it doesn't bode well for the future if we don't start making the decisions to fund roads. I am for Senator Fischer's compromise. That, although is...while that is a wonderful solution, it is a short-term solution. It allows us the stimulus money to get things going and move some projects, but as far as the roads system, system preservation, if I'm reelected my last day will be 2012, in 2017 we start with only \$2 million that year to build a road, and in 2018 we start dipping into the maintenance fund. I don't want to look back at my time in the Legislature and say I didn't have the will to confront a problem that presented itself; I didn't have the will to make the decision that needed to be made so that we could be proud of the roads in this state. I don't want to take a call from somebody in Boone County that says Highway 32 is deteriorating in Petersburg and the Roads Department in Norfolk says we don't have enough money to maintain that road. Unfortunately, that happened last summer. We have to find solutions. I respect the concerns that have been raised by those that wish to sustain the Governor's veto, but I don't want to wake up in 2017 and not have any money to even preserve the roads that we have. And the only way that many parts of the state are going to grow is if we have good infrastructure. Is \$14.5 million going to build anything in Norfolk? Guarantee it won't. I guarantee it won't. I'm not doing this for my road. I'm doing this for the system. Truth be told, that money will probably go to Omaha; \$1.25 billion has been spent in the metro area in the last ten years. That's where this money is going because they have the traffic count right now. The only way I get credibility on this issue down the road is to make the hard decisions right now and raise the gas tax 1.2 cents per gallon. That money will go places where there's high traffic count, but someday I want them to build roads in areas that don't have the traffic count. And if I'm not willing to do it for our state's largest metropolitan areas, how can I do it for the rest of the state either? This isn't self-serving, for those that want to vote to override; it's responsible, and I encourage you to do it. Thank you, Mr. President.  
[LB959]

SENATOR LANGEMEIER: Thank you, Senator Flood. Senator Wightman, you're recognized. [LB959]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I also rise in support of the override of the Governor's veto, a line-item veto of LB959. I voted last year, in 2007, for an increase in the gas tax because at that time I thought it was the

Floor Debate  
April 07, 2008

---

responsible thing to do. I've given this figure so many times over the last two years that it seems somewhat repetitive, but I think people should know how much 1.2 cents will cost the average driver. I've always used 20,000 miles on a car, 20 miles to the gallon, which would be 1,000 gallons per year; 1.2 cents would be \$12 for the average driver of a car. Since then, I have some motor vehicle statistics from the U.S. Department of Transportation that says that I'm all wet. They say that the average gallons of fuel used per registered vehicle is only 736 gallons as of 2005, although they say the annual miles driven were a little less than I figured, 15.40. Based on their figures, it would probably come out to about \$9, maybe \$9.50. I suggest to you that this is not a very big increase. I disagree with the idea that we need to look at the other funding. We may need to down the road, but certainly for this 1.2 cents we're talking about this year, I don't believe we need to look at other methods of funding. I think we can easily handle 1.2 cents increase. Whether it's \$9 per average driver or whether it's \$8.50 or \$9.50, it's a relatively small amount. Last year, when the budget contained an increase in the gas tax, we were told that now is not the time for a gas tax increase. This year, obviously the times are a little harder and we've been told now is not the time for a gas tax increase. Two thousand nine, if I were a wagering man I would say, lay a small wager that 2009 will not be the time for a gas tax increase. There will never be a time for a gas tax increase among many members of this body, probably with the Governor as well. I think in the meantime our roads and highways need to be maintained. They're not going to be able to be maintained and they're not being maintained as they should be with the current funding. And not only do they need to be maintained, but in many instances they need to be improved. This can include widening or whatever it may be, but I don't think we can remain stagnant on our roads, but stagnant is a lot better than we're doing right now. Construction costs that Senator Flood mentioned have gone up, other members have mentioned it as well. I think we were told last year in the Appropriations Committee that the construction costs in the three-year period had raised 36 percent. In the meantime, we'd had about a 1 percent annual increase in sale...or gas tax collection, so we had about a 12 to 1 ratio between the increase in construction costs and any increase that was being recognized in the gas tax. So we can sit back and we can wring our hands. We can say that we have to look at a different method of funding. And even if we do, I suggest to you that 1.2 cents is hardly going to mean we can't look at some other method of funding down the road. But as Senator Fischer has said a number of times,... [LB959]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR WIGHTMAN: ...that this has always been our method of funding our highway construction, through a user tax, we've done it up to now, we don't have anything on the board that's going to propose some other method, I don't think somebody is going to ride down in a gondola or anything like that and drop off some money, so I don't think we have a lot of possible solutions other than to raise the gas tax. And I think that is the responsible thing to do. So I would urge your support of an override of the Governor's

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

Floor Debate  
April 07, 2008

---

veto on LB959, the line-item veto. Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Friend, you're recognized. [LB959]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Six years ago, five years ago I guess, I stood right about where Senator Karpisek sits and railed on the idea that we were going to raise taxes to the tune of \$250 million and, to the credit of a lot of the folks that are still in here, they really felt like we had to do it, and I respect that decision that was made by that Legislature--\$250 mill. We also cut by about \$250 mill or so, maybe more, but we cranked it up. And I railed on that Legislature. I was the first one up and I railed on them and guess what happened. Person after person said, you know what, Friend, show us the first old man or old lady you want to throw out of the old folks' home; show us the first kid that you want expelled from school because we can't teach them anymore; show us the first teacher you want laid off. I'm going to rail again, but I want to see the first person who stands up and says, oh, Friend, show me the one that you're going to throw out of the old folks' home; show me the kid that you're going to send home because we can't afford to teach him. This is priorities, folks. You know what this is? This is like...this is like throwing meat to the monster in hopes that he'll eat you last. The Department of Roads will continue to come squealing because it's never enough. You can thank Ronald Reagan for that one. It's never enough, folks, ever. This is political, it's practical, and it's administrative, okay? With all due respect to our Speaker, my friend, Mike Flood, he's saying the same (laugh) thing that the Speaker said six years ago or five years ago when I got up and railed. And he can say the same thing to me now, but, because you know something that I feel is true we...that wasn't true then, we do not have to do this. Like Senator Erdman said, we had five different opportunities, five, but we think that we're at our...we think that we're at the rope's end, that we're about to fall off. This is political. Who wins here? You all know who wins. It's the Governor. He doesn't lose battles like this, folks. Who loses? The Legislature loses. We lose. We lose over and over again because we can't see the fiscal restraint that we need to show to the Department of Roads or anybody else. The Governor always wins, and he'll win here. And we have an administrative problem. How do we pay for all of these things? We have a practical problem. How do we pay for all these things? How about a Department of Roads tightening its belt a little bit and showing some responsibility like the Department of Education will, like Health and Human Services is asked to do? We're not raising taxes for HHS, are we? We're not pumping funds in to the General Fund. Let me tell you what the Department of Roads has. They have a dedicated, reliable funding source and if you try to touch it, like Senator Brashear did a couple years ago, they will rip you and they will crucify you, and they will knock you down and kick you right in the head. This isn't funny to me. I'd like to laugh and be affable like Senator Chambers thinks that Senator Erdman should be, but it is not funny to me because we lose. The Governor wins and then we can leave going, oh, guess what, he wins again, we lose, we'll be made the

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

Floor Debate  
April 07, 2008

---

scapegoat. We don't have to be made the scapegoat. It's our own choice right here. We had five opportunities before. I say let this stand. [LB959]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR FRIEND: It doesn't end. We are not fixing a long-term problem here. By the way, one person got up and defended my right five years...I'll bet you can guess who it was, after five people got up and said, you know what, Friend is all wet, he's an...well, they didn't say that but they railed on me, one person, I think he had to come running down here to end up doing it. If you can't guess who it is by now, listen on. Listen further to the conversation. We are making a mistake here as a Legislature. Maybe Senator Preister was right the other day about us all being a family. I don't know if I really bought that whole thing hook, line and sinker, but let me tell you something. The Governor has got a family and it's himself. [LB959]

SENATOR LANGEMEIER: Time. Thank you, Senator Friend. Those wishing to speak, we still have Senator Erdman, Carlson, Fulton, Loudon, Chambers, and others. Senator Erdman, you're recognized. [LB959]

SENATOR ERDMAN: Mr. President, I do take Senator Chambers' instruction to heart. If anything, I've learned what not to do and what to do and, at times, how to do things. But he wasn't here on the floor when I mentioned that the amendment that I were offering were for the kids, and that didn't work; so we tried, it was for economic development, and that didn't work; and then I even threw in national security, and that didn't work. And now here's a new one for you. I worked on this one, I've been working on this one for 31 years: come on, vote against this, it's my birthday. (Laughter) There are two things that would make me extremely happy today, two things beyond what I'm already blessed with, with a family and all of the things that I have. One would be that this motion fails, and that the Kansas Jayhawks would win the national championship. Those two things would make this a fantastic day. I think I've got a better chance of seeing Kansas win the national championship than I have of you being convinced that there are alternatives to the path that you've set yourself on, and that's fine. So Senator Chambers is right. If I was trying to convince you, I probably wouldn't have taken the tone, but guess what? You've already decided what you're going to do. You've already made your deals, you've already talked to your friends, you've already decided what it is that you want to have happen. And maybe it is because you don't like me or you don't like the amendments. I mean it reminds me of the commercial. Senator Chambers is up talking and he's explaining essentially what I've already said once and he does it in such a way that you're all like, oh, that's fantastic. It reminds me of the commercial where the guys are sitting around the room--I've used this example once this session--and the one gentleman says, we could save 15 percent on our copies by using this copier company, and everybody just kind of looks at him. And then the boss says, well, we could save 15 percent on our copies by using this one copier company. Everybody goes, well, that's

Floor Debate  
April 07, 2008

---

fantastic. So I just said that. He says, no, I did this. I mean, who cares who's saying it? And who cares why you're taking it out on whomever it is that's offering it? But here's who you're taking it out on. I don't...I mean, Senator Heidemann says, well, either I'm persistent or I'm persistently wrong, regardless, the fact that you won't adopt it shows me you didn't learn anything last year, because, because of what you did last year, we're \$19 million short. And if you don't do it again this year, you potentially might be \$14.5 million short. So you're not taking it out on me, because at the end of the day I can say to the public, look, here were five opportunities this session and three opportunities last session. You're taking it out on the citizens of the state of Nebraska. And Senator Wightman says, well, it's \$9 bucks, so what; people can pay it. It's \$9 bucks based on today's projections. Senator Wightman can't tell me what the actual tax increase is going to be, neither can Senator Heidemann, neither can any other member of the Legislature, neither can the Department of Roads, neither can the Fiscal Office, because you're not setting the tax rate. You're setting the fund appropriation. Can you imagine if we set our budget this way? We're going to spend \$7 billion. That's our target. It doesn't matter what that looks like, but we're going to spend \$7 billion and one-third of it is going to come from this fund and one-third of it is going to come from this fund, and your sales and income tax would fluctuate to fill that. That's what this is. It's 1.2 at best and may be substantially more. But here's what's missing. My proposal that I'm offering is not a tax increase, with all due respect to Senator Kruse, and the reality is that he's not offered an amendment nor a bill or anything since he's been here to actually reduce the sales tax a half a percent. So if you want a reason to vote against my amendments, I can give you some. [LB959]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR ERDMAN: But the tax on fuel right now is 23 cents. If this amendment passes or if this override is successful and Senator Fischer's bill would have passed, it's a 6.8-cent increase. It's not just a couple cents here and there. Right now you're paying 23 cents. If we take the path that we're on, you're paying 30--29.8. The reason we don't have \$19 million more for funding in roads from last year, because you set us on this path and you weren't able to deliver. You have set us on this path. For your sake, you better deliver, but it's going to be at the expense of Nebraskans and it won't be because there weren't any other options. Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Carlson, you're recognized. [LB959]

SENATOR CARLSON: Mr. President and members of the Legislature, I'm following Senator Erdman and Senator Friend. I'm not going to agree with them and so I'm a little bit afraid, as I talked about Senator Chambers the other day that I was a pitcher, they might try to pick me off, but Friend was a catcher and I don't think he ever picked very many people off, so I'm not going to worry about him. (Laughter) Senator Chambers

Floor Debate  
April 07, 2008

---

said that we don't need to build more roads. Now I almost agree. We need a few more miles in the right places, but we have to fix, repair or rebuild many of our existing roads. Senator Johnson emphasized that we need a priority, a schedule, a plan to rebuild and extend where necessary and improve our roads, and to him and to me it seems like we are a piecemeal operation in our approach. Now if we aren't, it seems like we are, and perception is everything, and apparently we aren't well enough convinced of what the state plan really is. And this is absolutely no criticism of Senator Fischer because the Transportation Committee doesn't set the plan for state roads. Now Senator Fulton stated the situation, in his engineering fashion, of the roads funding dilemma in Nebraska. I agree with him that the gas tax alone can't carry the burden, and I do favor the concept of a user fee, but we must find another source of revenue. He said that. I agree. I don't know what that source is. And as I have met with people in District 38 and asked them the same question, what's the new source, I get no answer. So we have two choices. Senators Erdman and Friend would say let's do nothing, and several in this body say let's do something. I think something is better than nothing. Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Those wishing to speak, we have Senator Fulton, Loudon, Chambers, Stuthman, Johnson, and others. Senator Fulton, you're recognized. [LB959]

SENATOR FULTON: Thank you, Mr. President. There is another issue to interject into this debate and Senator Friend did touch on it and I'd like to continue to expound upon it, and that is what we have at present within the Department of Roads. In my wide travels, at least in my district anyway, I am picking up something among my constituents and that is that there is some skepticism that all monies within the department are being spent appropriately. With skepticism there is often doubt, and when there is doubt it's very difficult for them to accept an increase to fund that which they doubt. So it seems to me if we're going to take an objective look at our overall policy before we can increase funding into X, we first need to know what X is doing, and I'm not confident that we have a pure understanding to that effect. In my industry, though my particular branch of engineering I didn't build roads and I really don't have a lot of expertise in that area, but I do know a lot of people who work in this area and a lot of the policy by which roads are built is subbed out. Subcontractors get a lot of the work for the Department of Roads. And that, as I understand it, has occurred in the past several years as a matter of conscious policy that a lot of the work is contracted out. What has been suggested to me by not an insignificant number of people in the industry is that there hasn't been an accompanying decrease in the level of staffing at the department. So the work is being subbed out and that work was being performed by people and those people are continuing in their present positions. I also own a business and I can tell you that that's problematic. Now I do not know this for certain. What I am telling you is what I have picked up in working on this issue for the past year. But when I hear things like that, you have to think that that is a widespread perception. And with that perception you can

Floor Debate  
April 07, 2008

---

understand why we're having this political heat from our constituents. They don't believe that more money is warranted. So to that end, I have requested a performance audit. I've done it in this year. Hopefully the Performance Audit Committee sees clear to enact a performance audit. I understand we don't have enough staffing to really dig into the entirety of the Department of Roads, but certainly there are aspects and elements we can look into. That's another reason to oppose this motion. We're getting ready to take revenue and put it into X without being able to tell our constituents that X is operating as efficiently as it can. Now perhaps some of you do have that conviction that the department is operating as efficiently and as effectively as possible, and if that's the case more power to you. I, for one, do not have that conviction and, in fact, I have a contrary conviction due to what I have heard publicly. So I'm willing to study that and make an empirical and, as best we can, an objective rendering of what's going on in the department. What are we going to do next year? Those of us who are privileged to be in this institution next year, think about what we are going to do. Do you think we're going to be talking about funding the Department of Roads again? If history is any witness, I would surmise we will. [LB959]

SENATOR SCHIMEK PRESIDING [LB959]

SENATOR SCHIMEK: One minute. [LB959]

SENATOR FULTON: And how will we talk about funding the department? How will we talk about building roads in the future? I'll bet we talk about raising the gas tax again. I did propose another way and I think...it's probably not...it's not appropriate to talk about that on this particular motion. What I'll do is I'll just e-mail you that proposal. I think it's a reasonable proposal, doesn't involve new taxes, it makes sense out of our existing policy. I'll e-mail that to you. But please recognize that what we are doing here is not solving the problem. It could possibly make the problem worse. Perhaps next year we'll be tempted to think we don't need to revisit this roads issue because we took care of that last year. Even if we override the Governor, even if we go with Senator Fischer's LB846, we are not solving the problem. And so we have an opportunity here to say... [LB959 LB846]

SENATOR SCHIMEK: Time. [LB959]

SENATOR FULTON: ...wait a minute. Thank you, Madam President. [LB959]

SENATOR SCHIMEK: Thank you, Senator. Senator Louden, you are recognized to speak. [LB959]

SENATOR LOUDEN: Thank you, Madam President and members of the body. I support the override and part of it is the reason that we are having to do an override. It was a reduction in the gas tax there January 1. Now we can stay here and talk all afternoon or

Floor Debate  
April 07, 2008

---

all day or jawbone as long as we want to, but if there's politics played with the way the appropriation is made for the Department of Roads, and they decide to not raise the appropriation on the amount of revenue that they may have, that was the reason the gas tax got dropped 3 cents. They played politics with it and, consequently, they caught us about \$4 million a month short since the first of the year. Now did we save the people of Nebraska or people that buy Nebraska, the consumers, \$4 million a month, or are we short \$4 million a month in our road funding? So no matter, the system that is in place will work if there isn't politics played with how it's appropriated and how it's operated, because that's what the variable tax is in there for, is if you have too much money you lower the variable tax, if you don't have enough you raise the variable tax. And what happened was I think that they thought the revenue was going to be down so they put the appropriations down. Consequently, the revenue was higher than what had come in so they had to lower the gas tax, which is what will happen. When, I think, Senator Fulton and some of them talk about different ways of doing something to raise money to support our roads, and probably we can go back to about 1983, and maybe that's further than some of you can go back, but back then we had what we called diesel cars or John Deere cars. General Motors came out with cars that had diesel engines in them and at that time we didn't have to pay a fuel tax on diesel. Consequently, people in the rural areas would buy a big tank, call it farm diesel, and they wouldn't pay any sales...any road tax on their diesel fuel. So what we did about the next year, when we went to get our license for our diesel cars, they figured about how many miles you would drive and I thought it was figured about 25,000 miles, and the amount of fuel tax that you would pay if you drove that far, so you had to pay that up front, whether you bought your fuel in town or where you bought your fuel. But if you had on-farm storage, you had to pay that fee. So there are other ways of raising money for the Department of Roads and that's the way it was taken care of back then and in the eighties when there were a lot of diesel cars driven. Now at the present time there's a fuel tax on diesel fuel, so that took care of that. I think, as Senator Chambers had mentioned that we don't need to build more roads, and I agree, the Department of Roads doesn't build more but I would like to see them improve some of the ones we have. For instance, that one in Omaha, that expressway, that was an improvement on what they had coming out of there and my observation was the reason that was built was so people could drive out of Omaha at 100 mile an hour, because that must have been the reason because Senator Pirsch then had to introduce legislation, if you drove 35 mile an hour over the speed limit, why, (laugh) you would increase the penalty. So I guess all of that came in together there in order to take care of that expressway. That was \$140 million bucks for two miles worth of road there, so I hope that it's been well worth it. So I think what I've always said is we need to have money some place to leverage some of these federal earmarks that have been sitting around there for several years. The problem has been to get the Department of Roads to... [LB959]

SENATOR SCHIMEK: One minute. [LB959]

Floor Debate  
April 07, 2008

---

SENATOR LOUDEN: ...want to go ahead and do that. They've always worked on the idea that you had to have a traffic count in order to improve a road and, consequently, if you don't have a road, you won't have a traffic count. So therein lies the fact that there's areas of the state that don't get developed. You want to remember, Nebraska sits in the middle of the nation. We've lived the whole history of Nebraska on transportation and we have a chance to have a transportation corridor north to south that crosses Nebraska, so we should be doing something about it. And I support this override legislation. Thank you, Madam President. [LB959]

SENATOR SCHIMEK: Thank you, Senator Louden. Senator Chambers is next, followed by Senator Stuthman, Johnson, Wightman, and others. [LB959]

SENATOR CHAMBERS: Thank you. Madam President, members of the Legislature, and to Senator Louden's last comment, who doesn't know that Nebraska is the middle of the nation? But people drive through Nebraska; they don't stop here. Your population is holding steady and perhaps diminishing. There are 1,700,000 people in this state. Where is the population base? On the eastern side of the state. When you talk about raising the gas tax, who is going to pay that gas tax? The people where the population is. So it ought to be clear to my colleagues why these rural people are jumping up here saying raise the gas tax because their people are not going to be paying it because there are not that many of them, they're not going that many places. They say they don't have roads so I guess all their cars are in the garages. And they'll let those fools in Omaha and Lincoln pay it. And then they want these roads that go nowhere. When they talk about accessing this earmark money that the federal government has, what are those projects for? What the rural people want. This is not a rural-urban split. This is an argument between sense and nonsense, and if we override this veto, nonsense will have won. I'm surprised that my friend Senator Johnson, except that he's a "ruralie," will talk about an economics model as though any economics model has ever worked in the real world. They just write these things on paper, politicians pick up the one that seems to fit his or her position at that time, and then will advocate it. But these people are not accountable in any kind of way. They put it out there and we have to have sense enough to reject that which has no value. Senator Fulton said, in the kind of engineering he does, it does not involve road building so he doesn't have a lot of expertise in that area. Well, Senator Fulton, neither does the Department of Roads and that's why we have the problem that we have. When you talk about the quality of roads, which that man from Creighton, I don't know whether he mentioned that or not, if he would drive the roads he would see the poor quality. And again, you all don't want to talk about it. Those who come back are going to have to deal with that at some point. But what will happen if you vote for this override--headline: Legislature overrides Governor, raises gas tax. Then you're all going to come running and trying to explain to your constituents, we didn't raise the gas tax. They'll say, you can't count. You're in the pocket of big oil. The reason the federal government won't do anything about these fluctuating prices, and they're always going higher, is because they have the same problem the

Floor Debate  
April 07, 2008

---

Legislature has. The senators know how much people are paying for oil at the pump, gas at the pump, and they are adding a tax on top of it. These so-called fiscal conservatives who say don't raise taxes, well, they're raising taxes on everybody--the poor person, the old person, maybe Daddy Warbucks but certainly Little Orphan Annie if she has a driver's license. Then you're going to try to weasel your way out of it and say it doesn't mean what it said; you just don't understand how this works. In January we lowered it 4 cents when we shouldn't have. So now they're going to say, I don't want to hear that. You raised the gas tax. That's what I know that you did and you can cut it any way that you want to. Then they can add, I drive these roads and they are not in very good shape, so what are you raising the gas tax for? I see Hawkins trucks driving up and down the highway all the time, orange lights flashing. Do they run the roads program? I think they do. And we know that those who benefit from the chicken that's laying the golden egg, it's supposed to be a duck, is the one who's going to feed us some chicken feed. That means you support the... [LB959]

SENATOR SCHIMEK: One minute. [LB959]

SENATOR CHAMBERS: ...politicians who will go your way. The construction industry is running the roads building program. No entity has a sacred fund of its own other than the Roads Department. You can cut insurance for poor children quicker than you can touch money in that dedicated Roads Department fund, and we all know it. So I'm going to watch my brave, bold colleagues, while they're under some kind of influence, override the Governor's veto and then watch them run for cover for the rest of the time. Then, when you run for reelection, people are going to say, yeah, you voted to raise the tax, you voted to raise the tax, and you're not going to be able to explain your way out of it. Thank you, Madam President. [LB959]

SENATOR SCHIMEK: Thank you, Senator Chambers. The Chair recognizes Senator Stuthman. [LB959]

SENATOR STUTHMAN: Thank you, Madam President, members of the body. I'm not going to spend a lot of time because a lot of the comments made, you know, that I wanted to make have been already touched on. I do support the override, I will make that clear first. And I want to thank Senator Wightman for the facts that he brought about this is not the right time, you know, to raise the gas tax. But I want to give you some of the facts that I've been researching just today. My supplier that brings me fuel and in my community the gas from January 1 till Friday, gas prices, the regular gas has raised 36 cents. The gas with 10 percent ethanol in has raised 24 cents. Diesel has raised 61 cents in 94 days. That comes to an average of .013 cents every other day the prices increased. And we're talking about 1.2 cents of a gas tax increase. More than that is done every other day, since the 1st of January. Are we complaining about that? No, we're paying it. And we are really concerned about just that little bit, only trying to get back 1.2 cents of the 4 that we have taken off. And everybody is so against, you know,

Floor Debate  
April 07, 2008

---

raising the gas tax. Yes, perception, that is very true. But the increase in fuel cost will trickle down to everyone, everyone that purchases products, because the trucking industry is what moves the country. But that's a 61-cent increase from January. Hopefully, the next 90 days it don't increase again like that, hopefully not, but we have seen a substantial increase at the present time. But I think we need to take that into consideration. Gas prices have gone up. It only takes four days. Every fourth day the price went up 1.3 cents per gallon. So I just...I'm just concerned about that, that, you know, we're really taking a serious look at trying to keep the gas tax at a low rate, but it's a lot lower right now than it was on January 1. We must keep that in mind. I think there's someone making a lot of money off of the consumers in the state of Nebraska. But I want you to keep in mind, you know, that what we are paying every other day already in increased fuel tax, increased fuel cost. And people need to drive. They need to get to work. Thank you, Madam President. [LB959]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Senator Johnson, you are recognized to speak. [LB959]

SENATOR JOHNSON: Thank you, Madam President. Let me just talk about a few things. One of them...and let's just talk a little bit about policy. I, too, in my six years down here, have been most disappointed in the Roads Department because economic development apparently is not part of the equation in our road building. Until this becomes part of our decision-making process so that we build priorities, with the highest priority first, I think we'll continue to be in trouble. The other thing that I see, and you can just look up in northeast Nebraska and see where there is a mile here and a mile there done on several different places, rather than the completion of a project of an expressway from Columbus to Fremont that would reinvigorate this whole area, again, I think this is a major stumbling block. Also, to pick out traffic counts, how can you pick out what a traffic count is when you have a 1940 road that runs from South Sioux City to Norfolk and think that the traffic count means anything? Here's another thing that bothers me, and I've never had it satisfactorily explained to me. We are in this buckle-down mode where we, quote, we maintain what we have, no new projects. I would ask, do we have to maintain all of these different projects? When the truck knocked down the bridge over the interstate out at Big Springs, we spent more than three-quarters of a million dollars so that one farmer can go to his pasture and look at his cows six months a year. Recently, one mile west of York on I-80 we again had repair of a bridge. They were there for a couple of months. The bridge goes from one cornfield to another. Go to Exit 348 four miles west of York. It was redone two years ago. This exit was put in place because it was supposed to go to an Atlas missile site, that was never built, in the sixties. It goes to an unimproved road. We just fixed it up again two years ago. People from Omaha, as you're driving home today, when you get close to Greenwood look and you will see that all of the bridges that were originally put up across the interstate are still there. Two of the three go to gravel roads and they're all within two miles of each other. Were all three of these bridges needed? I doubt it.

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

Floor Debate  
April 07, 2008

---

Let's...I'm going to...one of the things that I've tried staying away from micromanaging and so I don't think that you've ever heard me talk about the Kearney exit here before, but I'm going to mention something to you today because there's something kind of interesting. First of all, this exit site was picked in 1991. It goes to the third largest airport in Nebraska, Cabela's, an industrial park. It's the resupply for a large mall, including two lumberyards. It's the only way that emergency vehicles from as far away as northern Kansas... [LB959]

SENATOR SCHIMEK: One minute. [LB959]

SENATOR JOHNSON: ...can get to the hospital. It would be a bypass for two highways north of our community. It is at capacity five hours a day. Now when the decision was made to go ahead of this, till the time that it will be built, will be longer than what it took to build the transcontinental railroad. With that in mind, this is what happened today. Due to the uncertainty of future federal and state transportation funding for the Nebraska Department of Roads and double-digit inflation costs for road construction, the city of Kearney has agreed to pay the federal matching requirement of 20 percent to ensure that this project phase one is completed as soon as possible. [LB959]

SENATOR SCHIMEK: Time. [LB959]

SENATOR JOHNSON: Thank you, Madam President. [LB959]

SENATOR SCHIMEK: Thank you, Senator Johnson. Senator Wightman is next, followed by Senators Nantkes, Erdman, Howard, Fulton, and others. [LB959]

SENATOR WIGHTMAN: Thank you, Madam President, members of the body. I rise again to discuss the merits of overriding the Governor's veto. I know we've been presented with figures numerous times that Nebraska ranks the second highest or third highest in the way of gasoline tax in the United States. I'm not sure where all of this information comes from. I do have some figures from the 2005 U.S. Transportation Department and on gasoline tax alone I think we do rank the fifth highest...sixth highest. I think there are five states that have a higher tax, ranging from about 28 cents to as high as 38 cents. However, many of the states, a number of the states, have a separate sales tax on gasoline, which is being proposed in Nebraska as well under LB864 or LB846--sometimes I'm dyslexic when it comes to numbers, but at any rate whichever it is, Senator Fischer's bill--and with that, we would place a 5 percent gasoline tax...or a sales tax on gasoline. My figures show, my information shows that there are nine states presently with a separate sales tax on gasoline. These range from 4 percent to as high as 7 percent, 9 percent actually in the state of Kentucky. And you have to understand that if gas is selling for \$3, that 9 percent comes to 27 cents. Even at 4 cents (sic), it comes to 12 cents per gallon, because you're paying that based upon the price rather than upon the number of gallons. Out of those nine states, only one would have less tax

Floor Debate  
April 07, 2008

---

by the time you factored in the sales tax and added that on top of their current gasoline tax. So there would be 8 states plus 5, or a total of 13 states, and these are based on the 2005 gasoline tax figures so there could be 13 to 15. As a matter of fact, I think I've recently heard that Nebraska ranked 33rd. So the figures are not always exact and certainly they're not always correct in actually telling you what whoever is telling you the information wants you to know. I'd like to address a few of the comments that have been made by some of our colleagues. Senator Friend's biggest argument seems to be that the Governor is going to win and that may well be the case. He may win the public opinion battle, even if we pass this. He's been known to. But I would hate to think that the time ever comes to where I determine whether I'm going to vote on an override on whether the Governor is going to win the public relations battle. I don't think that's what we're here for. We're a coequal branch of government. I think we have to use our independent common sense in determining whether a veto should be accepted or overridden. Senator Fulton says we should look at other methods of funding the gas tax or at least highway construction. I'd like to ask Senator Fulton a question. I know he didn't want to address the issue of what his method of funding would be. I think he had one that would have included the tax on motor vehicles. Is that correct? [LB959 LB846]

SENATOR SCHIMEK: Senator Fulton, would you yield? [LB959]

SENATOR FULTON: Yes. And, yes, that was...yeah, you're correct, Senator Wightman. [LB959]

SENATOR WIGHTMAN: Could you tell me where that money is going at the present time? [LB959]

SENATOR FULTON: Uh-huh. Presently, I believe it's 60 percent goes to schools,... [LB959]

SENATOR SCHIMEK: One minute. [LB959]

SENATOR FULTON: ...22 percent to the counties, and 18 percent to the cities, I believe is how it plays out. [LB959]

SENATOR WIGHTMAN: So I assume, if we looked at that, we'd have to find other fundings to replace the money that's going to the schools and money that's going to other sources. So all we're doing, isn't it, is shifting taxes? [LB959]

SENATOR FULTON: That would...that's correct. We would have to find other revenue streams. [LB959]

SENATOR WIGHTMAN: So none of these methods really are a cure-all. We're still going to have to come up with the same funding. It's just a matter of where we're going

Floor Debate  
April 07, 2008

---

to fund it and how we're going to replace the dollars that we remove from what is currently being funded. Is that correct? [LB959]

SENATOR FULTON: It would be correct to say that we would have to work to find other dollars, but I would disagree in saying that it's not a cure-all. I do believe it's a cure-all. [LB959]

SENATOR WIGHTMAN: Well, I would take exception with Senator Fulton here. When we're removing taxes from some other source that it's going to go to at the present time, I hardly consider that a cure-all. Thank you, Madam President. [LB959]

SENATOR SCHIMEK: Thank you, Senator Wightman. Senator Nantkes, you are next to speak. [LB959]

SENATOR NANTKES: Thank you, Madam President. Good afternoon, colleagues. I rise in support of the motion to override in regards to this issue of critical infrastructure funding for our state. We've heard a lot of discussion this afternoon about family and what it means to be a part of a family and who maybe is included in each person's definition of family, but when we look at our state's budget let's look at it as...in its entirety as what a family budget should include. And when we're talking about infrastructure financing, like the issue at hand, those are one of those basic needs that can't be eliminated from the family budget. These are one of the core reasons that government exists, is to ensure that we have an appropriate level of financing available for our infrastructure needs. The other basics are pretty clear--education, community corrections and things related to the criminal justice system, infrastructure, and then all of the other issues that we deal with here in state government are kind of lumped together in the remainder of that budget. So let's think about that as we move forward, how critically important this issue is to what we do in state government. Senator Wightman started down this path a little bit in his earlier comments and we've heard from Senator Erdman and Senator Fulton that other options need to be looked at. And the reason those other options that have been placed into the public dialogue have not been taken up is because we as a body have come to the conclusion that they are not sustainable and do not meet our current needs or future needs and, in addition, as Senator Wightman was apt to point out, instead raid funds from other critical areas of our state budget, like education, and I see as wrongheaded under Senator Fulton's proposal. Furthermore, words do matter, and we've heard a lot of talk about who wins and the gas tax and what that's going to mean in a reelection campaign or otherwise, and here's the headline: Today on the floor of this Legislature a group of bipartisan senators came together to do the right thing, and that right thing is an investment in the future. That should be the headline. That's who wins. Under that scenario, Nebraska wins, and that is what we are here to ensure as Nebraska state senators. Thank you, Madam President. [LB959]

Floor Debate  
April 07, 2008

---

SENATOR SCHIMEK: Thank you, Senator. Senator Erdman, you are next. And this is your third time. [LB959]

SENATOR ERDMAN: And all the members said, amen. (Laugh) Senator Nantkes, it would be great if that were the headline. But Senator Chambers actually has beat you to it, because we know what the headline was when we did it the first time this session, and we know what the headline is going to be today: Gas tax goes up. That's what the headline is going to be. And what's missing from the story is that we didn't have to do it. But let me make a...and just so that you're aware, full disclosure, I wasn't planning to speak a third time. I thought I had said everything I needed to say, but unfortunately my good friend, and he is a good friend, Senator Carlson has misrepresented my position. If you have been in the Legislature the last two years, which Senator Carlson has, if I can be accused of probably anything, and there's a lot of things you can accuse me of, finding viable alternatives is probably the one that I stand most convicted of. If you would have followed my votes on my bills or, excuse me, on my amendments last year, we'd be \$19 million ahead of where we are today. If you follow my votes, guess what? We wouldn't even be overriding the Governor and we would have money, and we wouldn't have the people of the state of Nebraska looking down on us, wondering if we have any common sense. So it's not fair to characterize my position as let's not do anything. It's quite the contrary. Because if you do what's proposed before you, which you know you can't because you don't have the votes, you'll be further behind than if you had adopted the proposals that I have offered. So to characterize what I am asking you to do today is to do nothing, that's quite...that's not it at all. In fact, if you recall my first conversation with you this afternoon, even if you do this, we can still avoid a gas tax increase when we come back to LB846 again. Of all the people that have been subject to unfair conversations or accusations on the floor, even this day, I would think that Senator Carlson, of all people, would be sensitive to that. So I just wanted to make sure that it's clear that if you voted for my amendments you would have not only provided a viable alternative to the path that we're on, it was more realistic. Senator Stuthman made the argument, and I'm still trying to figure out what it actually was, but it sounded something like this: Everyone else is raising the price of fuel, so let's get on board. What? The price of fuel has gone up 61 cents, let's add to it. It's now the state of Nebraska adding to it. We're not OPEC. Senator Chambers brings up big oil. We're not big oil. This is now the only area that we have that affects the price of fuel, and Senator Stuthman's argument is, everybody else is doing it, let's do it too. Finally, my good friend Senator Johnson had this asked of him a couple years ago when he made the same comment about the bridge, the overpass at Big Springs. Senator Johnson doesn't know that there's only one farmer that lives south of Big Springs that uses that bridge. Senator Johnson doesn't know that they only go over there every other, excuse me, every six months to look at their pasture. He doesn't know that. That's his assumption, but it has nothing to do with what we're talking about here today, even if it were true. But if you vote for this override, congratulations, you've raised the people's taxes, and they will see it that way. They won't see it as some wonderful investment, which is what

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

Floor Debate  
April 07, 2008

---

everybody that raises your taxes wants to claim on the floor of the Legislature. People will look at their checkbook, they'll look at their balance sheet, and they'll go, gosh, I'm making less money now because the Legislature stuck their hand in my pocket and took some more out. [LB959 LB846]

SENATOR SCHIMEK: One minute. [LB959]

SENATOR ERDMAN: Have at it, but you didn't have to do it. But you want to do it, because you're really excited about doing it, so go for it. I won't. Thank you, Madam President. [LB959]

SENATOR SCHIMEK: Thank you, Senator Erdman. Senator Howard, you're next to speak. [LB959]

SENATOR HOWARD: Thank you, Madam President, members of the body. Since it's his birthday, I would like to remind Senator Erdman that I did vote to support most, if not all, of his amendments. (Laugh) Thank you, Senator Erdman. I appreciate Senator Friend's comments. He's absolutely right. When we look at cuts, the first target is Health and Human Services, which serves the neediest and most vulnerable population, or education, because we all know that teachers are dedicated and will continue to teach no matter how the Legislature cuts funding to schools. I wasn't here in 2003, but when the Legislature ran into a financial shortfall, the homeowner was burdened with a tax on home repairs, which especially hurt those on fixed incomes, living in inner city older homes. Department of Roads has not been asked to reduce spending or to more carefully scrutinize the awarding of contracts. When the cuts come or the burden increases it's the homeowner, the foster parent, or the school child who is told to make do with less. I say to you if we can take \$5 million from Cash Reserves to move the State Fair, certainly we can look at utilizing money from this source to prevent a gas tax increase. As concerned as we are about helping out the University of Nebraska, can we not be just as concerned about helping the average taxpayer? I have opposed this gas tax increase and continue to oppose it. I offer the remainder of my time to Senator Friend. [LB959]

SENATOR SCHIMEK: Senator Friend, you have 3 minutes and 14 seconds. Thank you, Senator Howard. [LB959]

SENATOR FRIEND: Thank you, Madam President, and thank you, Senator Howard. Members of the Legislature, we should not override the Governor on this. I don't know if my position has been mischaracterized. It's not about the Governor looking good, or us looking good. I'm just telling you what's going to happen. He's going to look good in the end. So if you're okay with that, that's fine. Live with that. Frankly, I'm okay with it, too. I don't really care. But I'm telling you there's people out here that are going to have a problem with that when it's all said and done. Understand that now and live with it. He

Floor Debate  
April 07, 2008

---

wins here, that's my only point. I really don't care if he does or not. That is not the point of this whole thing. I live paycheck to paycheck. I drive a 1992 Honda Accord. I have trouble filling that up in the morning. So make no mistake about this, when we raise taxes or we even...when we raise squishy taxes--it doesn't matter what we raise--when we do it, whether it's real or perceived by the public or the people that live in my district, I live just like them. I don't live high on a hill like the king of "Gondor" looking over my kingdom. I live with them and I understand the problems that they have. And the problem that they have right now is that they see, whether real or perceived, that we are raising their taxes and we don't have to. That's what they see. Now you can say, you know what, they're all wet and they don't get it; they don't understand that we're a family and we have to do what's right for the state. They don't understand that and they don't care about that. The people that live next door to me, the people that live with me, the people that are working paycheck to paycheck don't care that the Department of Roads can't manage a budget appropriately. What they know is we're raising taxes, that's it. And you know what? I'm sick of going back and saying this: You know, I didn't vote to raise your taxes, the Legislature...come on, I didn't do it, I live in your district, you know, you know me, I told you before I got... [LB959]

SENATOR SCHIMEK: One minute. [LB959]

SENATOR FRIEND: ...elected I wouldn't raise your taxes, you know me, I'm just like you. I'm sick of it. Governor wins, Governor loses, I really don't care, okay? The point is a paycheck-to-paycheck guy, the people that are calling us, they don't care what OPEC is doing. They don't care what the feds are going to do. All they know is 4 cents, it's coming at you. I'm willing to listen to what Senator...Senator Fischer is going to end up doing. But if we override this, it's real simple what they're going to say--oh, they're stupid. Can you live with that? They've said that about us for six years that I've been here. What does it matter? We might as well continue down that road. Thank you, Madam President. [LB959]

SENATOR SCHIMEK: Thank you, Senator Friend and Senator Howard. Senator Fulton, you are next to speak and this is your third time. [LB959]

SENATOR FULTON: Thank you, Madam President. I did send an e-mail to members, if you'd like to look into the proposal that I made. The...just to respond to a couple of questions, it was LB741 that was the form the proposal took when it came time to introduce a bill. For my colleague and friend, Senator Nantkes, schools actually did not oppose LB741. The mechanisms by which it would have been enacted actually would have increased TEEOSA funding to them. And I understand this is an entire other debate, and so I won't go into any more detail. Take a look at it. I'll be glad to talk with you off the mike. But that we have a specific idea in front of us in order to consider, just because it's an idea that you don't necessarily agree with, it's an idea. And I'm saying that we're going to have to have more ideas, even if we enact this motion, even if we do

Floor Debate  
April 07, 2008

---

override the Governor and we do increase the gas tax. Pay attention to the math. We're going to have to more than double it in order to meet what we're going to need to fund in roads, and we're going to have to expect it to increase double-digit percentages every single year. The math doesn't lie. We can't do that. I'm using this as an opportunity to communicate to future legislators, to communicate to us. We shouldn't believe that we are immune from the psychology that I had elaborated on before. We are all people, too. There's a certain culture that exists inside of this body. There's a certain momentum that we'll feel in this body because of the thoughts of our colleagues. We're not immune to this psychology, and here's an example. There is an idea that the price of gas is increasing anyway, what's another couple of cents? That's not an appropriate way to make our policy. I'll take an argument stance that I don't think I've heard yet. If we enact...if we override the Governor, and if we do enact LB846, if we...I'll just...I'll be more general than that. If we increase the gas tax, I'll make the case that it actually hurts our long-term roads policy. We are not immune to what goes on in our society and our culture. We senators are affected by it, too. And I can tell you, if I understand human nature, I think what's going to happen next year is, well, we got it that last year; let's put it off a couple of years. Do the math. At 15 percent what we have done will go away in a hurry. We have an opportunity now, perhaps an unprecedented opportunity, to make a statement now and for the ages. Hopefully, someday people will look back on our Legislature and say, they recognized that in the long-term this would not fix the problem and they decided to deal with it then. I believe that's what Senator Warner did when he first enacted the gas tax as our main policy. There have to be other ideas. This is a way that we put ourselves into a situation by which we find other ideas. Necessity is the mother of invention. If we come back and continue down the same path, then what's to expect any change next year? We'll go down the same path again and again and again. I'll yield the rest of my time to Senator Chambers. [LB959 LB741 LB846]

SENATOR SCHIMEK: Thank you. Senator Chambers, you have 1 minute and 7 seconds. [LB959]

SENATOR CHAMBERS: Thank you, Madam President. Thank you, Senator Fulton. And I'm agreeing with Senator Fulton's contentions. [LB959]

SENATOR SCHIMEK: One minute. [LB959]

SENATOR CHAMBERS: Senator Nantkes, Senator Nantkes, Senator Nantkes, my poor naive, dreaming child. To think that they're going to say that a group of senators got together on a bipartisan basis or nonpartisan, bipartisan to do the right thing, no way. But if they did that and the public would say, so what are you asking me? She'd say, well, what do you think about that? This person would say, well, it proves what George Wallace said was true--ain't a dime's worth of difference between the parties, and ain't a nickel's worth of sense among all of them. It just proves that on a nonpartisan or bipartisan basis they made a blunder. That's about all the time that I would have, but

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

Floor Debate  
April 07, 2008

---

how much time do I have, Madam President? [LB959]

SENATOR SCHIMEK: Thirteen seconds. [LB959]

SENATOR CHAMBERS: How much time do I have now? [LB959]

SENATOR SCHIMEK: Eight. [LB959]

SENATOR CHAMBERS: (Laugh) Thank you. [LB959]

SENATOR SCHIMEK: Thank you, Senator Chambers. (Visitor introduced.) Senator Dierks, you are the next speaker, followed by Senators Chambers, Friend, and Rogert, and others. [LB959]

SENATOR DIERKS: I call the question, Madam President. [LB959]

SENATOR SCHIMEK: The question has been called. Do I see five hands? I see five hands. The question is, shall debate cease? All in favor vote aye; all opposed vote nay. Have you all voted? Have you all voted who wish to vote? Record, Mr. Clerk. [LB959]

CLERK: 26 ayes, 10 nays, Madam President, to cease debate. [LB959]

SENATOR SCHIMEK: Debate does not cease. I'm sorry, debate does cease. (Laugh) Excuse me. So we are back then to Senator Heidemann, to speak on the motion to overcome the veto on LB959. [LB959]

SENATOR HEIDEMANN: Thank you, Madam President, fellow members of the body. I think we've had a good debate. I think there's a lot of good right...a lot of right on both sides. And I think...and I'm not criticizing the people who don't vote to override because I believe you really think what you're doing is right. I, undoubtedly, think that we need to get the \$14.5 million which was estimated, Senator Erdman is right, 1.2 cents. We've talked about other funding mechanisms for the Department of Roads. And as I was sitting here listening to the debate, there's papers that I was going through that actually dealt with the budget. And it said, summary of General Fund budget. And I kind of began to realize probably why we haven't ever adopted any of those other thoughts on how we could fund Roads, because you would put Roads in direct competition with the university and college system, Health and Human Services system, Corrections, courts, State Patrol, retirement, Medicaid, public assistance, developmental disabilities, behavioral health, children's health insurance, aging programs, higher ed, student aid programs, public health aid, community health centers, state aid to schools, TEEOSA, special education, aid to community colleges, homestead exemption, aid to ESUs, aid to cities, aid to counties, county jail reimbursement, early childhood programs, and many others. We've always funded roads with gas tax and motor vehicle taxes and a

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

Floor Debate  
April 07, 2008

---

few others. I don't believe that we want to start looking in other places. As we worked on this over the weekend, and I realize that a compromise might be best, I very reluctantly agreed to take \$15 million out of the Cash Reserve to leverage federal funding, that we would be able to maybe spend \$75 million. And I've agreed to that. I want to take you to the green sheet, where we're at this year. We've done a very good job about getting to where we're at. We're not at a spot, though, that I'm very comfortable. We're showing a \$801,000 shortfall, an imbalance on the negative side in '08-09. Next year when we come back and start to craft our budget we will be facing almost a quarter a billion dollar shortfall imbalance. The more we take out of the Cash Reserve, the more we use some General Fund, we are just going to expand that problem. And \$15 million out of the Cash Reserve to leverage federal funding I've become okay with. Any more than that and I'm not okay with it. As I went through my district this week, I had people that came up to me and more of them were for this than were against it. And one guy came up from behind me and grabbed my arm and said, do you really think I'll see that 1.2-cent increase? And the answer is no. I came up yesterday and I was working on this and I didn't get to go home last night. And my wife called me at 7:00 in the morning and she had got up a little after 5:00 and she always starts to get ready. She teaches school and she starts early. And all of a sudden she heard a man's voice in the house and she was a little bit alarmed at first, but then she realized that the answering machine had went off at 5:30 in the morning. And the person that was leaving the message said that it was encouraging Senator Heidemann to do the right and responsible things and fund roads. You don't like to hear that at 5:30 in the morning, but I believe it was the right message. And I think it's something that we need to take heart here in the Legislature, and I ask that you please do the right and responsible thing. I'd like a call of the house, please. Thank you. [LB959]

SENATOR CHAMBERS: (Microphone malfunction.) Roll call vote. [LB959]

SENATOR SCHIMEK: Thank you, Senator Heidemann. [LB959]

SENATOR HEIDEMANN: In reverse order. [LB959]

SENATOR SCHIMEK: There has been a request for a call of the house. All in favor of the house going under call vote aye; all opposed vote nay. Record, Mr. Clerk. [LB959]

CLERK: 44 ayes, 0 nays, Madam President, to place the house under call. [LB959]

SENATOR SCHIMEK: The house is under call. Would all senators please return to this Chamber and record your presence. The house is under call. Would unauthorized personnel please leave the floor. Mr. Clerk, I believe we're all here. There's been a request for a roll call vote in reverse order. [LB959]

CLERK: (Roll vote taken, Legislative Journal page 1331.) 34 ayes, 15 nays, Madam

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

Floor Debate  
April 07, 2008

---

President, on the motion that LB959 become law notwithstanding the objections of the Governor. [LB959]

SENATOR SCHIMEK: The motion is successful. Mr. Clerk...oh, I raise the call. Items for the record, Mr. Clerk? [LB959]

CLERK: Madam President, Committee on Judiciary, chaired by Senator Ashford, reports LB810 to General File with amendments. Amendments to be printed: Senator Aguilar to LB1072; Senator Heidemann to LB609A. New resolutions: LR380 by Senator Gay; LR381, Senator Gay; LR382, Senator Gay; LR383, Senator Gay. All will be laid over, Madam President. And that's all that I have at this time. (Legislative Journal pages 1331-1337.) [LB810 LB1072 LB609A LR380 LR381 LR382 LR383]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: LB959E, having been returned by the Governor with his signature, but with certain items therein line-item vetoed, the Legislature, by the constitutional majority, has overridden said line-item vetoes this seventh day of April 2008 as follows: Sections 31 and 32, Agency 27, Department of Roads Program 569, Construction, Cash Fund for fiscal year 2008-2009, signed. Members, please find your seats. We now proceed to Final Reading. Again, members, please find your seats. We now proceed to Final Reading. Mr. Clerk, let's begin with LB171. [LB959 LB171]

ASSISTANT CLERK: (Read LB171 on Final Reading.) [LB171]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB171 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB171]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1338.) The vote is 49 ayes, 0 nays, Mr. President. [LB171]

SPEAKER FLOOD: LB171 passes. Mr. Clerk, LB171A. [LB171 LB171A]

ASSISTANT CLERK: (Read LB171A on Final Reading.) [LB171A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB171A pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB171A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1339.) The vote is 48 ayes, 0 nays, 1 present and not voting, Mr. President. [LB171A]

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

Floor Debate  
April 07, 2008

---

SPEAKER FLOOD: LB171A passes. Mr. Clerk, LB179. [LB171A LB179]

ASSISTANT CLERK: (Read LB179 on Final Reading.) [LB179]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB179 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB179]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1339-1340.) The vote is 47 ayes, 1 nay, 1 present and not voting, Mr. President. [LB179]

SPEAKER FLOOD: LB179 passes. Mr. Clerk. [LB179]

ASSISTANT CLERK: (Read LB179A on Final Reading.) [LB179A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB179A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB179A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1340.) The vote is 47 ayes, 1 nay, 1 present and not voting. [LB179A]

SPEAKER FLOOD: LB179A passes. Mr. Clerk, LB467. [LB179A LB467]

ASSISTANT CLERK: (Read LB467 on Final Reading.) [LB467]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB467 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB467]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1341.) The vote is 44 ayes, 0 nays, 5 present and not voting. [LB467]

SPEAKER FLOOD: LB467 passes. Mr. Clerk, LB467A. [LB467 LB467A]

ASSISTANT CLERK: (Read LB467A on Final Reading.) [LB467A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB467A pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB467A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1341-1342.) The vote is 47 ayes, 0 nays, 2 present and not voting. [LB467A]

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

Floor Debate  
April 07, 2008

---

SPEAKER FLOOD: LB467A passes. Mr. Clerk, LB575. [LB467A LB575]

ASSISTANT CLERK: (Read LB575 on Final Reading.) [LB575]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB575 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB575]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1342.) The vote is 47 ayes, 0 nays, 2 present and not voting. [LB575]

SPEAKER FLOOD: LB575 passes. Mr. Clerk, LB888. [LB575 LB888]

ASSISTANT CLERK: (Read LB888 on Final Reading.) [LB888]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB888 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB888]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1343.) The vote is 48 ayes, 0 nays, 1 present and not voting. [LB888]

SPEAKER FLOOD: LB888 passes. Mr. Clerk, LB912. [LB888 LB912]

ASSISTANT CLERK: (Read LB912 on Final Reading.) [LB912]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB912 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB912]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1343-1344.) The vote is 47 ayes, 0 nays, 2 present and not voting, Mr. President. [LB912]

SPEAKER FLOOD: LB912 passes. Mr. Clerk, LB1049. [LB912 LB1049]

ASSISTANT CLERK: (Read LB1049 on Final Reading.) [LB1049]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1049 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1049]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1344.) The vote is 40

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

Floor Debate  
April 07, 2008

---

ayes, 2 nays, 7 present and not voting, Mr. President, on the final passage of the bill. [LB1049]

SPEAKER FLOOD: LB1049 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB171, LB171A, LB179, LB179A, LB467, LB467A, LB575, LB888, LB912, and LB1049. Mr. Clerk, items for the record. [LB171 LB171A LB179 LB179A LB467 LB467A LB575 LB888 LB912 LB1049]

CLERK: I have nothing at this time, Mr. President. []

SPEAKER FLOOD: Pursuant to the agenda, we will now move back to General File, 2008 committee priority bills, in the Erdman division. And we will resume discussion on LB1082. Mr. Clerk. [LB1082]

CLERK: Mr. President, when the Legislature left the issue at noon, Senator Cornett had pending AM2670 as an amendment to the bill. (Legislative Journal page 1327.) [LB1082]

SPEAKER FLOOD: Senator Cornett, you previously opened on your amendment. We will recognize you to give a brief explanation of AM2670. [LB1082]

SENATOR CORNETT: Thank you very much, Speaker Flood and members of the Legislature. This morning we voted on the committee amendments to LB1082 and they were not adopted. Basically that would allow workers in this state that receive a mental injury at work to have compensation in the way of medical care for that injury. This amendment...in Nebraska's workers' comp system, employees that are injured at work are not allowed to sue for damages or for compensation. What this amendment would do would take workers that are injured mentally out of that limitation. So they, if the employer was found negligent, mind you again, found negligent, would be allowed to sue for damages. Currently, what this means in the state of Nebraska is no matter how grossly negligent an employer is, if they are an employer which is required to carry compensation insurance under the Nebraska statute, the injured employee cannot sue their employer for recovery in tort. This amendment removes mental injuries from that prohibition. I'd yield the remainder of my time to Senator White. [LB1082]

SPEAKER FLOOD: Actually, Senator Cornett, that was just an opportunity for you to brief us on the amendment. [LB1082]

SENATOR CORNETT: Oh. [LB1082]

SPEAKER FLOOD: We now return to discussion. Senator Wightman, you are recognized. [LB1082]

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

Floor Debate  
April 07, 2008

---

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I would like to engage in some conversation with Senator Cornett. [LB1082]

SPEAKER FLOOD: Senator Cornett, will you yield to a question from Senator Wightman? [LB1082]

SENATOR CORNETT: I will. [LB1082]

SENATOR WIGHTMAN: Senator Cornett, you have suggested an amendment, proposed an amendment, AM2670, that would say if the employer was negligent that the employee would have a right of action under regular tort law, I assume. Is that your purpose? [LB1082]

SENATOR CORNETT: It is. It's similar to what is currently allowed for farmers and farm workers. If they have less than ten employees, if their employee is injured at work, they are outside the work comp laws and allowed to recover under tort claims. [LB1082]

SENATOR WIGHTMAN: I'm not certain that I would vote in favor of the amendment. But I think that there are some questions with regard to just saying that if the employer is guilty of negligence that the employee can recover. I would ask a few more questions. Under tort law, if the person is guilty of negligence, he's...the employee may still be barred from recovery by reason of his own contributory negligence. Have you addressed that issue in the amendment? [LB1082]

SENATOR CORNETT: No, because that is covered. This is basically taking the worker and recognizing that mental injury falls under that. [LB1082]

SENATOR WIGHTMAN: If the mental injury comes later, if for some reason or other the employee was contributory and negligent in whatever the act was that allowed them to view whatever this horrendous scene would be, there could still be contributory negligence or contributory negligence that contributed to the act causing them, the criminal act, I suppose. Are we saying that contributory negligence would never be a defense? [LB1082]

SENATOR CORNETT: No. Contributory negligence would be taken into account under this. It would be up to the judge to decide at that point. [LB1082]

SENATOR WIGHTMAN: But contributory negligence would be a defense to the negligence action if in fact the employee was guilty of contributory negligence? [LB1082]

SENATOR CORNETT: In the same way any other tort claim is handled. [LB1082]

Floor Debate  
April 07, 2008

---

SENATOR WIGHTMAN: Is that addressed in the amendment as you have it? [LB1082]

SENATOR CORNETT: No, and it doesn't need to be because it simply removes them from the prohibition under the workers' comp and puts them into the regular area for tort claims. [LB1082]

SENATOR WIGHTMAN: Okay. Another common law defense is frequently assumption of risk. And I think that might particularly come into play with regard to first responders in that maybe they have assumed that risk. Do you have a position on that? [LB1082]

SENATOR CORNETT: That, Senator Wightman, I'm going to turn over to Senator Lathrop or Senator White. I know what you're asking, but I want one of the other attorneys in the body that is familiar with my amendment to address that issue a little more clearly than I could, if that would be all right. [LB1082]

SENATOR WIGHTMAN: Okay. One other question, and then I'll ask Senator Lathrop, if he is still available. One other question that I would have is, if this bill had been brought as a separate bill wouldn't it more appropriately have been referred to the Judiciary Committee in the form it now is, in the form of the amendment, rather than to...the committee that it was referred to? [LB1082]

SENATOR CORNETT: Well, again, per Senator Erdman this morning, it would be up to the Referencing Committee to decide that. [LB1082]

SENATOR WIGHTMAN: Okay. Well, I'll let Senator Lathrop have a shot at the answer to the assumption of risk question. [LB1082]

SENATOR LATHROP: I'd be happy to yield to a question. You had a question about the assumption of risk? [LB1082]

SENATOR WIGHTMAN: Right. It seems to me that perhaps, particularly with regard to first responders, that even if you left it open to negligence actions... [LB1082]

PRESIDENT SHEEHY PRESIDING [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR WIGHTMAN: ...that the common law defenses might apply, and one of those would be assumption of risk. [LB1082]

SENATOR LATHROP: No question about it. And probably the only place we'd see this result in anything is the liquor store owner that provides no security whatsoever. You know, the place is just...there's no lock on the door, there's no security cameras. They're

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

Floor Debate  
April 07, 2008

---

just inviting people to come in and put a gun to their employees. That's where you'd see liability. [LB1082]

SENATOR WIGHTMAN: Okay. So most instances probably there would be no liability, not nearly as broad as it would under the Workmen's Compensation Act, is it? [LB1082]

SENATOR LATHROP: That's true. [LB1082]

SENATOR WIGHTMAN: Thank you, Mr. President. Thank you, Senator Lathrop and Senator Cornett. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Cornett. [LB1082]

SENATOR CORNETT: Thank you very much. I just wanted to go over what I briefly mentioned earlier. Farmers are not required to carry compensation insurance, unless they are large farmers employing ten or more employees on a regular basis. Most small farmers have to carry...most small farmers do not have to carry workers' compensation. Basically, hypothetically, if a farmer hires a part-time farmhand, and the farmhand is injured because of the farmer's negligence, the farmhand can recover because they are not covered under workmen's compensation in this state. What this amendment does is the same as that. It removes people that are...receive mental injuries at work from the workers' compensation statutes, which allows them to then go to court to receive some sort of damages. I'll give you an example. We'll use Senator Lathrop's, and there are other things besides convenience stores. But for some reason the owner has been very negligent in regards to safety or security of his employees. That employee receives a mental injury. Someone comes in and shoots or stabs another employee or a customer. That person is suffering and needs to see a counselor. In this state they cannot seek...see a counselor and have workers' comp pay for it, and they cannot sue their employer for damages. They have no remedy. People receiving mental injuries in this state have no remedy. We didn't vote for the original bill. We said that this didn't belong in workers' comp, that mental injuries didn't belong in workers' comp. Here we are, ladies and gentlemen, we're removing it from workers' comp. I'll yield the remainder of my time to Senator White. [LB1082]

PRESIDENT SHEEHY: Senator White. [LB1082]

SENATOR WHITE: Thank you, Mr. President. In response to Senator Wightman and others who wonder about this provision, as I understand it, what it would do is return us, with regard to purely mental injuries, to the state of the law that existed prior to the enactment of the work comp but with modifications to the rules of negligence that have evolved over a normal time. In other words, an employee who claimed a mental injury alone would not be barred from filing suit because in course he had no remedy at all in workers' comp. He could file in normal court claiming his employer was negligent. There

Floor Debate  
April 07, 2008

---

are examples where that might be easily maintained. There are, believe it or not, stores that have a policy that if goods are shoplifted on an employee's watch that they may be docked their pay for the loss. If that employee tried to stop a shoplifter who pulled a gun on him, terrorized him, left them with posttraumatic stress disorder but no physical injuries, that employee could fairly look to the comp law and say, wait a minute, the basic policy here, the fundamental fairness of the law was that I would give up my right to sue in normal negligence, which by the way is a constitutional right. It is your right to life, liberty, pursuit of happiness. The state won't take that away, unless there's some kind of equivalent compensation or a good reason. So the employee says, I have no right to sue, and I did, for 1,000 years, in the common law. What happened to my right to sue for this mental injury? The only thing that is fair, if we are not going to compensate for mental injury, then is to return their right to sue. Because what you've done otherwise, literally, is take something that is inestimable value to an individual and given them no compensation whatsoever. One might as well rule that people that run red lights and damage your car can't sue and they won't have a remedy. Or if they bop you on the head and hurt you, they can't sue because, after all, we don't like all these lawsuits. You are taking something from someone and giving them no remedy in exchange. And that has been fundamentally unfair, even when it has been ruled constitutional for well over 100 years. It's wrong. It's wrong to take from the poor worker a right to sue if you're not going to give them some kind of return remedy. Clearly, if you're going to give them a guaranteed right to treatment, it would be reasonable, as we found for 100 years, to limit his right to sue. But you won't give him the remedy, but you still take the right to sue away. That cannot be... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR WHITE: ...fairly defended to rational people. And what's more, it encourages employers to use their employees in ways they should not be used. Why make reasonable provisions to keep them safe? You are, after all, not responsible for the injuries that should occur to them. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator White. Senator White, you're next in the queue to speak, followed by Senator Pirsch. Senator White waives. Senator Pirsch. [LB1082]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I wonder if Senator Cornett might yield to just a quick question. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR PIRSCH: Just by way of background and comparison, Senator Cornett, I

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

Floor Debate  
April 07, 2008

---

was wondering if in committee you had had a chance to look at other states' approaches to this issue. Is there a general, of the 50 states, is there a...could you tell me how many approach it in a workers' comp type of approach, and how many approach it from a tort kind of framework, if you know? If you don't, I can certainly redirect the question. [LB1082]

SENATOR CORNETT: Again, as stated earlier, 30 states address this under the workmen's comp court. Mental injuries without a physical injury are addressed in other states. We have looked at what they are doing. In regards to other states and what they do in regards to tort claims outside the workers' comp court, I do not know. [LB1082]

SENATOR PIRSCH: Okay. Well, I do appreciate that. And I'd yield the balance of my time to Senator Cornett, should she like to make a few more comments. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, 3 minutes, 40 seconds. [LB1082]

SENATOR CORNETT: Thank you very much, Senator Pirsch. I had this amendment drafted as a wake-up call for the Legislature, for the people that voted no on the committee amendment because they thought it opened the door. They didn't like expanding workmen's comp to help first responders and private citizens that experience a mental trauma. I heard it costs too much. We proved that it didn't cost too much. We heard that this is just a foot in the door. Our intent was not a foot in the door. Our intent is what the bill was. What this bill does or this amendment does opens the door a lot further, I repeat, a lot further than the original amendment. And I hear people in here that voted against the committee amendment going, well, I think I'm going to support this. Workmen's comp was developed to remove liability for negligence from the employer and from the employee. And employee under workmen's comp can't claim damages, under this amendment they can. I have another amendment filed. I understand the body does not wish to open the door to private pay. I wanted to include the individuals that are not first responders. When that amendment comes up, I will explain a little bit further what that is, and I'll be happy to answer any questions. And again, I thank Senator Pirsch. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Cornett, seeing no additional requests to speak, you're recognized to close on AM2670. [LB1082]

SENATOR CORNETT: Thank you very much, Lieutenant Governor. I was hoping this amendment would draw more discussion in regards to what it did so I could put out to the body how important this issue was, and that what we were doing in the original amendment was very, very conservative. And to explain in the original amendment how we had limited it down, and how employers can mitigate against this. That's what they do with work comp insurance. I know Senator Fulton had many questions or statements in regards to, well, you can teach people how to lift so they don't injure their back. You

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

Floor Debate  
April 07, 2008

---

can teach them. How you prevent the unpreventable, like a gunman walking in? You have insurance, you plan for it. There is no difference if your employee is driving and they are hit by a drunk driver. They're covered if they are injured. There's nothing you can do to prevent that. With that, I thank the body for its attention and I withdraw this amendment. [LB1082]

PRESIDENT SHEEHY: AM2670 is withdrawn. Next amendment, Mr. Clerk. [LB1082]

CLERK: Mr. President, Senator Cornett would move to amend, AM2709. (Legislative Journal pages 1345-1347.) [LB1082]

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on AM2709 to LB1082. [LB1082]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. This amendment is my concession. It is me saying I want to do what I can do to help, to go back to my roots. This is what my original bill was, and I feel that it was a good bill. We expanded it out in committee to help everyone. This is, in basic, Senator Lautenbaugh's amendment for first responders. It also includes the committee clean-up language with the correct definition of what a first responder is, referenced to the correct area of statute. It also makes it clear that this bill is prospective. That means that no one can go back and claim work comp injuries for an event that's already occurred. None of the events that we've discussed here, no matter how horrific they are, would apply under this bill. It would be everything moving forward from this date for first responders under the definition of first responders in this state. I'd urge the body to support this amendment and the overall bill. I know a number of people in here voted for Senator Lautenbaugh's amendment. While they're...fundamentally I disagree that we should not treat all employees the same, I think that the need for first responders is critical. And I would urge the body's support of this amendment. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening of AM2709 to LB1082. The floor is open for discussion. Are there members requesting to speak? Senator Nelson. [LB1082]

SENATOR NELSON: Thank you, Mr. President. May I address a question or two to Senator Cornett? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR NELSON: Once again, I find myself not having a chance to read the amendment which is now on the machine, but let me ask you this. We talked about the

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

Floor Debate  
April 07, 2008

---

volunteer firefighters. Are they covered with this? [LB1082]

SENATOR CORNETT: Yes, they would be. [LB1082]

SENATOR NELSON: All right. I think that's the only question I have. Thank you, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Seeing no additional...Senator Lathrop. [LB1082]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I hope you can appreciate what we've done with this amendment. We've listened to those of you who have expressed concern about store employees, about the private sector. We have narrowed down this bill, essentially incorporated the Lautenbaugh amendment, and narrowed it down to first responders. Now the question is whether it's good policy. I think it is. I think it is because if there's a group of people who are likely to suffer posttraumatic stress disorder and like things, it's those folks that we call in the middle of the night, not 3:00 a.m. when we call the White House, but when we call 911 and we ask first responders, we ask law enforcement to come into the dark alleys, we ask law enforcement to show up at domestic disputes, we ask first responders to show up at these gruesome car accidents, to be around when folks are being shot at. This is an important amendment. These people deserve our support, volunteer firemen and paid firefighters alike, they deserve our support, they deserve the care that they will need if they have a grizzly situation that leads to posttraumatic stress disorder. This is a good narrowing of the bill. It should bring people aboard. Hopefully, we have Senator Lautenbaugh on board since it's consistent with his amendment. But support your fire guys, support your law enforcement guys. This is for them. It helps them get the care they need which is mostly, mostly what work comp is about. Most of work comp ends after a person gets treatment. And if we do not get these people treatment after they've suffered an injury to their psyche, we will pay for it dearly in the long run. Again, I'd ask your support of Senator Cornett's AM2709 and now LB1082 with that amendment. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Speaker Flood, you are recognized for an announcement. [LB1082]

SPEAKER FLOOD: Thank you, Mr. President, members. With regard to adjournment tonight, it's my intention to adjourn no later than 7:30 p.m., in the event that you're making arrangements or plans with your family following adjournment today. Also, tomorrow we'll be focusing on a number of General File bills with a little Select File sprinkled in throughout the day. And it is my hope to take up the State Fair on Select File on Wednesday. Thank you, Mr. President. Again, adjournment no later than 7:30 tonight. Thank you. [LB1082]

Floor Debate  
April 07, 2008

---

PRESIDENT SHEEHY: Thank you, Speaker Flood. Senator Janssen, followed by Senator Fulton. Senator Janssen. [LB1082]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. Senator Cornett, I do believe that we are at the point now when I can support this amendment. Many of you in this body have been in the same situations that I have as a volunteer fireman. There are some situations that you go to that are very undesirable, like trying to find children in a fire, and adults also. It is pretty...a pretty traumatic experience, especially for a bunch of people who are not being paid and are giving their time to their community. This is one of the...I don't imagine it's going to happen very often, but when it does, at least there will be some relief for that person who witnesses some of these things. So with that, thank you, Senator Cornett, for bringing this amendment to us. And I hope you will all support this particular amendment. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Janssen. Senator Engel. [LB1082]

SENATOR ENGEL: Mr. President, members of the body, I just have a question. This is exactly...Senator Lathrop maybe, if he would respond. And the question is, this is, I think, is exactly the same amendment that Senator Lautenbaugh had? Can that same amendment be brought up in the same stage of debate again or not? Just a question. Maybe that takes a ruling from the Chair. I don't know. [LB1082]

PRESIDENT SHEEHY: Are you raising a point of order if this is for reconsideration? [LB1082]

SENATOR ERDMAN: Well, I just have...wonder if this can be done? Can you have a...okay, point of order, that's fine. And just to satisfy my curiosity whether the same amendment can be brought up during the same stage of debate. [LB1082]

PRESIDENT SHEEHY: Senator Engel and maybe Senator Lathrop, Senator Cornett, would you come forward. Following discussion, the ruling from the Chair is that the current amendment, AM2709, does encompass some language or intent of Senator Lautenbaugh's, but also has two...another component, plus another previous nonconsidered amendment. So the Chair rules that it is appropriate to continue with discussion on AM2709. We have Senator Cornett, followed by Senator Fulton. [LB1082]

SENATOR CORNETT: Thank you, Lieutenant Governor. In the interest of time, and I've told the Speaker that I was not going to drag this on forever, there is no new material to be introduced. We discussed all of it this morning with Senator Lautenbaugh. The only new language that hasn't been discussed makes sure the language is clear that this is prospective, that you can't go back for an injury in the past. I would urge the body, if

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

Floor Debate  
April 07, 2008

---

they have any questions that were not addressed in all of the debate this morning, to please come and discuss it with me so we can move on. We have a lot of other issues this year that need to be heard. I do not wish to drag this on all day. And I urge the body to support the amendment. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Fulton. [LB1082]

SENATOR FULTON: Thank you, Mr. President. Would Senator Cornett yield to a question? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Fulton? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR FULTON: Senator, the...okay, I'll go ahead. This is one that I think other people may have, and so I'll go ahead and ask this on the microphone. So we are now limiting...we are limiting the scope of this bill to encompass first responders, correct, and only first responders? [LB1082]

SENATOR CORNETT: Yes, I've got so much paperwork, I can't find the amendment. Hold on. [LB1082]

SENATOR FULTON: Okay. [LB1082]

SENATOR CORNETT: But yes, only first responders. [LB1082]

SENATOR FULTON: Okay. Limiting this to first responders then...well, Senator Lathrop asked me a question earlier: Is there anything that we can do to change this bill that would cause you to accept it? And I had to think on that. I think I'm opposed to the bill in principle. I'm not positive about that. This seems to be more reasonable, but there are still questions that I have, so I'll attempt to ask the questions. I'll just ask the questions rhetorically, I guess. Extraordinary and unusual in comparison to the normal conditions; we are limiting the scope of this bill to first responders. And within the bill, page 1, line 6, "Establishes, by a preponderance of the evidence, that the employee's employment conditions causing a mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment." I understand it's not our job to necessarily interpret what extraordinary and unusual means, but we would be putting it forth in statute. What is extraordinary and unusual for a first responder? I don't know. And my concern is that the way that we would find that out is through a number of litigious activity, a bunch of litigious or a number of litigious actions. So maybe I should be asking the trial attorney. Senator Cornett, yeah, please, if she'd yield again. [LB1082]

SENATOR CORNETT: Senator Fulton, this language is in other places in...we ask the

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

Floor Debate  
April 07, 2008

---

courts to interpret this all the time in other areas. We would be asking the work comp court, which they haven't done before, to interpret new language. So you may find a few claims, that until they establish what that means, going to court and discussing that. But we ask our courts to interpret language like this every day. [LB1082]

SENATOR FULTON: Understood. [LB1082]

SENATOR CORNETT: And again, you would probably be better off asking a trial...one of the trial attorneys in here. But I have a basic knowledge of this. [LB1082]

SENATOR FULTON: Well, understood that is...the power of the court is interpretive. But we, in putting something forward, I don't think should invite interpretation. So I guess the question I have is, do we have precedent within workers' comp interpretation as to what extraordinary and unusual would be for a first responder? [LB1082]

SENATOR CORNETT: No, we do not under workers' comp. I do...I do want to point out something, Senator Fulton. Everything we do in here is subject to interpretation by the courts. How many different bills have we passed in the past few years that have went to court in litigation? A very large number of them. Because whenever you enact something new, then people go to the court system to try and have that interpreted. So I will turn the remainder, or you can, over to Senator White. [LB1082]

SENATOR FULTON: Yeah. Would Senator White yield to a question then? [LB1082]

PRESIDENT SHEEHY: Senator White, would you yield? [LB1082]

SENATOR WHITE: Certainly. [LB1082]

SENATOR FULTON: Senator, is there precedent within workers' comp interpretation as to... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR FULTON: ...what extraordinary and unusual would actually consist of for a first responder? [LB1082]

SENATOR WHITE: Not that I'm aware of, Senator. [LB1082]

SENATOR FULTON: Okay. [LB1082]

SENATOR WHITE: Certainly the words have accepted meaning, and the legislative history, if you recall the original discussion, and it's been some time, we discussed, for example, being called to a car accident would neither be unusual nor extraordinary,

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

Floor Debate  
April 07, 2008

---

even if someone died a fairly bloody death in it. On the other hand, Von Maur was clearly an extraordinary situation in the city of Omaha. I think you will find traditionally the courts are pretty restrictive when we use language like that and they will not generally expand it beyond that. [LB1082]

SENATOR FULTON: How would we arrive at an interpretation of extraordinary and unusual if we pass this bill forward? [LB1082]

SENATOR WHITE: We won't. You know,... [LB1082]

SENATOR FULTON: As a society how would we? [LB1082]

SENATOR WHITE: Well, the courts will do it, and they will do it initially by looking at the language of the statute for the plain language. They will then go to the dictionary and say, what does extraordinary mean? [LB1082]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Fulton. Thank you, Senator Cornett. Thank you, Senator White. Are there additional members requesting to speak on AM2709? Seeing none, Senator Cornett, you are recognized to close. [LB1082]

SENATOR CORNETT: Thank you very much, Lieutenant Governor. Senator Fulton, just for a slight answer to your question, it would not pertain per se to Nebraska, but this is from the National Council on Compensation Insurance. We analyzed data on mental-mental injuries from states that have laws with similar language as proposed in this bill. In particular, we examined states that include the wording such as "extraordinary" and "unusual" in comparison to "normal working conditions." These states are Arkansas, Maine, Montana, Nevada, New York, Utah, show that approximately .02 percent of all claims are of the mental-mental variety. What we have done with this amendment was...it was clear this morning that a percentage of this body, a large percentage of this body, wanted to exempt private employees but did want to address the serious concerns of mental injuries for first responders. We took Senator Lautenbaugh's language, which was very well drafted and thoughtful, and we incorporated it with the committee language that defines first responder and the clarifying language and put it with the prospective language. The amendment addresses the issue of mental injury to first responders. I think that we have shown that mental illness and mental injury are very real. Now it is up to this body to decide if they are willing to help their first responders with this. With that, I urge the body to pass AM2709. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of AM2709 to LB1082. All those in favor vote yea; opposed, nay. Senator Cornett. [LB1082]

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

Floor Debate  
April 07, 2008

---

SENATOR CORNETT: I request a call of the house and a roll call vote in reverse order, please. [LB1082]

PRESIDENT SHEEHY: There has been 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. [LB1082]

CLERK: 26 ayes, 1 nay to place the house under call. [LB1082]

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 Heidemann, Senator Johnson, Senator McGill, Senator Pedersen, Senator Kruse, Senator Burling, Senator Chambers, Senator Ashford, the house is under call. Senator Cornett, all members are present or accounted for. The question before the body is on the adoption of AM2709 to LB1082. Senator Cornett has requested a roll call in reverse order. Mr. Clerk. [LB1082]

CLERK: (Roll call vote taken, Legislative Journal page 1347.) 26 ayes, 4 nays, Mr. President, on the amendment. [LB1082]

PRESIDENT SHEEHY: The Cornett amendment, AM2709, is adopted. [LB1082]

CLERK: I have nothing further on the bill, Mr. President. [LB1082]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will move to floor discussion on the advancement of...call is raised, on LB1082. Members requesting to speak: Senator White. [LB1082]

SENATOR WHITE: That you, Mr. President. Senator Fulton asked me some questions as to where our courts would go and whether there is precedent on this. I misunderstood the line of his questions. I thought he meant inside of Nebraska's own tradition. There is not. There is however, Senator Fulton, as Senator Cornett advised, lines of cases in other states--Maine, Arkansas, and others. And on that interpretation the court could, if they chose, look to that. It is not binding precedent, it does not force them to follow it, but they will look to them for advice. If they do, you can expect that the financial impact would then mirror what they've experienced in Maine and Arkansas, which is very limited impact indeed. And with that, I would yield the rest of my time to Senator Cornett, should she wish it. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, just over 4 minutes. [LB1082]

SENATOR CORNETT: Thank you, Senator White, and thank the body. This has been a

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

Floor Debate  
April 07, 2008

---

very good debate. It's been a very difficult debate for me, personally, because it is personal. Having come from a law enforcement background, I know the kind of things that you can see as a first responder. Some of them are horrific. I had my own personal experiences with things that, in retrospect, I probably should have went and seen someone. One of them is a homicide, to this day I feel partially responsible for. I know that I couldn't have done anything to stop it, but that doesn't take that guilt away. There are people that are hurting every day from injuries that they receive, and they are just as real as being shot, or being run over, or being stabbed, or being punched. This body just acknowledged that first responders do see things that the rest of us don't and should be compensated when they can't take any more. I have again data from the police psychiatrist for the Omaha Police Department that states: On the other hand, approving this legislation will not break the bank. As appointed by Dr...it's an article, refers to an article. The vast majority of first responders will not experience ASD, which is acute stress disorder, which if untreated turns into posttraumatic stress disorder, which is much more difficult to treat and can be a lifelong condition. If we can get these people help when they are first injured, it will follow what workers' comp was established for, that is returning the person back to the workplace. I ask the body to stop, and the people that voted against this, and think: What is the cost to your municipalities, to your state, to your counties when you have an employee who isn't treated? They've invested their time in training, whether it's a volunteer fire department, volunteer fireman, a police officer, an EMT. It takes a lot of money and time to train people. It should be everybody's goal in this state to return that person to work. That's what this bill does, is it allows them to get the help that they need... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: ...where it doesn't have to be paid off of their private insurance. If you're a volunteer firefighter and you see something that you just can't handle in this state, there is no coverage for you if you don't have insurance, there is no help. I urge the body to support the bill. And thank everyone for their time today and their consideration. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Thank you, Senator White. Senator Cornett, seeing no additional requests to speak, you're recognized to close on LB1082. Senator Cornett waives closing. The question before the body is on the advancement of LB1082. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1082]

CLERK: 25 ayes, 7 nays on the advancement, Mr. President. [LB1082]

PRESIDENT SHEEHY: LB1082 advances. Next item, Mr. Clerk. [LB1082]

CLERK: Mr. President, LB1027 is a bill by Senator Erdman. (Read title.) Introduced on

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

Floor Debate  
April 07, 2008

---

January 17 of this year, referred to the Agriculture Committee for public hearing, advanced to General File. There are Agriculture Committee amendments, Mr. President. (AM2295, Legislative Journal page 960.) [LB1027]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Erdman, you're recognized to open on LB1027. [LB1027]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. LB1027 was introduced out of a work product that the committee involved "themselves" in over the interim. Part of the response was the introduction of Senator Dierks's bill that he introduced and we debated earlier last week. One of the components that we continually heard about as we traveled the state in holding our public hearings on the response to Initiative 300, but more specifically under LR93, were what types of programs or opportunity should we be providing in the state of Nebraska for young people, not young as in age but young farmers, to be able to become successful farmers or successful individuals in the area of agriculture. As you're well aware, we have a number of programs in the state of Nebraska that provide tax incentives or opportunities for a number of businesses in which agriculture is not allowed to participate. And in fact when agriculture is allowed to participate, they're simply allowed to participate only to the extent that those programs help them comply with federal or state regulations. There is no direct incentive, outside of this specific program, for agriculture to take advantage of similar opportunities that other entities may have. So as we traveled the state, obviously one of the things that we are well aware of in the Agriculture Committee and in the state is that the average age of agricultural producers in the state of Nebraska is increasing, it is increasing at an alarming rate. Individuals are older than 55 as an average age for agricultural producers. What happened in 1999 was the Nebraska Legislature passed the Beginning Farmer Tax Credit Act. And what that was designed to do and to this date has attempted to accomplish is to partner retiring farmers with younger farmers--and again, this is not age specific, it's the fact that they're a new farmer--to ensure that they have access to land and capital for them to be able to continue their operation. Specifically what LB1027 does is that it provides a personal property tax exemption for those that would be certified as a beginning farmer for up to three years and, under the committee amendment, to not exceed \$100,000. As the state of Nebraska and as a committee we looked at what other states do in the area of ag policy. As I mentioned last week when we were discussing LB1174, we did a comprehensive survey of incentives, of programs, of packages, of things that other rural states provide to their agricultural producers to encourage them and to provide them opportunities to become successful in production agriculture. One of the things that we found in other states, specifically in South Dakota and Iowa, is that they provide for real property tax abatement for their producers. Our constitution prohibits that from twofold: one, the state no longer collects property tax; and two, we don't have that authority as a state to do that. The best opportunity that we have and has been supported by the Cattlemen, the Farm Bureau, we've worked with the Center for Rural Affairs, Nebraska

Floor Debate  
April 07, 2008

---

Farmers Union, all of these groups to come up with some incentives and proposals that we can all agree on. And generally they're reflected in LB1027 and the committee amendments. The process that a beginning farmer would follow to get the credit is similar to the process that an individual would apply for to get a homestead exemption. They have to prove that they've met the qualifications. And once they've been certified by the Beginning Farmer Board, under LB1027, they would then apply to the county board. And the county board would then grant them that exemption, not to exceed three years and no more than \$100,000 of taxable value. That's essentially what the underlying bill would have done. With the committee amendment, it clarifies that process, it clarifies that appeal process or, excuse me, it clarifies that application process. Senator Fulton had a bill, LB875, that we'll discuss with the committee amendments that further expands the definition of who a beginning farmer can partner with and then whom can receive that tax credit. The Beginning Farmer Tax Credit only goes to, currently, the landowner. There is no direct benefit that's given to the beginning farmer under the current bill, under current program. Under this bill you have two types of credits that will be available--one directly to the young producer, and again young is not a reflection of their age but rather of their time in agricultural production; and then secondly, we expand the opportunity for those individuals that are willing to work with farmers, young farmers, to have advantage of that Tax Credit Act. The bill was heard on January 29 by the Agriculture Committee. And when recognized to open on the committee amendments, I will explain the details of that. Thank you, Mr. President.  
[LB1027 LR93 LB1174 LB875]

PRESIDENT SHEEHY: Thank you, Senator Erdman. You have heard the opening to LB1027. As noted, there is a committee amendment from the Agriculture Committee, AM2295. Senator Erdman, you're recognized to open on your committee amendment.  
[LB1027]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. LB1027 was heard in front of the Agriculture Committee on January 29, 2008. The bill was advanced to General File with committee amendments, which is before you. The vote was unanimous, 8 to 0. All members were present and all members voted to advance LB1027 to General File with the committee amendments. Those again that have worked on this legislation, not only with the underlying bill but with Senator Fulton's amendment, which is a part of this bill which is LB875, include the Farm Bureau, the Cattlemen, the Farmers Union, the Center for Rural Affairs. There's a number of agricultural interests that were a part of our previous conversation. And although they could not agree on the overall package of LB1174 that Senator Dierks offered, there is support between all of those groups for these proposals. I will briefly outline again what those are, and then I will yield the remainder of that time to Senator Fulton because his amendment or, excuse me, his bill, LB875, is the second half of the committee amendment. When we went out across the state and we asked producers, what's essential for our agricultural industry to be positioned for success and to have

Floor Debate  
April 07, 2008

---

opportunities for young people to be involved, we ran into a number of questions that either we couldn't answer or were beyond our reach. This one clearly was within our grasp, and as a committee we felt that this was overwhelmingly important. We advanced this bill to General File unanimously and have named this our second committee priority bill for this legislative session. Specifically, LB1027 would allow a beginning farmer who is certified by the Board of...Beginning Farmer Board to be able to apply to the Beginning Farmer Board. If they meet the qualifications, they would be certified as a beginning farmer. They would then be able to take that certification and apply to the county board, just as an individual would for a homestead exemption, and they would be eligible for up to three years, not to exceed those three years, but up to three years of an exemption for personal property tax, not to exceed \$100,000 of taxable value. We have put safeguards in place to ensure that personal property can't be transferred as a way around the law from one asset owner to another. We've given the county some authority similar to what we do with homestead exemptions and other appeals process to ensure that there are safeguards in place that the actual beginning farmer gets the benefit. The other part of the committee amendment that Senator Fulton has, and I'll allow him to introduce that, generally expands the definition of the landowners who can receive that tax credit. And right now the only individuals who can receive a tax credit for working with a beginning farmer are those farmers who are currently engaged in the operation of their farm and are on that farm. We have a number of absentee landowners or other entities that would very likely be an opportunity for beginning farmers to partner with, but because of obviously high land prices and other factors they're unable and ineligible of accessing those tax credits. And so that was the second part of our conversation that Senator Fulton brought to us, which is LB875. And I will yield the remaining...remainder of my time to him to explain his bill. And ultimately, I would encourage your support of the committee amendment. Senator Fulton, you may have the rest of my time. [LB1027 LB875 LB1174]

PRESIDENT SHEEHY: If I could take just a moment. Members, currently the electronic system is down. And so we're going to be going back on...using a stop watch. But if you have...want to speak, we're going to ask that you call up on the phone to 250. That's currently how we'll take you in and out of the queue. Because even pressing your light doesn't get up here to the front. So, Senator Fulton, you have about 6 minutes. [LB1027]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Erdman. I'll be brief. Senator Erdman really touched on a lot of what my original bill, LB875, did. It is now part of AM2295. I introduced LB875 after being contacted by a young man in my district actually who alerted me to the current hindrances of the Beginning Farmer Program. The Beginning Farmer Tax Credit program is not presently fulfilling its original purpose of affording young people greater opportunity to enter into agricultural production. The tax credit is given to the agricultural asset owner who agrees to rent his or her property to a beginning farmer for three years. However, too few beginning

Floor Debate  
April 07, 2008

---

farmers presently receive such an opportunity, as nearly half the available farmland is owned by an absentee landowner. Present policy disallows that type of arrangement. So AM2295 expands the current statute to facilitate the purpose of the Beginning Farmer Program, affording the next generation of Nebraska's farmers the opportunity to earn a living in farming and livestock production. The Beginning Farmer Program has great potential to attract and assist young agricultural producers. I thank Senator Erdman for recognizing the necessity of bringing our policy into line with what the original intention was. And I urge you to vote in favor of AM2295 and to move LB1027 forward. Thank you, Mr. President. [LB1027 LB875]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Thank you, Senator Erdman. Members wishing to speak on AM2295: Senator Wightman, Senator Rogert, Senator Dubas, and Senator Erdman. Senator Wightman. [LB1027]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do rise in support of this amendment, both the bill and the amendment. I do think that it's important that we really encourage young farmers to take an active interest in agriculture and to become involved in agriculture, because I think if we don't we're going to, ten years from now and maybe less, have a real scarcity of young farmers out there. And that's a major issue, because I've seen figures, I don't remember the figures, but I think the average farmer in Nebraska is probably between 55 and 60 years of age. And if we don't have ways that will encourage young farmers to stay with agriculture, or people who are not currently involved in agriculture to become engaged in agriculture, we're going to have a real problem down the road. And so I do support this bill. I know it's Senator Erdman's bill, and always have to kind of reassess when I'm supporting one of Senator Erdman's bills. Not really. I usually vote about the same way he does. But at any rate, I do support both the amendment and the bill. Thank you, Mr. President. [LB1027]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Rogert. [LB1027]

SENATOR ROGERT: Thank you, Mr. President, members of the body. I rise in support of LB1027 and the amendment, AM2295. And I want to make a few comments, just basically in regards to what kind of a tool this can provide us in terms of saving the family farm, or keeping young farmers on the farm, and bringing new ones to the farm. This is the type of legislation, I think, that we can use in lieu of restrictions or penalties in terms of to save the family farm in Nebraska. The carrot versus the stick is basically the example I use. This is the carrot. We can give young farmers, family farmers, a competitive advantage to corporate owned farmers by using more tools like this rather than limiting the resources or the tools that everybody can use in terms of organization and capital gain methods. This is the type of legislation that I like to see coming through here, and hope that we can continue to work forward in the coming couple of years to reestablish some of the hopes that I-300 and LB1174 were willing to gain if they were to

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

Floor Debate  
April 07, 2008

---

be passed. I think we can have more success in doing it in terms of LB1027 and like legislation. Thank you, Mr. President. [LB1027 LB1174]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Dubas. [LB1027]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor, members of the body. I, too, rise in support of the amendment as well as the underlying bill. When we were discussing Initiative 300 last week, and I received a lot of e-mails and contacts from people on both sides of the issue, but I simply sent an e-mail back to them, asking them to share with me, what do you see as some of the biggest challenges facing agriculture today? And I would have to say overwhelmingly the number one response was the challenge to raise capital and keep beginning farmers, young farmers on the land. And this gives us an incredible opportunity to do just that. As a legislative body we've invested in job training money, we've invested in packages that recruit jobs to our state that are high paying jobs. Well, when you can...the more farmers that you can keep on the land in the communities, those are returns of hundreds of thousands of dollars, not just to the community, but to the state as well. Those farmers are paying property taxes, personal property taxes. They're buying feed, fuel, equipment, just general repairs for their farms. They are investing in their local economy, which in return goes to support our state economy. So anything that we can do to give these beginning farmers a chance to stay on the farm and compete with some of the more established farmers I think is a good thing for us to do. As a parent of a young farmer, you know, we've got the equipment, we've got the assets that our son doesn't necessarily have to go out and buy. But it's still a challenge for him to...for us to bring him into the operation. So for someone to just come into the business right now, it's almost an insurmountable obstacle. And when we talk about the \$100,000 limit on this personal property, it doesn't take very much equipment to hit that \$100,000. You look at a tractor and a planter, or a cultivator or some piece of equipment like that and you're almost there. So I think this is a great way for us to support our beginning farmers, to support agriculture in the state, and to try to put some of those incentives in place that we have for other types of businesses. And this definitely will pay dividends, I think, for our communities and the state as well. Thank you. [LB1027]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Erdman. [LB1027]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. Let me share with you some statistics that we have received from the USDA Economic Research Service. One of the things that we know is that, regardless of the farm size, regardless of your operation, whether you're in a large farm, small farm, somewhere in between structure, it's somewhat irrelevant. We know that those first four years are essential to your success. If you're not going to be successful during that first four years, no matter the size of your operation, it's not going to happen. And one of the things that we're trying to do, and with your support we'll accomplish with LB1027, is targeting

Floor Debate  
April 07, 2008

---

those times where it's essential for agricultural producers to be successful or to lessen the burden that they experience to give them that opportunity to be a producer that extends beyond those first four years. And many of you have received information from the agricultural groups that are supporting this. There's all kinds of information out there that points to why this mechanism and this process is effective and why it provides a benefit at the right time for the right people to ensure that they are successful. The issue that Senator Fulton has brought up in his bill further allows, as we currently know, I believe, there's 50 percent of the landowners or 50 percent of the people that potentially would be taking advantage of this that could work with those beginning farmers are either absentee or no longer fit the bill of working directly on the farm. Those are the types of farms that we need to get back in the hands of those young producers. And those are the types of opportunities that we need to pursue in this state to ensure that those opportunities are realistic. And if we as a state can provide these short steps in order for them to accomplish that, it's a reasonable approach for us to take. The committee, again, advanced this bill with the committee amendment 8 to 0. We have all kinds of statistics and rationale as to why we arrived at this. The fiscal note is minimal, if nonexistent. We believe that this is an appropriate step forward, specifically on the personal property tax exemption and then even on the tax credit part that's Senator Fulton's. The impact to the state is minimal. Thank you, Mr. President. [LB1027]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Pirsch. [LB1027]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I also join those voices in support of both the amendment and the bill. I think it will, as Senator Dubas rightly states, go towards helping young farmers raise the capital that they need to, to get into farming in today's modern economy. That's a very important facet. We are an ag state. It will...it's a key to our future. It is an area in which we have a strong competitive advantage. So when you're talking about economic development, I think that it is an important measure towards reaching that. And I thank Senator Erdman for bringing this. I would yield the balance of my time to Senator Erdman, if he had some additional comments. [LB1027]

PRESIDENT SHEEHY: Senator Erdman waives. Senator Stuthman. [LB1027]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I would like to engage in a little conversation with Senator Erdman. [LB1027]

PRESIDENT SHEEHY: Senator Erdman, would you yield? [LB1027]

SENATOR ERDMAN: I will yield to questions. [LB1027]

SENATOR STUTHMAN: Senator Erdman, I'm totally supportive of facts of trying to help beginning farmers. With this \$100,000 limit on the personal property tax, as you well

Floor Debate  
April 07, 2008

---

know, you know, personal property tax is assessed locally, collected locally, and spent locally. Can you tell me, you know, on this \$100,000 value at a mill levy of 93 cents, and that would be \$930, that would be credited, that the individual would not have to pay that personal property tax, is that something that the county is going to lose, or how is the county going to be reimbursed for this amount of loss, or is that going to be at the loss of the county? [LB1027]

SENATOR ERDMAN: Senator Stuthman, we've had that conversation with the Nebraska Association of County Officials. And their rationale, and I think it's logical, is one of a longer benefit versus a short-term loss. They recognize that if these producers are successful they're going to have more assets, they're going to get more revenue from their real estate taxes, and potentially from the expansion of their personal property equipment in the future. The way that it would fall out generally is depending upon how much of that money is affecting their budget, and depending upon whether there are aid programs to offset that loss of revenue. There may or may not be an offset. Recognize that I think the total impact statewide, assuming everybody that would take advantage of this took full advantage of all of the credits that are available, I believe the cost is \$40,000 a year to all counties. So when you're talking about the total cost statewide, it's \$40,000. The actual impact to individual counties, obviously, is yet to be determined. But depending upon where that money comes into, and what the budget is of that local entity, and what resources they have for whatever formula, it may or may not be made up. But their rationale is that they will make up that difference in the long term very easily because of the growth of those operations, if they're successful. [LB1027]

SENATOR STUTHMAN: Thank you, Senator Erdman. And I think that explains it well. To me, in my opinion also, that it would be that if you don't allow this young farmer to invest in equipment, machinery, or something to hopefully have him be an asset to the community in the next 10 to 20 years rather than not allowing him to do that, and he may never get involved in the agriculture part of it. I think that's a very good...very good process where we allow them the couple, three years of not paying the personal property tax, because if we wouldn't allow that there would probably be no equipment or machinery bought because that individual would not have the interest in the farming operation. And by allowing this, that gives him a little bit more of an opportunity... [LB1027]

PRESIDENT SHEEHY: One minute. [LB1027]

SENATOR STUTHMAN: ...to invest in equipment, in livestock so that he can be a very good taxpaying citizen in the years to come. Thank you, Lieutenant Governor. [LB1027]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Carlson. [LB1027]

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

Floor Debate  
April 07, 2008

---

SENATOR CARLSON: Mr. President and members of the Legislature, I, too, would like to engage in a little dialogue with Senator Erdman. [LB1027]

PRESIDENT SHEEHY: Senator Erdman, would you yield? [LB1027]

SENATOR ERDMAN: I will. [LB1027]

SENATOR CARLSON: Senator Erdman, first of all, I apologize for misstating your position earlier in the day. And I was wrong. I am going to indicate something, though, as to how I got there. I'd like to ask you a question and then I'm going to come back to this bill. But your proposal concerning the gas tax had to do with taking money out of Cash Reserve. Is that correct? [LB1027]

SENATOR ERDMAN: The...for this budget cycle it would have taken it out of the Cash Reserve. [LB1027]

SENATOR CARLSON: Yeah. And what kind of money gets into the Cash Reserve to begin with? [LB1027]

SENATOR ERDMAN: As you and I both know, it's money from sales tax, income tax, cigarette tax, liquor tax, other miscellaneous taxes. [LB1027]

SENATOR CARLSON: Okay. And my concern is that the roads continue to be funded by user fees. And I don't look at the Cash Reserve as a source of user fees. And so I'm referring to that as doing nothing, and I'm wrong, and I apologize on that. [LB1027]

SENATOR ERDMAN: Senator Carlson, I think it's just a matter of practicality. I don't know that anybody is right or wrong. I think the apology stands and I do appreciate your friendship. [LB1027]

SENATOR CARLSON: Good. Thank you. On LB1027, certainly I want to support it. But you...Senator Stuthman asked you a question, and I didn't quite follow. You agree that at the state level we are passing a law that affects counties, in terms of revenue, not the state. And so we can't access this on our computers right now. So at the hearing you indicated the County Officials are supportive of this bill. [LB1027]

SENATOR ERDMAN: No. I said that we've had conversations with them, and they're supportive of the concept because of the long-term benefits to them. They didn't testify for, against, or neutral. [LB1027]

SENATOR CARLSON: Okay. Well, the example you gave, I had trouble following because on a farmer, if he had \$100,000 that he could apply against this, and if that levy is somewhere around \$1, it's \$900 to \$1,000 that he's saved. That's correct, isn't it?

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

Floor Debate  
April 07, 2008

---

You take his total county levy... [LB1027]

SENATOR ERDMAN: The tax that they would be exempted, and again depending upon whether the county is at the levy or not will affect the county's ability to offset that loss. But generally you're right. We're not requiring them to pay what they ordinarily would have been required to pay. [LB1027]

SENATOR CARLSON: Right. So at a levy that's near \$1, on \$100,000 that's \$1,000. [LB1027]

SENATOR ERDMAN: Okay. [LB1027]

SENATOR CARLSON: Okay? [LB1027]

SENATOR ERDMAN: Go ahead. [LB1027]

SENATOR CARLSON: But you said statewide this should only involve about \$40,000. That doesn't sound right at all. [LB1027]

SENATOR ERDMAN: And here is where that estimate comes in, Senator Carlson. As I mentioned to Senator Stuthman, that's the maximum that any one entity...one individual can get. Not everybody that's going to apply for this tax credit is going to get a full \$100,000 exemption. They may get \$30,000, \$40,000, \$20,000. It's simply a reflection of what their personal property tax would have been, assuming they are certified as a beginning farmer. So the number is an estimate, the \$40,000. And I'll have to grab the fiscal note to make sure that that's what we have been told from the potential impact on subdivisions. But it's a reflection that if everybody that they believe would take advantage of this would take the maximum, and if you're at \$1 you're talking about a possible additional 40 beginning farmers, which would nearly double the number of people that are currently taking advantage of the program. [LB1027]

SENATOR CARLSON: Okay. I thank you for your answers. Certainly, I'll be supportive of the amendment and the bill. [LB1027]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Thank you, Senator Erdman. Senator Erdman, there are no additional requests to speak. You're recognized to close. [LB1027]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. I do appreciate the questions. And as always, as we work through this, if there are other questions or if you have concerns or ideas, we stand ready to work with you. The committee amendment refines the draft of LB1027, as well as incorporates Senator Fulton's bill, LB875. It provides for an appeal process, as well as an application process

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

Floor Debate  
April 07, 2008

---

that we believe is appropriate and makes the bill better. In working with the Department of Revenue and the counties, we've come up with this process that generally mirrors that of a homestead exemption. And so if you understand that process, once a beginning farmer would be certified by the Beginning Farmer Board that they were a qualified producer, that they would then be able to apply to the county. The provisions of Senator Fulton's bill again expands the definition of landowner that can take advantage of the tax credit. We believe that, as part of our conversation throughout Nebraska this interim, that Nebraska agriculture believes that this is an essential component to our state's ag policy to move us forward. We would encourage your adoption of the committee amendment and advancement of the bill. Thank you, Mr. President. [LB1027 LB875]

PRESIDENT SHEEHY: Thank you, Senator Erdman. You've heard the closing of AM2295 to LB1027. Members again, the system is down, so that also does include the voting board. And so under Section 7...or Rule 7, Section 2, Voting, Electronic Roll Call, it states: All votes shall be taken viva voca unless otherwise provided for herein. Questions shall be distinctly put in this form, to wit: "Those who are in favor of the question say 'aye'; those who are opposed to the question say 'nay.'" So that is the form that we will use until the system is back up, unless there is a request for a roll call vote. Is everyone clear? Then the question before the body is on the adoption of AM2295 to LB1027. All those in favor say aye. Opposed, nay. AM2295 is adopted. [LB1027]

CLERK: I have no further amendments to the bill, Mr. President. [LB1027]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will return to floor discussion on the advancement of LB1027. Are there members requesting to speak? Seeing none, Senator Erdman, you're recognized...Senator...oh, Senator Raikes. Again, I ask members, if you have a request to speak, that you call 250 so that the pages can record it. Senator Raikes. [LB1027]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I have a couple of questions for Senator Erdman, if he would yield. [LB1027]

SENATOR ERDMAN: I will. [LB1027]

SENATOR RAIKES: Senator, I don't...I rely on my computer, and I'm sorry for not having done the background work. How do you define a beginning farmer? [LB1027]

SENATOR ERDMAN: I will...I'll get that for you here in a second. Back in the olden days, Senator Raikes, we used to use it on paper. So Section 77-5203 defines the terms. The current definition of a qualified beginning farmer or livestock producer is an individual who is a resident, as defined in Section 77-2714, who has entered farming or

Floor Debate  
April 07, 2008

---

livestock production or is seeking entry into farming or livestock production who intends to farm or raise crops or livestock on land located within the state borders of Nebraska, who meets the eligibility guidelines established in 77-5209 and other qualifications as determined by the board. And I have 77-5209 here, if you need that as well. [LB1027]

SENATOR RAIKES: Well, let me ask you a for instance. Suppose someone had a successful career in Chicago as an attorney and decided to retire from that, come to Nebraska, began a farming operation. Would they be eligible for this credit? [LB1027]

SENATOR ERDMAN: It depends on their net worth. One of the things that we had to do a couple years ago is raise the net worth cap from \$100,000 to \$200,000. So if that individual is retiring...or is moving to Nebraska and they are an attorney and they want to farm, they potentially would have to overcome that first hurdle, which is that they have a net worth of less than \$200,000. If their net worth is over \$200,000, they do not qualify for any of these programs, including the personal property tax exemption. So that's in the existing law that the first issue is that they have a net worth of not more than \$200,000, including any holdings by a spouse or dependent based on fair market value. And there are nine different requirements that they would have to meet in order to become eligible to be certified, and then they would have to be able to demonstrate to the Beginning Farmer Board that they have a partner or a farmer that's willing to work with them on their... [LB1027]

SENATOR RAIKES: Now does the board itself conduct this sort of an investigation, verify a balance sheet or whatever that's turned in? [LB1027]

SENATOR ERDMAN: They have to make an application to the department, and they also have to then verify the information that's given to them to ensure that the individuals that are applying are complying with the intent of the statute. And as I read to you earlier, it's not just these items in statute, but it's also other qualifications that the board would also place upon those applicants. So they do have the responsibility now of verifying and going through those applicants to make sure that they fit the definitions of these potential participants. [LB1027]

SENATOR RAIKES: Okay. Another topic I wanted to pursue a little bit is the tax impact. There were questions raised about, well, if we have \$40,000 statewide, which seems, by the way, to be a very low amount, there apparently wouldn't be very many people that are interested in this program given that estimate. But let me put that off for a second. Is this a loss to political subdivisions, or is this something that simply gets taken out of the tax base so that everybody else pays a little more? [LB1027]

SENATOR ERDMAN: It depends on their circumstance, as you well know. In the event that the county is able to recover those costs elsewhere by raising the levy or doing other things. They would have that ability. Obviously, their resources are dependent

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

Floor Debate  
April 07, 2008

---

upon the tax structure as it is established. And if there's \$100,000 that's no longer there,... [LB1027]

SPEAKER FLOOD PRESIDING [LB1027]

SPEAKER FLOOD: One minute. [LB1027]

SENATOR ERDMAN: ...they potentially would have the opportunity to make up that somewhere else through other taxes locally. If they can't, then there is a potential loss to the counties. But again that cost is minimal, but it's a huge... [LB1027]

SENATOR RAIKES: It would really be an issue of timing. If the valuation base is established with this credit accounted for, and then the subdivisions determine their tax asking based on the budget and the valuation base, then everybody else would pay more, if I'm understanding what you're saying. [LB1027]

SENATOR ERDMAN: That potentially could happen. And again it follows the same process that we utilize for the homestead exemption. When they go through that process of determining how that plays out for their budgeting and for their... [LB1027]

SENATOR RAIKES: Well, that confuses me because the state pays the homestead exemption. [LB1027]

SENATOR ERDMAN: The state reimburses for that cost. [LB1027]

SENATOR RAIKES: Yes. [LB1027]

SENATOR ERDMAN: Yes. [LB1027]

SENATOR RAIKES: And in this case, that's not going to happen, right? [LB1027]

SENATOR ERDMAN: We...there's not a direct program similar to that. But because the potential impact is minimal, they believe that it's not an important enough issue to worry about. But they also believe they're going to get a long-term benefit... [LB1027]

SPEAKER FLOOD: Time. [LB1027]

SENATOR RAIKES: Thank you. [LB1027]

SENATOR ERDMAN: ...by those producers having more assets. [LB1027]

SPEAKER FLOOD: Thank you, Senator Raikes. Senator Stuthman, you're recognized. [LB1027]

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

Floor Debate  
April 07, 2008

---

SENATOR STUTHMAN: Thank you, Mr. Speaker and members of the body. I would like to continue in a conversation with Senator Erdman. [LB1027]

SPEAKER FLOOD: Senator Erdman, will you yield to a question from Senator Stuthman? [LB1027]

SENATOR ERDMAN: I will to yield to questions from Senator Stuthman. [LB1027]

SENATOR STUTHMAN: Thank you. Senator Erdman, I was listening to when you was discussing the part of the beginning farmer issue that Senator Raikes had asked you, the \$200,000 worth of net worth to qualify for a...be a beginning farmer. When was that changed from like \$400,000 to \$200,000, or can you give me some history on that? [LB1027]

SENATOR ERDMAN: Senator Stuthman, it was actually raised from \$100,000 to \$200,000 and I believe that that was done in 2005 or 2006. So the program started off in 1999 at \$100,000 worth of net worth, and that was the limit. If an individual had a net worth of more than \$100,000--and that's their assets as well as their significant other's, excuse me, I believe it's their spouse or dependent--that they would not be eligible for the credit. Now they didn't get the credit, it was the landowner. We raised that amount, I believe it was a couple years ago, to \$200,000 to try to make sure that as time goes on and as the value of property goes up proportionately that we're still providing the same benefit to the same people we intended to in 1999. [LB1027]

SENATOR STUTHMAN: Okay, thank you. Another concern that I have is that if the individual purchases \$100,000 worth of equipment and the first three years he does not have to pay any personal property tax, and the equipment is on a schedule of...a 7-year depreciation schedule, what will that...the last four years he'll be paying personal property tax on that based on the original value or on the four years of value that is left? [LB1027]

SENATOR ERDMAN: It would be the depreciated value, because obviously if you just forgo the three years, he's not actually getting a benefit, he's just delaying the inevitable. This is...if they're on that seven-year schedule, those first three years are exempted. And then they start with what the fourth year would have been, paying until that's depreciated out, if it's a seven-year schedule or whatever schedule they're using. [LB1027]

SENATOR STUTHMAN: So the depreciation part would be as normally would be for the seven-year program, but there would be no tax assessed to that portion of depreciation then, in other words? [LB1027]

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

Floor Debate  
April 07, 2008

---

SENATOR ERDMAN: Up to \$100,000 for those producers that fit these nine qualifications, if they're certified by the board, and the county board authorizes them to receive the credit under the same application process that's generally followed for homestead exemption. [LB1027]

SENATOR STUTHMAN: Okay. Is the county board obligated to give them the personal property tax exemption? Are they obligated to do that, being as now that the individual is complied and been approved as a beginning farmer? [LB1027]

SENATOR ERDMAN: They're not...they're not required to, Senator Stuthman. And here's the distinction that I can give you based on my understanding. Again, I think we're all operating at about the same circumstance without having the language right in front of me. What we don't want to have happen is we don't want to say everybody that meets this qualification gets the credit, and then find out that one of the individuals that got the credit was simply taking his dad's machinery off of the property tax...personal property tax rolls and claiming that as his own and say they sold it for \$1. The county needs to have some ability to police that to ensure that that doesn't happen. And so there is some flexibility that they're not required to give everybody that qualifies that credit, but it's not designed to prohibit the counties, or it's not designed to keep the counties from giving him that benefit if they otherwise would qualify. It's a safeguard to ensure that they have some discretion in ensuring that the intent of the law is being carried out. So generally, yes, they should give the credit... [LB1027]

SPEAKER FLOOD: One minute. [LB1027]

SENATOR ERDMAN: ...if the person meets the qualifications. But the statute and the amendment doesn't require it, and it's for those types of circumstances. [LB1027]

SENATOR STUTHMAN: Would there ever be the possibility that they could only allow half of it them first three years, if they seen that there's a real problem with the amount of dollars that beginning farmers are...or there's a lot of beginning farmers that want to utilize the program, and they feel that they can't...can't handle that many dollars, would there be the chance that the board would say, well, we'll only accept 50 percent of the exemption? [LB1027]

SENATOR ERDMAN: No, Senator Stuthman. The way that the bill is written, they either approve or deny whatever the amount is, whatever the application is. They don't have the ability to adjust that amount up or down. They simply approve or deny. And then if that is denied, then the beginning farmer has an appeal process that, I believe, goes through a similar process to which you would for TERC or other similar appeals. [LB1027]

SENATOR STUTHMAN: Okay. Thank you. [LB1027]

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

Floor Debate  
April 07, 2008

---

SPEAKER FLOOD: Thank you, Senator Stuthman. Senator Raikes, you're recognized. [LB1027]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Senator Erdman, if I could ask you a few questions, please. Can you tell me, you mentioned in some of your earlier comments that we've had a Beginning Farmer Program, I think, for a number of years now, maybe five, or nine, or something. So what has been the experience? What success can you point to with the program that we've had now, or up to now? And why do you believe this change in the program is going to be effective? [LB1027]

SPEAKER FLOOD: Senator Erdman, would you yield to a question from Senator Raikes? [LB1027]

SENATOR ERDMAN: I will. Senator Raikes, if you'll notice, time stands still when you ask questions. It's not 4:47, it's actually 5:21. [LB1027]

SENATOR RAIKES: Thank you for pointing that out. I often thought maybe something like that was happening. (Laughter) [LB1027]

SENATOR ERDMAN: Here's this...here's the process that we generally know. As you look at the program, which started in 1999, by the year 2006, there have been 61 landowners that have worked with 52 beginning farmers. So because of this program, and maybe not entirely, but because of the mechanism that is currently in place where I, as a beginning farmer, work with another landowner, there have been 52 beginning farmers that have actually gone through this program and the landowner received the credit. And so over five years or six years, whatever that was up until that date, because it passed in '99, didn't become effective until later that year, so over the first six years you had 51 people take advantage of that with, excuse me, 52 beginning farmers with 61 landowners. We know that, because of the net worth increase that happened after the 2006 Session, that there potentially are more individuals that are going to be considering this as a possible opportunity for them to be able to work with a landowner as a beginning farmer to find land that's available to them and to be able to take further advantage of this. And so we know where we've come from. And we have participant statistics of what they're paying in rent on an average. This was the annual report, I think the most recent one that we have, goes back just until 2007. We have a lot of the information. We know that it's not as easy as some would like. We know that the benefits currently only go to the landowner, and that's why LB1027 is an advantage to the producer, the beginning farmer, and things like that make the program more attractive and potentially provide a better success for the state to demonstrate that this program is accomplishing the intended goal. [LB1027]

Floor Debate  
April 07, 2008

---

SENATOR RAIKES: So all of the existing provisions remain in effect, and this is just an added provision. So you've got the credits to the landowners that still go on, but now we're giving a tax break to the farmer, the beginning farmer,... [LB1027]

SENATOR ERDMAN: The... [LB1027]

SENATOR RAIKES: ...which there has not been up to now. [LB1027]

SENATOR ERDMAN: Correct. Up till this point any credit that was received under the Beginning Farmer Tax Credit Act went to the landowner, didn't go to the producer. The theory behind that, and I think generally weighs out, is that if that landowner didn't receive that benefit they would have likely rented it or sold it to somebody else. And so it helps them with their overall cost of operation to make sure that the reason that those beginning farmers aren't being able to acquire that property through lease or other arrangements is simply because of the money. It's a decision that the Legislature made in '99. [LB1027]

SENATOR RAIKES: Okay, thank you. Let me ask you this question. Is there any restriction on business organization for this business farmer? Can this...or beginning farmer. Can this farmer be organized as a single proprietor, or can he be organized, he or she be organized, as a sub S, or a limited liability company, or a C corp? Are there any restrictions on that? Is it...are they eligible for this property tax credit no matter the organization? And, for example, while you're thinking about answering that, suppose you have a sub S with... [LB1027]

SPEAKER FLOOD: One minute. [LB1027]

SENATOR RAIKES: ...one person that qualifies as a beginning farmer and two that don't? [LB1027]

SENATOR ERDMAN: Again, it goes back to the qualifications. There is nothing specific in the statute, nor do I believe in the amendment, that changes, nor does it currently specify the structure of an eligible producer. It's simply a qualified beginning farmer is an individual who has a net worth of not less (sic) than \$200,000, that provides the majority of the day-to-day physical labor and management on the farm, has the judgment of the board of adequate farming and livestock experience. There's nothing currently that precludes the structure, and there's nothing in the amendments that generally affects that. What happens in the amendment, however, is that the eligible landowners, if you will, does get expanded beyond the simple single individual partner that's on the farm. And part of that is because of the other policies we've discussed here on the floor and the court decisions that... [LB1027]

SPEAKER FLOOD: Time. [LB1027]

Floor Debate  
April 07, 2008

---

SENATOR RAIKES: Thank you. [LB1027]

SPEAKER FLOOD: There being no further requests to the queue to discuss LB1027, Senator Raikes, would you like to use your third time and opportunity to discuss this bill? [LB1027]

SENATOR RAIKES: I would. Thank you, Mr. Speaker. [LB1027]

SPEAKER FLOOD: You are recognized. [LB1027]

SENATOR RAIKES: Members of the Legislature, so there is the issue that comes up, Senator Erdman, about prorating this property tax break, if you will, among multiple shareholders if you've got a sub S, or a limited liability company, or something like that, and particularly in the case where they're not all eligible. [LB1027]

SENATOR ERDMAN: And again, it depends on the structure and you're going to get a lot further along than probably my knowledge allows me to follow. But for them to qualify as an entity or as an individual, they have to meet these qualifications. And regardless of how they're structured, if one of those individuals is not providing a majority of the day-to-day physical labor and management on the farm, none of them qualify for any of it. So if a third of them are doing a third of the work, clearly that's not 50.1 percent. You have to be able to verify to the board that you're going to complete and accomplish those parameters. And so depending upon your business structure, it's not simply the structure that matters, it's the operation and how it's being carried out. It's real similar, the way this is currently set up, obviously, to the way Initiative 300 was established, and that is that a majority of the day-to-day labor and management was provided by an individual on the farm. Now this is actually a little broader than that, but it's generally the same theory, and that is that the individual who is actually providing the day-to-day labor and management is the individual that qualifies the operation. This language doesn't require that they provide all of it, but it says a majority of it. [LB1027]

SENATOR RAIKES: Well, but in... [LB1027]

SENATOR ERDMAN: And so you're right, in the event of who gets the credit locally and how that would play out potentially at the local level, there are some things that...and if...again, if I had the amendment in front of me, we could probably have a more intelligent conversation. But we can definitely have that. [LB1027]

SENATOR RAIKES: Well, okay, but I think you've gone a long way to addressing it. It maybe is worth pointing out as we go by here that this bill does not prevent the credit from going to someone who joins in a corporate structure with people that are unrelated. [LB1027]

Floor Debate  
April 07, 2008

---

SENATOR ERDMAN: No, and I would think, generally, and this is maybe just my philosophical opinion, I would think generally that would be a problem for me. I think the goal is that you're trying to provide an opportunity for a beginning farmer to be successful. And there are many different structures and many different operations that that may take. But ultimately, the safeguard is these parameters in the law and that that individual that is the farmer actually has to do the work. [LB1027]

SENATOR RAIKES: Okay. Let me...let me pursue one other issue with you. Two hundred thousand dollars maximum net worth, would you agree that someone that has more than \$200,000 net worth heading into this enterprise or occupation probably has a better chance of being successful over time? Say if you had \$300,000 instead of \$200,000 as a net worth, wouldn't you, by and large, say, well, you probably have got a better chance of surviving? [LB1027]

SENATOR ERDMAN: I think, in general, the more financial stability that an operation has, regardless of how old it is, the better their chances are of being successful. And that's probably the same in any operation. If I have more net worth, if I have more assets than I do liabilities, I stand a greater chance of being successful than somebody who doesn't. [LB1027]

SENATOR RAIKES: Why then would you penalize someone that had more than \$200,000 by saying, you don't get any tax breaks if you've got... [LB1027]

SENATOR ERDMAN: Well, there...there are two, if you will, penalties in this process. One, obviously, is that we're trying to target it to the people that we believe need it. The individual that inherited his family operation, that has net worth that exceeds most people in their circumstances probably doesn't need the benefit. And so it's a matter of making sure that the people who need the benefit get it. The other thing that you also have to realize is that in the bill, if you're related to the individual, the beginning farmer, you also... [LB1027]

SPEAKER FLOOD: One minute. [LB1027]

SENATOR ERDMAN: ...don't receive the credit. So if you're passing your operation on to your family member, you, as the landowner, don't receive this beginning farmer tax credit either because if you're not willing to help your own family, we probably as a state can't help you either. But the rationale behind setting this limitation is to target the people who need the help. Obviously, if you want to raise that, which we have done in the past, it brings in more people and potentially provides an additional benefit... [LB1027]

SENATOR RAIKES: Well, you bring an interesting point there. And you mention we

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

Floor Debate  
April 07, 2008

---

want to give the tax break to the people who really need it. And if you contrast that, for example, with LB895, I think you could say that there is a discrepancy there. [LB1027 LB895]

SENATOR ERDMAN: I think they think... [LB1027]

SENATOR RAIKES: LB895 is the... [LB1027 LB895]

SENATOR ERDMAN: I think they think they need it. I can't speak for that. You're a member of the Revenue Committee. [LB1027]

SENATOR RAIKES: Okay. [LB1027]

SENATOR ERDMAN: But from the standpoint of what we're trying to accomplish with LB1027, the existing program limits the net worth to \$200,000. We're not changing that. We're simply utilizing that foundation... [LB1027]

SENATOR RAIKES: Okay. [LB1027]

SENATOR ERDMAN: ...to go forward. [LB1027]

SENATOR RAIKES: Okay. Thank you, Senator Erdman. Thank you. [LB1027]

SPEAKER FLOOD: Thank you, Senators. Senator Stuthman, you are recognized. [LB1027]

SENATOR STUTHMAN: Thank you, Mr. Speaker, members of the body. I would like to give some of my time to Senator Raikes, if he has some more concerns. But before I do that, I would...I'm just really concerned also about what he had stated with the \$200,000 limit of the assets. You know, at the present time with the value of land, a beginning farmer, you know, maybe just has 40 acres and a home, and that's over \$200,000 already. That's one of the concerns that I have also. And I'd just like to give the balance of my time to Senator Raikes. [LB1027]

SPEAKER FLOOD: Senator Raikes, you have the balance of Senator Stuthman's time, which is 4 1/2 minutes. [LB1027]

SENATOR RAIKES: Thank you, Senator Stuthman. Thank you, Mr. Speaker. I've got a question for Senator Heidemann, if he would respond. [LB1027]

SPEAKER FLOOD: Senator Heidemann, will you respond to a question from Senator Raikes? [LB1027]

Floor Debate  
April 07, 2008

---

SENATOR HEIDEMANN: Yes. [LB1027]

SENATOR RAIKES: Senator, looking at the fiscal impact of this sort of a program, as Senator Erdman has pointed out, if really what it amounts to is reducing the local tax base by taking away personal property, and then if that tax base gets accessed by local subdivisions in a reduced form, then the impact is pretty much on a little bit higher tax for everybody else, except the person who's getting the exemption. Would you agree? [LB1027]

SENATOR HEIDEMANN: That would be one way to look at it. I wonder how this would impact the local schools, because there would be loss of a local resource, and then we as a state would have to pick that up. And that would be a question that I would ask you. [LB1027]

SENATOR RAIKES: Well, in fact, you beat me to it because I was going to bring that point up to you. And again, Senator Erdman points out, and I think the fiscal note, that we're talking \$40,000 statewide for a year, so it's probably not enough money. But suppose it were \$40 million instead of \$40,000, and suppose that a lot of that \$40 million ended up in the...in school districts that were equalized. Then there would be an impact on state finances, would you agree? [LB1027]

SENATOR HEIDEMANN: That would be the way I would look at it, yes. [LB1027]

SENATOR RAIKES: Okay. So again I...this is a hypothetical in the sense that there is no expectation that it would be...it would be a big amount of money which would cause that. But if you chase through all of the implications, even small ones or even on a small amount of money, it seems like there is likely an impact on the distribution of the tax burden within the subdivision, that people who don't get the credit will pay more than...pick up whatever is left out by the person who does get the credit. And the state would come in, in the event that there is enough of a reduction that school districts lost revenue and it were made up by equalization aid. So with that, I'll stop. Thank you. [LB1027]

SPEAKER FLOOD: Thank you, Senator Raikes. We have not been notified of anybody else wishing to speak in the queue. Given that situation, Senator Erdman, you are recognized to close. And might I remind the body we are not considering AM2295. That was already adopted via voice vote earlier. The board behind me is incorrect. We are now solely on LB1027, the bill, and Senator Erdman is closing on that matter. Senator Erdman, you're recognized. [LB1027]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I think it's important that we walk through and understand this. But the foundation for this bill is the existing program. As I have outlined with Senator Raikes, there are generally nine

Floor Debate  
April 07, 2008

---

qualifications that an individual has to meet in order to be eligible. Some of the corporate structure ideas that have been offered, obviously, get a little hard to accomplish if your net worth is limited to \$200,000. So there are certain safeguards currently in place. And again, we can have a greater discussion on the floor about the impact of aid, the potential impact of other incentive programs. Obviously, all of those have a potential impact long term to somebody, whether it's the local subdivisions, the state, whomever. But the reality is that this is a targeted solution that we know is a problem. We know that younger producers, and these are not again age, these are the age of their operation, have a greater chance of being successful if they are given those opportunities between their zero and fourth year of operation than those that aren't. And the reason why you don't have a larger net worth is because, generally, it could be assumed that those entities already have an advantage and therefore don't need it. We have similar checks and balances, but not to this level. The impact of LB1027, the fiscal, excuse me, the personal property tax exemption, according to the fiscal note, is LB1027 has no fiscal impact on state government other than a minimal impact on state aid to schools. And again that minimal impact is probably less than \$40,000 a year. What are we spending in state aid annually now? Nine hundred million dollars. If we can figure out that we've lost \$40,000 in our state aid formula, then we did one heck of a job on LB988. The reality is, is that that's not an impact to the state, and it likely won't continue to be an impact to the state. And the counties that are directly affected by this personal property tax exemption have recognized, as Senator Stuthman has said, that those operations starting up will buy assets, personal property, that will likely go on a seven-year schedule of which four years of that still has to be paid. So it would have been zero, probably, otherwise. And it's an opportunity for us as a state to provide an encouragement while expanding the tax base locally, and most importantly providing a mechanism, both under the amendment and the bill, that provides opportunities for producers in the state of Nebraska to have access to land and utilize their capital in ensuring that their operation is successful. I would encourage your support to advance LB1027 to Select File. And we'll continue to work with members about questions that they have regarding the bill or the amendments that have been adopted. Thank you, Mr. President. [LB1027 LB988]

SPEAKER FLOOD: Thank you, Senator Erdman. You've heard the closing on LB1027. Given the technical difficulties currently with the state's computer system, we will now proceed to a voice vote, unless a roll call vote is requested by any member so desiring the same. The question before the body is, should LB1027 advance to E&R Initial? Seeing no request for a roll call vote, all those in favor say aye. Those opposed say nay. LB1027 advances to E&R Initial. I do want to make one note regarding the agenda. At the introducer's request and my order, LB1016 will be passed over this evening. Again, LB1016 will be passed over this evening. We now proceed to LB1027A. And I would remind the body that the boards behind my chair are inaccurate, as they stopped working at the time the computer system stopped working. We now proceed to LB1027A. Mr. Clerk. [LB1027]

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

Floor Debate  
April 07, 2008

---

CLERK: Mr. President, LB1027A is a bill by Senator Erdman. (Read title.) [LB1027A]

SPEAKER FLOOD: Senator Erdman, you're recognized to open on LB1027A.  
[LB1027A]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. With the adoption of the committee amendment and the advancement of LB1027 from the committee, the committee was informed that the Department of Agriculture believes that for them to carry out the functions of LB1027 that they would need to have authorization and funding for an employee. And essentially, let me go through this process. The Beginning Farmer Program is currently staffed by a program administrator who administers the Farm Mediation Program. When the Beginning Farmer Program was first enacted in 1999, the A bill provided a 1.2 full-time equivalent staff to carry out the program, including 1 clerical staff and partial assignment of the program administrator. Because of the lower thresholds than what was realistic, and the participation amount, those responsibilities have been reduced and reassigned. The Beginning Farmer Program currently has .05 full-time equivalent. That's not .5, it's .05 FTEs devoted to it. And the agency currently expends about \$6,000 for their cost of administering the program. That includes the staff, the board members' expenses, the copying and communication costs. The agency has indicated between the expanded pool of people who could participate in the program and the need for beginning farmers to be certified by the board to apply for the exemption, the program workload would increase, and a full-time position would be appropriate. And again, that would be restoring what was initially proposed under the program in 1999. The...one of the things that keeps getting brought up about the program is, how do people know about it? And we have a list of those things that are generally done by the Beginning Farmer Board to ensure that people are aware of these opportunities. The A bill before you specifically would appropriate \$52,000 from the General Fund for the purposes of carrying out LB1027. The temporary and permanent salaries for that shall not exceed \$31,000. Essentially, what we're paying for is that full-time equivalent to be able to carry out the responsibility of this program under the Department of Agriculture. We would encourage your support, as a committee, to advance the A bill with the underlying bill that the committee supports unanimously. Thank you, Mr. President. [LB1027A LB1027]

SPEAKER FLOOD: Thank you, Senator Erdman. Senator Raikes, you're recognized.  
[LB1027A]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Question for Senator Erdman, please. [LB1027A]

SPEAKER FLOOD: Senator Erdman, will you yield to a question from Senator Raikes?  
[LB1027A]

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

Floor Debate  
April 07, 2008

---

SENATOR ERDMAN: I will. [LB1027A]

SENATOR RAIKES: Did I hear you, Senator Erdman, say that the implementation cost of this program is going to be \$12,000 a year more than the expected benefit to beginning farmers? [LB1027A]

SENATOR ERDMAN: No. The potential impact to the local subdivision is approximately \$40,000 a year. Depending upon the...and that's LB1027. Depending upon the credit that is received under the expanded definition of a beginning farmer producer, that fiscal note is somewhat in play. But it potentially is \$100 and...I don't know what the actual number is, I'll get that for you, but it's over \$100,000 of the tax credit that the state would have...would forgo. So the benefit overall is probably somewhere in the \$200,000 range annually to those producers and to the landowners. The potential impact to the state to administer the program is around \$50,000. [LB1027A LB1027]

SENATOR RAIKES: Okay, so I'll have to have you run that...my understanding was the total impact on the tax receipts by local subdivisions, statewide, was going to be \$40,000 a year. Am I wrong on that? [LB1027A]

SENATOR ERDMAN: On the personal property tax exemption, you're correct. [LB1027A]

SENATOR RAIKES: So with LB1027, that's really the addition we're talking about. [LB1027A LB1027]

SENATOR ERDMAN: There are two components in LB1027. There is the component of LB1027, which is the bill that was introduced that deals with personal property tax exemption. Senator Fulton's amendment, which was LB...or, excuse me, the committee amendment which includes Senator Fulton's bill, LB875, expands the definition of entities that could partner with beginning farmers in order to access that credit. And, I believe, the first year, fiscal year '08-09, that number is \$101,000. So the committee amendment portion, which is the expanded definition of not the farmer but the entities that could partner with them to receive that tax credit, is \$101,000 total to the state. Coupled with \$40,000 locally, the initial year's benefit is \$150,000, or potential impact either state or locally. The cost to administer it is one FTE at the Department of Ag. [LB1027A LB1027 LB875]

SENATOR RAIKES: So we're spending \$52,000 more money in order to administer, at most, \$150,000 of tax credits. [LB1027A]

SENATOR ERDMAN: For the first year. I mean obviously these are projections. But the potential benefit, depending upon the access, and again if you qualify for one year, you

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

Floor Debate  
April 07, 2008

---

likely are going to qualify for that additional year that... [LB1027A]

SENATOR RAIKES: Doesn't that seem to you to be a very low ratio of result for input, in terms of spending money to employ people in order to implement a tax cut program? [LB1027A]

SENATOR ERDMAN: It's different than what they're doing now. And the rationale is, is that as this gets phased in over time the potential benefit, obviously, is a lot greater or is a lesser percentage of administration than what the first year is. Because again, you're expanding the definition of those that qualify, and you're creating a new opportunity. People getting aware of that will be low initially and over time will potentially grow. So I can show you, I can bring you the fiscal note to LB875, that over time that actually grows and the administration cost becomes less and less because of the ability for people to understand the opportunity. [LB1027A LB875]

SENATOR RAIKES: Are you saying the total administration cost is going to go down? [LB1027A]

SENATOR ERDMAN: As a percent. [LB1027A]

SENATOR RAIKES: As a percent, but the total absolute cost will not go down, in your judgment. [LB1027A]

SENATOR ERDMAN: To the department or to...because we're talking about two different things. I just want to make sure I'm responding appropriately. It's going to cost about \$50,000 of salaries and benefits for one employee to administer this program. The total benefit or the total cost to the state is twofold. One, it's obviously that cost of that administration, but also it's potentially the impact of the state forgoing that revenue that they would have received otherwise from the tax credit. I can show you the schedule and the rationale that's been arrived at. Initially, it's \$100,000, and then it goes up to \$300,000 so that the percent of the actual cost of administration goes down,... [LB1027A]

SPEAKER FLOOD: One minute. [LB1027A]

SENATOR ERDMAN: ...but obviously it's still going to cost about \$50,000 for one FTE. [LB1027A]

SENATOR RAIKES: So I can be encouraged that the percentage will go down, (laugh) but on the other hand the amount of the tax break goes up. Am I missing that? [LB1027A]

SENATOR ERDMAN: Again...no, that's exactly right. The reason that the tax break

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

Floor Debate  
April 07, 2008

---

goes up is not because of the statute, but because of the availability of it, becoming aware...or people becoming aware of this opportunity. And if we truly want to provide this opportunity that obviously long term there's a potential impact to the state because of the multiple year applicants, as well as the additional opportunities that are provided to additional landowners. [LB1027A]

SENATOR RAIKES: Okay. Well, thank you, thank you, Senator. I will just offer this judgment. I didn't really realize, I guess, what we were looking at here in terms of fiscal note. I think that probably the responsible thing is to advance the fiscal note or the A bill because we advanced the mainline bill. But I would have to tell you, I'm going to have great reservations come... [LB1027A]

SPEAKER FLOOD: Time. [LB1027A]

SENATOR RAIKES: ...Select File going any further. Thank you. [LB1027A]

SPEAKER FLOOD: Thank you, Senator Raikes. Senator Carlson, you're recognized. Again, members wishing to speak need to dial 250, 250. Senator Carlson. [LB1027A]

SENATOR CARLSON: Mr. President and members of the Legislature, I, too, would like to address a couple of questions to Senator Erdman. [LB1027A]

SPEAKER FLOOD: Senator Erdman, will you yield to a question from Senator Carlson? [LB1027A]

SENATOR ERDMAN: Hello, Senator Carlson. [LB1027A]

SENATOR CARLSON: Yes, Senator Erdman. I'm going to follow up a little bit of your discussion with Senator Raikes, and I think something you said early might help me out. [LB1027A]

SENATOR ERDMAN: Okay, what was that? Let me repeat it. [LB1027A]

SENATOR CARLSON: About...well, you made a statement that part of the...I think I heard, part of the responsibility of this half of an FTE... [LB1027A]

SENATOR ERDMAN: No, no, .05, .05. [LB1027A]

SENATOR CARLSON: Point zero five, but it's \$50,000, isn't it? [LB1027A]

SENATOR ERDMAN: No, no. The existing program is .05. The program going forward would have 1 FTE, 1.00. [LB1027A]

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

Floor Debate  
April 07, 2008

---

SENATOR CARLSON: But that's \$52,000 or whatever? [LB1027A]

SENATOR ERDMAN: Thirty-one thousand dollars for salary, and the remaining, I believe, is for benefits. [LB1027A]

SENATOR CARLSON: All right. But I think that you said that...and I would agree with this, if your answer is yes, the success of a program such as this a lot of times has to do with how many people are aware of it. Would that be part of the responsibility of this person, to make more people aware of it so that they can take advantage of it? [LB1027A]

SENATOR ERDMAN: They would. Obviously, if their responsibility is to make sure that the program is available and it's administered correctly, the way that you ensure that that happens is to make sure people are aware. I've got lists of that. But their job is twofold as I would understand it. They would make sure that the Beginning Farmer Board is doing their job, that the applications are coming through, but that also people are aware of the program. And there's a lot of people that are doing it for free now, publications and other things. And the group, the Beginning Farmer Board is doing a great job with the resources that they have, but they get \$6,000 a year total for their board to not only do their costs, but also for their expenses and for any opportunity they have to distribute about what this program does. [LB1027A]

SENATOR CARLSON: Okay. Well, I am...I have supported the bill, I'm going to support the A bill. And then we'll look for a little better feeling of the potential that this has for both the state and local entities on an ongoing basis. But I will support the A bill. Thank you. [LB1027A]

SPEAKER FLOOD: Thank you, Senator Carlson. (Visitors introduced.) Continuing with discussion on LB1027A, Senator Engel. [LB1027A]

SENATOR ENGEL: Mr. Speaker, members of the body, I'd like to ask Senator Erdman a question, if he'd respond. [LB1027A]

SPEAKER FLOOD: Senator Erdman, will you respond to a question from Senator Engel? [LB1027A]

SENATOR ERDMAN: I will. [LB1027A]

SENATOR ENGEL: Yeah, and not reluctantly? [LB1027A]

SENATOR ERDMAN: Not at all. [LB1027A]

SENATOR ENGEL: Okay, thank...no, the question I have is I was here when we passed

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

Floor Debate  
April 07, 2008

---

the Beginning Farmer Act, and I believe it was 1998 or '99. And I think I heard you mention that, I think, 52 farmers took advantage of that, or something... [LB1027A]

SENATOR ERDMAN: Between 2000 and 2006, there were 61 landowners and 52 farmers that took advantage of the program. [LB1027A]

SENATOR ENGEL: Okay. And now how many of them are still in the program? That's the question I have. [LB1027A]

SENATOR ERDMAN: I'll have to look that up for you, Senator Engel. [LB1027A]

SENATOR ENGEL: Okay, that's fine if you have time now, or I check with you later. But the thing is, what I'm always curious about when we start these new programs and they always sound good, and then I like to know what the results are, like the performance and whether they...it's a good way to judge whether they're worthwhile or not. So...do you have.... [LB1027A]

SENATOR ERDMAN: Yeah. And I'll look that up for you. And if I can get that before we advance here, I will, otherwise I'll get it to you directly. [LB1027A]

SENATOR ENGEL: Okay, fine. Thank you. I return the rest of my time to the Chair. Thank you. [LB1027A]

SPEAKER FLOOD: Thank you, Senator Engel. There are nobody...there are no other senators that have identified themselves as persons wanting to speak on LB1027A. That being the situation, Senator Erdman, you are recognized to close on LB1027A. [LB1027A]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. Let me again briefly explain the total cost to the Department of Ag to administer this program right now is \$6,000. The total cost to the department to administer this program, with its expanded definition under Senator Fulton's bill and the committee amendment, as well as the expanded opportunities, as well as responsibilities to the board, that total cost to administer that program is \$50,000. As you go forward and you look at the fiscal note--you need to look at obviously when this gets adopted or when the bill gets discussed on Select File we should have a revised fiscal--but the potential impact to the state in LB875, potentially, because of the expanded definition, and this is again based on participation and the assumptions and the methodology used by the department, if you utilize that methodology, you're looking at \$100,000 the first year, \$360,000 in '09, and \$700,000 in fiscal year '10-11. The overall cost of administration goes down significantly as the total benefit that's received is expanded. It's going to cost more to start this up, it's going to cost more to ensure that these things are happening. But over time we believe that it's an appropriate investment, and we'll continue to work with

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

Floor Debate  
April 07, 2008

---

Senator Raikes and others so that people have the information that they believe that they need before this bill comes up on Select File. The A bill simply funds the employee at the Department of Ag to administer this program, consistent in compliance with the statutory language in LB1027. We would encourage your support to advance LB1027A, as that is the motion before us. And again, look forward to working with you between General and Select File if you have any further concerns. [LB1027A LB875 LB1027]

SPEAKER FLOOD: You've heard the closing on LB1027A. Given the technical difficulties we've been having, we will take a voice vote, unless a member raises their hand and indicates they would like a roll call vote. Seeing no request for a roll call vote, all those in favor of advancing LB1027A to E&R Initial say aye. All those opposed say nay. LB1027A advances to E&R Initial. Pursuant to an earlier order, LB1016 will be passed over this evening. Mr. Clerk, do you have any items for the record? [LB1027A]

CLERK: I have nothing at this time, Mr. President. []

SPEAKER FLOOD: Mr. Clerk, we now proceed to General File, 2008 committee priority bills, Schimek division, second bill is LB720. [LB720]

CLERK: Mr. President, LB720 is a bill introduced by Senator Schimek. (Read title.) The bill was introduced on January 9 of this year, at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM2044, Legislative Journal page 705.) [LB720]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Schimek, you're recognized to open on LB720. [LB720]

SENATOR SCHIMEK: Thank you, Mr. President and members. I rise to introduce LB720, the new and improved "robocall" bill. As you might recall, I did introduce such a bill last year, which was LB198. With the help of the Legislature, that bill was passed by a 31 to 7 vote, but the Governor vetoed it. He did feel that the limitations in the bill should apply equally to all prerecorded messages. And we can go into that discussion. But I didn't attempt a veto override because the Governor indicated that he would support legislation that would limit these types of calls so long as the restrictions were made applicable equally to all automatic dialing devices. LB720 reflects these changes that the Governor requested. Both LB198 and LB720 were and are responses to the public outcry on the way that prerecorded campaign telecommunications, also known as "robocalls," were used during the 2006 election. Several stories were reported in the press about possible abuses of current state law and "robocalls" which border on harassment. LB720 limits the time of day that any prerecorded telecommunication message may be made to a household, requires that the identity of the person on whose behalf the message is being transmitted be stated at the beginning of the

Floor Debate  
April 07, 2008

---

message, and requires the person using the device and the person on whose behalf the device is being used to include his or her contact information within the message. LB720 also states that the person connecting with a third party to operate an automatic dialing device machine for solicitations shall be jointly and severally liable with the third party for violations under the ADAD Act. The person contracting with a third party shall file a script, to be used to comply with NRS 86-247, with the Public Service Commission. Furthermore, a person contracting with a third party to operate an automatic dialing-announcing device for purposes other than solicitation shall be jointly and severally liable with said third party for violating the ADAD Act. The person contracting with a third party shall file a script to be used to comply with NRS 86-247. These provisions, dialing with the filing of scripts, were added to the bill by request of the Public Service Commission. They feel as though these requirements will help them prosecute violators. The language of this bill was based on the Governor's recommendations, as well as input from the Government, Military and Veterans Affairs staff and Public Service Commission. At the time, we did not see any potential issues with the language. Subsequently, however, we were contacted by Lincoln Public Schools and notified that they currently run an ADAD device to notify parents of school closings due to weather conditions. Upon learning this, LPS suggested that we take a look at some language from the Minnesota statute which was upheld by VanBergen v. Minnesota. So the upshot was I did offer an amendment to the committee, and the committee adopted it and addressed several other concerns that came to light during the days after the hearing. LB720 with the proposed amendment contains provision that I think appeases all parties involved. The bill aims to treat all phone calls more equally, yet also contains exemptions that would enable our school systems and businesses that use these devices for communication purposes with employees to continue doing what they're doing without complication. I welcome your input and support. Thank you, Mr. President. [LB720 LB198]

SPEAKER FLOOD: Thank you, Senator Schimek. Senator Aguilar, there are committee amendments. You are recognized to open on the committee amendments. [LB720]

SENATOR AGUILAR: Thank you, Mr. President and members. The committee amendment reflects the work of several interested parties to address concern raised at the public hearing. It makes several changes to the original bill. First, the committee amendment requires that telephone messages other than telephone solicitations transmitted by an automatic dialing and announcing device will: number one, at the beginning of the message clearly state the identity of the person on whose behalf the message is transmitted; two, during or after the message state clearly the telephone number or address of the person operating the device; and three, only transmit messages between the hours of 8:00 a.m. and 9:00 p.m. at the location of the person receiving the message. Also a person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations will file with the Public Service Commission the message to be used within 24 hours of

Floor Debate  
April 07, 2008

---

the message being transmitted. For telephone solicitations, such persons will file any subsequent changes to the message within five days after the change. The above requirements do not apply to telephone messages used by schools transmitting messages to any of its students, parents, or employees; persons transmitting messages with whom the person placing the call or the person on whose behalf the message is being transmitted has an established business or personal relationship; or (c) employers transmitting messages advising any of its employees of work schedules. I urge you to support the committee amendment and the underlying legislation. Thank you, Mr. President. [LB720]

SPEAKER FLOOD: Thank you, Senator Aguilar. You've heard the opening on the committee amendments. Senator Nelson, for what purpose do you rise? [LB720]

SENATOR NELSON: Mr. President, I would ask for a division of the committee amendment. [LB720]

SPEAKER FLOOD: A division of the committee amendment has been requested by Senator Nelson. Would Senator Nelson, Senator Schimek, Senator Aguilar please come to the Chair. Members, it is the Chair's ruling that the committee amendment is divisible. The following will be the divisions on AM2044, and paper copies will be delivered to the floor within the next five minutes. There will be two different divisions. The first one will be titled FA1. It will include everything on page 1, lines 1 through 23; on page 2, everything on lines 1 through 13, and then lines 26 and 27; and on page 3 it will be lines 1 and 2. That is FA1. FA2 includes, on page 2, lines 14 through 25. That consists of the division, FA1 and FA2. We will begin with FA1. Again, the board behind me is not working due to computer difficulties. Senator Schimek, you have an opportunity to open on FA1. My correction: Senator Aguilar, you have an opportunity to open on FA1, as they are committee amendments to LB720. You are recognized. In the queue, as Senator Aguilar prepares to speak, Senator Gay and Senator Schimek, if you'd like to be placed on the queue. It is now my understanding Senator Gay has waived his opportunity which is coming up. Right now, the only one in the queue is Senator Schimek. Senator Aguilar, you're recognized to open on FA1. (AM2713, Legislative Journal pages 1348-1349.) [LB720]

SENATOR AGUILAR: Okay, Mr. President, as far as what I read in my opening statements, that is pretty much FA1. I can go through it again, if you prefer. [LB720]

SPEAKER FLOOD: You've heard the opening on FA1. We now proceed to discussion on FA1. Senator Schimek, you are recognized. [LB720]

SENATOR SCHIMEK: Thank you, Mr. President and members. You will see on the sheet that I passed out to you everything in brief that this bill does. The part that is in question, as I gather, is the sixth bullet point on that, so let me just go over what the bill,

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

Floor Debate  
April 07, 2008

---

with the amendment, will do, except for we're dividing out that second portion of the committee amendment. Political calls will be treated similarly to all other "robocalls." They will be made only between the hours of 8:00 and 9:00, which is what all the other ADAD calls will be done. The number of "robocalls" will not be regulated. As you know from last year, we had put in that bill that there would be a restriction on the number that could be made every day. I think we settled on two as a final number. But in order to treat these calls like all other "robocalls," to pass that free speech scrutiny test, we decided to not limit the number of calls. Under the bill and the amendment, the "robocall" message must state who is making the expenditure, and that would be for Accountability and Disclosure, or for whom the call is being made and contact information for the person making the call. In addition to that, we have, under the committee amendment, allowed people, like schools and businesses and employers, regarding work schedules, to be exempted from the requirements of this section. So I guess, with that, Mr. President, I would simply urge the adoption of the first part of the committee amendment and get on to the discussion, perhaps, of what is most controversial about this amendment, as at least Senator Nelson sees it. Thank you. [LB720]

SPEAKER FLOOD: Thank you, Senator Schimek. Nobody else has identified that they would like to speak on FA1 (AM2713). You must be calling line 250 in advance. If you are interested in speaking on this bill, pick up your phone and call 250. Senator Nelson, you are recognized. [LB720]

SENATOR NELSON: Thank you. Thank you, Mr. President, members of the body. This has come up a little unexpectedly today, so I apologize for some of the last minute things here, particularly the division, but I think it's important to discuss this a little more and understand what it is here in the bill. We...this bill has been before us before and did not pass because of the Governor's veto, which was sustained. My feelings are this: In looking at this, and I'm speaking about the first division, that it's more restrictive than last year's bill. Secondly, that it requires a script to be submitted to the Public Service Commission, including those persons that are running...other candidates running against members of the Public Service Commission that are already serving. My other...let me ask Senator Schimek a question about that, if she will yield. [LB720]

SPEAKER FLOOD: Senator Schimek, will you yield to a question from Senator Nelson? [LB720]

SENATOR SCHIMEK: Yes, I will. [LB720]

SENATOR NELSON: I'm just wondering, Senator Schimek--thank you very much, I appreciate your taking this--why it's necessary, in your opinion, to submit a script to the Public Service Commission. [LB720]

Floor Debate  
April 07, 2008

---

SENATOR SCHIMEK: Well, one of the complications of doing this bill, Senator Nelson, is the fact that the Public Service Commission regulates ADAD calls, as you know. And as you also may recall, last year there was an Attorney General Opinion issued that said, well, you know, this particular bill, and that was LB198 last year, might be constitutional or it might not, because you have the free speech argument as compared to residential privacy argument, and nobody knows what the courts would say on balancing this. So what we decided to do, instead of fashioning the bill as it was last year strictly under basically the Accountability and Disclosure statutes, we decided that this should be written to put these political "robocalls" under the ADAD statutes, as they are in some other states. So we had to kind of make them match the other "robocalls" as much as possible. And I'll stop there, but there is a little bit more to the script explanation than that. [LB720 LB198]

SENATOR NELSON: Which brings up a question: Isn't...doesn't the NADC already require disclosure, Senator Schimek? [LB720]

SENATOR SCHIMEK: Disclosure of what? [LB720]

SENATOR NELSON: Well, disclosure, this very...the very same thing that you're asking for here. [LB720]

SENATOR SCHIMEK: Of the script? [LB720]

SENATOR NELSON: The script, yes. [LB720]

SENATOR SCHIMEK: Yes. And what we're doing here is making the provision for the political calls a little bit different because with the other calls that are "robocalls," you have to submit your script in advance. And then if you have changes to it you have to submit those changes within so many hours after the call is made, if there are changes. With the political calls, because the political campaign is so volatile,... [LB720]

SPEAKER FLOOD: One minute. [LB720]

SENATOR SCHIMEK: ...we said you don't have to submit a script until the message has been given, and then I think we gave 24 hours to submit that script. [LB720]

SENATOR NELSON: All right. With regard to my comment about the fact that you have to submit this if you are a candidate running for the Public Service Commission against someone who is already there, do you see that as a difficulty? [LB720]

SENATOR SCHIMEK: No, because you don't submit it until it's already been aired, so to speak. The calls have already been made. You have 24 hours in which... [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR NELSON: So the script, according to the amendment here then, the script has to be submitted after the calls are already made. [LB720]

SENATOR SCHIMEK: That is correct, so they have a record. [LB720]

SENATOR NELSON: Oh. All right. On line 22 of page 1, and I'll just read this for the record, "At the beginning of the message, state..." [LB720]

SPEAKER FLOOD: Time. [LB720]

SENATOR NELSON: Thank you, Mr. President. [LB720]

SPEAKER FLOOD: Thank you, Senator Nelson. Before I go to Senator Erdman on the queue, in light of the technical difficulties, we will be releasing the agenda early. This is going to be the...and I'm going to read the agenda over the microphone here so that it's broadcast statewide for the public's benefit in the event that we are unable to broadcast the same over our Internet site. The following constitutes the agenda for Thursday, April 8, 2008, beginning at 9:00 a.m. Senators, you will receive a paper copy shortly. We will begin with Final Reading. The first bill will be LB736, Senator Fulton's change certain driving under the influence penalties and provide indigent assistance for ignition interlock devices. The second bill is LB736A, which is Senator Fulton's A bill for LB736. The third bill on Final Reading will be LB916, the Revenue Committee's proposal to change sales tax provisions. The fourth bill will be LB765E, which is to change property tax provisions. The fifth bill will be LB1058E, Senator McDonald's rename and change powers and duties of the State Advisory Committee on Problem Gambling and Addiction Services. The next bill on Final Reading will be LB1068, Senator Loudon's bill to create the road classification of remote residential road and require a public transportation report. The next bill on Final Reading will be LB1154, Senator Raikes's bill to change provisions relating to learning communities, schools, educational service units, and job training grants. His A bill will follow that. And finally on Final Reading in the morning tomorrow we will take up LB1001, Senator White's bill to adopt the Low-Income Home Energy Conservation Act and change provisions relating to income tax withholding of independent contractors, and the A bill that is attached to LB1001. After Final Reading, we will take up LR283 which was introduced by myself to create the Developmental Disabilities Special Investigative Committee of the Legislature. Following that, on General File, we will move to 2008 Speaker priority bills, Fulton division. Senator McDonald's LR229CA will begin us in that division. It's a constitutional amendment to change the powers of municipalities relating to fund sources for economic or industrial development. LB1172 follows, from Senator Dierks, which adopts the Food Supply Animal Veterinary Incentive Program Act and the corresponding A bill. LB837 is in that division. It's Senator Karpisek's proposal to change provisions relating to railroad crossings. And LB734 from Senator Fulton will wind down the Fulton division. It changes employee benefit plan provisions for certain political subdivisions. The next

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

Floor Debate  
April 07, 2008

---

division on tomorrow's agenda is General File, 2008 Speaker priority bills. The Hudkins division begins with LB746, Senator Aguilar's bill to change provisions relating to tuition credits for National Guard members; LB781, Senator Rogert's bill to change the Uniform Deceptive Trade Practices Act; LB911 is Senator Hudkins' bill to provide for REAL ID operator's licenses and state identification cards, and the corresponding A bill. The next section down will be General File, 2008 Speaker priority bill. It includes Senator Fulton's LB1104, which provides for unlawful billing practices under the Uniform Credentialing Act. After that, General File, 2008 Speaker priority bill is LB813, Senator McGill's bill to authorize urban growth districts and bonds. At 2:30 p.m., we will go to General File, 2008 committee priority bill LB720, provided it's not resolved this evening: change requirements regarding to prerecorded messages. After that, General File, 2008 senator priority bill, LB1130, from Senator Synowiecki, provides for the merger of adult probation and parole services, followed by its A bill. After that will be General File, 2008 senator priority bill LB810, offered by Senator Kruse, to adopt the Alcoholic Liquor Liability Act. At 5:00 p.m. we will move to Select File, 2008 senator priority bill, Senator Karpisek's LB844, change certain drug and alcohol penalty provisions. After that bill we will go back to where we were at, at 5:00 p.m., prior to moving to LB844. That constitutes the agenda and, again, this has been read into the record given the technical difficulties we are having with our computer systems, including the state's Internet connection. We now move to Senator Erdman, continuing discussion on FA1 (AM2713). Senator Erdman. And, Senator Langemeier, would you please come to the Chair. [LB720]

SENATOR ERDMAN: Thank you, Mr. President. I hope Senator Langemeier is not in trouble. Hate to have that on statewide TV. Would Senator Schimek yield to questions, please, Mr. President? Mr. President. [LB720]

SPEAKER FLOOD: Senator Schimek, will you respond to a question from Senator Erdman? [LB720]

SENATOR SCHIMEK: Yes, I would. Thank you. [LB720]

SENATOR ERDMAN: Thank you, Senator Schimek. We had a good conversation about the intent of LB198 last year, and as I understand the intent of LB720, it's designed to address the potential concerns from last year while still accomplishing the same goal. Is that an accurate reflection of where we're at? [LB720 LB198]

SENATOR SCHIMEK: That's pretty good. [LB720]

SENATOR ERDMAN: The provisions of LB720, as amended by the committee amendment, are designed so that political calls are treated the same as commercial calls or nonpolitical calls. Is that accurate? [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR SCHIMEK: With just a little bit of variation perhaps, but, yes, it's accurate. [LB720]

SENATOR ERDMAN: And that's where I'm going. Walk me through those variations so that I can connect the dots because I'm trying to connect between the committee amendment and the green copy to see what those variations are. So if I'm selling some item, life insurance, whatever, via telephone, what's the process that I'd follow for that to be allowed under the Automatic Dialing Act? [LB720]

SENATOR SCHIMEK: Well, basically, it's the same as it always has been. You have to file an application with the Public Service Commission. You have to, at some point, tell them how many calls you're going to make. You have to tell them what your script is, what the old language says, what your script is going to be and, you know, give your name and address and all of that kind of thing. That's pretty much the same way it will still be under the new bill. [LB720]

SENATOR ERDMAN: Okay. [LB720]

SENATOR SCHIMEK: What changes is that the political calls will become regulated more like the business calls or solicitation calls, I should say. [LB720]

SENATOR ERDMAN: And the distinction, I think that's right. It's telephone solicitations or other than telephone solicitations is how we draw the distinction. [LB720]

SENATOR SCHIMEK: Right. [LB720]

SENATOR ERDMAN: Telephone solicitations are those examples where someone is trying to sell you an insurance policy or widgets or whatever. "Other than telephone solicitations" would be a political call. And have we defined other than political as...or other than telephone solicitations as that, or is that understood? [LB720]

SENATOR SCHIMEK: I believe that's understood. [LB720]

SENATOR ERDMAN: Okay. So if I'm going to make...and again, currently, all of this is legal now. We're not...I mean you can make a commercial telephone call for the purposes of selling your product to somebody, or if you're in a campaign you can make "robocalls" for whatever purpose now. [LB720]

SENATOR SCHIMEK: Correct. [LB720]

SENATOR ERDMAN: So all this is legal and under your bill it remains legal. The question is how you regulate them. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR SCHIMEK: Correct. [LB720]

SENATOR ERDMAN: So then walk me through the process on the political calls, the "other than telephone solicitation" calls. What's the process that an individual goes through to comply with the new provisions of LB720? [LB720]

SENATOR SCHIMEK: Well, you also have to file an application with the Public Service Commission and you...I don't have that amendment right in front of me, but you have to do the kinds of things that the business solicitation calls are required to do or the people who are making those calls. [LB720]

SENATOR ERDMAN: And under the business calls, the telephone solicitation calls, do they also have to state up front who's calling and those types of requirements that I believe is found...that are found? Excuse me. [LB720]

SENATOR SCHIMEK: Yeah, and I have to...I have to make sure that I have this right, but it's actually the "robocall" business entity itself that files these applications, you know, the people who are actually going to... [LB720]

SENATOR ERDMAN: The people who will actually... [LB720]

SENATOR SCHIMEK: ...make the calls. [LB720]

SENATOR ERDMAN: The person who... [LB720]

SENATOR LANGEMEIER PRESIDING [LB720]

SENATOR LANGEMEIER: One minute. [LB720]

SENATOR ERDMAN: ...if you're in a campaign--and, Mr. President, I'd like to be added to the queue again just to make sure I save a phone call--the person who is...because I haven't disclosed to the Public Service Commission that I'm going to be making "robocalls" I guess, so would do that here. So the person who's going to call for any purpose will have to do the same thing. When the phone call comes through, if it's a telephone solicitation, they'll have to make the exact same notification to the recipient as a political call would. [LB720]

SENATOR SCHIMEK: Right. [LB720]

SENATOR ERDMAN: Okay. And we'll have a chance to go through this. I'm just trying to understand this so that I can get a picture of where we're going, as far as the regulation. Thank you, Mr. President. [LB720]

Floor Debate  
April 07, 2008

---

SENATOR LANGEMEIER: Thank you, Senator Erdman. Those wishing to speak, as I have it, I have Senator Rogert, then Senator Schimek, then Senator Nelson, and others. Senator Rogert, you are recognized. [LB720]

SENATOR ROBERT: Thank you, Mr. President. And, Senator Erdman, when I get finished, I'll give you some time to finish up. I rise in support of this bill and the amendment, and I think if we...if Senator Schimek would yield to a question or two, we could dialogue out a little bit more of the reasons behind some of these issues. [LB720]

SENATOR SCHIMEK: Sure. [LB720]

SENATOR ROBERT: Senator Schimek, and when we talk on the first page about... [LB720]

SENATOR SCHIMEK: First page of the amendment? [LB720]

SENATOR ROBERT: Yes. Yes, my mistake. [LB720]

SENATOR SCHIMEK: Okay. [LB720]

SENATOR ROBERT: At the very bottom, lines 22, 23, it says: At the beginning of the message, state clearly the identity of the person of whose behalf this message is being relayed. What is the reasoning behind that exact language? [LB720]

SENATOR SCHIMEK: Well, so that (laugh) the public will know on whose behalf, on behalf of who...which candidate the call is being made, so that there won't be any games played. [LB720]

SENATOR ROBERT: Yes. And I think that's, if I understand it, as concerns that have arisen over the past few election cycles that "robocalls" were made on behalf of a candidate or an issue by an outside interest. Is that correct? [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ROBERT: And before, they had to state who it was on behalf of at the end and if the message was offensive enough to somebody, they hung up before it got over. They didn't know who actually it was for or from, and if they filed a complaint that it would cause maybe some confusion issues. [LB720]

SENATOR SCHIMEK: I need to double-check on that because I'm not sure they had to state on whose behalf that call was made before. [LB720]

SENATOR ROBERT: I think they had to say who paid for it. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR SCHIMEK: I need to double-check that. [LB720]

SENATOR ROBERT: I think you had to say who paid for it beforehand. [LB720]

SENATOR SCHIMEK: Who paid for it. [LB720]

SENATOR ROBERT: Yeah. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ROBERT: And I think that's the reason for that language there. [LB720]

SENATOR SCHIMEK: So if we could, that would be maybe committee XYZ... [LB720]

SENATOR ROBERT: Right. [LB720]

SENATOR SCHIMEK: ...but you don't know on behalf of which candidate. [LB720]

SENATOR ROBERT: Correct. Correct. And then I think reasoning for requiring the script go to the Public Service Commission is that, that way, if there's a discrepancy about what was said about somebody to somebody in one of these "robocalls," they could go back to the script and find out exactly what was said. Is that correct? [LB720]

SENATOR SCHIMEK: That is correct. [LB720]

SENATOR ROBERT: Okay. Mr. President, I'll yield the rest of my time to Senator Erdman. [LB720]

SENATOR LANGEMEIER: Senator Erdman, you're recognized. I'll give you the 1 minute when we get there. [LB720]

SENATOR ERDMAN: Thank you, Mr. President. So as I'm understanding this or trying to go through this and making sure that we are consistent, Senator Schimek is in conversation so I'm not going to ask her questions on Senator Robert's time. LB198 last year was not problematic because of the intent, but because of the practical application of the law. What was attempted last year was to only regulate political speech and regulate it more restrictively than what we regulate other speech or commercial speech. And we have case law that talks about the regulation of speech or how that can be done, if it's appropriate, where you know it's not appropriate, those parameters that go through it. Last year we limited the number of calls that an individual could make under a bill. That's not in this bill, and it was only limited for the political calls. So what you could have had under LB198--which, again, I don't practice law, never have and, Lord

Floor Debate  
April 07, 2008

---

willing, never will--you had a situation where you were actually restricting political speech. And if you look back to the foundation of the intent of our founders on freedom of speech, political speech is probably one of the most important things to be protected because it's very easy to get in the situation where you don't like what people are saying. Even if you're not a member of the Legislature and don't like what I say generally, I mean, you can leave or turn it off. But the reality is, is that political speech, first and foremost, is a protected right and it's something that should be protected in our society above all other rights of speech. And as you go through the courts and you've looked at their interpretation, they generally come down... [LB720 LB198]

SENATOR LANGEMEIER: One minute. [LB720]

SENATOR ERDMAN: ...on the idea that you can't be more restrictive on political speech than any other types of speech, at a minimum, to ensure that you're not being overly restrictive. What I'm going to try to do with reading the bill, and again trying to get up to speed on this, is ensuring that we're being as consistent as we possibly can but, more importantly, that we're not being more restrictive on the political side than we are on the other...on the solicitation side. If you are--Senator Burling, I'm breaking your book here, sorry--if you are, then you still have to overcome that hurdle. And so I'm interested in making sure that when I go through this--and either I'll talk with Senator Schimek privately or on the mike, whichever is appropriate--to make sure that I have an understanding of why we're doing what we're doing and, most importantly, that we're being consistent with the intent to regulate things the same. And we have to have a very rational basis why we would be more restrictive on political speech to even have a chance in court. And I don't think any of us want to go through this process and find out that what we did was inappropriate or, more importantly, unconstitutional. [LB720]

SENATOR LANGEMEIER: Time. [LB720]

SENATOR ERDMAN: Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Erdman, and thank you, Senator Rogert. Senator Schimek, you are recognized, followed by Senator Nelson. [LB720]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Nelson, did you want to pursue your conversation with me? That's why I turned on my light. [LB720]

SENATOR LANGEMEIER: Senator Nelson, you are recognized. [LB720]

SENATOR NELSON: Thank you, Senator. I appreciate that, Mr. President and members of the body. I was in queue after you, but it's a little difficult to keep track of who's up next. I would like to pursue then, and Senator Rogert already discussed this

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

Floor Debate  
April 07, 2008

---

with you, but on page 1, lines 22 and 23, I guess I would...I am concerned about "state clearly the identity of the person on whose behalf the message is being transmitted." And this is the thing that concerns me a little bit when we get into the business of expenditures here. We've had some discussion earlier on the floor about the parties getting involved and let's just take a for instance. Suppose the Democratic Party wants to help out a candidate of their choosing and they want to do "robocalls." All right. How does that call start out? On whose behalf is this call being made? Is it the Democratic Party or is it the candidate? If...and will you...would the senator...well, I don't know if I need to ask. Can you respond to that question, Senator? [LB720]

SENATOR SCHIMEK: Well, yes, I think I can, Senator Nelson. Remember that the word "person" can either mean an individual or a committee, so in this case that would be the Democratic Party, it could be, or it could be the Democratic Party making the call on behalf of John Nelson. Who knows? [LB720]

SENATOR NELSON: All right. Then whose expenditure? I mean, when we submit our expense accounts, who's paying for this and on whose behalf? [LB720]

SENATOR SCHIMEK: In that case, it would be the party making the call. [LB720]

SENATOR NELSON: So if I were the candidate they were promoting, I would not have to show that as an expense on my statement to the NADC and I would count on the party or the committee or whoever to do that. [LB720]

SENATOR SCHIMEK: I believe that's right, Senator Nelson. Now they may...if it was a phone call on your behalf, they might have to list that as an in-kind contribution with Accountability and Disclosure. [LB720]

SENATOR NELSON: All right. Okay. I don't think I have any other question. I may have some comments later on in queue, but I guess I will return the remainder of the time then to you, Senator Schimek, if you care to use it, and I thank you. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Schimek, would you like your time back? I'll take that...would you like your time back? Thank you, Senator Schimek. Senator Nelson, you are next in the queue. Would you like to be recognized again? [LB720]

SENATOR NELSON: (Laugh) Thank you, Mr. President. I, as you can tell, I have some concerns about the bill or the amendment; that is, I could have asked, as we go on to (b), that: after the message then state clearly the telephone number, other than that of the device which made the call, and the address of the person operating the device. This all has come about, I think, because of calls coming from out of state and the

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

Floor Debate  
April 07, 2008

---

attempt to regulate those. Perhaps they can be regulated. We can do what we can. But I just wonder if--and I'm just wondering this out loud and I'll make this statement--whether we can actually affect those in any way. If the persons...if they're underhanded and they don't want to comply with the amendment and the bill that's being promoted itself what...how can it be enforced? I mean, we can ask for the accurate information, correct, but we have no assurance that it's going to be given. And as Senator Rogert, I think, intimated that people might be unhappy about the call and hang up before they hear the message, so we're getting something in advance there and perhaps that will help. I think at this time I will continue to listen to any other conversation and return the time to the Chair. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Erdman, you are recognized and you're the last light at this point, if there's anyone else wishing to speak, as Senator Erdman comes in. Senator Erdman, you are recognized. [LB720]

SENATOR ERDMAN: Thank you, Mr. President, for your patience. Senator Schimek, would you yield? [LB720]

SENATOR LANGEMEIER: Senator Schimek, would you yield? [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ERDMAN: So, Senator Schimek, when we stopped, we had gone through the process in which a solicitation call happens. Individual applies to the Public Service Commission, makes application; they submit a script, that's all part of that process. They have to do that, I believe under the bill, within five days. [LB720]

SENATOR SCHIMEK: If they are a business, that is correct. [LB720]

SENATOR ERDMAN: Okay. And that's five days from the first call? That's five days from the change? Because the language refers to a change. [LB720]

SENATOR SCHIMEK: Right. They have...if they are a solicitation call, they have to give...they have to give that message to the commission in advance of the call. [LB720]

SENATOR ERDMAN: Right. [LB720]

SENATOR SCHIMEK: And then, if they decide to make a change to the call, they have to file that change within five days... [LB720]

SENATOR ERDMAN: Okay. [LB720]

SENATOR SCHIMEK: ...of the call. [LB720]

Floor Debate  
April 07, 2008

---

SENATOR ERDMAN: So if I'm selling widgets, I tell the Public Service Commission this is what I'm going to say... [LB720]

SENATOR SCHIMEK: Uh-huh. [LB720]

SENATOR ERDMAN: ...either prerecorded or live, right? It's...or is it all prerecorded? [LB720]

SENATOR SCHIMEK: I think all of it is prerecorded. [LB720]

SENATOR ERDMAN: Okay. So it's prerecorded and it says, you know, we're going to sell you whatever, call this number, okay? When do I have to file that change under that act? Is it five days from when I make the decision to make a change? Is it five days from when the calls happen? What's the trigger that determines that five days? [LB720]

SENATOR SCHIMEK: It is...and I'm going to have to look at up to make sure I have this right, but once the call is made, I believe. Let me look it up, though, and go ahead to your next question, if you would. [LB720]

SENATOR ERDMAN: Okay. So then, as I...and this is off of your bullet sheet here, the last bullet: The person contacting and the person making the call are jointly and severally liable for the ADAD Act. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ERDMAN: For political calls, the person contracting with the third party files with the political service...Public Service Commission, excuse me, the message to be used within 24 hours after the message is transmitted. [LB720]

SENATOR SCHIMEK: Right. [LB720]

SENATOR ERDMAN: For all other calls, the contracting person files any changes to the original script with the Public Service Commission within five days after the change. [LB720]

SENATOR SCHIMEK: Right. [LB720]

SENATOR ERDMAN: Are we given...are we giving the nonpolitical calls, the solicitation calls, are we giving them five days from the time of the call? Are we giving them five days from the change? And are we not then providing a more narrow time frame for the political calls to have to meet this obligation? [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR SCHIMEK: Yes, we are, but it's a balancing act and the reason we're doing it that way is we are not requiring the political calls to file ahead of time what their message is. Because of the volatile nature of political campaigns, a decision to make a "robocall" can be made within a few hours of some kind of an issue coming to the forefront of a campaign and so they are allowed to make their calls, but within 24 hours they have to file that message so that there is a record of that call with the Accountability Commission. [LB720]

SENATOR ERDMAN: How does the Accountability... [LB720]

SENATOR SCHIMEK: Or with the, I'm sorry, with the Public Service Commission. [LB720]

SENATOR ERDMAN: Public Service Commission. How does the Public Service Commission know that I made that call? [LB720]

SENATOR SCHIMEK: Because, first of all, the company that made the call had to file with the Public Service Commission all the information about the fact that they are going to be making the calls, and they have probably sort of a permanent kind of record... [LB720]

SENATOR LANGEMEIER: One minute. [LB720]

SENATOR SCHIMEK: ...on file with the Public Service Commission. [LB720]

SENATOR ERDMAN: And, Mr. President, I'd ask to be added to the queue one more time. But, if I'm hearing you correctly, the third-party call, the entity that's actually making the calls, has to file with the commission that they have this device. They essentially have to have that on file with the Public Service Commission. [LB720]

SENATOR SCHIMEK: That's right. [LB720]

SENATOR ERDMAN: But if they don't have to do that before they make the call, how does the Public Service Commission know that they made that, other than the law says that they have to? [LB720]

SENATOR SCHIMEK: (Laugh) That's a good question. [LB720]

SENATOR ERDMAN: I mean, how do you enforce that? [LB720]

SENATOR SCHIMEK: Yeah. [LB720]

SENATOR ERDMAN: I mean I see...and actually, it may be more beneficial to the

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

Floor Debate  
April 07, 2008

---

political speech than the commercial speech, but I'm looking at this and saying if I have to do a commercial speech, I have to file it ahead of time so that they know that's going to happen. If you do it under this bill, as I understand it, is it Boy Scouts' honor that you made the call and you're going to self-report, or how does that work? [LB720]

SENATOR SCHIMEK: Well, remember, that the part... [LB720]

SENATOR LANGEMEIER: Time. [LB720]

SENATOR SCHIMEK: ...the six... [LB720]

SENATOR LANGEMEIER: Thank you, Senator Schimek, and thank you, Senator Erdman. Senator Fulton, you are recognized. [LB720]

SENATOR FULTON: Thank you, Mr. President. I have a quick question I would have asked off the mike, but she's been on the mike all night so... [LB720]

SENATOR LANGEMEIER: Senator Schimek, will you yield? [LB720]

SENATOR SCHIMEK: Yes. I'm sorry, yes, I will. [LB720]

SENATOR FULTON: Okay. And then I'm going to yield my time to Senator Erdman, if he'd want to continue their line of questioning. [LB720]

SENATOR SCHIMEK: Okay. Thank you. [LB720]

SENATOR FULTON: Senator, we're both familiar with this bill from last year. The question I have is on the committee amendment, FA1 (AM2713), at the very bottom of the page, "At the beginning of the message, state clearly the identity of the person on whose behalf the message is being transmitted." One of the reasons why I agreed to prioritize this last year was because of a recent happening. It was for a congressional race out in the 3rd District, and I recall that it was placed ostensibly on behalf of a candidate, but the idea was that some...oh, a bad guy was placing it on behalf of this candidate. Do you recall that situation? [LB720]

SENATOR SCHIMEK: Yes, I do. Thank you. [LB720]

SENATOR FULTON: Okay. Would...so I guess I still have that concern here. At the beginning of the message, if one were to state clearly the identity of the person on whose behalf the message is being placed, could it still be construed that, you know, an opposing party makes a call? So if someone wanted to take a shot at me, an opposing party might place a telephone call into my district saying that this is on behalf of Tony Fulton. Can you direct me to what part of the bill would stop that from happening?

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

Floor Debate  
April 07, 2008

---

[LB720]

SENATOR SCHIMEK: Well, yes, the part that we're not getting to yet and it's actually the sixth bullet point here and it's the part that is on page 2 which the Public Service Commission asked us to include so that there could be penalties, so that there could be...so that they would be able to prosecute for violations of the act. [LB720]

SENATOR FULTON: Okay. Okay, I'll look at that. [LB720]

SENATOR SCHIMEK: And remember that all of that will be on record with the Public Service Commission. But I know what you're getting at. I understand your question. [LB720]

SENATOR FULTON: Okay. Okay, I'll look into it. I'll yield the remainder of my time to Senator Erdman then. [LB720]

SENATOR LANGEMEIER: Senator Erdman, 2 something. (Laughter) [LB720]

SENATOR ERDMAN: Two something? Is that closer to 3 or 2? [LB720]

SENATOR LANGEMEIER: I'll let you know when you get to a minute. [LB720]

SENATOR ERDMAN: Closer to 3, fair enough. I don't know that I can, just point of clarification, Mr. President, can I ask Senator Schimek questions on Senator Fulton's time? [LB720]

SENATOR LANGEMEIER: You can. Senator Schimek, would you yield? [LB720]

SENATOR SCHIMEK: Yes. Thank you. [LB720]

SENATOR ERDMAN: Didn't want to break any rules here. So we're talking about this process in which political calls don't have to register ahead of time; the entity that they're using has to be registered the whole time. If I'm making a solicitation call, it has to register ahead of time. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ERDMAN: When we left off, how do we know that they made that call? How do we know that the call was placed when there was no advance notice and what's the mechanism? Because we do have the liability provision in here that says now you can enforce it. [LB720]

SENATOR SCHIMEK: Well, because at the beginning of the phone call you have to say

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

Floor Debate  
April 07, 2008

---

on whose behalf the call is being made. [LB720]

SENATOR ERDMAN: And was that an issue prior? Is that an issue with the current law that... [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ERDMAN: ...you couldn't prosecute? [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ERDMAN: And why is that? [LB720]

SENATOR SCHIMEK: Why is what? You couldn't... [LB720]

SENATOR ERDMAN: Why couldn't you... [LB720]

SENATOR SCHIMEK: You didn't know. You couldn't find them. You didn't know who had made the call. [LB720]

SENATOR ERDMAN: Because they didn't have to state it, or because... [LB720]

SENATOR SCHIMEK: Because they didn't have to state it, yes. [LB720]

SENATOR ERDMAN: Okay. Let me ask you about just one other component of FA1 (AM2713) here, where it talks about it doesn't apply to elementary, secondary, postsecondary educational institutions, to its students, parents, or employees;... [LB720]

SENATOR LANGEMEIER: One minute. [LB720]

SENATOR ERDMAN: ...a message to a person with whom the person placing the call or the person whose...on whose behalf the message is being transmitted has an established business or personal relationship; or (c) a message from an employer advising any of its employees of work schedules. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ERDMAN: Just generally, it's logical. I mean, you wouldn't...if Lincoln Public Schools has got a "robocall" and says we're not going to have school today, parents would need to know that. [LB720]

SENATOR SCHIMEK: Right. [LB720]

Floor Debate  
April 07, 2008

---

SENATOR ERDMAN: The rational basis for that is convenience, is it? [LB720]

SENATOR SCHIMEK: Yes. They're not...they're not...they are not a for-profit group nor are they a political group. They are simply making contact with the patrons of their school. [LB720]

SENATOR ERDMAN: But we're not making a distinction on the solicitation side between profit and nonprofit, right? In other words, if I'm selling something to you it's no different than if I'm fund-raising for the Schimek foundation. [LB720]

SENATOR SCHIMEK: Correct. Correct. [LB720]

SENATOR ERDMAN: So the distinction here is maybe... [LB720]

SENATOR LANGEMEIER: Time. Senator Erdman, you are recognized. Your light is next. You can continue. [LB720]

SENATOR ERDMAN: Okay. Then if Senator Schimek would continue to yield, the distinction here maybe isn't that it's a hostile call, I guess, or that it's an unwelcome call. Generally, that call would be well received by the recipient is the distinction? [LB720]

SENATOR SCHIMEK: Yes. I think that's... [LB720]

SENATOR ERDMAN: Why are we... [LB720]

SENATOR SCHIMEK: I think that's a good way to put it, Senator. [LB720]

SENATOR ERDMAN: Okay. Why are we limiting, under Section 5, which is page 2 of the floor amendment that was handed out, (c) says "a message from an employer advising any of its employees of work schedules." Everything else so far has been, if you have a relationship, it doesn't necessarily matter what the message is. If you're a student, a parent or employee of a school, it doesn't matter what they're going to tell you. They're exempt. [LB720]

SENATOR SCHIMEK: Uh-huh. [LB720]

SENATOR ERDMAN: If it's a message of a person who you have an established business or personal relationship, which that would be a lot of fun to annoy somebody. If you knew them, you could just legally send them 50 "robocalls" a day and they couldn't do anything about it, I guess, under this. But again, it doesn't say what the message has to say. Why was the language chosen? If this is a committee amendment versus your amendment, I can direct that elsewhere, but why is it limited for an employer to only their work schedule? There may be a circumstance, you work at a

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

Floor Debate  
April 07, 2008

---

bank or some other reason, that it's not a work schedule. It's there's an outbreak of influenza or something; don't come to work. I mean, can you walk me through this, why it wouldn't just say a message from an employer advising its employees? [LB720]

SENATOR SCHIMEK: Well, I suppose you could, although the illustration that you just gave, the example you just gave does involve, I suppose, in a way, work schedules if it's some kind of influenza or something like that. [LB720]

SENATOR ERDMAN: And that... [LB720]

SENATOR SCHIMEK: I guess because nobody ever worried about anything but that particular situation with employer/employee. [LB720]

SENATOR ERDMAN: Maybe it's because they would send an e-mail, except right now we don't seem to be able to do that in here. [LB720]

SENATOR SCHIMEK: Probably. (Laugh) Well,... [LB720]

SENATOR ERDMAN: And I'm just trying to understand this. [LB720]

SENATOR SCHIMEK: ...they may not have everybody's home e-mail address, Senator. [LB720]

SENATOR ERDMAN: And that might be true as well. So under the bill, I file with Public Service Commission that I'm going to make a call to sell you something five days ahead of the calls or five days going back? [LB720]

SENATOR SCHIMEK: No, ahead of the call you have to file with the Public Service Commission and... [LB720]

SENATOR ERDMAN: Okay. So my marketing plan says that on the... [LB720]

SENATOR SCHIMEK: ...with the message or the script, however you want to... [LB720]

SENATOR ERDMAN: Right. So my marketing plan says on April 15, we're going to start selling something. I file that with the Public Service Commission by April 10. Whatever that script is, that goes into their record. They know that that call...those calls are supposed to be taking place. There's no restriction on the number of calls they can make,... [LB720]

SENATOR SCHIMEK: Right. [LB720]

SENATOR ERDMAN: ...but they generally have that five-day window. And if at any

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

Floor Debate  
April 07, 2008

---

time, either prior to or after the calls, you make a change, from the point that you decide to make a change...I guess it would have to be prior to. [LB720]

SENATOR SCHIMEK: Then you have five days to file that change with the commission. [LB720]

SENATOR ERDMAN: And it's five days from the decision to make the change or five days from when the calls... [LB720]

SENATOR SCHIMEK: I believe from the decision to make the change. [LB720]

SENATOR ERDMAN: And you can go ahead and make the calls... [LB720]

SENATOR SCHIMEK: Correct. [LB720]

SENATOR ERDMAN: ...even though the script isn't accurate. [LB720]

SENATOR SCHIMEK: That's my understanding. [LB720]

SENATOR ERDMAN: So then on the political side again... [LB720]

SENATOR SCHIMEK: My staff is nodding yes. Okay. [LB720]

SENATOR ERDMAN: I can see that. So then on the political side, it's they follow the same process essentially up till the application of the script or the providing of the script. [LB720]

SENATOR SCHIMEK: Message or whatever. [LB720]

SENATOR ERDMAN: So they apply...no, they don't apply. [LB720]

SENATOR SCHIMEK: Well, the "robocall" company has to have their application in. [LB720]

SENATOR ERDMAN: The "robocall" is on file,... [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR ERDMAN: ...but as far as the entity applying or the candidate or the committee or whomever, they don't actually have to apply for anything. [LB720]

SENATOR SCHIMEK: No. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR ERDMAN: They just simply make the calls and within 24 hours of those calls being made... [LB720]

SENATOR SCHIMEK: That script has... [LB720]

SENATOR ERDMAN: ...that script has to be at the... [LB720]

SENATOR SCHIMEK: ...or that message has to be filed... [LB720]

SENATOR ERDMAN: ...Public Service Commission. [LB720]

SENATOR SCHIMEK: ...with the Public Service Commission. That's right. [LB720]

SENATOR ERDMAN: Is it from the point of the first call, 24? [LB720]

SENATOR SCHIMEK: Yes. I would... [LB720]

SENATOR ERDMAN: So then it's back... [LB720]

SENATOR SCHIMEK: I'm not sure I understand what you're asking. [LB720]

SENATOR ERDMAN: Well, if... [LB720]

SENATOR LANGEMEIER: One minute. [LB720]

SENATOR ERDMAN: ...if I'm making the call at 7:00 in the evening, I have till 7:00 the next evening to make the...is it that...you know, I'm just trying to figure this out. Twenty-four hours is great, but is it...are they open? [LB720]

SENATOR SCHIMEK: No, you can only make those calls between 8:00 and 9:00. [LB720]

SENATOR ERDMAN: Right, and 7:00 is within that time frame. [LB720]

SENATOR SCHIMEK: Right. So I would say with... [LB720]

SENATOR ERDMAN: Because I could be in violation of... [LB720]

SENATOR SCHIMEK: ...if it's at 7:00 that you start the calls, you're going to have to be done by 9:00. [LB720]

SENATOR ERDMAN: Right. But they're not open at 7:00 and, if I waited the full 24 hours, it would be after the close of business. I would legally be within the law but I

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

Floor Debate  
April 07, 2008

---

couldn't comply with it. [LB720]

SENATOR SCHIMEK: As long as you file that, and you would have to do that electronically, I'm... [LB720]

SENATOR ERDMAN: And they have a process to receive those electronically. [LB720]

SENATOR SCHIMEK: Yes. Yes. And a lot of this will be taken care of by rule and regulation. [LB720]

SENATOR ERDMAN: Right. And I'm just making sure that I understand this so that I get a sense of the change of direction we have with this bill versus LB198 from last year. [LB720 LB198]

SENATOR SCHIMEK: Okay. Thank you. [LB720]

SENATOR ERDMAN: Thank you. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Erdman. For the body's information, we are still discussing the first component of the committee amendment offered by Government, Military and Veterans Affairs Committee to LB720. If you would like to be put into the queue and recognized, please call me at 250. Those wishing to speak, we have Senator Schimek, Avery, and Nelson at this point. Senator Schimek, you are recognized. Senator Schimek waives time. Senator Avery, you are recognized. [LB720]

SENATOR AVERY: Thank you, Mr. President. I apologize to Senator Schimek for being out of the Chamber for some of this debate, but I would like to ask her a few questions, if she would yield. [LB720]

SENATOR LANGEMEIER: Senator Schimek, would you yield? [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR AVERY: Can you tell me, if you haven't already done so, and I was not here so you might have, what are the current Public Service Commission rules governing these kinds of calls? Do they have any rules at all? [LB720]

SENATOR SCHIMEK: Governing which kind of calls? There's... [LB720]

SENATOR AVERY: "Robocalls." [LB720]

SENATOR SCHIMEK: Yes, but they...generally, their statutes generally apply to the business...the solicitation calls. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR AVERY: And in most cases throughout the country do-not-call lists don't cover calls of this nature? [LB720]

SENATOR SCHIMEK: Political calls? No. [LB720]

SENATOR AVERY: Yeah, political organizations, charities, phone polling surveys, that kind of thing, right? [LB720]

SENATOR SCHIMEK: Well, the do-not-call lists cover the solicitation calls, yes,... [LB720]

SENATOR AVERY: Uh-huh. [LB720]

SENATOR SCHIMEK: ...the businesses,... [LB720]

SENATOR AVERY: Right. [LB720]

SENATOR SCHIMEK: ...the nonprofits, charities, all of those kinds of things. [LB720]

SENATOR AVERY: There is another way to do this and that would be to establish a political do-not-call list that people could... [LB720]

SENATOR SCHIMEK: Yes, that is true. I chose not to go that direction, Senator Avery. I can't imagine what it will be like for a political campaign to have to deal with a do-not-call list. [LB720]

SENATOR AVERY: I agree. I agree. I wouldn't want to do that either. I have another question. The FCC has some rules on "robocalls." Do you know whether they have rules that require, for example, the identification of what the...who is making the call at the beginning? Don't they require the identification... [LB720]

SENATOR SCHIMEK: The FCC? [LB720]

SENATOR AVERY: ...of the source of the call at the beginning? [LB720]

SENATOR SCHIMEK: I don't know anything about the FCC rules, Senator Avery. I'm sorry. [LB720]

SENATOR AVERY: I think they do. [LB720]

SENATOR SCHIMEK: I can find out. The Public Service... [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR AVERY: The problem is, I think they're not enforced, and that is a problem with "robocalling" I think, is enforcing these kinds of rules. [LB720]

SENATOR SCHIMEK: And that is why we added bullet point six to the committee amendment, or why you did it, to be able to hold people responsible. And that's the second part of the amendment, actually, that starts on line 14 of page 2 and goes through line 25. [LB720]

SENATOR AVERY: Yes. This is also where you hold people liable,... [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR AVERY: ...severally and jointly. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR AVERY: That raises another question I want to ask you. Are there any safeguards for vendors who experience a genuine computer glitch? That happened, by the way, in Ohio where you had a computer malfunction that sent out 6,000 calls very, very early in the morning, upset a lot of voters, probably affected how they voted. [LB720]

SENATOR SCHIMEK: (Laugh) No, this doesn't address that, Senator, and I would assume that that would be an issue that the Public Service Commission would have to examine if indeed... [LB720]

SENATOR AVERY: They'd have to use discretion. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR AVERY: Because that can happen. [LB720]

SENATOR SCHIMEK: Well, of course it can. Look at us tonight. (Laugh) [LB720]

SENATOR AVERY: But then...but I know what you're trying to do, and I agree with you, because this...the "robocall" has two faces. One face is it allows you to do an awful lot of voter contact for not a lot of money and allows you to do it very fast. I've used it. The other thing is that it can be used for malicious purposes. It's a very easy, dirty trick mechanism to call people in the middle of the night,... [LB720]

SENATOR LANGEMEIER: One minute. [LB720]

SENATOR AVERY: ...to call people early in the morning, or call and pretend that you

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

Floor Debate  
April 07, 2008

---

are calling on behalf of a candidate, and you are not that candidate, spreading false information, things of that sort. I have the feeling that these calls are not very effective unless you're using them for dirty tricks and that's one of the things, I think, that argues most strongly for approving this bill. In fact, if you're calling to get out a positive message or you're calling just to get voter contact for your campaign, the chances are pretty good that you might actually turn off more voters than you influence in a positive way. It's entirely possible that the primary purpose might be or primary... [LB720]

SENATOR LANGEMEIER: Time. [LB720]

SENATOR AVERY: ...outcome might be to make way for more dirty tricks and mischief. [LB720]

SENATOR LANGEMEIER: Time. Thank you, Senator Avery. [LB720]

SENATOR AVERY: Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Those wishing to speak, I have Senator Nelson, Senator Pirsch. Senator Nelson, you're recognized. [LB720]

SENATOR NELSON: Thank you, Mr. President. Would Senator Schimek yield to some questions, please? [LB720]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR NELSON: Thank you, Senator Schimek. Just so I'm clear on this, in any event, if a "robocall" is made, at the end of the call you have to state who paid for the call. Is that correct? Is that your understanding? [LB720]

SENATOR SCHIMEK: You have to give the address or phone number of the entity making the call. [LB720]

SENATOR NELSON: But don't the NADC rules right now state that you have to, somewhere in the message, state who's paying for the call? [LB720]

SENATOR SCHIMEK: Well, that would be the...yes, who's making the call. I'm sorry. I misstated that, Senator Nelson. You have to state during or after the message what the telephone number is or the address of...oh, I'm sorry, the person operating the device, so that would be ABC "robocall." You have to give that telephone number or address for that company. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR NELSON: All right. If I am a candidate--let me pose this question--I'm a candidate and some committee that wants to play dirty tricks uses "robocalls," how do I find out about it so that I can respond as quickly as possible? [LB720]

SENATOR SCHIMEK: That's a very good question because that's what this bill is all about. You go to the Public Service Commission and you find out, first of all, you will know because the "robocall" will tell you at the very beginning on whose behalf the call is being made, the person. Now that, as I said before, could be an individual, the candidate, or it could be a committee. So you will get that right up front and then you can go to the Public Service Commission with the information you have from the end of the call and say this is the address or telephone number of the company and I have a complaint to make about that particular call that was made at that particular time of night or day. [LB720]

SENATOR NELSON: And if the statement at the beginning of the call or if the address and telephone number was...at the end was false, then I come to the question how...who do we go to? How do we enforce that? [LB720]

SENATOR SCHIMEK: Well, then that's very difficult if you don't have the information that you need. If people are breaking the law then that will, of course, be very difficult. [LB720]

SENATOR NELSON: All right. One final question here: If I, as a candidate, wanted to use the "robocall" method to contact all of my supporters and give them private directions or talk to them in a private conversation, I would have to give that text to the Public Service Commission within 24 hours. Is that correct? [LB720]

SENATOR SCHIMEK: Within 24 hours of the call having been made. [LB720]

SENATOR NELSON: And if I, as a candidate, am running for that office of Public Service Commissioner, I still have to do that. Is there any protection of my private message there, or is it going to be spread on the record? [LB720]

SENATOR SCHIMEK: Well, Senator, the message will already have gone out. It will be in the public domain already. [LB720]

SENATOR NELSON: No, I'm speaking about just sending it out to my people supporting me, if I want to use a "robocall" for that purpose. Is that covered by this bill or this amendment? [LB720]

SENATOR SCHIMEK: Yes, I believe that would be. [LB720]

SENATOR LANGEMEIER: One minute. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR SCHIMEK: So if you were sending a message and encouraging all of your supporters to get out to vote for you,... [LB720]

SENATOR NELSON: Yes. [LB720]

SENATOR SCHIMEK: ...well, yes, that probably would be in the public domain. It would be on file with the commission. And if you're running for the Public Service Commission and that, for some reason, came to the attention of the commission itself, yes, I suppose that's a possibility. [LB720]

SENATOR NELSON: All right. Okay. Thank you very much for your responses. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Pirsch, you're recognized. [LB720]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Schimek would yield to a couple more questions. [LB720]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question from Senator Pirsch? [LB720]

SENATOR PIRSCH: Oh, sorry about that. (Laugh) [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR PIRSCH: And I apologize. Our computers are down so I'm going off written copies, but could you just briefly restate? There was a question that Senator Nelson inquired about with you that had to do with the 24-hour time period after a call had been placed. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR PIRSCH: What was...and I apologize, but could you re-go over that as well what that 24-hour period dealt with? [LB720]

SENATOR SCHIMEK: Yes, I could, Senator, and it's probably the main place where the calls that are made to solicit are different from the calls that are made for political purposes, and that is because of the volatile nature of political campaigns and sometimes having to respond quickly. But this does allow the call to be made and the message or script to be filed within 24 hours after those calls are made. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR PIRSCH: Oh, I see, after the fact. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR PIRSCH: Okay. And there's also, in this amendment, a five-day period, is that correct, for certain activity? [LB720]

SENATOR SCHIMEK: For the business solicitation or the charitable solicitation, they have to file their message ahead of time with the commission and if they change their message at any point then they have to file that change within five days. [LB720]

SENATOR PIRSCH: Okay. But those don't pertain to political... [LB720]

SENATOR SCHIMEK: No. [LB720]

SENATOR PIRSCH: ...type of races, but business. They file. The ordinary rule is file five days before and, if there's any changes in the script, then you must refile within a five-day period those changes then, correct? [LB720]

SENATOR SCHIMEK: I think I need to correct something because we keep saying that it has to be filed five days ahead of the call being made. The script has to be filed ahead of the call being made, but if there are changes made to that script then those changes have to be filed within five days. You see what I'm saying? [LB720]

SENATOR PIRSCH: Within five days after the call being placed. [LB720]

SENATOR SCHIMEK: After the change. After the change. [LB720]

SENATOR PIRSCH: Yeah. And how far in advance of the call need the script be filed then with the... [LB720]

SENATOR SCHIMEK: I don't think there is a time frame on that, and that's, I think, presently in statute, basically. [LB720]

SENATOR PIRSCH: I see. Okay. Okay. And this would...in the bill last year, I think it was, there was a maximum number of calls that would be allowed for. [LB720]

SENATOR SCHIMEK: That's correct. [LB720]

SENATOR PIRSCH: That's not... [LB720]

SENATOR SCHIMEK: That is not in this bill. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR PIRSCH: Okay. [LB720]

SENATOR SCHIMEK: There was a maximum number of two in last year's bill. [LB720]

SENATOR PIRSCH: Okay. [LB720]

SENATOR SCHIMEK: And we arrived at that. The original bill had one and we stretched that out a little bit for Senator Avery. And then, in order to make it match more closely the Public Service Commission ADAD calls, we said there won't be any limits on it. And after discussion, we decided, I think, that anybody who wants to make four or five "robocalls" in the daytime to households in his or her district is probably not going to be very popular anyway. It will probably have a self-limiting kind of an effect. [LB720]

SENATOR PIRSCH: Okay. So the duty is then to announce...that's required in this, they announce at the beginning who's the sponsor of the call, so to speak? [LB720]

SENATOR LANGEMEIER: One minute. [LB720]

SENATOR SCHIMEK: That's correct. Who's... [LB720]

SENATOR PIRSCH: The duty includes the hours, prohibits the hours from... [LB720]

SENATOR SCHIMEK: 8:00 to 9:00. [LB720]

SENATOR PIRSCH: ...8:00 to 9:00. [LB720]

SENATOR SCHIMEK: Uh-huh. [LB720]

SENATOR PIRSCH: And the filing of the script, so to speak, with NADC. [LB720]

SENATOR SCHIMEK: That is correct. [LB720]

SENATOR PIRSCH: Are there any other major components that I'm missing? [LB720]

SENATOR SCHIMEK: Oh, just that little bit about schools and employers and so forth that we discussed earlier. [LB720]

SENATOR PIRSCH: Okay. [LB720]

SENATOR SCHIMEK: And then, of course, the part of the amendment that we haven't gotten to yet about the person making the call and the person contracting being jointly and severally liable if they are in violation of the ADAD Act. [LB720]

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

Floor Debate  
April 07, 2008

---

SENATOR PIRSCH: And ostensibly, if it's an out-of-state interest, we would have civil liability through a long-arm statute. Is that...in other words, from a legalistic, they could be sued since they have contacts with the state and is that the... [LB720]

SENATOR SCHIMEK: That sounds plausible, Senator, but... [LB720]

SENATOR LANGEMEIER: Time. Thank you, Senator Pirsch and Senator Schimek. Having no one else wishing to speak, Senator Schimek, you are...oh, no, Senator Aguilar, excuse me, Senator Aguilar, you are recognized to close on the first FA1 (AM2713) component of the committee amendments. [LB720]

SENATOR AGUILAR: Okay. Thank you very much. Thank you for the discussion out there. It has been very enlightening. I just want to reiterate the three main points of what this will do: At the beginning of the message, clearly state the identity of the person on behalf the message is being...is transmitted; during or after the message, state clearly the telephone number or address of the person operating the device; and three, only transmit messages between the hours of 8:00 a.m.--9:00 p.m. at the location of the person receiving the message. I ask you to support this half of the amendment and the underlying legislation. Thank you, Mr. President. [LB720]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the closing on the first component, FA1 (AM2713) of the committee amendments, AM2044, offered to LB720. The question before the body is, shall AM...the first component of AM2044 be adopted to LB720? All those in favor say aye. All those opposed say nay. The ayes have it. The first component is adopted. Mr. Clerk, items for the record. [LB720]

CLERK: Mr. President, bills read on Final Reading this afternoon were presented to the Governor at 4:05 p.m. (Re: LB171, LB171A, LB179, LB179A, LB467, LB467A, LB575, LB888, LB912, LB1049.) New resolution, LR384, Senator Wightman; be laid over. Senator Ashford, amendments to LB1130 to be printed; Senator Fischer to LB846; Senator McGill, motion to LB813. (Legislative Journal pages 1350-1353.) [LB171 LB171A LB179 LB179A LB467 LB467A LB575 LB888 LB912 LB1049 LR384 LB1130 LB846 LB813]

I do have a priority motion, Mr. President. Senator Flood would move to adjourn until Tuesday morning, April 8, at 9:00 a.m. []

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