

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

Floor Debate  
April 07, 2009

---

[LB9 LB35 LB57 LB58 LB63 LB65 LB67 LB69 LB70 LB127 LB159A LB159 LB164  
LB165 LB195 LB206 LB234 LB296 LB336 LB340 LB347 LB373 LB396 LB420 LB430  
LB449 LB458 LB460 LB463 LB477 LB483 LB485 LB517 LB555 LB587 LR68 LR69  
LR70 LR71 LR72 LR73 LR74 LR75 LR76 LR77 LR82]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-seventh day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Bob Lawrence of the South Auburn Church of Christ in Auburn, Nebraska, Senator Heidemann's district. Please rise. []

PASTOR LAWRENCE: (Prayer offered.) []

SPEAKER FLOOD: Thank you, Pastor. I call to order the fifty-seventh day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

CLERK: I have no corrections. []

SPEAKER FLOOD: Are there any messages, reports, or announcements? []

CLERK: Mr. President, at this time I have neither messages, reports, nor announcements. []

SPEAKER FLOOD: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB67. Mr. Clerk, proceeding to the first item on the agenda as it relates to LB195. [LB67 LB195]

CLERK: Mr. President, I have a motion from Senator Gay with respect to LB195. He would move to recommit the bill to the Health and Human Services Committee pursuant to Rule 7, Section 3. [LB195]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Gay, you're recognized to open on your motion. [LB195]

SENATOR GAY: Thank you, Mr. President. This LB195 was placed on General File on February 6. That was earlier, when we were looking for bills to be heard on the floor,

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

Floor Debate  
April 07, 2009

---

and this was sent out with the intention of being heard. It was not, and on March 12 we decided to make this a committee priority bill. We were going to attach a floor amendment. It would be easier to just recommit this back to committee where we're going to have a public hearing on a confirmation and an Exec Session to do that. So I would ask my colleagues to recommit this back to committee. We will then...this will be one of our committee bills dealing with regulation and licensure issues. Thank you, Mr. President. [LB195]

SPEAKER FLOOD: Thank you, Senator Gay. Senator Friend, you are recognized. [LB195]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. As I look at the agenda today, one of the things that's occurred to me--it's actually occurred to me before I looked at today's agenda...I don't want this to come, I don't want this to come forward or seem condescending, because it's not, but I think there's an important...I think there's some important points before we go forward, especially looking at the agenda and looking at the way we decide, as a legislative body, that we're going to spend money. I think it's appropriate to do it on a recommit of LB195, because that's...as Senator Gay knows, one of the things that we're going to try to accomplish here in the future is an evaluation of what happened during safe haven. And we're also talking about probably spending to the tune of maybe \$8 million or \$9 million or \$10 million of state funds to take care of the problems that we've analyzed and critiqued from the lessons learned. There are 28 A bills out there that were introduced--28 appropriations measures, X amount--and I don't even remember how many actually made it to General File. On April 23, I believe, we're going to find out exactly the type of money we're going to have to spend, and I'm not Nostradamus but I don't think it's going to be very much. So let's analyze this for just a quick second. Lavon Heidemann in the Appropriations Committee is going to come out and they're going to say--and they do it every biennium--they come out and say, here's how much money you, Legislature, can spend on appropriations measures. So in other words...let's use an example. Let's say that the Appropriations Committee says you have \$15 million to spend on those A bills. Well, if the behavioral health bills take up \$9 million...do the math. We've got \$6 million left. I'm just tossing out a \$15 million number. Nostradamus says it's not going to be at \$15 million. My guess is, we'll be lucky to get \$9 million. I don't know that; that's just my guess. Now if that's the case, that leaves us...if the \$15 million was out there, that leaves us with the \$6 million. And you ask yourself, well, we have a bunch of bills on Select File. We have a bunch of bills that actually moved to Final Reading. Well, Speaker Flood and the Legislature are going to look at these things on Select File, and they're going to go: We don't have the money. So you ask, well, what happens to those bills that are sitting on Select File and Final Reading? The answer is nothing. We don't have the money to spend and we won't spend it, and those bills will either die over the next two years or they'll just sit there. They won't be brought up because we won't have the money to spend. I don't say this...I don't bring up some of these points--and again,

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

Floor Debate  
April 07, 2009

---

not to be condescending, a lot...we all probably know this, right? I say it to temper our enthusiasm. A few days ago--we all know the value, we all know or we feel like we know the value of SCHIP--I stood up and corralled minimal support to actually vote against an A bill. [LB195]

SPEAKER FLOOD: One minute. [LB195]

SENATOR FRIEND: There was a point to all of that. We have to critically analyze every one of these A bills out there, because we're going to be standing in line. Let's say we have 25 people standing in line to get their paycheck--this is an analogy, but it fits--25 people standing in line to get their paycheck from an employer. The first ten people are actually going to get bonuses. Do you think there's going to be a fight to be one of the first ten? There is. There's going to be a big fight, because the last 15 people are going to get nothing. They're just going to get their normal paycheck or they're going to get a cut because we don't have enough money to pay them that bonus. If you happen to be lucky enough to be the first one on...look, there's four more bills that come up here today. There's a tax credit expansion. There are initiatives all the way down our agenda that provide to either tax relief or have a fiscal implication. Folks, again, I'll say it a third time, not to be condescending: We have to critically analyze... [LB195]

SPEAKER FLOOD: Time, Senator. [LB195]

SENATOR FRIEND: ...what's going to be important to us. Thank you, Mr. President. [LB195]

SPEAKER FLOOD: Thank you, Senator Friend. Senator Gay, there are no lights on. You're recognized to close on your motion. [LB195]

SENATOR GAY: Thank you, Mr. President. I appreciate Senator Friend's comments. For everyone's knowledge, there is no spending in LB195, so you can be assured it's licensure and regulation only and you'll get a chance to hear that. Mr. President, also I did want to take a minute. I thought it was kind of interesting in the history magazine--I handed out a little article for you guys to look at dedicating the Lincoln Memorial over here on the west side in 1912--I thought it was very interesting so I handed that out this morning for a little bit of lightness. But anyway, I would appreciate your support of recommit LB195. Thank you, Mr. President. [LB195]

SPEAKER FLOOD: Thank you, Senator Gay. Members, you've heard the motion. The question is, shall LB195 be recommitted to committee? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB195]

CLERK: 33 ayes, 0 nays, Mr. President, on the motion to recommit. [LB195]

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

Floor Debate  
April 07, 2009

---

SPEAKER FLOOD: LB195 is recommitted to committee. (Doctor of the day introduced.) A brief announcement this morning. Due to Senator White's absence, LB555 will be handled by Senator Mello this morning. LB551 will be passed over. Please make a note on your agenda. Again, LB551 will be passed over due to an absence. Continuing with our agenda, Mr. Clerk, Select File, 2009 Senator priority bills, White division. [LB195 LB555]

CLERK: Mr. President, LB458, no E&Rs. Senator Lathrop has a motion to bracket the bill. [LB458]

SPEAKER FLOOD: Senator Lathrop, you are recognized to open on your bracket motion. [LB458]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I have placed a bracket bill or a motion on LB458. I don't intend to see this through. After a little bit of a discussion this morning, I intend to withdraw the bracket motion. I rise this morning to discuss a matter unrelated to LB458: that having to do with an appropriations matter. The Lincoln Journal Star reported what has been...what I can refer to as an ongoing saga with relationship to certain appropriations requested by the Governor for developmental disability issues. The executive branch requested from the legislative branch...or I'll speak more plainly. The Governor wants about \$32 million, and he has sent, as is tradition, John Wyvill to the Appropriations Committee to ask for \$32 million. This is not the money that we will spend because we've been decertified. That's about \$50 million. This is \$32 million, and I'll explain it as best I understand the dollars. There is \$10 million which we are told is for community-based programs. The balance, or \$22 million, is for BSDC--not all to be spent this year, but that's about all the detail we've gotten. That's \$32 million. And Mr. Wyvill has come before the Appropriations Committee. Prior to coming to the Appropriations Committee--just so that you know and in fairness--Senator Nordquist sent a letter to Mr. Wyvill, and said: Come to the Appropriations Committee with detail; we want to know what you intend to spend the \$32 million on. He did not. At the Appropriations Committee hearing, Senator Mello asked him for detail, and he promised it and has not delivered. Last week, the LR11 Committee met in my office. That's the committee generally referred to as the BSDC Committee, which I chair. Mr. Wyvill, the director of Developmental Disability Services, arrived. And we asked him, in the presence of several reporters, and it was reported in the paper as well: What are you going to spend?; What's the plan for the \$32 million?; Do you have a plan? Thirty-two million dollars. You'd better have a plan, right? He said: Yes, we do have a plan. I said: Can I get it from you? He said yes. And I said: In two days. No problem. That two days have come and gone. We have no detail. Thirty-two million dollars. We have problems with BSDC. We had a committee, the LR283 Committee, or the BSDC Committee, study these issues through the summer and the fall, and made recommendations. The Governor has sent or proposed a general plan,

Floor Debate  
April 07, 2009

---

which includes developing some ICF/MRs, and there's some general language about moving some people around. No detail; no dollars. My concern and the reason I've chosen to speak this morning is, it is not the norm to ask for \$32 million and not tell the Appropriations Committee how you intend to spend it. It suggests that either we don't have a plan for BSDC, or we want the Appropriations Committee to say no, so that it's the Legislature's fault that BSDC doesn't succeed. Either way, we are doing something that isn't the people's work. It's not the way this body should function in its relationship with the Governor's Office and this is wrong. It is wrong. The Legislature and our Appropriations Committee, as well as the LR11 Committee, deserve to know how do you intend to take BSDC from a state of decertified to a place where we can be certified and, once again, get the federal government's help in funding and running BSDC. I stand today, because if we don't make public the difficulties we are having getting information from the Governor's Office and from Mr. Wyvill, nothing is going to happen. I would encourage others, from the Appropriations Committee in particular, to share their thoughts. This is not Steve Lathrop engaged in some partisan bickering with the Governor's Office. This is a real and legitimate concern. Senator Friend correctly stood on the floor this morning and talked to us about the appropriations process and the fact that we don't have enough money to take care of all the A bills that are passing through here. There is \$32 million that is being requested and we have no idea what it is to be spent on, and every promise for detail has been broken. The issues and the matters relating to BSDC, the problems at BSDC, and the state's plan to take us from the failures of BSDC to recertification, are our business. We deserve to know the detail. The detail is in the dollars. And the dollars will tell us what the plan is, which so far has been a general statement about building some ICF/MRs. Those are my remarks. I would encourage people who are on the Appropriations Committee and who share my point of view to express them so that we have a broad explanation for what's going on and the concerns that the Appropriations Committee members have for this subject. Thank you. [LB458]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Nordquist, you are recognized. [LB458]

SENATOR NORDQUIST: Thank you, Mr. President. Thank you, Senator Lathrop, for your leadership on this issue. I share your frustration. This is very frustrating. We have asked time and time again. I sent a letter on March 17 to Director Wyvill, asking to come prepared a week later at our Appropriations Committee hearing, with detailed specifics about how this additional \$32 million worth of General Funds--\$32 million worth of General Funds-- is going to be spent. No answers there. Senator Mello followed up at the hearing, saying we want answers. I believe at the hearing there was as promise within a week or so we'd get a plan. Time passed. Last Thursday, Senator Lathrop in the LR11 Committee asked again. A couple days, a couple days--no answers. This is frustrating. I don't know how you propose to spend \$32 million, come to the Legislature and ask it, without having something prepared, without having some sort of detail,

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

Floor Debate  
April 07, 2009

---

without having some sort of plan. And we cannot just give a blank check to an administration at BSDC that has failed the most vulnerable Nebraskans. We're not going to do it. We...all of us...I think everyone in this body, everyone on the Appropriations Committee, believes that we need to meet these needs. There are serious problems. We're willing to step forward in tough times and put the money forward to address these challenges, but we're not going to do it without answers and without a plan first. It's irresponsible of us to do that, to do it without answers. It's irresponsible for us...we cannot do that to Nebraska taxpayers, and we cannot do that to the clients and the patients, the most vulnerable Nebraskans at BSDC. Thank you.  
[LB458]

SPEAKER FLOOD: Thank you, Senator Nordquist. Senator Harms, you're recognized.  
[LB458]

SENATOR HARMS: Thank you, Mr. President and colleagues. I've had the fortunate opportunity to participate in a lot of our work in regard to Beatrice. And I've been a little frustrated over the last six months in regard to the issue, having hearings, following up on the hearings, seeing people come and tell you how concerned they are about the Beatrice issue. And one of the things that I learned very quickly, that it was very hard for us to get information back and sometimes you would question the accuracy of the information, and so that has bothered me a lot. And yesterday we had the opportunity to begin to start the discussion of building a budget for Health and Human Services in the Appropriations Committee, and I was rather verbal yesterday with my colleagues about making sure that we understand: Do we have a long-range plan?; Do we have a plan for Beatrice? I mean, what are the issues? You've got a request for \$30-some million with no plan, no idea how it would be spent. And knowing that these are very difficult times for us, what...I mean, where should we be with this? What should we be doing? How can we address the issue? I want to make it clear on my views. I don't believe that, to be frank with you, that this is something the Governor is pushing. I just think that it's an issue that the leadership in the Health and Human Services, John Wyvill and his staff, just haven't stepped to the plate here. I know, as a CEO, sometimes you could ask people to do things, and sometimes they just don't quite get there. And so I think we need to be careful how we focus this. My focus is not on the Governor. My focus is on, directly, on the plan and having Health and Human Services step up; having John Wyvill step up and address the issue. I think it's important for us, because if you bring a budget in here with \$32 million and you would ask the Appropriations Committee how...you know, how they're going to spend this, we can't give that to you. And I've asked simply that we don't go any further with that budget. That we just put that budget portion of it to the side until we get clarification of just exactly how that money is going to be spent, and I don't think that's asking too much. Senator Friend definitely hit it right on the head when he said, you know, we don't have enough money to fund all the A bills coming through. He's absolutely correct. And we would, if we decide what our priorities...we have a choice of priorities here. We can set the priorities here. But he's absolutely

Floor Debate  
April 07, 2009

---

correct: we don't have it. And I think when we find out exactly how much we're going to have, in April, I think we're all going to be shocked, and I think the Appropriations Committee will be back in the war room trying to figure out how we match all of this out. So I just think that it's a fair question and we need to have just a fair answer. I mean, what is your plan? How do you want to use it? I can't imagine coming before this legislative body or I can't even imagine coming before the Appropriations Committee and saying, I want \$32 million but I don't know how I'm going to use it for sure. And I saw the questioning that took place at the hearing. It was never answered and I think that's all any of us are really asking here. This is not an issue to split this body. This is not an issue for me that addresses the Governor or anyone else. All we want is an answer, and I think John Wyvill, who has that responsibility, needs to give us the plan so that we can have a fair chance to review it, so that we know how we're going to use these dollars. We have great issues here: issues of problems that we have and concerns that we have... [LB458]

SPEAKER FLOOD: One minute. [LB458]

SENATOR HARMS: Thank you, Mr. President...just with our community-based programs. That still hasn't been answered. We're going to move all these people from Beatrice into community-based programs. And you know what, folks? I'm not convinced that there's a program there yet. I haven't been shown that we have enough doctors, that we have enough nurses, that we have enough social workers, that we have enough people to honestly take care of these people. Yet we have a waiting list of, what, 1,200 or 1,300 people who need help? And we'd like to move that down to at least stop the bleeding at 200 and try to place 200. Can we place that 200 in a place that we know they're going to be safe and that we have the services? And I also don't think they ought to be just placed into nursing homes. I think they ought to be placed in a system that people are trained to help them and to take care of them. And to me, that's what this issue is about. Just give us a plan so the Appropriations Committee can do their work,... [LB458]

SPEAKER FLOOD: Time. [LB458]

SENATOR HARMS: ...and then we'll come back with you. Thank you, Mr. President. [LB458]

SPEAKER FLOOD: Thank you, Senator Harms. Senator Mello, followed by Senators Nantkes, Wightman, Dubas, Cornett, Wallman, Gay, Karpisek, Fulton, and Friend. Senator Mello. [LB458]

SENATOR MELLO: Thank you, Mr. President. I don't want to belabor any of the points that my colleagues on the Appropriations Committee, that Senator Nordquist and Senator Harms made. But I guess it kind of dovetails a little bit off of what Senator

Floor Debate  
April 07, 2009

---

Friend mentioned this morning, which is we're in some very unique fiscal times and we are in some very unique economic challenges. And my perception, as an Appropriations Committee member right now, that we have to ask some very difficult questions of our state agencies and our state programs: questions that revolve around performance, questions that revolve around what value are taxpayers getting for the services that you're providing, and more importantly though, with an increase of General Funds that we're seeing that's been requested for Beatrice, where actually are those dollars going and how is that going to rectify the problem. So with that, I think Senator Harms was starting down a path that I'd kind of just want to wrap-up on, which really focused on what else does this increase in funding for Beatrice really do and how does that increase of the \$30 million-plus affect community-based services. Senator Lathrop, Senator Karpisek, Senator Hadley brought bills in dealing with developmental disabilities, the needs for increasing provider rates, funding for cutting down the waiting list. Those are all issues that are going to be impacted by what we do at Beatrice, and ultimately we don't know what we can do at Beatrice right now because we don't have the information. I think from last night's thoughtful and in-depth conversations we had in Appropriations Committee, that Senator Lathrop, I believe someone from HHS, and possibly the Governor's Office will be sitting down and talking with the Appropriations Committee more at length about what these plans are. But I guess the point that I would like to make, more than anything else, is that we have to ask these questions as a body, as individual senators--whether we represent south Omaha, Lincoln, Elkhorn, Scottsbluff, North Platte, South Sioux City--we all have to ask these questions about Beatrice, because it's a statewide issue. It's something that as a body we have to look to address. It's something as a body we have to ask the difficult questions of how we're going to rectify the situations at Beatrice and how we're going to help create a culture change that will help us meet the benchmarks we have to, to actually get our federal funding back, depending upon the decision from the arbitration at Beatrice. So with that, I'd like to thank Senator Lathrop for his leadership on the Special Investigative Committee, and Senator Harms, yesterday, for shedding light in regards to the issues that we have to look at in regards to dealing with the situation at Beatrice. And it's my hope that not just the Appropriations Committee, but all members of the Legislature will start to ask these difficult questions in regard to this very serious issue that's plaguing our state. Thank you, Mr. President. [LB458]

SPEAKER FLOOD: Thank you, Senator Mello. Senator Nantkes, you are recognized. [LB458]

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. I rise to echo some of the dialogue and concerns that have been brought forward by members of the Appropriations Committee and members of the special Beatrice committee this morning. I want to make two quick points in addition to what's already been said. One is in terms of process and one is in terms of questions about partisanship. In terms of process, the Legislature, the people's branch, is really given one power, and that's

Floor Debate  
April 07, 2009

---

traditionally referred to as "the power of the purse" which is designated to the legislative branch through our constitutional separation of powers. The power of the purse can be used positively by rewarding programs and rewarding funding to those agencies and programs that meet certain benchmarks and improve the lives of our citizenry, or it can be used in a negative aspect by removing funding for underperforming departments or programs or even eliminating that. The power of the purse plays a critical role in the relationship that exists amongst the executive and the legislative branch and is a historic tool by which the legislative branch can exert limits on existing actions within the context of executive power. How we really utilize that in the Nebraska Legislature is, first, through the Appropriations Committee, and then fully exercised by this body as a whole, in terms of setting those priority and funding decisions and directions to different programs and agencies under the operation of the executive branch. In order to fully utilize that power and to let the people's voice be heard, we have to be very serious about all of the options that are on the table. I think, to be clear...a few things. One, I spent a great deal of time last week with family members who have displaced adult children with developmental disabilities in a variety of different facilities across the state. They were moved from BSDC because they were qualified as medically fragile. And they're desperate; they're desperate for our help. They are desperate for this body to inject itself and to take ownership and to take leadership on these issues. The way that we can speak on behalf of these families and the vulnerable citizens who cannot speak for themselves is by utilizing the powers granted to us within our authority to say, we want you to succeed, we want you to improve people's lives, but we cannot issue you a blank check to do so when the track record has demonstrated a complete neglect, abuse, or disinterest in these people and these families. And in order to turn that tide, we have to look at what we have available to us. And I think without having clear plans, true dialogue, and benchmarks in place for these families, these citizens, and this Legislature, we have to be very careful about how we proceed. We have to ensure that there is critical direction given to the executive branch in terms of administering these programs. We have serious and diverse challenges within the context of developmental disabilities, as you all well know. We have existing populations at BSDC. We have existing folks, hundreds of families on the developmental disabilities waiting list, and we're also trying to figure out how to deal and how to pay for... [LB458]

SPEAKER FLOOD: One minute. [LB458]

SENATOR NANTKES: ...those medically fragile citizens who have been moved to hospitals and maybe nursing homes. Those are all short-term immediate needs. Then in terms of the long-term plans to create appropriate community-based programs to serve those developmentally disabled Nebraskans, we're looking at almost 30 months down the road before any of those are really ready to go. So while that is a good step in the right direction, we have emergency needs that exist now: exigent needs. We have short-term needs that exist that we have to address, and then we have this final long-term piece. We have a lot of moving parts. There's a lot of questions and concerns

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

Floor Debate  
April 07, 2009

---

that exist amongst the community, and it is our responsibility as state legislators to use our powers to leverage that kind of critical thought and planning on behalf of the department and on behalf of the citizenry who is crying out for this kind of leadership. Thank you, Mr. President. [LB458]

SPEAKER FLOOD: Thank you, Senator Nantkes. Senator Wightman, you are recognized. [LB458]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. I rise as a member of the Appropriations Committee but as one who has not served on the BSDC committee. But it is a real problem for the Appropriations Committee, there's no question of that. When we're being asked to fund \$32 million worth of programs and with no plan as to how that money is being spent, it's very difficult for the Appropriations Committee to sit as a committee and determine priorities, when we have no plans as to how a particular requested expenditure is going to be used by the state, and so I do think it's important that we obtain information as to a plan as to how that money would be spent. We're being asked to fund transfer of many of the patients out of BSDC to community-based providers. There's the statement being made that the money will follow the patient. But again, I don't think we even know how much it's going to cost per patient, where they're going to be placed, or whether, in many instances, those community-based providers will be in a position to provide the services that are needed. So as we as an Appropriations Committee are faced with millions of dollars in appropriation requests, millions of dollars in appropriation bills and agency requests, that total in the multimillions of dollars, we also have to consider the fact that we have drastically shrinking revenues this year. We're going to have bills this morning that talk about tax exemptions and credits that will shrink those revenues even more, so we've got to determine priorities as a Appropriations Committee, and those priorities have to be based upon the needs of the citizens of the state and, in some instances perhaps, expected returns on the appropriation dollars. So I certainly agree with Senator Lathrop that we do need to get a plan as to how this money is going to be spent. At that same time, it's going to be very difficult for the Appropriations Committee not to provide some appropriation for this, because we know the need is going to be there, so it's a little difficult not to appropriate anything even if there's not a plan. But I don't see how we're going to come forward and, as Appropriations Committee, suggest that this body provide for those expenses, when we don't even know what the expenses are going to be. We've got to have a plan in place for the money that's requested and we don't have it now, so I certainly am in agreement that we do need a plan. With that, I would yield any additional time that I may have to Senator Lathrop if he wants to use it. [LB458]

SPEAKER FLOOD: Thank you, Senator Wightman. Senator Lathrop, you've been yielded time, is that my understanding? [LB458]

SENATOR LATHROP: Yes. [LB458]

Floor Debate  
April 07, 2009

---

SPEAKER FLOOD: You have 1 minute 30 seconds. [LB458]

SENATOR LATHROP: Okay. Thank you, Mr. President, and thank you, Senator Wightman. I do agree with Senator Harms in that this is not intended to be an issue that splits the body. I don't think it needs to. I would be surprised if everyone in the body didn't agree with what's being said here today, which is when it comes to making an appropriation of this consequence, \$32 million, that we ought to be provided with the detail. The concerning part is that the request for that detail has been made--and not forthcoming. I believe I'm going to wait until my next opportunity to speak to address other matters, but I did want to agree with Senator Harms, that ultimately--and Senator Nantkes in the sense that she said, ultimately what we don't get to vote on the Governor's plan. BSDC is the executive branch's institution to run. We don't get to vote on how that's done. We don't get to vote on the plan. But ultimately, as the legislative branch, our power with respect to that plan is whether we're going to fund it. And before we can fund it, we need the detail, and I think that's what this discussion is correctly pointing out. Thank you. [LB458]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Dubas. [LB458]

SENATOR DUBAS: Thank you, Mr. Speaker, members of the body. We have the executive branch, the judicial branch, and the legislative branch: each separate branches with their specific duties and responsibilities. And while they're separate, they are equal. Our specific duties, our responsibilities, are to set the budget. We control the money. We determine how taxpayer dollars are spent. So we not only have a right to ask for information, we have an obligation to not just ask for that information but to make sure that we get it, because the buck stops here. We are the visible line of government. We are the ones that go back to our district and speak to our constituents about what's happening in Lincoln. We are the ones that have to justify how those dollars are spent. And I don't have a problem talking about how dollars are spent, if I can justify it: if I can say, with a great deal of confidence, this is the decision that was made and it was based on these facts. I can't go back and say we're going to spend \$32 million, um-m-m, but I'm just not quite sure how those dollars are going to be spent. I couldn't in good conscience say that to my constituents. We're spending their money. They sent us down here with certain expectations, to make sure that those dollars are going to the best place that they can go. Yes, we have some really tough decisions to make ahead of us. We have limited resources, and so it's even more critical now that we make sure that those dollars are being spent in the most prudent fashion. It should not be an absurd request when we go to an agency and ask them for information. I don't care if it's about Beatrice, if it's about water issues, if it's about energy issues, if it's about...any issue, we should be able to go to an agency and say: You know, we've got a bill; we've got a decision that we have to make; can you help us out here with some information? I don't understand why this has to be or why it appears to be such an

Floor Debate  
April 07, 2009

---

adversarial relationship. In the end I would hope that we all want the same thing. I would hope that we all want services that get to the people that they're supposed to get to; that the dollars are spent in the most efficient and effective manner; and that we're taking care of the needs of the citizens of Nebraska, whether it's those who are most vulnerable, all the way up the line. I requested specific information during the safe haven debate. I wanted to know about the kids who were dropped off at the hospitals. I understand privacy issues. I wasn't asking them to breach any type of privacy issues. I was just wanting to know: Were these kids in the system? What services were they receiving?--I mean, information that you would have just naturally expected would have been given to us without even asking. We called a Special Session. We were dealing with how many kids were dropped off at the hospital. And yet to get that kind of information, I had to ask, and then I had to ask again, and then I sent a letter very specifically outlining the type of information that I wanted. And then there was a follow-up about, well, we're not quite sure what you're asking here. You know, to me this was pretty simple, pretty straightforward. We're making decisions about children; it's going to involve dollars. Can you help us out here with some information? So I appreciate Senator Lathrop bringing this issue to our attention. We must remember--we must remember--we are an equal branch of government. We have the right and, again, the obligation to request this information. [LB458]

SPEAKER FLOOD: One minute. [LB458]

SENATOR DUBAS: We work together. I know sometimes I have a little bit of a Pollyanna attitude towards things, but in the end we do work together. We all want the same thing. Let's stop being at loggerheads. Let's sit down at the table and let's make the right things happen for the citizens of Nebraska. Thank you. [LB458]

SPEAKER FLOOD: Thank you, Senator Dubas. Senator Cornett, you are recognized. [LB458]

SENATOR CORNETT: Thank you, Mr. Speaker and members of the body. Senator Dubas' comments are a good segue into what I wanted to touch upon. We are (1) losing institutional knowledge because of term limits. There are very few senators here and there will be very few in two years or four years that were here when this started. When I first started in the Legislature, I think the second year we started getting reports about Beatrice and the conditions at Beatrice. Then we kept hearing it was getting better and we'd get reports that it was getting better. As time has progressed, over five years, things have not gotten better. When Senator Dubas talks about needing information, that we have to base our judgments on the information we receive because we owe that to the taxpayers and the people in our district and the most needy...a number of you weren't here last year when in Business and Labor there was a bill regarding mandatory overtime and the amount that was being accrued at Beatrice and other state facilities. As Chair of Business and Labor, I requested the number of mandatory hours worked at

Floor Debate  
April 07, 2009

---

state facilities and the number of mandatory hours specifically worked at Beatrice. Because in the reports by the federal government, one of the things that was cited repeatedly was the number of hours these people were being forced to work, the vacations denied, leave denied, people quitting because they couldn't get the day off for their children's graduation from high school; being told, after working a 12-hour shift, they have to work another 12 or lose their jobs. I requested this information. And I got a nice little packet and I looked at it, and I was like, oh, the overtime isn't as bad as I thought it was. I get up on the floor of the Legislature and I say, you know, the hours aren't that bad. I tell my committee and I provide my committee with those hours. And I don't think these hours are that bad; they're not good but they're not that bad. And then I find out that the hours were incorrect. The information I had been provided was inaccurate. It was false. It was nowhere near an actual reflection of what the employees were being required to work. So while we sit here and we ask for information and we ask for facts, we need to be asking for the correct facts. We cannot continue down the line we have of being given information, basing our votes, basing our allocation of funds and basing our trust upon information that is incorrect. With that, I yield the remainder of my time to Senator Lathrop. [LB458]

SPEAKER FLOOD: Senator Lathrop, you have 1 minute 50 seconds. [LB458]

SENATOR LATHROP: Thank you, Mr. President. And perhaps I can begin the remarks I intended to make next time I had an opportunity to speak, and that would be to make this observation: There are really two facets to this issue that we're talking about this morning. One is the appropriations process and respecting the appropriations process and the Legislature's role in that process; and the responsibility of one branch of government to work with another in the appropriations process. And that's certainly important, and Senator Harms and Mello and others from Appropriations have properly expressed their concern for the need for detail. My concern isn't necessarily with that process but with a second dimension to this, and that is, where are we at with respect to developmental disability services, getting out of the quagmire down at BSDC, and what does the failure to provide this information tell us about how we're doing about moving down the road to a place where we can get BSDC recertified and otherwise provide services to families with developmentally disabled loved ones. When I served on the BSDC Committee with Senator Harms and Cornett and Adams and others, we saw...we took an in-depth look at the way this...the problems down at BSDC and how the state is doing delivering these services to families in the communities at BSDC, in private ICF/MRs, and also the people who aren't getting services, the people on the waiting list. We issued a report. I hope you've had an opportunity to read it, I really do, and would encourage you to read that. [LB458]

SPEAKER FLOOD: Time. [LB458]

SENATOR LATHROP: Did you say time? [LB458]

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

Floor Debate  
April 07, 2009

---

SPEAKER FLOOD: Yes, I did. Thank you, Senator Lathrop. Senator Wallman. [LB458]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. And I, too, want to thank Speaker Flood for setting up this commission and the rest of my members. And I would like to ask Senator Harms a question, please. [LB458]

SPEAKER FLOOD: Senator Harms, will you yield to a question from Senator Wallman? [LB458]

SENATOR HARMS: Yes, I will. [LB458]

SENATOR WALLMAN: Thank you, Senator Harms. Now part of this budget, \$32 million, is that if we lose some Medicaid funding from the federal government? Is that replaces that? [LB458]

SENATOR HARMS: No, it's not. We don't...Senator, we're just not sure what that \$32 million is going to be spent for. And that's really what the issue is: We don't know what it is going to be spent for. It's as though we were to give them \$30-some million without any justification. And that's really all we're asking for, is justification, plan, and how does it fit in to their long-range plan for Beatrice. It has nothing to do with that. That's a complete, separate, independent issue, and that's probably \$60 million. [LB458]

SENATOR WALLMAN: Thank you, Senator. I am a proud member of District 30, BSDC, Homestead National Monument. It's a nice area. And also HHS. And we've been dealing with this problem. We've been told it's management, management, management. This just doesn't happen overnight. And I got a letter from my daughter here, and it says, Dr. Tom Pomeranz, whom we could have heard. She runs a community-based service, and she spent \$5,000 for a couple of days for staff training, staff training, staff training. It's about management, training. And then I heard this magic number, get it down to 200. It keeps ratcheting down. Are we going to get so expensive so we can't fund it? We keep thinking of this as a cost. And folks, for a lot of people it's economic development. They have a job. They pay taxes. They take care of these people. They're caring people. They're in our communities. They have kids in school. And it's a tough job, and then you stick in mandatory overtime. That's a tough job. These are residents and parents who are very, very concerned about what's going to happen to their child or adult in BSDC, so I am too. I turn the rest of my time over to Senator Lathrop. [LB458]

SPEAKER FLOOD: Senator Lathrop you have 2 minutes 6 seconds. [LB458]

SENATOR LATHROP: Thank you. And thank you, Senator Wallman. As I was suggesting or saying before my time ran out, my concern is, because I served on the

Floor Debate  
April 07, 2009

---

BSDC Committee, what this tells us about where we're going in relationship to dealing with issues regarding developmental disabilities and, in particular, BSDC. I do have concerns. Last week the Governor put a plan out, and there are aspects of that plan I think are well advised. He wants to build some ICF/MRs. He wants to upgrade the OTS program and the ITS program. Those are two programs at BSDC offered to aid community-based providers. I think that's good. That's a good direction for us to go, but that doesn't tell us the whole story. That doesn't tell us where the money is spent. We don't know if they're putting a spade in the ground and starting those projects. But more importantly...more importantly, in addition to not getting answers here, I've had other concerns that relate to the relationship between myself or the committee, and Mr. Wyvill, since we put the LR283 report out. We've requested information on, for example, the termination of the medical director last week. We've asked for information regarding certain events that are taking place down at BSDC, and told that they are the subject of police investigation, so we're not getting information. The relationship between this committee and Mr. Wyvill is deteriorating. And this not providing detail regarding the budget is only one more example. We are having...there are things that are going on down at BSDC that we need to know about. The death of Olivia Manes, for example. [LB458]

SPEAKER FLOOD: Time, Senator. Senator Gay, you are recognized. [LB458]

SENATOR GAY: Thank you, Mr. President. I'd just like to take the opportunity to commend the Appropriations Committee for asking these questions on spending at BSDC, and I'd be extremely worried if they didn't ask those questions, quite honestly. But I just wanted to take a little bit of time since we're discussing this issue, to talk about the Beatrice State Development Committee and the opportunities I think we have to help define a long-term vision for delivering developmental disability services and create a policy that I think could stretch into the decades beyond after we're here. There's a real opportunity. I spoke with Senator Lathrop and his staff about this a little bit, about some of the breaking down of some of the responsibilities of the committee. You're hearing a lot about Beatrice right now, and rightfully you should be because it's a major, major issue--has to be dealt with. But also I did want to talk a little bit about community-based services, how we could break this committee up. There's some great members. And Senator Lathrop is doing an admirable job as Chairman and Senator Harms as Vice Chairman, and we have other good members, as you've heard. Many of the members...I'm on there, and Senator Adams as well, and Senator Wallman, and you've heard some of the others that are on there...Senator Stuthman, as I look around the room. But everybody on there is doing a fine job. But I think what we need to do a little bit is break this thing down a little bit, because the issue is so big on the developmental disability policy of community-based. We have a Department of Justice study. We have regulations that are put on providers every day that need to be looked at, and are being looked at, the Beatrice facility and its reorganization and its future, where they're going with that. I think that's number one, because that's an immediate

Floor Debate  
April 07, 2009

---

problem that we need to fix. We have a Department of Justice study going on that needs to be completed and to make sure we abide by that. So there's five or six things in motion here that I think we need to take as a committee and break this up. Or the committee will meet for...I think it's extended for another two years or whatever, but we're in the heat of battle right now. We've got things going on. We've got a budget. And again, I commend the Appropriations Committee for asking those tough questions. I certainly would like to know community-based services. We know what's happening there with the Mosaic contract that went through. I'm very favorable. And Senator Wallman's bill, LB511, we just passed yesterday to Final Reading, is a huge step in the right direction. And Senator Lathrop had mentioned some of the other things that are going on that are very positive. Again, I don't want to diminish what needs to be done at Beatrice, because it's major, but I do believe that these moving parts need to all fit together somehow. And we need to look at Beatrice as a management issue, a funding issue, and a policy issue, but we can't ignore these other parts of the puzzle, because if we do, we're going to have a crisis going on somewhere else, quite honestly. I do believe we're going in the right direction on some of the community-based services in those opportunities, but anyway I just wanted to be on record. I've talked to--again, this is not a surprise--I've talked to Senator Lathrop at length about this and his staff member, Doug Koebernick, and we're working on, hopefully, a policy to do this. But if we break this thing up a little bit and get expertise where it could be delivered, then I just--kind as an example, Senator Harms with management issues and some of those things--and just break this thing down, I think we're going to be further ahead. There's a lot of work to be done yet this summer. Well, before we even get to summer there's work to be done every day on this, and it is being done. But I'm looking forward...I think we can do a lot of good things in the summer and coming forward. I was excited to meet the new interim director down there; Claire Mahon is doing a fine job. Her energy is... [LB458]

SPEAKER FLOOD: One minute. [LB458]

SENATOR GAY: ...is commendable, so I'm excited about that. But I do believe there's a great opportunity here that we need to get to, and say, how can we make a system, a developmental disability delivery system that will last into the next 10, 20 years. Because not only do we have this problem going on now at BSDC, but as we get more aging population, and parents maybe can no longer take care of their children--and these are very vulnerable people--that we're going to need a fine facility--or maybe another. I don't know. But we're going to need community-based services. We're going to need a lot of different things. Because the aging population and the more people that come in, and even the waiting list that we want to talk about, we need to do this in incremental steps but also working together on different projects at the same time. So I just wanted to make sure we don't ignore other things in the community, and the policy, and make sure we focus on that. [LB458]

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

Floor Debate  
April 07, 2009

---

SPEAKER FLOOD: Time. [LB458]

SENATOR GAY: Thank you. [LB458]

SPEAKER FLOOD: Thank you, Senator Gay. Senator Karpisek, you are recognized. [LB458]

SENATOR KARPISEK: Thank you, Mr. President. I just want to quickly stand and say that I think...I know that the task force that we have at BSDC has done a great job. They've uncovered a lot of things and we have a lot of answers going forward. I think that this needs to be a cooperation. I am not...don't want to point fingers at anyone, but things are not working the way they're going. We need to work on this together. No one needs to take blame. No one needs to take the good part that goes along with it either. But we need to sit down from now forward and work this thing out. It's not working. Senator Friend was very right when he said we have a lot of bills coming up with A bills, and especially in this whole arena. I have utmost confidence that Senator Gay has sat down and is taking all of those bills and making one bill that we can all agree on, on it. I think we have very competent people on that committee, on the Health and Human Services, that want to get something done. There is no reason that this has to be adversarial, but we do need to do something. I don't think we're heading in the right path. I hope we can all sit down and work this out. People need it; people are watching. We owe it to these people and we owe it to the state just to sit down and make it the best we can. The Appropriations Committee has a huge job ahead of them. I think they'll work through it; they have before. Again, we've got good leadership there. We've got good people there. I appreciate what everyone is doing. I think everyone in this body is working very hard to find a solution and I hope that we can just all sit down and work it out. Not getting information doesn't let us do our job. Our job is to do the state's work, and we need the information so we don't make the wrong decisions. Again, we have great people working on these things. They're very committed. Senator Lathrop and Senator Gay are two of the most committed people that I've met, especially on this issue. They'll do the right thing. But we just need to move forward, and it's a matter of emergency. We can't wait any longer. Thank you, Mr. President. [LB458]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Fulton, you are recognized. [LB458]

SENATOR FULTON: Thank you, Mr. President and members of the body. We're wrapping up here, so I'm going to be brief. I'm not going to rehash a lot of what has already been said. Just simply that hopefully we can get some answers to Director Wyvill. We do need to have some more level of detail. As we're working through the budget, you can well imagine it's not rocket science. You take as much information as you can, you pick your priorities among the nine people that are in our committee, and then we have to come out with a recommendation to you, the floor. As we are thinking

Floor Debate  
April 07, 2009

---

through priorities, we have to have as much detail as what we can. And sometimes, admittedly, it's information overload. There's an awful lot of information that has to be consumed within a \$7 billion biennial budget. So we're going to have to make decisions that will make a number of people unhappy, but in the end we're going to have to make decisions which we believe best represent the interests of Nebraska. Now from there I'm going to segue into something that I hope my colleagues are listening to. As we on the Appropriations Committee are making decisions with specificity, you out here will also have to begin making decisions that have to do with finances; maybe not at the level of specificity that we are in the committee, but certainly overall, generally. In the end, the numbers have to add up. That which comes into the state must equal that which is planned to be spent by the state, because constitutionally we have a balanced budget. We don't have the luxury of a credit card, thankfully, here in Nebraska. So Senator Friend touched on this. I really hope that colleagues take this seriously. As we vote bills forward, those bills that have an A bill, those bills that have a fiscal impact, they don't automatically get passed. They will accumulate at the end of our process. And when we decide what our budget is going to be as a body, then we will learn that there will be a number of those A bills that will not get funded. So as the Appropriations Committee is choosing and sorting through its priorities, out here the Legislature as a broader body should also be choosing your priorities and begin talking with other senators to find some cohesion toward given priorities. That's what's going to be facing us in the upcoming weeks. So with that, thank you, Mr. President. [LB458]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator Howard, you are recognized. [LB458]

SENATOR HOWARD: Thank you, Mr. President. Senator Cornett, Senator Dubas, Senator Nantkes, and those who have spoken before me are all absolutely correct. I agree this comes down to a question of trust. Last session, time and time again I attended Health Committee meetings with the CEO, and heard that the problems were being addressed and the changes were being made and improvements were being put in place. The hard questions were never asked and the staff concerns were minimized. The problems of Beatrice did not occur overnight. They are longstanding and were alternatively ignored or fixed, quote, with band-aid approaches that mainly fell on the shoulders of the staff. We are now in a crisis, both financial and human. I too have spent a great deal of time with parents and family members of those living in Beatrice: parents who placed their young children in Beatrice and who are now elderly and afraid for the future of these now adult children. They trusted the state through the Beatrice facility to meet the needs of the child they could not care for. They trusted the state of Nebraska to do what they were told it would do to care, with safety and compassion, for the child they loved. We owe them that. We have that obligation. Thank you, Mr. President. [LB458]

SPEAKER FLOOD: Thank you, Senator Howard. Senator Lathrop, you were next.

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

Floor Debate  
April 07, 2009

---

You're the last light. Is this your closing? [LB458]

SENATOR LATHROP: It is. Thank you, Mr. President. Just a few comments. I appreciate the discussion this morning. It is an expression from the legislative branch of the importance of providing the Appropriations Committee with the information they need to make intelligent decisions with respect to a significant amount of money in the budget: \$32 million. And I appreciate the remarks of those on Appropriations and other members of the Legislature. I was trying, with the fragments I was offered by other senators, to express my concerns about another dimension to this issue, and that is whether or not what we have seen so far this year since we've been down here, demonstrates that we have a plan and the right leadership in place to move us forward. I think the fact that we can't get information, haven't been able to get information to this point in time...Senator Nordquist's letter went out two weeks ago asking for detail; Senator Mello asked for detail a week ago; and I was promised detail about the \$32 million, four days ago. And so what does that tell us about the leadership and whether or not we're moving in the right direction?, which is a different facet to this question than just whether the Appropriations Committee is getting the information they need. My concern has, and the concern of the committee...you will recall that they gave a no-confidence vote to the leadership, those people. Mr. Wyvill is still in place, director of developmental disabilities. And is this...you know, ultimately, I guess we got to ask this question: Are we not getting the information because he doesn't have it, because he can't provide it, or he doesn't...he's not capable of putting a budget together to spend \$32 million. I would encourage you to watch this issue closely, because the committee has had grave concerns about the leadership, including Mr. Wyvill, who is the person that appeared before the Appropriations Committee with no answers even though he was told to bring them. And he's the person that promised me the detail on the \$32 million that they want to spend, and he hasn't provided it. If we are to move from a place where we are spending this kind of money, \$32 million to fix the place and \$25 million a year of General Funds that should be federal government money, we'd better make sure that we have a plan in place and we have the right person at the tiller or we're going to have problems. And it isn't going to improve, and we're going to be three years of financing this ourselves instead of two. Anyway, that's the other facet to this problem. It's one that I think we must keep an eye on. I hope and expect with this dialogue this morning on the floor, that we will see detail sufficient to satisfy the Appropriations Committee and the rest of us. That we have a plan; that the plan makes sense; and that it deserves the funding that is being requested. Thank you. And with that, I'd pull the bracket motion. [LB458]

SPEAKER FLOOD: The bracket motion is withdrawn. Mr. Clerk. [LB458]

CLERK: I have nothing further on the bill, Mr. President. [LB458]

CLERK: Senator Nordquist for a motion. [LB458]

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

Floor Debate  
April 07, 2009

---

SENATOR NORDQUIST: Mr. President, I move LB458 to E&R for engrossing. [LB458]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye; all those opposed say nay. LB458 advances to E&R for engrossing. Mr. Clerk. [LB458]

CLERK: Mr. President, LB206. Senator Nordquist, E&R amendments first of all. (ER8043, Legislative Journal page 865.) [LB206]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB206]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB206. [LB206]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor of adopting the E&R amendments say aye. Those opposed say nay. The E&R amendments are adopted. [LB206]

CLERK: Senator Lautenbaugh would move to amend with AM997. (Legislative Journal pages 958-960.) [LB206]

SPEAKER FLOOD: Senator Lautenbaugh, you're recognized to open on AM997. [LB206]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I'm happy to rise in support of and introduce AM997. Let me explain where this comes from, and I'll represent to you that I'm proceeding on this with the support of Senator Nantkes and I appreciate her kind offer of support on this. This is a bill that I brought this session, in essence, that is in Judiciary Committee. It provides for certain rebuttable presumptions to arise for firefighters and rescue personnel for illnesses that can arise within the line of duty, certain infectious diseases--which I'm scanning through it again to make sure I'm not skipping anything. Basically there's a current presumption in the law, if you will, that deals with hypertension and some heart disease arising out of the course and scope of the employment. And there's a presumption that says if you come down with this and you're in this profession: fine. Also same thing for some cancers that are covered. If there is an exposure to a carcinogen on the job that is known to cause this kind of cancer, be an agent causing cancer, what this bill does is it adds the presumption that certain infectious diseases, such as tuberculosis, meningitis, methicillin-resistant Staph, those are added to a rebuttable presumption of being work-related, as well, and covered under the disability and death benefits. That makes it, you know, a natural component or complement to this bill that Senator Nantkes brought. And I'm happy to try to add it to this and get this through this session as well. The thing to keep in mind is this does not say that all of these particular things will

Floor Debate  
April 07, 2009

---

necessarily be covered. It just creates a rebuttable presumption, like we already have for certain cancers. There was a fiscal note on here because the original bill contained sort of a five-year look back, if you will, based upon the number of years of service. You could, if you came down with one of these within five years of service, the plan could still be liable. The city could still be liable, and that was taken out after one of the cities objected to this. So I think it's a very clean proposal; a very necessary thing to add, a very necessary protection for our first responders, if you will, and I would ask you to look favorably upon the amendment. [LB206]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. (Visitors introduced.) Senator Nantkes, you're recognized. [LB206]

SENATOR NANTKES: Thank you, Mr. President. Colleagues, I want to make the record quite clear that I am so happy to be working with Senator Lautenbaugh in regards to this issue. I think this is a prime example of not only his statesmanship on a personal level, but really a good example of how this body works at its best in terms of from each day to each issue putting aside differences that may or may not exist, and focusing on common ground, focusing on sound policy to improve the lives of our constituents and those that we are here to serve. I want to thank Senator Lautenbaugh for bringing the legislation, shepherding it through the Judiciary Committee; and the Judiciary Committee, for working diligently to address the concerns that were posted at the committee hearing and put forward this commonsense piece of legislation which directly does relate to the day-to-day lives and needs of our first responders. So with that, Mr. President, thank you. [LB206]

SPEAKER FLOOD: Thank you, Senator Nantkes. Senator Price, you're recognized. [LB206]

SENATOR PRICE: Thank you, Mr. President and members of the body. I was wondering if Senator Lautenbaugh would yield to a question. [LB206]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a question from Senator Price? [LB206]

SENATOR LAUTENBAUGH: Yes, I will. [LB206]

SENATOR PRICE: Senator Lautenbaugh, in this early portion of your amendment you talk about hypertension. And my question also is the term that you're using there, the presumption term. What do you mean by that? What does that legally mean that we're saying here? [LB206]

SENATOR LAUTENBAUGH: Well, legally, very specifically, presumption controls...well, suggests who has the burden, whether or not you've met your burden of evidence. If

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

Floor Debate  
April 07, 2009

---

there's a presumption...or burden of proof, I'm sorry...if there's a presumption that something is caused, then it's up to, in this case the public entity, to prove that it wasn't caused...so the presumption establishes the minimal case for this being work-related. It then becomes the other party's obligation to rebut that presumption with competent evidence. [LB206]

SENATOR PRICE: Thank you very much, Senator Lautenbaugh. Let me go one step further. And please, please be assured this is not a tongue-in-cheek or a jab at prior legislation of what we're doing, but I really do question hypertension as result of the stressors of work. And I'm not a doctor and I wouldn't want to talk to how hypertension, the physiological occurrence of hypertension as a result of external stressors and stressful events versus lifestyle choices, particularly smoking. And if we have members or people who are smoking or any of the others...and I truly...honestly, I don't mean that just...I just want to be sure that when we say that a first responder has a hypertension issue, that we don't lump it all onto the job. And I want to make sure that we still have the ability to say...and like you said before, that they had a physical before they came on to duty and they didn't have hypertension at that time. I understand that. But I wonder what lifestyle concerns can be weighted, and would there be an ability to disapprove that burden I guess is the question. [LB206]

SENATOR LAUTENBAUGH: Thank you, Senator. And let me say at the outset, smoking is a vile habit and I don't know why anyone would do it. (Laughter) But leaving that aside, once again we're dealing with just a presumption; not a conclusion. So yes, you could introduce evidence that would say, well, this wasn't caused by that; it was caused by some other factor, other stressors, perhaps unhealthy lifestyle. And the thing to keep in mind is that there's already the presumption for hypertension. The only way this amendment affects that is it adds in that if you have the death or disability within three months of leaving work, leaving the job, it's still covered. Otherwise it's already covered, if you're still on the job, for hypertension. [LB206]

SENATOR PRICE: Thank you very much, Senator Lathrop (sic). And I do want the members of the body to know and everybody else to know, I do rise in strong support of this. I believe this is the thing to do. And I did remember, when talking with Senator Nantkes before, that there was a concern at times, that stressful events don't play themselves out within the hour of which that event occurred; sometimes it takes up to 24 hours. And again, I do stand in support of the amendment and the underlying bill. Thank you, Mr. President. [LB206]

SPEAKER FLOOD: Thank you, Senator Price. Senator Gay, you are recognized. [LB206]

SENATOR GAY: Thank you, Mr. President. Would Senator Lautenbaugh yield to a few questions? [LB206]

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

Floor Debate  
April 07, 2009

---

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a few questions from Senator Gay? [LB206]

SENATOR LAUTENBAUGH: Yes, I will. [LB206]

SENATOR GAY: Thank you, Senator Lautenbaugh. Following up with what Senator Price was discussing...and I apologize if you've brought this up. I was out and I just wanted to catch...on page 1 of your amendment, it says the presumption, again "as a result of hypertension or heart or respiratory defects." So three months after such separation of service, you have a heart attack, let's say. You're then covered under this--presumed that it was because of line of duty--policy. [LB206]

SENATOR LAUTENBAUGH: Yeah, it's...what that section does is, there's already a presumption if you're still on the job. This just extends the presumption for three months. [LB206]

SENATOR GAY: And why are we doing this? [LB206]

SENATOR LAUTENBAUGH: Well, there were some specific examples of circumstances when that arose, where a person was diagnosed just after leaving, and whatnot, and while the evidence was there, that it was probably job-related. And the way hypertension and heart disease seems to work, it's not something that you come up with overnight. But because we had the bright line of, oh, they're off the job, no more; this just moves it ahead three months. [LB206]

SENATOR GAY: Okay. And then again, then, this earlier--and I'm just coming back to the bill in general--there's a federal benefits you have to qualify for in order to receive. You go there first, and they say, yeah, you're a candidate for these benefits. And then if you don't get those, you come to the state, and the state then gives these benefits to the dependents. But I guess on this, is this covered in the federal program? Would this be covered if this happened? Does the federal program cover this? [LB206]

SENATOR LAUTENBAUGH: The best answer I can give is, I don't believe so, as I stand here. [LB206]

SENATOR GAY: So we're really getting away a little bit from the federal program in adding this to our own. I'm a little concerned on that, because in the General File it was on the federal...based on the federal program if...and that was kind of our screen. And then we'd go, if you met that, I understood, then if you didn't receive all the benefits there you'd come back on the state, and that helped with the fiscal note. And I'm a supporter of the bill. I just feel this is the time to talk about these issues and get them on the record. But on another question, then on page 3 you talk about, is this for...this is for

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

Floor Debate  
April 07, 2009

---

volunteers and paid firefighters, the overall bill? Is it for volunteers, as well, right?  
[LB206]

SENATOR LAUTENBAUGH: No, it appears to apply to a paid fire department. [LB206]

SENATOR GAY: Okay. That's a question on line 7. It says the home rule charter. Can you explain that again, who suffers from...what those are...the meningitis? What are those, those different diseases? [LB206]

SENATOR LAUTENBAUGH: Well, it would basically...that amendment makes this apply to cities that also have home rule charters, basically. Off the top of my head, it would be the city of Omaha... [LB206]

SENATOR GAY: So the original bill didn't cover them? [LB206]

SENATOR LAUTENBAUGH: The existing... [LB206]

SENATOR GAY: Or this just makes this amendment follow the city of Omaha. [LB206]

SENATOR LAUTENBAUGH: This...when you say the original bill, are you referring to my bill or this amendment? [LB206]

SENATOR GAY: No, LB206. [LB206]

SENATOR LAUTENBAUGH: Oh. [LB206]

SENATOR GAY: LB206 covered Omaha, as well, I'm sure. But this...you're just making your amendment to be the same as the bill. [LB206]

SENATOR LAUTENBAUGH: Yes, the amendment is the same as my bill. And I think I probably did a poor job of answering your prior question. These don't really amend the same sections of law as...well, that's a poor way to put it. This isn't meant to change really what Senator Nantkes' bill does. So while you're asking if there's federal coverage for that, this really shouldn't impact that in any way. This is really separate in that regard. [LB206]

SENATOR GAY: Okay. And I support the...I've supported the LB206 on General File, as well, and it's the amendment I'm questioning. On page 3, line 16, it says, "such firefighter or firefighter-paramedic has engaged in the service of the fire department within ten years before the onset of the disease..."--and this is probably the prior diseases you mentioned--"shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for purposes of..." this section. So are you saying ten years prior? [LB206]

Floor Debate  
April 07, 2009

---

SENATOR LAUTENBAUGH: Well, that's one of the elements of the... [LB206]

SENATOR GAY: And this goes back ten years? [LB206]

SENATOR LAUTENBAUGH: I'm sorry? [LB206]

SENATOR GAY: Does this go back ten years to cover those other illnesses? [LB206]

SENATOR LAUTENBAUGH: No, that is the look back for when...part of the evidence of when you get the presumption of coverage. This isn't meant to look back ten years. The claim terminates within, still, three months of termination if you will. [LB206]

SENATOR GAY: Okay. Then I'm reading that...I guess if you could explain section...I guess it would be section (2) then, on this other... [LB206]

SPEAKER FLOOD: Time. [LB206]

SENATOR GAY: Thank you, Mr. President. [LB206]

SPEAKER FLOOD: Senator Lautenbaugh, you are next. [LB206]

SENATOR LAUTENBAUGH: I'll waive, Senator...Speaker. [LB206]

SPEAKER FLOOD: Senator Lautenbaugh waives his opportunity. Senator Gay, you're next. [LB206]

SENATOR GAY: Thank you, Mr. President. Senator Lautenbaugh, would you yield to a few more questions? [LB206]

SPEAKER FLOOD: Senator Lautenbaugh, would you yield to additional questions from Senator Gay? [LB206]

SENATOR LAUTENBAUGH: Yes, I will. [LB206]

SENATOR GAY: And you can take as much time as you want on this. On page 3, can you discuss about how that works? It would be...and I'm looking at, probably it would be section (2) where you talk about the different diseases on this...you talk about these blood-borne infectious diseases, TB, meningococcal meningitis, and all those. And then you go down to (b) and it talks about what I just talked about: within the ten years. Can you explain that and just--and I'm no lawyer--just in English, kind of what that means, to me? [LB206]

Floor Debate  
April 07, 2009

---

SENATOR LAUTENBAUGH: Yes, this provides the test for when the presumption would apply. And the first instance, part (a) says "such firefighter or paramedic has passed a physical examination upon entry in the service or..."--let's see, I'm skipping a little bit here--"...failed to reveal any evidence of blood-borne infectious disease," etcetera, etcetera, and "such firefighter or firefighter-paramedic has engaged in the service of the fire department within ten years before the onset." That establishes the presumption that you have been employed and that you were tested clean before you entered the employment. So then, once again, the claim has to come, as I read this, as it states: within 90 days of termination, as amended, or leaving the employment if you will. [LB206]

SENATOR GAY: Okay. So let me give you the scenario. I've got...I'm on the fire department for 20-some years--Omaha, we'll use--and I have...I get...I retire, and then three months afterwards I pass away because of one of these diseases: tuberculosis, meningitis, whatever it may be. I fit the 90 days. I was getting checkups probably every year up until then. As long as I was on the fire department ten years prior--and I'm a 20-year member but I've got ten years of service--then I'm covered...or my dependents would be covered then if I had one of those illnesses. Is that what you're saying? [LB206]

SENATOR LAUTENBAUGH: Yes. [LB206]

SENATOR GAY: Okay. If I had been only on five years though--same situation, I'm a volunteer firefighter in parts of Nebraska but I've only been five years, relatively a young guy, but I pass away. And within three months my dependents get this. But I've only been on five years. Now do I not get this benefit then? [LB206]

SENATOR LAUTENBAUGH: Actually the language is within ten years, so yeah I would say you would still be covered with that. [LB206]

SENATOR GAY: So, okay. So 12 years, if I had quit, then 11 years ago, then I'm not covered. [LB206]

SENATOR LAUTENBAUGH: Right. [LB206]

SENATOR GAY: Okay. But on hypertension though, if I were on...you've got to be on the force, obviously, and then you pass away because of hypertension. That's only three months' look back then. So this is a look back provision, is what you're saying. [LB206]

SENATOR LAUTENBAUGH: In some sense, but a very limited way, yeah. [LB206]

SENATOR GAY: Okay. And then...and then again, why is this put on there? What

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

Floor Debate  
April 07, 2009

---

case? I mean I can...this is a line of duty thing and now we're extending it to if you have a heart attack, but why is this put on here? [LB206]

SENATOR LAUTENBAUGH: Well, we aren't really extending it just to cases where you have a heart attack. That already exists. We're just saying...and that there's a three-month after termination of employment. We're adding the infectious diseases on here, too, simply because...well, that was the intent of the underlying bill that I had introduced. We simply are adding this on to this bill because it's relatively the same topic matter--it's a benefit--and so I brought the bills and amendment. [LB206]

SENATOR GAY: Okay. I just wonder, on those infectious diseases... [LB206]

SPEAKER FLOOD: One minute. [LB206]

SENATOR GAY: You know, if you picked up some of them, and smoke inhalation or something like that, but you know there's a lot of people that unfortunately have diseases and they wouldn't get the benefit, and this is...I wonder if we're getting off track a little bit on that amendment, because, you know, that's my...that's my little bit of a problem, why I'm asking you the questions, and it's something for us to think about. But a lot of people may have those diseases and then their dependents wouldn't get the benefit. This is a line of duty, public safety, and I do support that. I support the bill. I just wanted to ask you questions on the amendment and bring it out there and just kind of get some answers so that I can make a good decision on it. So thank you, Senator Lautenbaugh, for answering the questions. Thank you, Mr. President. [LB206]

SPEAKER FLOOD: Thank you, Senator Gay. Senator Janssen, you're recognized. [LB206]

SENATOR JANSSEN: Thank you, Mr. President and members of the body. I wanted to...I didn't plan on speaking on this until I saw the amendment. LB206, I had some questions about on General File. I ended up supporting the bill. At the time, my questions dealt with private colleges getting involved with that, and if a student were, per se, going to Creighton at the time, would they be compensated or somehow allowed to stay in the same school. And I was told there was federal funding. But for whatever reason, I felt good enough about the bill the way it was formed that I supported it. I still wanted to put on note, though, that I think the private colleges are kind of getting left out in this deal, but I think it's a decent enough underwriting bill that I supported it. And the reason, another reason I was apprehensive about it, is I just thought that, you know, here we are, we're valuing the life of one certain segment of society or somebody's career more so than we do somebody else's, and that was my real rub on it. And in the end, what kind of pushed me in favor of the bill was it included the volunteer firemen. And I think the volunteer firemen across our state do a wonderful job, as the police officer do as well. But they're doing that as volunteers and this was a small way of giving

Floor Debate  
April 07, 2009

---

back to them. But I'm not rising in support of AM997, which may be surprising. I just think it's...and I could move off of that. I just kind of look at this as, here we go again. We're just adding something to it. And let's call it what it is. At some point, do we just...and I know this isn't happening, but maybe are we now doing K through postsecondary education? Is the tuition free? There is a point. I don't...the fiscal note was the big concern with the private colleges. There is a point in time where sending more students to the university systems does cost money. It's not free. It may not be a fiscal impact this year, next year, but if we let 100 go, 200 go, 300 go, 400...which this bill does not call for. I'm not saying that. I'm just making a point more than anything. There is a point to which it costs money. It costs our tax money to go there. It may be hidden somewhere else. It may not cost additional funds; it does cost money. And I take issue with some of the things Senator Gay was bringing up. It's kind of hard to, I guess, say when did some of these occurrences happen and how do you prove some of this. So I guess, you know, what I'll plan on doing is yielding the balance of my time to Senator Lautenbaugh just to help explain. I'm not dead set against anything but at present I'm not in favor of AM997. [LB206]

SPEAKER FLOOD: Senator Lautenbaugh, you have 2 minutes 5 seconds. [LB206]

SENATOR LAUTENBAUGH: Thank you, Senator Janssen. Thank you, Mr. President. I do want to make clear that my amendment does not add additional people who qualify for the benefit under Senator Nantkes' bill. This is really a cleanup regarding disability and pension issues and death benefit. This really isn't meant to add additional people to Senator Nantkes' bill's ambit. So I'm hoping that addresses some of your concerns, Senator Janssen. This is not meant to expand that class in the underlying bill. This is to address other benefits, not what Senator Nantkes is providing for. Thank you, Mr. President. [LB206]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. (Visitors introduced.) Continuing on with discussion, Senators Nelson, Stuthman, and Gay. Senator Nelson, you are recognized. [LB206]

SENATOR NELSON: Thank you, Mr. President, members of the body. Would Senator Lautenbaugh entertain a question or two, please? [LB206]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a question from Senator Nelson? [LB206]

SENATOR LAUTENBAUGH: Yes, I will. [LB206]

SENATOR NELSON: Senator Lautenbaugh, I'm looking at the statement of intent or the purpose here when we originally started with this bill, LB206, and it's to provide for officers and firefighters killed in the line of duty on or after the effective date of the act. I

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

Floor Debate  
April 07, 2009

---

don't see anything in your amendment that is germane to that. This one is an expansion of benefits, is it not? [LB206]

SENATOR LAUTENBAUGH: It deals with death benefits, but certainly it is not expanding the benefits under Senator Nantkes' underlying bill, no. [LB206]

SENATOR NELSON: All right. What we're basically saying here, if I read through this, is if you contract any type of a disease, cancer, all other sorts of things, it's presumed that this has occurred in the line of duty and they're going to be eligible for these benefits. Is that correct? [LB206]

SENATOR LAUTENBAUGH: Well, now understand that cancer is in the existing law and there's a recitation of the various kinds that are likely to be encountered in the line of duty, that there's exposure to a carcinogen that is identified by the International Agency for Research on Cancer. All of that is in the existing underlying law--I shouldn't say underlying law--in existing law in the state of Nebraska and the coverage for hypertension. What this really adds is the presumption for infectious diseases as listed herein, and once again merely a presumption, before infectious diseases. And I kind of fumbled a question from Senator Gay. The ten years is because you don't qualify for the pension benefit until you've been there ten years. That's why ten years was included. I hope that clarifies that. I "misanswered" the question, if you will. [LB206]

SENATOR NELSON: All right. Basically we're shifting the burden here, aren't we? It's the employee no longer has the burden of showing that this was caused during that period of time. It's shifting to the employer, right? [LB206]

SENATOR LAUTENBAUGH: For just the infectious diseases, yes, because we've already done that for hypertension and those cancers as enumerated. [LB206]

SENATOR NELSON: I...thank you. Thank you, Senator Lautenbaugh. I stand in opposition to this bill. I think that this is a fundamental shift that if an employee is going to come forward and claim these benefits, that they ought to have the burden of proving that it was caused in the line of duty; not the employer. And I can see that this is, even though it's only related to infectious diseases, it's still an expansion of the program and I cannot support this amendment. Thank you, Mr. President. [LB206]

SENATOR LATHROP PRESIDING []

SENATOR LATHROP: Thank you, Senator Nelson. Senator Stuthman, you are recognized. [LB206]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to ask Senator Lautenbaugh a question, if he'd respond. [LB206]

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

Floor Debate  
April 07, 2009

---

SENATOR LAUTENBAUGH: Yes, I will. [LB206]

SENATOR STUTHMAN: Senator Lautenbaugh, the fact of this 90 days after you terminate your employment and something would happen and you would pass on, have you got any record of how many people this would affect or do you know of situations that this would pertain to? [LB206]

SENATOR LAUTENBAUGH: There was...I believe there was a claim where this was specifically at issue because it arose immediately after the date of termination. I will say that the underlying bill I brought, based upon years of service, would have extended this out five years rather than 90 days; and we agreed, after the cities expressed concerns, to scale that back to just the 90 days. But to answer your question, it's a matter of line drawing, Senator. Whether it's the termination day or 30 days or 60 days or 90 days, it is what it is. [LB206]

SENATOR STUTHMAN: Senator Lautenbaugh, the main issue then is, is if something occurs in the line of duty as far as, you know, getting some type of a disease, infectious disease while you were employed, you know, with that, as a fireman, and then if you...if something happened while you were in the line of duty, you know, you would be covered. And now this really pertains to, you know, another 90 days after that, if something drastic would happen you'd still be covered in that part. Would that be correct? [LB206]

SENATOR LAUTENBAUGH: In essence. And once again, I think the 90 days just gives the credit...or recognizes the fact that you may not, on your retirement day, go out and get a physical examination but within 90 days something could reveal itself. And if you've been, you know, working as a firefighter, for instance, for 20 years, and then within 90 days of employment you're diagnosed with one of these covered maladies, if you will. This just creates the presumption that, yes, it is still work-related and it's a rebuttable presumption by the employer, certainly, but...or former employer in the case of your hypothetical, but yes. [LB206]

SENATOR STUTHMAN: Okay. Thank you, Senator Lautenbaugh, and I'll return the balance to the Chair. Thank you. [LB206]

SENATOR LATHROP: Thank you, Senator Stuthman. Senator Gay, you are recognized and this is your third time. [LB206]

SENATOR GAY: Thank you, Mr. President. I oppose the amendment. Looking into this further and discussing with even the bill's sponsor, I think we're getting away from the intent of this bill. The bill, as it was introduced here through Education Committee--and Senator Lautenbaugh has every right to bring an amendment and I commend him for

Floor Debate  
April 07, 2009

---

doing that--but when I...looking at the statement of intent, this passed out of Education and this has been tried, and for a lot of years, to get something like this done. And I think that LB206 is a reasonable bill. I supported it on General File and I want to support it on Select File, and see it passed, ultimately. There was no opposition to that bill and I thought it was very well-thought-out. I'm afraid, though, with the amendment, not that the amendment isn't well-thought-out, I just don't think it's that germane to this bill. We'll decide that, I guess. I'm not going to challenge the germaneness at this point, but this is an expansion. Senator Lautenbaugh just talked about shifting the burden to the employer, it sounds like to me I think I heard him say to Senator Nelson. And I think the bill is a very good bill, but again, by doing this I don't know how you go prove some of these issues and the hypertension and some of those duties. When I was looking at the bill, you know, it talks about in the line of duty and a lot of different things. And this has nothing to do with that I don't think, so I'm a little worried. Another part that worries me is we're relying on the federal policy to help guide where we would pay. We would pick up the difference that's away from the federal policy. We don't have any fiscal statement on this because we won't get it until if we pass an amendment, and I think that would be a shame. We then pass that and find out there is a fiscal note somewhere. It may not be to this Legislature but it might be to those communities or whoever it is. Well, it probably would be to this Legislature because I think the underlying bill reads that the dependents, and surviving spouse as well, could go to any state college or Nebraska institution. So we ultimately would have that responsibility to pay that bill. But I do think we're getting off of what the intention of LB206 was. I'm much more confirmed by that now as I read through the committee statement, and I see that it passed out of the Education Committee unanimously with no opposition so I think it was a very well-thought-out bill, and I'm afraid a little bit, if we put this amendment on there this year, that we're endangering the overall intent of that bill. So I'm going to vote no, and I encourage you to think about that and we'll have...maybe we'll have more discussion, maybe we won't. But the idea that we give a special benefit to those firefighters and public safety, I don't have a problem with that and I don't want to be on record against them, because I think this sailed through on General File like...and it should. But I'm afraid we're muddying the situation here if this amendment gets adopted to this bill. Thank you, Mr. President. [LB206]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Gay. Senator Janssen, you are recognized. Senator Janssen waives his opportunity. Senator Lautenbaugh, you are recognized. Senator Lautenbaugh waives. Senator Nelson, you are recognized. [LB206]

SENATOR NELSON: Thank you, Mr. President, members of the body. Mr. President, I rise to a point of order, please. [LB206]

SPEAKER FLOOD: What is your issue, Senator? [LB206]

Floor Debate  
April 07, 2009

---

SENATOR NELSON: My issue is a question of germaneness, Mr. President. I would like a ruling from the Chair on the germaneness of this amendment by Senator Lautenbaugh. I think that actually it's the same bill that came before us or that...believe it was LB373, which was an entirely different subject, really has nothing to do with the basic premise of LB206. It's an amendment which I feel is not germane and, therefore, I'm requesting a ruling from the Chair. [LB206 LB373]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Lautenbaugh, you have the opportunity to respond. [LB206]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and I would like the opportunity to respond. I do believe that this does deal with benefits for first responders. The underlying bill does as well. This is in the same vein. And I do believe, without putting too fine a point on it, it is clearly germane. [LB206]

SPEAKER FLOOD: Senators Nelson and Lautenbaugh, would you please come to the Chair? The Legislature will stand at ease until further notice. Members, the Chair has had an opportunity to review with the parties that have raised germaneness and Senator Lautenbaugh, the concerns that he has, Senator Nelson has, regarding germaneness. The germaneness rule is found in Rule 7, Section 3(d). It reads in part: No motion, proposition or subject different from that under consideration shall be admitted under color of amendment. Any attachment that is not germane is out of order. Germane amendments relate only to details of the specific subject of the bill and must be in a natural and logical sequence to the subject matter of the original proposal. A nongermane amendment includes one that relates to a substantially different subject. Under LB206, this bill creates a new act. It's named In the Line of Duty Dependent Education Act. The purpose of the bill is to establish a higher education benefit for the surviving children of law enforcement officers and firefighters who are killed in the line of duty on or after the effective date of the act. The bill addresses benefits for the children of deceased firefighters. Senator Lautenbaugh's amendment, the provisions of what was originally introduced as LB373, also addresses benefits for firefighters. Because both of the bills address benefit provisions for firefighters or their family, I believe the amendment meets the criteria of, quote, relating to the details of a specific subject of the bill and is in a natural and logical sequence to the subject matter of the original proposal. Therefore, it is the ruling of the Chair that Senator Lautenbaugh's AM997 is germane to LB206. Senator Nelson, you are recognized. [LB206 LB373]

SENATOR NELSON: Thank you, Mr. President, members of the body. A second question...and thank you for the ruling, Mr. President, which I feel is correct and I'm not going to challenge that. I do think if you can bring it up on your gadget you ought to take a look at the fiscal note for LB373, which I stated was basically the same...well, it's the same issue, the same proposition that Senator Lautenbaugh is bringing forth here in

Floor Debate  
April 07, 2009

---

this amendment. And if you look at the fiscal note for LB373, you'll find that there are no figures there and this is because it was printed before the issue failed to come out of committee. But just let me read to you here: Both the cities of Lincoln and Omaha indicate a significant cost as a result of the changes which were set forth in LB373. Lincoln indicates that increasing the time lines will have the impact of increasing the number of duty-related deaths and disabilities. A duty-related death or disability increases the pension plan's liability compared to a regular pension. The cost cannot be estimated. So here we are with this amendment to LB206 going to no fiscal impact whatsoever, because that cost was going to be absorbed by educational institutions, to a cost that cannot be estimated. And I think we should be very careful in moving forward with this amendment until at least we have some idea of what the probable cost may be. You can also, on the computer, take a look at LB373 and what the intent of that was, and it was expansion of benefits, expanding them into the categories that we're talking about today. So once again, I oppose this amendment for these reasons and I encourage the body to vote no against this amendment. Thank you, Mr. President. [LB206 LB373]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Pankonin, you are recognized. [LB206]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. This is one of those issues that kind of sneaks up on us and we find out that it's a major policy change if we enact this amendment, particularly, as Senator Nelson has talked about, Omaha and Lincoln. Their plans would be affected significantly, potentially. And as you all probably know, particularly in Omaha, the pension system has got really large shortfalls, actuarial shortfalls that are very, very significant, and I don't think that it's good policy to add to that potential burden that's already on the taxpayers of the city of Omaha. It'd be the city of Lincoln. There's eight other municipalities that could be affected by this amendment. And although it doesn't affect the state retirement plans, I just want everyone to know that this is a significant policy change that will already strain municipal plans that are under stress, and that we need to be clear about this: It was LB373 that didn't come out of committee that is this amendment. So thank you for taking some time to consider the ramifications of this one and the potential costs that it could cause our major cities and some other municipalities. Thank you. [LB206 LB373]

SPEAKER FLOOD: Thank you, Senator Pankonin. Senator Janssen, you are recognized. [LB206]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. I, too, again rise in opposition of AM997 and the bill for which it used to be. It was pointed out it was opposed by the community I'm from, Fremont, and for some very good reasons. They felt that it would be too expansive and too burdensome on local governments, could cause having to obviously raise more monies, i.e., taxes to cover those benefits, and

Floor Debate  
April 07, 2009

---

they felt the benefits currently being provided were adequate. Therefore, I remain opposed to AM997. Thank you. [LB206]

SPEAKER FLOOD: Thank you, Senator Janssen. (Visitors introduced.) Continuing with discussion on AM997 to LB206, Senator Lautenbaugh, you are the last light on. Would you like to use this as your closing? [LB206]

SENATOR LAUTENBAUGH: Yes, I would. [LB206]

SPEAKER FLOOD: You may close. You're recognized. [LB206]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do think we had a thoughtful discussion on this but I want to make clear what we're actually doing here. There is already a presumption of "work-relatedness" in existing law regarding hypertension. There's already a presumption regarding certain cancers, with certain caveats, in existing Nebraska law. This amendment adds the same presumption regarding infectious diseases, and this just recognizes that certain infections, especially MRSA and TB, are inherently related to firefighters, paramedics, and first responders, and would merit this presumption. Once again, it's not a conclusion; it's just a presumption. And I do want to address the fiscal note, because if you look at it, it says the cities, they don't know what this is going to do. The testimony we heard in committee, I think it was Lincoln that was worried about the five-year look back after leaving employment, so we shrunk that down to 90 days. It's very difficult, as you'll note from the fiscal note, for anyone to say what this really costs, because on the one hand it won't be used very often, and on the other hand it's not a conclusive presumption. This doesn't say you get benefits. What this says is we already say you're presumed to have work-related cancer, with some caveats in existing law; you're already presumed to have work-related hypertension, heart disease, with some caveats in existing law. This simply adds that presumption to certain infectious diseases to which first responders are particularly susceptible or likely to encounter, nothing more than that. And I don't think it's an excuse to say we can't calculate the possible fiscal cost on this, so the fiscal note says nothing so we can't ever act in this area. If it's hard to calculate, that's very likely because there really isn't a lot of risk here, especially as the bill or as the amendment was written to take out the five-year look back. We're simply adding a presumption regarding infectious diseases to the presumptions that already exist for cancer and heart disease. We also add a provision that you can make a claim and still be covered within 90 days, three months of leaving your employment. That's new, but once again I just cannot see that resulting in many additional claims on these facts. It just prevents someone from being shut out if they discover, the day after employment, after leaving employment, that they have one of these conditions that would be otherwise presumptively work-related. Once again, we're not extending this to everyone in the world, or every city employee even. We're talking about people who by very nature of their jobs, putting their lives on the line for us, day in, day out, are likely to encounter

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

Floor Debate  
April 07, 2009

---

these specific risks. And again, we already do this for certain cancers, with caveats, as in existing law. We already do it for hypertension, heart disease. This simply adds certain infectious diseases that our first responders are likely to encounter and we're asking them to go out there and do this on their job day in, day out. I'm just asking you to give them that added presumption. The city can still prove another cause, whatever the case may be. We can spin hypotheticals of how the disease could otherwise be caused and how it could otherwise be proven. This just helps the first responders on this one area of law. It is not a huge expansion. It is a modest expansion of when we grant the presumption. And once again...I don't want to repeat myself but I will: The presumption is not a conclusion. It can still be rebutted. We already allow them to have a rebuttable presumption in two other areas. This simply creates a third. And I would ask your support of this amendment and I thank you all for the discussion. [LB206]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Members, you've heard the closing to AM997. The question before the body is, shall AM997 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Lautenbaugh, for what purpose do you rise? [LB206]

SENATOR LAUTENBAUGH: I'd request a call of the house. [LB206]

SPEAKER FLOOD: A call of the house has been requested. The question before the body is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB206]

CLERK: 37 ayes, 0 nays, Mr. President, to place the house under call. [LB206]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Coash. Thank you for checking in. Mr. Clerk. All senators are present or accounted for. Senator Lautenbaugh, you have a choice. You can accept call-in votes or a roll call vote. How do you wish to proceed? [LB206]

SENATOR LAUTENBAUGH: A roll call, please. [LB206]

SPEAKER FLOOD: Mr. Clerk, please read the roll in regular order. [LB206]

CLERK: (Roll call vote taken, Legislative Journal page 960.) 21 ayes, 26 nays, Mr. President, on the amendment. [LB206]

SPEAKER FLOOD: AM997 is not adopted. Mr. Clerk. [LB206]

CLERK: I have nothing further on the bill, Mr. President. [LB206]

Floor Debate  
April 07, 2009

---

SPEAKER FLOOD: Senator Nordquist for a motion. [LB206]

SENATOR NORDQUIST: Mr. President, I move LB206 to E&R for engrossing. [LB206]

SPEAKER FLOOD: I raise the call. Members, the question before the body is, shall LB206 be advanced to E&R for engrossing? All those in favor say yea. Those opposed say nay. The ayes have it. LB206 advances to E&R for engrossing. Mr. Clerk, we now proceed to LB477. [LB206 LB477]

CLERK: Senator Nordquist, E&R amendments first of all, Senator. (ER8044, Legislative Journal page 873.) [LB477]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB477]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB477. [LB477]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB477]

CLERK: Senator Carlson would move to amend. AM991. (Legislative Journal page 961.) [LB477]

SPEAKER FLOOD: Senator Carlson, you're recognized to open on AM991. [LB477]

SENATOR CARLSON: Mr. President and members of the Legislature, as a quick review, LB477 provides uniform and consistent treatment of transfers of certified irrigated acres and certified water uses. There are four groups primarily interested in this piece of legislation: ground water groups--and the purpose of this is to clarify these transfers; secondly, surface water interests--and they have a procedure in place, so they were concerned that they not be included in this bill; NPPD--They have wells that they are concerned about; and then, certainly the financial institutions. This bill is important for financial institutions that hold liens on real estate. It's important for buyers of land. It's important for sellers of land. And whether you're buying or selling, that once that transaction has taken place and that involves a water transfer, that they are certain that these transfers are in order. The amendment would clear up some issues that these groups have met on between General File and Select File, and they asked that this amendment be presented. A new Section 9 states that the determination of certified acres or certified water uses by an NRD shall not affect allocations of ground water established by 46-740. That's the ground water allocation statute. The second change changes the term "licensed abstractor" to "registered abstractor," and in Nebraska we have registered abstractors, not licensed abstractors. Third change: It changes

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

Floor Debate  
April 07, 2009

---

terminology "irrigated land" to "irrigated acres." The original bill was "irrigated acres." There was a desire to change it to "irrigated land," which we did, and now the group wants to change it back to "irrigated acres." Fourth change is to remove the requirement that all lienholders of record have consented in writing to the transfer. Once a title is obtained through a registered abstractor, the assumption is that title is correct and the NRD would not be requested to consent that, in fact, that abstract or that title was correct. And the fifth change: The form that must be submitted by the individuals seeking the transfer shall be prescribed by the natural resources district and not the state Department of Natural Resources. These are changes. They clarify the intent of the bill and I would ask for your support. Thank you, Mr. President. [LB477]

SPEAKER FLOOD: Thank you, Senator Carlson. Members, you've heard the opening. Senator Lathrop, you are recognized. [LB477]

SENATOR LATHROP: Thank you, Mr. President. I wonder if Senator Carlson would yield to some questions, please. [LB477]

SPEAKER FLOOD: Senator Carlson, will you yield to a question from Senator Lathrop? [LB477]

SENATOR CARLSON: Yes, I will. [LB477]

SENATOR LATHROP: Senator Carlson, I want to be clear. I stand up to ask you some questions because I don't understand it, and I was afraid this thing was going to pass and get by us, without a further explanation, so maybe I can weigh in this way. I'm looking at Section 9, which is what caught my eye. "The determination of certified water uses or certified irrigated acres by a natural resources district shall not affect the allocations of ground water established under 46-740." That's the portion that I'm concerned with. Here's my question: Does any of this affect our ability to regulate who can irrigate and...? Maybe I'll tell you what my concern is. LB701. Part of LB701, struck down by the Supreme Court; the other part of it is sitting up there, and we don't have enough water in the Republican River Valley. Probably have similar problems coming with the Platte River. And we may, at some point, have to regulate who gets to irrigate; how much they get to irrigate--or maybe we're already doing that; whether somebody can drill a new well; any of those things that affect our ability as a state or the NRD or the Department of Natural Resources, their ability to regulate who can do any of these activities. Does this bill affect that at all? [LB477]

SENATOR CARLSON: Senator Lathrop, that is a good question, and I don't believe it changes that in any way, shape, or form. This bill addresses the sale of land. And it's natural that a lending institution wants to know if there's a sale of land or a transfer of the use of water from one piece to another; that if they have a lien on the original piece, they want to know about this because it changes the value of that piece of land. If you're

Floor Debate  
April 07, 2009

---

buying land, you want to know that when you buy it and it involves a transfer of the use of water, that you, in fact, get that transfer. If you're selling land and it involves a transfer of the use of water, you want to know that that transfer has taken place and nobody can come back on you. This doesn't have anything to do with who gets to...well, in a sense it does, because if you're transferring the right to irrigate, somebody else can irrigate, but it's no more. It's not expanding it and it's not...it's not affecting the ability of the state to regulate these things. I think it's clarifying it. [LB477]

SENATOR LATHROP: Okay. And believe me, I'm not trying to jump in front of this amendment. Just trying to understand. And I know I'm demonstrating the absence of a full understanding about irrigation and the way we regulate it, but I know enough about LB701 and its course through the Supreme Court to have some concerns about we're going to be dealing with this pretty soon. If we have...if a person gets a certified acre or the acres--let's say that it's a section of land--and it's certified under this as irrigated acres, what's that mean? What if that person sells it to somebody? Says I'm selling you this acreage, it's certified irrigated water, and then the state comes along later on and says, we haven't had rain in western Nebraska in three years and nobody can irrigate. Are we creating a right of action against the seller because they've certified it as irrigated acres? You following me? [LB477]

SENATOR CARLSON: I'm following you and I think the answer is no. If I have certified irrigated acres, I know that the laws that pertain to that come along with that certification. And if the state chooses to change that, I have to recognize that change, and the same would be true for a person that buys that piece of land. It's not trumping state law by any stretch. [LB477]

SENATOR LATHROP: Well, then maybe I can... [LB477]

SPEAKER FLOOD: One minute. [LB477]

SENATOR LATHROP: ...express my next concern this way. What about the state? If we come in, as a state, and we're running out of water in the Platte River, for example...and we have different uses. We have the power district needs water at McConaughy, and the people that are concerned about the fish want enough water in there for the fish, and then we have somebody that wants to take some water out to irrigate. Are we creating a priority or affecting the priority as it exists today or our ability to say what that priority should be at a later date? [LB477]

SENATOR CARLSON: No, I don't think...it's not touching those priorities at all. It's just simply clarifying. When you have a fully appropriated or overappropriated area,... [LB477]

SPEAKER FLOOD: Time. [LB477]

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

Floor Debate  
April 07, 2009

---

SENATOR CARLSON: ...you can't expand acres. [LB477]

SPEAKER FLOOD: Thank you, gentlemen. Senator Utter, you are recognized. [LB477]

SENATOR UTTER: Thank you, Mr. President and members of the body. This is my priority bill and I just rise to explain again that I think this is an extremely important bill for buyers, for sellers, for people who finance real estate in the state of Nebraska, because it merely puts on record what owners of land in appropriated, fully appropriated, or overappropriated basins have done with the water that we have taken for granted was attached to that land for a long, long time. Now all we're...all this bill does is make a matter of public record what the status of that water is. Is the use of that water still go with the land or has the owner at some time or another transferred that use? And if he does transfer that use of that water to some other entity, then it becomes a matter of public record. It's extremely important to you if you were a buyer of real estate; it's extremely important to you if you were financing real estate; and certainly it's important to you if you were a seller of that real estate, because in all instances it affects the value, affects the value of that real estate. Real estate with water on it is much more valuable than real estate without water. So I urge you to accept these amendments and to pass LB477. Thank you. [LB477]

SPEAKER FLOOD: Thank you, Senator Utter. Senator Schilz, you are recognized. (Visitors introduced.) [LB477]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. As I sat here listening to Senator Lathrop and Senator Carlson, I think that we need to be mindful that--and Senator Utter, as we talk about these things--there is no express ground water right that sits out there. We need to be mindful of that and we need to be careful as legislators not to infer such things. I think whether it's through a variance or however you're doing this, I think it should be noted that a lot of times what happens is when these agreements are put into place is that you agree not to pump on a certain area. So it's more of a contractual thing, not to do something, than it is a transfer. We need to be mindful of that as we do this. Now there are ways to get a practical transfer in there. But I think we need to be mindful, as Senator Lathrop said, and not take this too far. So I just wanted to get some clarifying language in there and make sure that people understand what we're talking about; make sure I understand what I'm talking about. So with that, I will say thank you. [LB477]

SPEAKER FLOOD: Thank you, Senator Schilz. Senator Langemeier, you are recognized. [LB477]

SENATOR LANGEMEIER: Mr. President, members of the body, Senator Lathrop and I had a little discussion off mike and I'm going to express my thoughts. I want to give you

Floor Debate  
April 07, 2009

---

a little example of what's the main objective with LB477, and Senator Stuthman and I had this discussion earlier this year as we talked about LB483, and let me give you a little example. If I own 80 acres, and I have a pivot out there and I'm "windshield wiper" it because I don't own the adjoining 80 and I'm in a fully appropriated area, and my piece of ground is designated as irrigated and the 80 next to me is not, and I have the opportunity to buy that adjoining 80 and I would like to then let my pivot irrigate the 160 and go around, what's happening in the Republican and other fully appropriated areas is, I'm going to my friend down the road and saying, can I buy your designation as irrigated? And so what happens is, is I buy his certified acres. It's a designation. It's not a water right, it's a designation. And then I have the NRD, subject to their approval, their transferring it on to that adjoining 80 that I just bought. So what we're doing is we're just moving the number of acres from one place to another, so now I can let my pivot go around. Now this is where the bankers came in. The banker said, wait a minute, wait a minute; I have Joe Blow's down the road financed as irrigated ground and he's just sold off the irrigation designation; that affects me as a mortgage holder. So what they're asking in a nutshell in LB477 is, before that transfer can happen you got to let us know; let the banker know that this transfer is going to happen. So we're not increasing any irrigated acres within a fully appropriated. The acres that I would buy and move on to my 80 are still subject to any restrictions the state, the NRD, or anybody else puts that has authorization to do that to the amount of pumping. It's not going to affect that at all. It's strictly allowing me to take his designation--not a right, but his designation as certified acres--and move it on to this new piece of ground that I can more efficiently help my operation with. And so I would yield some time to Senator Lathrop if he wants it, but...or even answer questions if he'd like. But that's an example of what LB477 is trying to accomplish. [LB477 LB483]

SPEAKER FLOOD: Senator Lathrop, 2 minutes 42 seconds. [LB477]

SENATOR LATHROP: Thank you. Thank you. And that's just about the time I need. I appreciate the explanation. I really do. I appreciate your patience with me as I'm trying to understand, better understand water issues. I'm with Senator Carlson on the amendment. It makes perfect sense. I do want to comment, if I can, on something that Senator Schilz said which I think is very important. Senator White made this point when we were dealing with LB701 a couple years ago, and that is, the water belongs to the people, and we're not creating a right to any of the water but it's simply a designation. And this is more of a banking bill so that the bankers know who has certified acres that affect the value and who doesn't, and so I appreciate that. I also appreciate the fact that you've answered my question that nothing about this bill or certified acres affects the ability of this Legislature or the NRDs to regulate who may and how much one may irrigate to the extent we need to, to affect water levels in the streams and the aquifers. So with that, thank you. [LB477]

SPEAKER FLOOD: Thank you, Senator Lathrop. Your light is next. Do you wish to

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

Floor Debate  
April 07, 2009

---

waive that opportunity? Senator Lathrop waives. There are no other lights on. Senator Carlson, you're recognized to close on AM991. [LB477]

SENATOR CARLSON: Mr. President and members of the Legislature, I appreciate the discussion and the questions. I will take this opportunity to expand a little bit on what Senator Lathrop just said. Ground water is owned by the state of Nebraska and the people have the right to a beneficial use of that water, and that's pretty important as we go along. This is...it's a good bill, it's a necessary bill. I appreciate the discussion and ask for your support on this amendment. Thank you. [LB477]

SPEAKER FLOOD: Thank you, Senator Carlson. Members, you've heard the closing on AM991. The question is, shall AM991 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB477]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Carlson's amendment. [LB477]

SPEAKER FLOOD: AM991 is adopted. Mr. Clerk. [LB477]

CLERK: Nothing further on the bill, Mr. President. [LB477]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB477]

SENATOR NORDQUIST: Mr. President, I move LB477 to E&R for engrossing. [LB477]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB477 is advanced to E&R for engrossing. Mr. Clerk, we now proceed to LB555. [LB477 LB555]

CLERK: Senator, I have no amendments to LB555. [LB555]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB555]

SENATOR NORDQUIST: Mr. President, I move LB555 to E&R for engrossing. [LB555]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB555 is advanced to E&R for engrossing. Mr. Clerk, Select File, 2009 senator priority bills, Cook division. We begin with LB396. [LB555 LB396]

CLERK: I have Enrollment and Review amendments, Senator. (ER8045, Legislative Journal page 873.) [LB396]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB396]

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

Floor Debate  
April 07, 2009

---

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB396. [LB396]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Opposed say nay. The E&R amendments are adopted. [LB396]

CLERK: I have nothing further on the bill, Senator. [LB396]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB396]

SENATOR NORDQUIST: Mr. President, I move LB396 to E&R for engrossing. [LB396]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. The ayes have it. LB396 is advanced to E&R for engrossing. Mr. Clerk, LB449. [LB396 LB449]

CLERK: Senator, I have no amendments to LB449. [LB449]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB449]

SENATOR NORDQUIST: Mr. President, I move LB449 to E&R for engrossing. [LB449]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Opposed say nay. LB449 is advanced to E&R for engrossing. Mr. Clerk, LB340. [LB449 LB340]

CLERK: LB340, Senator, I have Enrollment and Review amendments. (ER8046, Legislative Journal page 873.) [LB340]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB340]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB340. [LB340]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The ayes have it. E&R amendments are adopted. Mr. Clerk. [LB340]

CLERK: I have nothing further on LB340, Senator. [LB340]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB340]

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

Floor Debate  
April 07, 2009

---

SENATOR NORDQUIST: Mr. President, I move LB340 to E&R for engrossing. [LB340]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. I'm going to do that again. I couldn't tell whether or not we had an affirmative vote. All those members in favor of moving LB340 to E&R for engrossing say aye. Those opposed say nay. The ayes have it. LB340 is advanced to E&R for engrossing. Mr. Clerk, we now proceed to Select File, 2009 senator priority bills, Christensen division. We begin with LB463. [LB340 LB463]

CLERK: LB463, I have E&R amendments, Senator. (ER8048, Legislative Journal page 883.) [LB463]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB463]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB463. [LB463]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The ayes have it. The E&R amendments are adopted. [LB463]

CLERK: I have nothing further on the bill, Senator. [LB463]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB463]

SENATOR NORDQUIST: Mr. President, I move LB463 to E&R for engrossing. [LB463]

SPEAKER FLOOD: All those in favor say aye. All those opposed say nay. LB463 is advanced to E&R for engrossing. Pursuant to an earlier announcement, we will skip over LB551 due to Senator White's absence. Mr. Clerk, LB517. [LB463 LB517]

CLERK: LB517, Senator, E&R amendments first of all. (ER8050, Legislative Journal page 884.) [LB517]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB517]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB517. [LB517]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB517]

CLERK: I have nothing further on LB517, Senator. [LB517]

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

Floor Debate  
April 07, 2009

---

SPEAKER FLOOD: Senator Nordquist for a motion. [LB517]

SENATOR NORDQUIST: Mr. President, I move LB517 to E&R for engrossing. [LB517]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB517 is advanced to E&R for engrossing. Mr. Clerk, we now proceed to LB430. [LB517 LB430]

CLERK: LB430, Senator, I have E&R amendments first of all. (ER8052, Legislative Journal page 928.) [LB430]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB430]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB430. [LB430]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The ayes have it. The E&R amendments are adopted to LB430. [LB430]

CLERK: Mr. President, the first amendment I have is by Senator Price, AM940. [LB430]

SPEAKER FLOOD: Senator Price. Senator Price is not available. We will pass over his amendment and proceed to the next. [LB430]

CLERK: Mr. President, Senator Hansen would move to amend, AM958. (Legislative Journal page 930.) [LB430]

SPEAKER FLOOD: Senator Hansen, you are recognized to open on AM958. [LB430]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. This is a 1921 bill that we're talking about, so the sections aren't quite like they write them now. But my concern is on page 5, if you have the committee amendments, and I'll read the entirety of (18): To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the street or on the sidewalks or to frighten teams of horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city. This is kind of old language but is very enjoyable reading. My question is with, on line 17, where I'm not exactly sure, and the committee counsel couldn't tell me for sure, why the word "or" was replaced with "of" horses. And I'll explain just very quickly. Frightened teams or horses: those are two entities. Frightened teams--a team of horses, a team of mules, a team of oxen--you can't frighten those on the street with anything that...like the rolling of hoops. My

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

Floor Debate  
April 07, 2009

---

amendment simply changes that back to the language where it says "frightened teams or horses." This is important. This is important if we want to keep the language...this was...I don't think this bill on concealed handguns in the state of Nebraska had anything to do with frightening horses or teams of...or teams. There is one town in my district--Wellfleet--it's the only town in my district that doesn't have a paved Main Street. On Labor Day, every year they do have a--or around Labor Day--they have horse races down the street, so there are some horses and some teams still that do go on the streets of some cities. So basically that's it. I just want the old language put back in there, and it should read frightened teams "or" horses. Thank you, Mr. President. [LB430]

SENATOR LATHROP PRESIDING []

SENATOR LATHROP: Thank you, Senator Hansen. There's no one wishing to speak. Do you care to close? Senator Hansen waives closing. The question before the body is the adoption of Senator Hansen's AM958. All those in favor vote aye; all those opposed vote nay. Has everyone voted who wishes to? [LB430]

SENATOR HANSEN: Mr. President. [LB430]

SENATOR LATHROP: For what purpose do you rise, Senator Hansen? [LB430]

SENATOR HANSEN: I hate to do this at 11:36, but I'd ask for a call of the house. [LB430]

SENATOR LATHROP: We'll wait just a moment. [LB430]

SENATOR HANSEN: Okay. [LB430]

SENATOR LATHROP: We have a few members returning to the Chamber. [LB430]

SENATOR HANSEN: That's fine. There we go. [LB430]

SENATOR LATHROP: Record, Mr. Clerk. [LB430]

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of the amendment. [LB430]

SENATOR LATHROP: AM958 is adopted to LB430. Next amendment, Mr. Clerk. [LB430]

CLERK: Mr. President, Senator Avery would move to amend, AM993. (Legislative Journal pages 962-965.) [LB430]

Floor Debate  
April 07, 2009

---

SENATOR LATHROP: Senator Avery, you're recognized. [LB430]

SENATOR AVERY: Thank you, Mr. President, colleagues. AM993 is an amendment that was a bill before the Judiciary Committee. The committee voted it out unanimously. It had a public hearing, and very briefly let me give you some background on this particular amendment. It comes about because of an event that occurred at the University of Nebraska-Lincoln campus, when two students carried rifles across campus to a student meeting and they were simply trying to demonstrate the...trying to get attention to a gun issue that was going to be discussed at that meeting. Many alarmed students and faculty called the Lincoln police and campus police, and the students were ultimately charged with disturbing the peace and unlawful possession of a firearm on school grounds. These charges were eventually dismissed by the Lancaster County Court based on the interpretation that the word "school" in the current law was inadequately defined. In essence, what the court ruled was that the word "school" did not mean colleges and universities, and that the intent needed to be clearly spelled out in statute. That is what this amendment tries to do; it doesn't really do much more than that. It would simply add language that would read this way: A public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school, a community college, a public or private college, a junior college, or university would be included in the definition of school. This is something that I believe we need. It's a clarification of current law. It's not a significant change. It simply makes it clear that "school" does in fact mean colleges and universities, so that colleges and universities would be able to bar these weapons from the campuses. I urge you to support AM993 to LB430. Thank you. [LB430]

SENATOR LATHROP: Thank you, Senator Avery. Those wishing to speak include Senator Ashford and Senator Nantkes. Senator Ashford, you're recognized. [LB430]

SENATOR ASHFORD: Yes, thank you, Mr. President, and I rise in support of this amendment. This was a bill that actually was voted out of the Judiciary Committee. It deals with the issue raised by the university and other state colleges concerning, as Senator Avery suggested, concerning carrying concealed weapons on university and college property. It clearly includes those premises as part of...or as premises which would not be covered by the concealed weapon law, would be excluded from the coverage of the law. I think it's an appropriate amendment. Again, our committee, the Judiciary Committee, had the same sense, and so I would urge the adoption of the amendment, AM993. Thank you, Mr. President. [LB430]

SENATOR LATHROP: Thank you, Senator Ashford. Senator Nantkes, you're recognized. [LB430]

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. Just to give everybody a heads-up about some of the activity on the floor, Senator Christensen

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

Floor Debate  
April 07, 2009

---

has agreed to work with all interested parties in good faith, and at the moment we're waiting on the language for a technical amendment from the city of Lincoln that Senator Christensen has agreed to work with the body and the interested parties on. In that vein, because of where we are from a time-frame perspective, we talked about the possibility of a bracket motion to just carry the bill over till tomorrow so that amendment could be appropriately drafted and presented. However, with guidance, sound guidance from our legislative officers, they suggested that instead and a more appropriate procedural move would be to put in an IPP motion. That then would give Senator Christensen the opportunity to address that, to lay that over, instead of a bracket to a date certain or otherwise. So to be clear, it's not a filibuster issue. It's really just trying to ensure that we have time within the process and procedure to deal with the issues that Senator Christensen has in good faith agreed to deal with. So I'll save my comments as to the substantive underlying nature of the amendment and the bill for later. But I wanted to give you all a heads-up, so that there were no surprises in that regard, and thank Senator Christensen for his willingness to work. Thank you. [LB430]

SENATOR LATHROP: Thank you. Thank you, Senator Nantkes. Next to speak is Senator Christensen. [LB430]

SENATOR CHRISTENSEN: Which... [LB430]

SENATOR LATHROP: Senator Christensen, you're recognized. [LB430]

SENATOR CHRISTENSEN: Which are we speaking to right now? Does she...she don't have her bracket up, right? [LB430]

SENATOR LATHROP: No. [LB430]

SENATOR CHRISTENSEN: Okay. [LB430]

SENATOR LATHROP: You're addressing AM993. [LB430]

SENATOR CHRISTENSEN: Okay. I'm very supportive of AM993. I think it does clarify a number of things, and we've got the language in there that allows the rifle teams and things this way to carry and not be prosecuted or...and be able to go to practice and things this way. So I think it does clarify things very well, and so we are...I just stand in support of AM993. [LB430]

SENATOR LATHROP: Thank you, Senator Christensen. Next in the queue is Senator Ashford. You're recognized. [LB430]

SENATOR ASHFORD: Yeah, thank you, Mr. President. And just very briefly, I spoke with Senator Nantkes. I think...believe she has stated what is the most appropriate way

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

Floor Debate  
April 07, 2009

---

to handle this would be to put up an IPP motion and then we can put the bill back on Select File when we've resolved this issue involving the laundry list of crimes to be covered under the bill. You know, with that, I again would urge the adoption of AM993 and then we can go to Senator...then we can go to the IPP motion. Thank you. [LB430]

SENATOR LATHROP: Thank you, Senator Ashford. Senator Hadley, you're next in the queue and recognized. [LB430]

SENATOR HADLEY: Mr. President, members of the body, I'll just take about 30 seconds and say one of the most scariest times of my life was when a student came into my office and pulled a gun out of his pocket and laid it on the desk and wanted to talk about his grade. Thank you. [LB430]

SENATOR LATHROP: Thank you, Senator Hadley. Senator Fulton, you're recognized. [LB430]

SENATOR FULTON: Thank you, Mr. President. Would Senator Hadley yield to a question? [LB430]

SENATOR LATHROP: Senator Hadley, would you yield to a question from Senator Fulton? [LB430]

SENATOR HADLEY: Yes, Senator. [LB430]

SENATOR FULTON: Senator, how did that student end up doing in his class? [LB430]

SENATOR HADLEY: I changed his grade to an A. (Laughter) [LB430]

SENATOR FULTON: Thank you, Mr. President. [LB430]

SENATOR LATHROP: Thank you, Senator Fulton and Senator Hadley. There are no further lights on. Senator Avery to close. [LB430]

SENATOR AVERY: Thank you, Mr. President. Just briefly, this is a clarification, as has been indicated. I don't need to remind you of the unfortunate atrocities that have occurred on a number of colleges and university campuses around this country. I'm not suggesting that this would prevent that, but I think that it might help and I urge you to adopt it. Thank you. [LB430]

SENATOR LATHROP: Thank you, Senator Avery. The question before the body is the adoption of AM993 to LB430. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB430]

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

Floor Debate  
April 07, 2009

---

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Avery's amendment. [LB430]

SENATOR LATHROP: Thank you. The Avery amendment is adopted. We'll next move to AM940 and recognize Senator Price. [LB430]

SENATOR PRICE: Thank you, Mr. President, members of the body. Apologize for not being prepared earlier; called out for business. Anyway, I'd like to withdraw the amendment, please. [LB430]

SENATOR LATHROP: The amendment is withdrawn. We'll recognize Speaker Flood for comments. [LB430]

SPEAKER FLOOD: Thank you, Mr. President, members. Senator Nantkes has the right approach here in wanting to work with Senator Christensen on this amendment on LB430, and I think what my intent is, is to adjourn now so that that can be given some time to be dealt with. Senator Christensen and Senator Nantkes and others can work on the issue that the cities have. But just a point of clarification. The use of IPP motions and having bills laid over or bracketing a bill, from my standpoint, is tantamount to killing the bill for the year, so if you lay your bill over on a friendly IPP, I'm not going to reschedule it. That's been my practice for the last two years and it continues today. If you bracket a bill to a date certain, I'm not going to reschedule it unless there are special circumstances, and I have not encountered those special circumstances in the last two and a half years as Speaker. So just kind of a point of order as you look at bracketing bills, if you are in a situation where your bill needs more time, come to me and I will give you some options, those that I have available. But the idea is that when your bill is on the agenda, it's time to work it, because it's like air traffic control. We're landing a lot of planes and a lot of planes are taking off, and I have to make sure that I can control that; not have some arbitrary date that bills will or will not show up on the agenda. So what Senator Nantkes is doing here is the right thing. She wants to work this out so that when it comes back to us, it will. You'll note on the agenda, at 1:30 we're going to be hearing more from Senator Hadley on his priority bill this year, so I just appreciate their effort to work this out and I will bring it back when it's ready. Thank you, Mr. President. [LB430]

SENATOR LATHROP: Thank you, Senator Flood. (Visitors introduced.) Mr. Clerk, items for the record? [LB430]

CLERK: Mr. President, Judiciary Committee, chaired by Senator Ashford, reports LB347 to General File with amendments. I have an amendment to LB35 by Senator Ashford to be printed. Education Committee will meet today at...strike that. Senator Howard would like to add her name to LB458. (Legislative Journal pages 965-966.) [LB347 LB35 LB458]

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

Floor Debate  
April 07, 2009

---

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

SENATOR LATHROP: The question before the body is to recess till 1:30 p.m. All those in favor say aye. All those opposed say nay. The motion carries. We're in recess till 1:30 p.m. []

RECESS []

PRESIDENT SHEEHY PRESIDING []

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

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

PRESIDENT SHEEHY: Messages, reports, or announcements. []

CLERK: I have a confirmation report from the Government, Military and Veterans Affairs Committee signed by Senator Avery, who's chair. That's all that I have, Mr. President. (Legislative Journal page 967.) []

PRESIDENT SHEEHY: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR68, LR69, LR70, LR71, LR72, LR73, LR74, LR75, LR76, and LR77. (Visitors introduced.) We will move to the first item under General File under the Sullivan division, LB420. [LR68 LR69 LR70 LR71 LR72 LR73 LR74 LR75 LR76 LR77 LB420]

CLERK: Mr. President, LB420 by Senator Hadley. (Read title.) The bill was introduced on January 20, referred to Revenue Committee. The bill was advanced to General File. There are Revenue Committee amendments. (AM710, Legislative Journal page 757.) [LB420]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Hadley, you're recognized to open on LB420. [LB420]

SENATOR HADLEY: Mr. President, members of the body, I ask your support of LB420 and the amendment AM410 (sic--AM710). I think they are good legislation. What they are about is sales tax exemption. The state of Nebraska, in statute, has exempted a number of nonprofit organizations over the years. They include religious purposes, organizations for the blind, nonprofit private and educational institutions, nonprofit

Floor Debate  
April 07, 2009

---

colleges and universities, government organizations, nonprofit hospitals, assisted living, skilled nursing homes, and some...some--and I want to emphasize the term some--healthcare clinics. It's been brought to our attention that we have part of the law that now has become problematic because of changes in the way healthcare is delivered. And I want to start out by giving you an example. I've had the pages hand out a list of what are called certified rural healthcare clinics that are privately owned and government owned. And there are two clinics on there I want to talk about for just a minute. One is the clinic in Alliance. It is in Senator Lathrop's district and it's a clinic that's owned by Box Butte General Hospital. The general hospital owns the clinic and Box Butte General Hospital is owned by Box Butte County. So as an extension of a governmental agency, they are exempt from paying sales taxes on their purchases. Fifty-eight point seven miles away is the Crawford clinic. The Crawford clinic is owned by the Chadron Community Hospital. The Chadron Community Hospital is a nonprofit hospital. It owns the Crawford clinic. Under existing law they are not exempt from sales tax. So we have two clinics basically 50 miles apart, both doing the exact same thing, both owned by basically entities that are not being charged sales tax. One of them is charged sales tax on their purchases; the other one is not charged sales tax on their purchases. I think that is not good law. The current law requires nonprofit clinics that are nongovernmentally-owned to be owned by two or more nonprofit hospitals. This goes back years and years ago to when Nebraska had a Certificate of Need program. Those of you who remember, the problems years ago was the worry about competition driving healthcare costs up. The worry was that if two hospitals each wanted a clinic with an MRI, they would put it in; it would drive healthcare costs up. So the Certificate of Need required that two or more nonprofit hospitals own a nonprofit clinic. The Certificate of Need statute has been repealed. It is no longer around. The two-hospital requirement that exists now no longer has any rational policy basis. It is obsolete. In fact, as far as our information is concerned, there is only one clinic in the state of Nebraska, a nonprofit clinic, that is owned by two or more nonprofit hospitals out of all the clinics in Nebraska. The Department of Revenue recently has been treating nonprofit clinics as tax-exempt, but recently began strictly interpreting sales tax exemptions leading to audits of nonprofit clinics and back tax assessments. They have basically started enforcing the two-clinic law. LB420 removes the two-hospital requirement. It basically makes it so that one hospital, a nonprofit hospital, can own a nonprofit clinic in order for the clinic to be exempt from taxes. Nonprofit healthcare clinic means federally certified rural health clinics or nonprofit clinics as defined by state law, either one. Nonprofit clinics across the state would be covered by the exemption. Basically only one healthcare clinic now qualifies for the exemption. The importance of LB420: It ensures affordable healthcare throughout the state. Nonprofit clinics operate both in rural and urban areas. They're in Omaha, Lincoln, as well as Crawford, Alliance. They're across the state. Most nonprofit clinics operate at a loss and are subsidized by hospitals that own them. I'd like to just spend a minute bringing up a personal experience. I was privileged enough to serve on the Good Samaritan Hospital board of directors for nine years, and all nine years I was on the Good Samaritan Outreach Services board of

Floor Debate  
April 07, 2009

---

directors that dealt with clinics. The outreach clinics of Good Samaritan Hospitals never made a profit in the nine years that I was on that board. Outreach clinics do not make profits. That is part of the overall nature of nonprofit hospitals to give healthcare out in the state. Most nonprofit hospitals and clinics are vital to the economy and health of communities across Nebraska. If the clinic in Crawford were to close, that would mean citizens might have to drive 60 to 70 miles to get healthcare services. The fairness. Lastly, currently as I said, government-owned healthcare clinics are exempt from sales taxes. And it is a good rationale. They're extensions of the government agency. But there's no rational basis that a nonprofit hospital that owns a nonprofit clinic should not have that same type of exemption; no good reason Nebraskans in government-owned clinics should be paying less for healthcare than Nebraskans in clinics owned by nonprofit hospitals. I would urge your support of this particular LB420. And it has been amended by AM420...410, I'm sorry, 410 (sic). Thank you, Mr. President. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You've heard the opening to LB420. (Visitors introduced.) As was stated, there is a Revenue Committee amendment. Senator Cornett, you're recognized to open on AM710. [LB420]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. AM410 (sic--AM710), if adopted, would replace the bill. The amendment does not radically depart from the bill, but rather serves to clarify the intent of the bill. I ask that you consider debating the merits of this bill, on the bill and not on the amendment, so that Senator Hadley, sponsor, may answer any questions you have on the bill itself. I will be happy to address the issues on the amendment. There is one point I want to emphasize on behalf of the committee: That is our recognizing that there exists, already, sound public policy regarding sales tax exemptions for nonprofit healthcare in Nebraska. We are not expanding the tax base nor are we reducing the tax base with LB420. The policy is in place already that we, as a state, have chosen to exempt nonprofit healthcare from sales tax on certain healthcare activities and services. This amendment, if adopted, seeks to clarify questions that have surfaced as healthcare delivery access points have evolved since this area of law was last amended. LB420, as introduced, did not have a fiscal impact. While that is unusually tremendous news for this body to receive, in fact it eliminated the problem the committee faced--the problem being that not all nonprofit licensed healthcare entities in Nebraska were reflected in our revenue statutes. The committee thus intended to identify, in the sales tax exemption law, the variety and types of healthcare facilities, with a specific eye towards health clinics. What hasn't changed from current law is that each and every type must be nonprofit; each and every type is licensed; each and every type must apply for a sales tax exemption certificate with the Department of Revenue. We have not added any new type of facility. But because over the years the Department of Health and Human Services has developed licenses that have not been reflected in the sales tax exemption laws, we are in a sense updating the sales tax exemption laws to accurately capture what has evolved in the marketplace. This issue came to the forefront over the

Floor Debate  
April 07, 2009

---

last three years when the Department of Revenue's audits of health clinics challenged certain sales tax exemptions based on current statutory requirements that a health clinic be owned by two or more hospitals. The Department of Revenue believes that there may be one clinic currently owned by two or more hospitals. The Department of Revenue believes changing the language from two hospitals to one hospital is a policy change and thus would not have been appropriate for their technical clarification bill, LB165. They did, in that bill, include language that clarified current law and specified the activities and services that were exempt at licensed facilities. The committee voted to delete that section from LB165 so that the whole discussion regarding this issue would be discussed on LB420. That language, both the reference to ownership of a health clinic by one or more hospital and to the activities and services, is incorporated in AM710. AM710 is the result of many, many hours of analysis and discussion with members of the Department of Revenue, including Commissioner Ewald and members of the healthcare community. The committee believed it was essential that these parties work to develop language that accurately reflected and captured the different licensed nonprofit healthcare entities. The committee agrees that this amendment does just that. Again I remind the body, we as a state historically have not taxed nonprofit licensed healthcare, and we do not wish to tax nonprofit. We believe as a committee that our appropriate role in this issue was to assist the parties involved to reach a consensus on exactly what compromises nonprofit licensed healthcare. We believe AM710 does just that. Again, I ask you adopt this amendment, then debate the merits of the bill on the bill itself. Thank you. [LB420 LB165]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening of the Revenue Committee amendment AM710. Mr. Clerk, we have an amendment to the committee amendment. [LB420]

CLERK: Senator Hadley would move to amend the committee amendments with AM960. (Legislative Journal page 930.) [LB420]

PRESIDENT SHEEHY: Senator Hadley, you're recognized to open on your amendment to committee amendment AM960. [LB420]

SENATOR HADLEY: Mr. President, I would just like to put the emergency clause on the bill. [LB420]

PRESIDENT SHEEHY: Without objection. You have heard the opening on the amendment of AM960. Members requesting to speak: Senator Christensen, followed by Senator Gloor, Senator Pahls, Senator Price, and others. Senator Christensen, you're recognized. [LB420]

SENATOR CHRISTENSEN: Thank you, Mr. President. The current LB420 is a bill that's similar to LB949 that was in the committee last year, and it went through an interim

Floor Debate  
April 07, 2009

---

study...or additional work on the bill, I should say. This is something that's been looked at that I think is very important, because the way it is, like now, for me, I got a hospital in Imperial tax-free; I got a clinic in Wauneta, 19 miles away, supposed to be taxed. And it's very difficult to maintain services in some of these small towns, having a clinic to take care of the elderly people that want to stay in that town and want to have the service available, when we're setting up a different standard here and charging tax. It's already a service that, if we're lucky, it breaks even by offering it in the neighboring town. But the fact is, it's a convenience that we provide out there and it works very effectively, and it allows people that can't drive to be able to stay in them communities. And so that's why I want to encourage people to vote for this bill. And I haven't even read the AM960 yet because I can't speak to it because it flew up before my light got addressed, but I do want people to look about and think about these rural communities that are getting service now that may not if we don't address this correction that needs to be done here, because it is vital for these communities. Think of the elderly that can't drive; they have rest homes in them communities. It's just additional work no matter how you look at it, whether the rest home has to take them further, whether they're a person that can't drive and got to find a friend to take them, or a young person that can walk even across town to get health services, when we have these clinics there. So there's a lot of very good reasons for having them here. They're not always profit makers, so let's make sure we're thinking about this bill in a positive manner of taking care of people for the long-term decreased medical costs. Thank you. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Senator Gloor, you're recognized. [LB420]

SENATOR GLOOR: Thank you, Mr. President, members of the body. I wonder if Senator Hadley would yield to a question? [LB420]

PRESIDENT SHEEHY: Senator Hadley, would you yield to questions? [LB420]

SENATOR HADLEY: Yes, I would. [LB420]

SENATOR GLOOR: Senator Hadley, by way of clarification on this I want to make sure I understand. In our previous conversations between the two of us, this has no budgetary impact because in fact this has not been enforced, revenues have not been collected. It's now come to light, and we're trying to rectify this before it causes an adverse effect with the Revenue Department enforcing the law before it, in fact, has a negative impact on rural clinics. Is that correct? [LB420]

SENATOR HADLEY: That is my assumption and my understanding that they have not been collecting this tax. They have started to do this, but at this point in time it doesn't have an impact because it has not been rolled into the revenues yet. But if we do not pass AM410 (sic) and LB420, they will start collecting the sales tax from these clinics.

Floor Debate  
April 07, 2009

---

[LB420]

SENATOR GLOOR: This would be a mea culpa for me. There's a term used in sailing...some of you know I enjoy sailing and sailing metaphors. It's called being hoist by one's own petard. And a petard is a hand grenade, so when somebody uses that term, they're being told that you're being blown up by your own hand grenade. That's a pretty disastrous thing. And the impact of the enforcement of this statute if we do not pass LB420, which I stand in support of, would be disastrous for a lot of these rural clinics. I go back to the days that I was involved in advocacy on behalf of hospitals and their clinics, and there was a degree of concern that mounted to paranoia about larger hospitals and more urban communities in our state buying up clinics to steer patients to their institutions and away from the rural facilities. And so I was one of those individuals who was responsible for advocating for this dual hospital ownership of these rural clinics, therefore I'm hoist by my own petard. But I will tell you, from personal experience also, I can justify the fact that they do not run profitably; at best, they break even. Understand, we're not talking about an income tax here; we're talking about sales tax. But sales tax can be a significant expense for a clinic replacing a roof, an x-ray machine, a very expensive x-ray machine, new heating system. All of this can result in added expense for clinics where this has not been enforced in the past, who might look at a \$5,000 or \$7,000 or \$10,000 sales tax bill on an expensive remodel and expensive equipment or a machine replacement, and decide it's no longer worth keeping this clinic open. There are some real ramifications of deciding we now are going to enforce this. We would be well-advised, I think, since we talk about health and concern about health clinics in outreach, to, in fact, pass LB420 just by way of our access issues with healthcare in rural clinics. So, again, I'm in support of LB420. I appreciate Senator Hadley helping me out of a degree of "uncomfortableness" about moving this sort of the legislation forward years and years ago. Now is the time to get it corrected. Thank you.  
[LB420]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Pahls, you're recognized.  
[LB420]

SENATOR PAHLS: Good afternoon, Mr. President and members of the body. My objective today is to utilize this time to discuss Senator Hadley's bill a little bit. But I'm going to use this as a vehicle to discuss the overall concept of tax exemptions. I'm trying to lay the groundwork today for some of my future endeavors. I think in the state of Nebraska we have some of the most beautiful sunsets there are. In fact, I was so intrigued by that word sunset that I'm just going to give you some ideas of some of the words or how it was utilized the last couple of days. Senator Carlson had a bill up here and he said we're going to sunset that. Senator Langemeier talked to a bill that was Senator Cornett's, I think it was LB164, and they talked about they're looking at sunsets. Now, they may be looking at sunsets different than I do, but I hear the word sunsets. And the other day Senator Harms had so many people patting him on his back because

Floor Debate  
April 07, 2009

---

he had used sunsets. I could not...I don't know, at least a half dozen people stood up and said, we like the bill, we like the idea that you're sunseting it. So that's what I'm about is taking a look at some issues in the future because of the rotation of the number of us from here on out, a number of the state senators who will not be here two years from now, four years from now. The longest, anybody serving in this body, will be eight years, so I may be talking to those people. Some of the things that I may be saying today and in the near future, I may be really talking to you because I think that we have to keep this idea or this concept in our brain cells, because, like I said, there's going to be a rotation. We as state senators are going to be sunsetted, believe it or not. Last week, when Senator Schilz stood up and he made a comment about A bills, the concern that we should be having about A bills...see, not only he is but a number of us are concerned about the amount of money that we will be appropriating, leaving our coffers. I think that's good because we do. It's a very...we are in a very, very serious predicament right now. Except I did read today that we are one of the happiest states to live in because how we have...it was on the, I think the Chambers' news, because all of the things that do happen in this state. But I do think that we need to not only look about the money that we're leaving our coffers, we ought to be taking a look at the monies that should be coming into our coffers. This would make many of our decisions much easier and maybe a little bit more fair, if everyone was treated perhaps on an equal basis. Again, that's one of the reasons why I'm talking about sunsets. Now, what I'm going to ask you to do, I handed out a...I had the pages hand out some information, and I'm just going to give you a brief overview of my perception of what some of the things that occurred in the Revenue Committee this year. Now, this is from outside looking in. I did not attend their sessions so I don't know all of the little intricacies that did happen. But this is my perception and what I'm going to have you take a look at, this packet, because if you follow along maybe this will give you some idea of some of my concerns for maybe not now but even for the future. As I start down the list: LB9, it exempts biofuels used for irrigation and farming purposes from sales tax. Now that is a Speaker priority bill. Now am I against that? No. Am I against any of these bills standing by themselves? No. [LB420 LB164 LB9]

PRESIDENT SHEEHY: One minute. [LB420]

SENATOR PAHLS: Am I against Senator Hadley's bill? No. Because everyone of these probably have merits standing on their own. But if you start standing together, we have a building taller than this Capitol. So what I'd like to have you do...and I'm going to push my button again, but just take a look at LB9. That is a Speaker priority. Starting in 2009, that would cost us \$36,000; four years later that would cost \$41,000. Not a large amount. Forty-one thousand dollars this year, etcetera, etcetera, etcetera. That will never be back in this body. That will never be part of our General File. Never. I should say never today, unless in the future or today or whenever, we would sunset. Not to say it's bad, but that means that would cause us to take a look at it if we would say this bill would be sunsetted in five years. So the next group of senators would say, oh, we have

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

Floor Debate  
April 07, 2009

---

to take a look at this. You know what? [LB420 LB9]

PRESIDENT SHEEHY: Time, Senator. [LB420]

SENATOR PAHLS: Thank you. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Pahls. (Visitors introduced.) Resuming floor discussion on AM960 to AM710, we have Senator Price, followed by Senator Rogert, Senator Carlson, Senator Stuthman, Senator Wallman, and others. Senator Price, you're recognized. [LB420]

SENATOR PRICE: Thank you, Mr. President, members of the body. First and foremost, I want to let you know I rise in support of what Senator Hadley is trying to do, but much like what Senator Pahls is doing, I'm going to take a moment here. It turns...it seems that what we exempt for taxes, it is pretty much anything to do with businesses. If somehow or another you have a business concern, you can apply for and argue for a tax exemption. But I don't really see that for the people, and here's why I say that. In Senator Pahls's handout, what we didn't see were LB69 and LB70. LB69 and LB70 were attempts, again, to recognize our veterans who have retired and live in the state. And we've approached it as economic development. We've approached it from many different ways. Just today, for those of you who didn't have the opportunity, we had Nebraskans awarded the Purple Heart. Right across the hall we got Purple Hearts. We have Nebraskans who are going over to foreign countries, standing on foreign lands, protecting our way of life. And just for those of you who haven't heard it before, when a veteran does this where they have the opportunity to serve in a combat zone or if they are serving in a noncombat area, what they have effectively done is written a check. And what this check says is: payable in full with my life, and they gave it to everyone of you. Cash it. Redeem it at any point in time it's necessary. And today we saw soldiers who were wounded in combat. But, you know, again we're going to do for businesses what we won't do for our own people. Now I'm not against business, trust me. I believe in economic development. But again, what we see time and time again, are businesses being exempted from taxes, but we don't do that for our people. We don't do it for our elderly. We don't do it for our first responders. You know, barbed wire is more important in Nebraska than a veteran, because you can get that tax-free. And Senator Pahls brought up many, many things over time that are tax-exempted. Motor homes, I believe is one of them. We see all these bill here. Now again, Senator Hadley, I am not against it. I understand that we want to clarify the code and do these good things. But also I did find it kind of amusing when Senator Cornett said: Please don't debate my amendment; just wait until you get to the bill. (Laugh) But we all don't get that opportunity to have no one debate our bills nor our amendments. But again, ladies and gentlemen of the body, this will be something like a drum that I will beat more often every time we're going to go ahead and tax-exempt another business entity. You know, I talked to people individually, and they all say, individually, you know, that's a good idea there, Senator

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

Floor Debate  
April 07, 2009

---

Price, we ought to do something for our veterans who are retired or wounded or whatever; we ought to do something for them. That's a good idea...you know, that's a great idea. But (inaudible) mine, we're not going to do that. When you get them in the collective, do we collectively say thank you? Or we'll say thank you, but our real thanks is when you say, you can keep that \$35 or \$75. As a matter of fact, the A bill on one of the bills this year was \$2 million...it would cost us \$2 million for the state--\$2 million--and the next biennium it was going to be \$4 million. That was just one of the opportunities we had to say thank you to those veterans who did all this for our country. And I just would ask everybody to keep that in mind. We're talking about A bills. We're talking about funding things. We have a budget coming up. Obviously we're going to have some challenges there. But again, once again, if you're a business, come on in, get your tax benefit; but if you're a person, if you're one of the people, go get in the back of the line. Thank you, Mr. President. [LB420 LB69 LB70]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Rogert, you're recognized. [LB420]

SENATOR ROBERT: Thank you, Mr. President. Good afternoon, members of the body. I rise in full support of LB420 and all of the amendments that are up in front of us. To me this is an issue of providing affordable rural healthcare in Nebraska. I happen to be the lucky recipient or I guess the holder of eight of these clinics in my district, which happens to be the most of any other person on this floor, so it means a lot to the folks that are receiving care in rural Nebraska and especially in my district. It's become a little bit of an issue on logistics. Most of these clinics, for the lack of a better term, operate at a loss most of the time, and they're subsidized by those hospitals that own them. What they're having to do...we'll take, for example, in West Point, Nebraska, we have a hospital in town and we have the clinic that's basically hooked right on next to it. And they're having to buy supplies at the hospital and take them over to the clinic, or send folks down the hall to do certain services in the hospital rather than in the clinic so they can avoid the sales tax on those things, which seems to me to be fairly silly. With this bill and the amendments, we're basically...we're limiting it to on-site use only, of nursing, skilled nursing, assisted living, intermediate care, care for the developmentally disabled, home healthcare, hospice, and respite care. So those things have to be done on-site and it exempts those services from sales tax. And it's not a lot of money coming from us, but from somebody that's getting the bill later on down the road, 5.5 to 7 percent makes quite a bit of difference if you're coming on a fixed income and you can't afford to pay what you got. So I encourage everybody to support the bill and the amendments. And if Senator Hadley has anything, I'll yield the rest of my time to him. [LB420]

PRESIDENT SHEEHY: Senator Hadley, you're yielded 3 minutes. [LB420]

SENATOR HADLEY: Thank you, Senator Rogert. I want to clear up exactly what we're talking about for the fiscal note on this. There was not a fiscal note on LB420 because

Floor Debate  
April 07, 2009

---

of some of the language in it. The concern that we have with fiscal notes, there will probably be a fiscal note on AM710. And this fiscal note will be what I call a "what if" fiscal note because that's the way the fiscal notes are handled. It will be basically if we start collecting...it will be what we will lose if we do not collect tax from these clinics. In essence, the fiscal note will be, if we defeat AM710 and LB420, the fiscal note you will be seeing will be what the state will collect. So you will have to make a decision when we get to Select File, if we get there, you know, is it worthwhile taxing nonprofit healthcare clinics to get this amount of money into the General File? That will be the decision that we have to make. It'll be a clear...I think it will be a clear decision that we have to make, because you will know exactly...it'll be exactly, it'll be an estimate from the Revenue Department as to what they think we will forgo if we don't tax these nonprofit clinics. I will give you one example with my time remaining and it deals with the Crawford clinic in Senator Lathrop's district. The Department of Revenue went out and audited that clinic. They happened to have remodeled the clinic. So they basically got a bill for three years' sales tax that they supposedly hadn't paid, plus the sales tax on all the remodeling and the new equipment they purchased for the clinic. They got a bill for \$100,000 in this rural health clinic... [LB420]

PRESIDENT SHEEHY: One minute. [LB420]

SENATOR HADLEY: ...that they had to pay. My understanding so far, the Department of Revenue has collected that \$100,000 and \$18,000 other dollars. So right now, in total, they've collected \$118,000 through going out, through audits and looking for the back taxes. Again, the decision when we get the fiscal note on AM710 is whether or not you want that...feel that money should be generated for the state General Fund or whether or not as a policy issue we should make nonprofit health clinics tax-exempt. Thank you, Mr. President. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Carlson, you're recognized. [LB420]

SENATOR CARLSON: Mr. President and members of the Legislature, it's very interesting that we've had this news release that Nebraska is the happiest place in the United States to live, and I agree with that, and I was especially interested in Senator Pahls announcing that it came from Senator Chambers' news. That was very interesting. He also talked about one of the Speaker's priority bills would cost us \$36,000 in the first year, and he said that's not very much money. Senator Pahls, do you know what you can do with \$36,000? You can buy three state senators. (Laughter) I am in support of LB420, AM710, and AM960. I'd like you to think a little bit differently with me for a minute as I try to make a point of how I would compare this exemption. A sales tax exemption for a nonprofit is like an insurance premium. The concept of insurance is spreading the risk over a lot of people. Now, if we remove that exemption, medical costs go up by 5.5 percent paid for by the people who seek medical treatment.

Floor Debate  
April 07, 2009

---

Now that's the concept of those who use, pay, and many would say that's the way it ought to be. But if we carry that far enough, we could say that we shouldn't even have health insurance, but just let those who use, pay, and those who seek medical help pay their own bill. But the concept of insurance is the sharing of risk. And keeping the sales tax exemption in place for nonprofits, I think follows that concept, and I would suggest that we continue to allow it. Thank you, Mr. President. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Stuthman, you're recognized. [LB420]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. First of all, I truly support this bill and the amendments. I think it makes it a very level playing field. But I would like to engage in a conversation with Senator Gloor. [LB420]

PRESIDENT SHEEHY: Senator Gloor, would you yield to questions? [LB420]

SENATOR GLOOR: Gladly. [LB420]

SENATOR STUTHMAN: Senator Gloor, since you've been a hospital administrator, can you explain to me the nonprofit status, how it is acquired by clinics or hospitals? What constitutes the nonprofit status? [LB420]

SENATOR GLOOR: I'd be glad to take a shot at it, understanding that, much to my mother's disappointment, I am not an attorney, but I'll give it my best layman's response based upon my years of trying to run a not-for-profit organization. It's a determination. And there's specific criteria that has to be met that's recognized by the Secretary of State's Office, recognized by the Department of Revenue, the IRS, that you operate strictly for charitable purposes--and I believe that's the key phrase, that you operate for charitable purposes on behalf of your community. That means any additional monies or funds that you take in, in charging for your services, go back to the community in terms of charitable services that are provided. So these organizations that we're talking about that are not-for-profit as opposed to the government-sponsored owned--that could be a county hospital, it could be a hospital district, those would be governmental--the not-for-profit clinics would be charitable clinics usually sponsored by a memorial hospital established for the community good, or perhaps religious sponsorship. And those would fit that category of charitable purpose. I hope that's somewhat helpful, Senator. [LB420]

SENATOR STUTHMAN: Yes. That is very helpful to me, because in my opinion, you know, any of the profit that is generated there, you know, really goes back to the communities in charitable donations, and I think that's very good. If they did have to pay the sales tax, I'm sure this would be taken off of the charitable donations to the community. I think that would be what would happen. And would you have another comment, please? [LB420]

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

Floor Debate  
April 07, 2009

---

SENATOR GLOOR: Absolutely. I mean, there is no other way to pay that particular new surprise expense except to reduce what you are paying for the other charitable purposes that your organization is all about. [LB420]

SENATOR STUTHMAN: So in other words you would either have to charge more for the services if you wanted to continue on those charitable donations, or you can be a not-for-profit hospital and not pay the sales tax. These clinics would not pay the sales tax, but in return for that it is a benefit to the communities and to the charitable organizations. And that is why I do support this, because I think, you know, these hospitals...these hospitals create a foundation which does help the community a lot and there's a lot of people that contribute to the foundations, and that helps in the fact of it donating to charitable organizations. So with that, I truly support the amendments and the bill. Thank you, Lieutenant Governor. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Members requesting to speak on the amendment to committee amendment AM960 to AM710: Senator Wallman, followed by Senator Gloor, Senator Avery, Senator Pahls, Senator Friend, and Senator Wightman. Senator Wallman, you're recognized. [LB420]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Gloor be open to a question? [LB420]

PRESIDENT SHEEHY: Senator Gloor, would you yield to questions? [LB420]

SENATOR GLOOR: Absolutely. [LB420]

SENATOR WALLMAN: Thank you. In regards to nonprofits versus profit hospitals, you know, like the Tenet Corporation, are there good guidelines as far as the state to audit the books? Do you have to audit the books if you're a nonprofit? Do we audit the books as a state entity, do you know? [LB420]

SENATOR GLOOR: I believe it is rare for a not-for-profit to be audited for its charitable purpose. Although that doesn't mean that there aren't reports that many community hospitals, many not-for-profit hospitals, issue to their communities explaining how they spend their monies and what they do from a charitable standpoint. The only time that I'm aware that anybody has been challenged on this might be if a not-for-profit healthcare organization of some kind got into an enterprise that was clearly not in keeping with its charitable purpose. Let's say a hospital decided to operate a flower shop, and sometimes the Department of Revenue, sometimes even competing flower shop operators in the community would challenge why that isn't being taxed. And so I think, on an individual basis, occasionally these issues will come up, but I'm not aware of overall audits that are done on not-for-profit hospitals, or profitable hospitals for that

Floor Debate  
April 07, 2009

---

matter, unless there are some specific concern. [LB420]

SENATOR WALLMAN: Thank you. I'm for this amendment and for this bill. I agree the nonprofits shouldn't have to pay sales tax. But we go to some issues, like we have, like implement dealers, for example, or big stores like a Sam's, or Wal-Marts. You have some things exempt, some things not. And I talked to a person that audits these books for the state of Nebraska. And, like Senator Pahls, I truly think we have to simplify our system. And whether that puts more things on the sales tax, or less things, I don't know, but we have to compete with bordering states and we need revenue. So I think we have to look at a sales tax issue and I appreciate Senator Pahls for bringing this effort out, but I'm definitely for Senator Hadley's bill and the amendments. Thank you, Mr. President. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Gloor, you're recognized. [LB420]

SENATOR GLOOR: I also would like to thank Senator Pahls for pointing out the obvious, and that is we really need to take a hard look at whether are we, in fact, waving goodbye to potential sources of revenue. But clearly, in this case, this is not money that has been coming into our coffers. This is not lost revenue. I would like to turn the issue around and ask if there is a senator here who, if approached, would be interested in sponsoring a bill that would say, let's start taxing charitable rural health clinics in the state of Nebraska? I don't think that would find a sponsor. And that is, in fact, what we'd be talking about doing if we did not pass LB420 and the attached amendments. If faced with that...and I would like to respond in part to a comment made by Senator Stuthman in his questions to me. Your options, really in these rural clinics, aren't to increase the fees that you charge, because so many of these rural clinics take care of Medicaid and Medicare populations, and these Medicaid and Medicare populations are paid based upon a fixed payment schedule that is not negotiated but is dictated to those healthcare providers. They have very few private insurers who come to those rural clinics. That's the reason they exist: as outreach clinics to provide services to populations in need to fulfill a charitable purpose of these organizations. So hypothetically, you could increase fees. Realistically, when you're already being paid a fixed amount that has been negotiated for you, not by you, you don't have that option of shifting that expense over. So you're faced with two other options. One is to not undertake that purchase, that expenditure, so the roof continues to leak, the air conditioning unit doesn't work in the summertime because you can't afford to replace it because you can't afford the sales tax bill that would come along with it, and eventually that causes other problems because you can't air condition your building. The x-ray equipment, which is highly susceptible to increased heat, eventually goes on the fritz, and now you're left with no other option but to shut down your clinic because of quality-of-care concerns. So there's inevitability here. You're either going to shut down the clinic immediately or you've signed a death warrant for it, because ultimately you're not going to be able to afford to

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

Floor Debate  
April 07, 2009

---

do the things necessary to continue to provide quality care or even reasonable and safe care in an organization. That's part of the reality that has those of us who understand a little bit about these clinics concerned, that if LB420 doesn't pass we will be shutting down clinics in places like Atkinson and Blair and Cambridge and Crawford and Howells and Oakland and Schuyler and Tilden. Look at this list. This list will touch a lot of Nebraskans if these clinics eventually have to close their doors as a result of this. So, again, I am very much in support of LB420. Thank you. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Avery, you're recognized. [LB420]

SENATOR AVERY: Thank you, Mr. President. There's several reasons why I'm going to support this bill. Number one is that it's good policy. And I think sometimes we ought to ask ourselves that question, "Is this good policy?", before we vote. Number two, it's really not a new program with new costs attached. The program has been around, and it's expected to expire and that's why this bill is here, is to extend it. The third reason is that it involves serving medically underserved areas of our state, and that's a critical need. In fact, there are at least two facilities affected by this bill that are in or near my own district. I don't mean to suggest that my district is medically underserved, but I have two facilities in my district with satellite facilities that would be affected and they are in underserved areas. I do have to say that I believe Senator Pahls has made an extremely, or a supremely, I should say, supremely solid point. And I'm sorry that he is not here to hear this. Yes, he is. We do need to examine our total accumulated sales tax exemptions. I don't think that means we would eliminate them all, but we certainly need to look at the...take a global approach to it. Look at the total impact of these exemptions on our receipts and see which ones perhaps we can do away with. I would like to join in that effort. I think most of you would, too, like to do that. We could decide which ones are worth holding and which ones are not. I would call your attention to the fact that the fiscal note does not show additional costs to the state. I understand that the amendment does suggest that we would incur some costs in anticipated sales tax revenue. But let's remember, we're not receiving those sales tax receipts now. So this bill would not incur an immediate loss in the sales tax receipts. I think it's a good bill. I intend to support it and I urge you to do, as well, and I will yield the rest of my time to Senator Hadley. [LB420]

PRESIDENT SHEEHY: Senator Hadley, 2 minutes 30 seconds. [LB420]

SENATOR HADLEY: Thank you, Senator Avery, Mr. President. Just a couple of quick points. There's a term called nonrelated income. Nonprofit organizations that have income that's not related to their main purpose actually do pay income taxes on it. A hospital that has a cafeteria, if you go in, they'll charge you sales taxes on the items you buy. If they have a flower shop or a gift shop, you will pay taxes on the items you buy because that's not related to their purpose. So basically the IRS is the one that

Floor Debate  
April 07, 2009

---

determines whether something is a nonprofit organization or not. To follow up on what Senator Gloor said, I did get some information on a particular hospital. Their reimbursement rate averages 22 cents for every dollar that they bill in revenue for Medicaid. For Medicare, it averages 32 cents for every dollar they bill for Medicare. So you see these clinics do not have big profit margins because a lot of their care is Medicare and Medicaid. Lastly, I was informed that I had misspoke where Senator Lathrop was from. I know he's from Omaha and I apologize to him for that. Thank you, Mr. President. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Members requesting to speak on AM960 to AM710: Senator Pahls, followed by Senator Friend, Senator Cornett, and Senator Karpisek. Senator Pahls, you're recognized. [LB420]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Senator Gloor, a couple of minutes ago you got to my heart because you said this town...that a hospital that was very important was Atkinson, Nebraska. Having been there for a number of years, many years ago, I understand and I value that hospital in that small town because that town evolved around that hospital. Having spent some time at Wayne, Nebraska, I understand. I want people to also understand I am not saying we need to do away with all the exemptions. I am saying that some of these should be sunsetted and we should take a look at this. What I want you to do right now, fast-forward this body, let's say, ten years from now. This exemption may come up and we would be having that discussion that we're having right now. And we would say, hey, this is a great idea; we need to keep it. (One clap) Done deal. Move on for another few years. That is the intent of a bill that I will be talking to later on, not today. It goes to show you the power, the potential of something such as that. But, again, I do need to...because I do not plan to talk...say my goal is not to talk this bill to death. But I want you to take a look at the handout that I gave you just to see the potential of all these exemptions that were in front of the Revenue Committee. LB57: that is held in committee. Now some of these may have changed since this packet of information was produced. The committee may have already done some...but that is held in committee. If you would go out four years on that--that is exempting repairs and parts on agricultural machinery and equipment--you go out four years from that, that would be a \$10 million deal. That would mean \$10 million this year, \$10 million the next year, etcetera, etcetera. That's lost forever from the revenue stream from our General Fund dollars. Let's go down to the next one, LB58: exempting oil and propane. That's held in committee. That would be, in four years, would be over \$6 million. LB65, which is very similar to LB57, that would be, in four years--again deals with agricultural machinery repairs--that would be \$10 million. LB127: Avery's--I have to say that, Senator Avery, because I had a bill like this dealing with textbooks. The bill would have gone on, in four years been \$12 million. Somebody made a comment to me early on: Pahls, you've had tax-exempted bills in here. Yes, I did several years ago. I tried to get one through. Did not get it through. Then I took another tactic and said the business would pay the sales tax. That also did not get

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

Floor Debate  
April 07, 2009

---

through, so I...full disclosure. And I have to be honest with you, there's some of these bills in the past that have gone through, I voted for, so I'm not a purest. I'm not saying, do away with all exemptions. What you have read is I said if we did away with all of them, the potential. I'm just trying to bring a point across. LB234, which is on General File, which relates to fuel and energy sales taxes, that would be almost \$500,000. That's still on General File is my understanding. LB296: That has been killed. That was a relatively small one. And LB336, which was killed, that in four years that would have been over \$11 million. LB420, which we are discussing today, that is very similar to Friend's LB460, another senator who sat on that committee. His bill, which I think is a similar bill, would bring \$11 million out of...or that would bring \$11 million into the fund, and I'm hoping Senator Friend will explain the rationale or why that happened. I think it has been explained a little bit by some of the people. LB485, that was... [LB420 LB57 LB58 LB65 LB234 LB296 LB336 LB460 LB485 LB127]

PRESIDENT SHEEHY: One minute. [LB420]

SENATOR PAHLS: That one was killed; it dealt with natural gas. And it was interesting on this one, this went up and down, because you did get some money, because through the excise tax. Well, if you look at the tail end of it, that was \$2 million. LB57, which was killed; LB587, which is on General File...I'm just going through. Now, if we total all the...if this all passed this year on General File and priorities, that would be \$41,000. Now, if we...all the bills that are still alive, that would be over \$1 million. And just to give you an idea, at the moment that this was printed there were eight bills that were alive, six were killed. Now, if we had passed everything this year, that would have been \$53 million that would not have been in our revenue stream. The point I'm trying to get across here is we need to take a look at these. Some of these are...have merit. I'm asking for us, in the future, when I'm up here and some of you will help me dialogue the need to take... [LB420 LB57 LB587]

PRESIDENT SHEEHY: Time, Senator. [LB420]

SENATOR PAHLS: Thank you. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Friend, you're recognized. [LB420]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. There's nothing wrong with LB420. Nothing. From a tax policy standpoint, absolutely nothing, because we've established...about the only thing I would agree with Senator Pahls on, we've established out here that we have a dysfunctional sales tax system. That's where it ends. He's not making an argument against LB420. The sales and use tax in this state is considered a tax on consumption. That's the way the Department of Revenue in this state looks at it. People that run around, tax gurus will tell you that the tax is only to be

Floor Debate  
April 07, 2009

---

levied on final consumption. We, like a lot of our counterparts, particularly in South Dakota, will take it a step further and impose the tax in at least, at the very least, business purchases. We'll extend it out past the consumption. Our sales tax problem is not...LB420 is going to move on. LB460, by the way,--I'm glad Senator Pahls brought that up--had a huge fiscal note. And I went nuts in the Revenue Committee and said, how could this bill be the same as LB420 and have a fiscal note that looks so much different? Since then it's been explained to me. Since then we've worked on it. Since then LB460 was killed and LB420 was worked on. We don't know what the fiscal impact of LB420 is. But I would submit to you what Senator Pahls is talking about is a high level discussion of a bunch of people who receive tax incentives and exemptions based on how we have either adequately or inadequately set up our sales tax code. It's not a matter, I would submit to you, of adequacy. I think we drum up enough money with our sales tax code. I would admit to you that I think it's equity, and it's equity because we don't tell everybody what...we don't define what consumption is. There is difficulty in administration for retailers, but the existence of exemptions exacerbates that. The exemptions are the complicating factor, right?, especially since some exemptions are based on what the product is: food. Some are based on the status of the purchaser. We're, you know, a religious organization, we're a church, whatever, schools, hospitals. Other exemptions depend on the use of the product by the purchaser, the resale of the product, which is what we're talking about here, or purchases of machinery, ag machinery. Here's my point: I don't care if you blew away all the exemptions and I don't care if you sunset anything; until you come to the determination of what you think is equitable, of what you think consumption is, you're not going to solve a dang thing--nothing. And I made that point in committee until they were sick of hearing it. We have got to create a sales tax code, not just start at ground zero and tax everything. That's not fair either. [LB420 LB460]

PRESIDENT SHEEHY: One minute. [LB420]

SENATOR FRIEND: We have to create a sales tax code. So in other words, say, here's what consumption is. Here's what you should be taxing. Right now, the Department of Revenue doesn't know. We're not giving them any help. And then we complain to them when they come in and start taxing something that they're supposed to be interpreting from our actions should be taxed. Clear, concise attitude and ideas. Not just saying, oh, it's time to sunset these because this is wrong or let's blow away all exemptions. All those exemptions had a good reason, right? Hey, by the way, if you blow everything away, all the exemptions, you have another problem. You're not taxing everything, sales taxwise. What about the Internet? We have an interstate commerce problem. That doesn't go away and that exacerbates once we blow away exemptions. I know that's not what Senator Pahls is talking about, but sunsets lead to that thought process. We're not talking about the right stuff here. That's my point. [LB420]

PRESIDENT SHEEHY: Time, Senator. [LB420]

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

Floor Debate  
April 07, 2009

---

SENATOR FRIEND: Thank you, Mr. President. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Cornett, you're recognized. [LB420]

SENATOR CORNETT: Thank you very much, Lieutenant Governor and members of the body. We've had a discussion on Senator Pahls's bill that will be coming before the Legislature at some point. It talks about exempting all sales tax. The committee has discussed in depth that very issue, that Nebraska's tax system, sales tax, does rather look like a piece of Swiss cheese. Some interesting facts: We do exempt more than we actually tax in sales tax. The thing that I want to stress to this body, that while I more than agree and so does the Revenue Committee that we need to reexamine our sales tax policy, I want everyone to keep in mind that this isn't for any particular special interest groups. I've carried the military retirement bill for five years. This isn't for machinery parts. This isn't for a specific industry. This is for nonprofit healthcare. We, as a state, a long time ago made the determination there were certain things that we would not tax: food, healthcare, medication. Yes, we can look at taxing those items and if they should be, but those are policies that were determined to be in the best interest of the people of the state. I want the people in this body to focus on this bill and what this bill is. It is not exempting farm equipment. It is not exempting oil sprayed in grain elevators, which you will hear. It is not exempting rural versus urban. It is focusing on the policy issue: Do we want to tax nonprofit healthcare in this state? That is the question you have to ask yourself. I want the body to stop and think about that. All the other issues aside, all the issues that have been brought into this argument, this bill is about healthcare. It is about rural healthcare and healthcare in the metro area. It is about people. If we tax healthcare, it will affect the elderly; it will affect the lower income; it will affect the people that disproportionately can afford to pay for that, because that tax will be passed on. With that, I urge the body to support both amendments and the underlying bill. Thank you. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Karpisek, you're recognized. [LB420]

SENATOR KARPISEK: Question. [LB420]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB420]

ASSISTANT CLERK: 25 ayes, 8 nays to cease debate, Mr. President. [LB420]

PRESIDENT SHEEHY: The motion to cease debate passes. Senator Hadley, you're

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

Floor Debate  
April 07, 2009

---

recognized to close on the amendment to committee amendment AM960. [LB420]

SENATOR HADLEY: Mr. President, members of the body, first of all, I apologize. I got things out of order. I should have put this after the other amendment. So I'm going to explain to you why I put the emergency clause because I think this is important enough that I didn't want the clinics to be held in limbo out there for two or three months without the emergency clause. So I do think that's important. But I would also like to talk about the AM710 and LB420 in my closing. I think these are important. I think these are important policy issues. And I want to reiterate that this is a policy issue that I hope this body reaffirms. I think Senator Pahls has some great points. I sat on the Revenue Committee and I heard all of these exemptions coming through. And I remember Senator Raikes, at our orientation, said to us that if we give the money away in the Revenue Committee, we have nothing left to appropriate, and I fully understand that. But I do think that this is a public policy issue that is important to the entire state of Nebraska. And I think you will see a fiscal note with AM710 in Select File. And I just want you to know when you look at that, that is kind of the opportunity cost which is the income forgone if we decide to tax nonprofit...I'm sorry, it's the income we will get if we decide to tax nonprofit clinics. With that, I hope that you will support AM960 and also AM710 and eventually LB420. Thank you. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You have heard the closing. The question before the body is on the adoption of AM960 to AM710. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB420]

ASSISTANT CLERK: 37 ayes, 0 nays on the adoption of AM960, Mr. President. [LB420]

PRESIDENT SHEEHY: AM960 is adopted. We will now return to the Revenue Committee amendment AM710 to LB420. Members requesting to speak are Senator Louden, followed by Senator Stuthman, Senator Pahls, and Senator Adams. Senator Louden, you're recognized. [LB420]

SENATOR LOUDEN: Question. [LB420]

SENATOR FRIEND: Point of order. [LB420]

PRESIDENT SHEEHY: Senator Friend, point of order. [LB420]

SENATOR FRIEND: I don't believe there's been sufficient debate on AM710, Mr. President. I would ask for a ruling. [LB420]

PRESIDENT SHEEHY: The Chair would rule that we're going to continue with debate on AM710. We do have members in the queue that have not spoken. Senator Stuthman, you're recognized. [LB420]

Floor Debate  
April 07, 2009

---

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I just wanted to talk a little bit more about, you know, what the hospitals and the healthcare clinics, the not-for-profit centers, you know, do provide in the state of Nebraska. And I think it is very fortunate that we have these institutions, these clinics that provide these services. It was brought to my attention that there's about \$750 million worth of service, you know, donated to the people in the state of Nebraska. And that comes of just charitable donations, donations as far as what the hospitals have to write off as far as what they were reimbursed for the services and what the cost of the services was, and they weren't able to capture that money by the direct billing. There's also about \$150 million worth of write-offs for people that just don't pay their bill, and this takes care of part of that. But I want to address another issue. I think the hospitals, you know, they make a great contribution to the fact that in the past, I think it was four or five years, they did start the dental days in Nebraska. I think the first one was out in North Platte and maybe one was in Grand Island and Norfolk, Scottsbluff, and this year it's going to be held in Omaha. It's a free Dental Day clinic where people go there that can't afford dental care and have their teeth worked on, anywhere from filling of cavities to root canals to crowns and assistance like this. The hospitals do contribute, you know, towards that, and I really appreciate that fact. But I think the main reason that hospitals do contribute towards that is because they do realize that, you know, with these free dental days, that if they can help these patients that have, you know, dental problems, they will keep them out of the emergency room. And that's one of the benefits that we have with these health departments. These five federally credited health departments, the majority of them have dental assistance, dental arena where they do work on people. And it has always been said, you know, these health departments are the best thing that has happened to the state of Nebraska mainly for the fact that they are keeping people out of the emergency room. And I think the hospitals, these not-for-profit hospitals realize that. That's why they utilize some of the money that they have generated, you know, for charity and to contribute to establishments like the free Dental Day and keep the people out of the emergency room. So with that, I truly support the amendment and the bill. Thank you, Lieutenant Governor. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Pahls, you're recognized. [LB420]

SENATOR PAHLS: Thank you, Mr. President, members of the body. This will be my last time. I had not planned on talking again. I do want to make it clear that I understand what this bill is all about. And I maybe sidetracked some of the issues as I was trying to bring a point across not to cause confusion on the bill...or with the bill, I should say. I have...we have some opportunities in the near future to discuss tax exemptions. I was just using this as a foundation. Again, I understand where the good senator is coming from, and I would...this is just a question I would like to propose to him: Would you be daring enough on Select File to sunset your bill? You pick the date ten years from now

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

Floor Debate  
April 07, 2009

---

so that we can set some examples of how we should be doing some of these things that will be taking potential money from our coffers. That's what I'm asking you to do. Not to comment on it now, but we need to start sometime. And again, there are many good exemptions out there. People are missing my point. But I think it would start the ball rolling if we would think about bringing this same topic up when all of us are gone, because I have a feeling the merits that you have discussed today, ten years from now those same merits would be discussed; the senators would vote for this bill. As you probably already know, this bill will pass. I believe ten years from now this bill would pass because I don't see the body making all those unbelievable changes in the personalities of the state senators. Just a thought. Thank you. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Adams, followed by Senator Campbell. Senator Adams...Senator Adams waives. Senator Campbell, you're recognized. [LB420]

SENATOR CAMPBELL: Thank you, Mr. President. I want to make a comment about Senator Cornett's very eloquent words to us in terms of what we were looking at. This is a policy issue, and really 10 years from now or 20 years from now it is a key policy decision on behalf of the Legislature. And I rise to support AM710 and LB420 from a different perspective, and that is having served on the Medicaid Reform Council. One of the key issues to keeping Medicaid to a cost that is effective and still provides quality services for our citizens across the state is dependent upon rural healthcare. These clinics will be as important today and they will be for the next 10 and 25 years. It is critical that we look at this from that kind of policy perspective and not just as an isolated revenue source of whether we're going to take in the money or not. This is a key issue in terms of our healthcare provisions for the state, and particularly as we try to work with elderly citizens who need to be kept in their homes, if at all possible, and the healthcare be there for them. Thank you, Mr. President. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Seeing no additional requests to speak, Senator Cornett, you're recognized to close on the Revenue Committee amendment AM710. [LB420]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. Again, I urge the body to adopt AM710. It clearly defines the policy of the state of Nebraska in not taxing nonprofit hospitals. Thank you very much. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of the Revenue Committee amendment AM710 to LB420. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB420]

ASSISTANT CLERK: 35 ayes, 0 nays on the adoption of committee amendments, Mr.

Floor Debate  
April 07, 2009

---

President. [LB420]

PRESIDENT SHEEHY: Revenue Committee amendment is adopted. We will now return to floor discussion on LB420. Senator Adams, you're recognized. [LB420]

SENATOR ADAMS: Thank you, Mr. President, members of the body. This was my first year on the Revenue Committee, and I'll be quite candid with you: My approach to the committee was to not let a dime out of here, because we need it, particularly with an eroding tax base. But obviously you sit day after day, and you listen to requests for exemptions and exemptions and exemptions, and one side of you says, plug them all up. That's what Senator Pahls would advocate. Just plug them all up, don't let them happen. But you know what? There's another side, a rational side, a tax policy side where you have to step back and say, well, wait a minute, wait a minute. There's more to this than just preserving the tax base. There's more to this than just rewriting the tax statutes. There's also making rational, fair, equitable tax policy. And when I look at this bill my thought is this: If we took a broad brush today and we wiped away all of the sales tax exemptions and said, all right, now look, that's probably a bit too black and white, so let's be reasonable. Do we have a rationale for allowing an exemption? Well, on sales tax I think it's the regressive nature that is inherent within the tax. And we started by granting an exemption for food, which is reasonable, and we grant an exemption for dental care, medical care. It's reasonable because it moderates the regressiveness of the tax. Now, are all of the other things that Senator Pahls described necessary to preserve and to protect from this regressiveness? I would doubt it. But here's one that is. And I think that even if we tried to plug every hole in the sales tax law, if we're rational and we step back and we look at good policy, in order to moderate that regressiveness we'd be here again somewhere in the future. Thank you, Mr. President. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Utter, you're recognized. [LB420]

SENATOR UTTER: Thank you, Mr. President, colleagues. I, like Senator Adams, this is my first year in the Revenue Committee too. And I went in with a very much similar attitude to his attitude with regard to preserving as much of our income in the state, for a year that we knew was going to be extremely tight, as we could. This situation, along with two or three other bills, represents an interpretation, almost of our revenue rules, and it represents a situation where these are taxes that haven't been collected in the past. And so to begin to start collecting them today, number one, would represent a tax increase which would seem to me to be unfair in this environment, particularly on the people that would ultimately end up paying for these taxes. You'll hear a couple of other bills that also came out of Revenue that represent a very similar type situation; represents a situation where the Revenue Department, either in a redefinition of rules or whatever the reason was, all of sudden decided that certain items should become

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

Floor Debate  
April 07, 2009

---

taxable, and those will be discussed in due time. But quite honestly, the Revenue Committee, as a total, has been very tightfisted, particularly in this year, about granting exemptions not only of sales taxes, but also of income taxes. And it seemed like it was something that we really had to do, facing the constraints of budget that we are faced with and seemingly are going to become worse. And so while we have been very stingy in Revenue, I think this is a legitimate bill. I think it's one that needs to be passed, in fairness, and I would urge your support of LB420. Thank you. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Utter. Seeing no additional requests to speak, Senator Hadley, you're recognized to close on LB420. [LB420]

SENATOR HADLEY: Mr. President, thank you so much. I just want to take a moment. I think we had a great discussion on the bill. I think it is an important tax policy or policy issue for the state dealing with healthcare. I would appreciate your green vote on LB420, and thank you again. [LB420]

PRESIDENT SHEEHY: Thank you, Senator Hadley. You have heard the closing. The question before the body is on the advancement of LB420. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB420]

ASSISTANT CLERK: 38 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB420]

PRESIDENT SHEEHY: LB420 advances. Mr. Clerk, do you have items for the record? [LB420]

ASSISTANT CLERK: Mr. President, I do. New A bill, LB159A. (Read title). That's introduced by Senator Gay. New resolution, LR82 by Senator Gloor. And an amendment to be printed by Senator Coash to LB63. [LB159A LR82 LB63]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now proceed to LB159. [LB159]

ASSISTANT CLERK: Mr. President, LB159, introduced by Senator Gay. (Read title.) The bill was read for the first time on January 12 of this year, referred to the Committee on Revenue. That committee reports the bill to General File with no committee amendments. [LB159]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Gay, you're recognized to open on LB159. [LB159]

SENATOR GAY: Thank you, Mr. President. I'm going to explain how we got to this point to have LB159 on the floor. For the past two years, I'd introduced a long-term care bill that never did make it out of committee. After those two years, I've included others who I

Floor Debate  
April 07, 2009

---

know had an interest, and then we worked over the summer with insurance providers, hospital administrators, insurance people that sell long-term care, and the department. And what I think we have here is a bill that adequately addresses a moderate move forward to help those that want to help themselves dealing with long-term care. And the reason why is to encourage people to be responsible for their future needs and curb the increasing Medicaid cost. LB159 would allow for a nonrefundable tax credit equal to 25 percent of the premiums paid for a long-term care insurance policy. The total credit is limited to \$250 for an individual policy and \$500 for a joint policy. The bill limits the number of years a credit can be claimed, to three years. Now, we'll discuss why on that. The credit cannot be claimed if a taxpayer used the deduction allowed under the Long-Term Care Savings Plan Act which is the act by the State Treasurer. Twenty-nine states plus the District of Columbia currently provide for a credit or a deduction, and two states allow for the choice between either a credit or a deduction. LB159 represents what I believe to be the best provisions of different states' policies. I did entertain the notion of allowing a credit on a sliding scale, but decided not to explore that option at this point. While the fiscal note indicates loss of revenue could be \$1 million in the next fiscal year, we need to look at the long term and keep in mind the savings that could come from more people taking care of their personal needs and not relying on their Medicaid. According to a study conducted by researchers from the Centers for Health and Long-Term Care Research and the Center for Health Policies, every long-term care policy purchased saves Medicaid between \$3,000 to over \$6,000. And this is in 1990 dollars, so that number could be higher. For my examples, I'm going to use \$5,000, though, when we discuss this. So if you hear me talk about savings, it's based on a \$5,000 average. LB159 is very similar to Maryland's law which allows for a credit equal to 100 percent up to a maximum of \$500. According to a summary of Maryland's credit, the largest loss in revenue since 2001 was a little over \$8 million, and the average over a six-year span was closer to \$5 million. The reason I bring that up is you can imagine the size of Maryland versus Nebraska, so we're somewhat estimating on the fiscal note what this could be. However, keep in mind that the year Maryland granted the most credits, this represented over 14,000 returns or policies. So if each policy saves Medicaid an average of \$5,000, that would equate to Maryland's savings of \$70 million. So I wanted to talk about, I handed out a little summary guide for you to follow and it kind of covers what I had just discussed. While I was preparing for my testimony, earlier, and introduction, I was looking this weekend at different things. And there was a pertinent article that popped into my...it was just...and basically AARP and National Conference of State Legislators, the NCSL, had a...it says "Shifting the Balance: State Long-Term Care Reform Initiatives." And there was a paragraph in there that I thought was pertinent. And I know we're having this discussion on credits and exemptions and things like that, but this was a...I highlighted, "As the population ages, these issues have become more urgent. Although tough economic times require careful planning by state policymakers, the need to move ahead is no less compelling. As state policymakers look for ways to control state budget growth on health and human services, balancing Medicaid funding can potentially slow the rate of increase to Medicaid and long-term

Floor Debate  
April 07, 2009

---

care spending while serving more people with disabilities who need help." That caught my attention, of course, as I was looking at this. But that sums it up, I think, what we need to do. We cannot just completely ignore future problems and then all of a sudden say, boy, how did that happen that we now have a huge problem? In my...the issue of what I handed out, you can see some of the spending we currently spend on our Medicaid, and most of that is for long-term care. But let me explain how this works a little bit. So if a couple has a joint policy--and policies are getting...they change all the time--but a joint policy today could cover a lot of in-home services. And the policy rates are actually going down, longer term. You're going down as you're seeing more...and you'll see these popping up in your communities probably: at-home day services, in-home care. And the movement has been, of course, because the person who is aging wants to be at home but yet the policymakers want them to be at home, as well, because it's a cheaper method of delivery. So you have a better quality of life and a cheaper way to do it. So those people that are trying to take care of their future needs and be a little independent and take control of their future, it would be if you bought a \$2,000 joint policy you'd get the \$500 tax credit. An individual that buys a \$1,000 policy would get \$250. That's how they'd max up to their \$250 credit. So if we had...the fiscal note, taking that \$1 million, if--if we even get that far, and I'll discuss later why I don't think that would happen yet--\$1 million. Divide that by the \$500. That's 2,000 policies in Nebraska, if we could get that, times \$5,000 savings. We have \$10 million in return on our investment. So the return is very important. I don't want to lose sight of that as we kind of look at the immediate problem and don't look at any former problems that could exist. Why three years? Is because as an inducement on a long-term care policy, these policies are sold; usually not bought. They're very difficult things. And many...I've talked to several of you here in the body about...that you've discussed with others, long-term care. And I know Senator Carlson has been very interested in this issue as well. He was president of NAIFA which is the National Association of Insurance and Financial Advisors, and they're supportive of this bill, as well as insurers, of course. But he understands this, when I talk about this is something that's sold, not bought. It's a complex sale. You need to...because people don't like to think about long-term care needs and the reason why, because it has to do with uncomfortable issues, quite honestly. It has to do with aging, and eating, bathing, toileting, dressing--just things like that; these ADLs we call them. Those are basically physical conditions that people don't like to talk about and it is a tough thing to get them to talk about. It's much like estate planning or situations like that. We don't like to talk about uncomfortable things. The top ten reasons, and I was on AARP's Web site, and long-term care is basically fractured bones, recovery from an illness, rehab, Alzheimer's dementia is a growing need--and that's a big need as well why somebody would actually start to use this policy in a hospital, Parkinson's, heart disease, strokes, head injury, and chronic and terminal medical conditions. So those are obviously things you don't like talking about but it's important to think about. Consumers are buying more affordable long-term care insurance. As I've talked about is 84 percent of people who buy these are usually they've had a loved one that they've had to deal with this, they're caring for a parent or

Floor Debate  
April 07, 2009

---

something like that, or they've had a family member who's not so old have to use policies like this, or they've seen their resources exhausted. I'm going to be handing out another thing, too, that's very important. When we're in the long-term care partnership act, which means if you take a policy and you go ahead and buy a policy, the value of that policy, you can waive that and keep those resources for your loved ones and pass something on. So this idea that people are pushing resources off so they can qualify for Medicaid is not necessarily needed at this point because, by taking control, we're inducing them to buy it already at a federal policy, and the state is a partner in this, where you can keep those resources at home and use those resources, and then if you use your policy and you get to... [LB159]

PRESIDENT SHEEHY: One minute. [LB159]

SENATOR GAY: ...the point of \$100,000, let's say, those resources stay out. So there's actually an incentive to take control of your life. You don't have to go down to \$6,000 and have a look-back provision and all these other things that people don't want to do. That encourages them to get rid of their assets. So we are a member of that partnership and I think this would help, would help us move that. The reason why, three years? Again, if we did it just one year, it's just not really enough. A person sets aside a certain set, a sum of assets. Best way to do this is set aside a certain sum of assets to pay the premium policy, so it's a fixed...it could be a bond, it could be something like that, it pays the premium policy. Once you get paying on a policy for, I think, three years, you're going to keep that policy. You're not going to make an investment and then say, oh, by the way, I think I'm going to dump that long-term care policy. So this is an investment. Three years and then it would be removed. But I think it's enough of an investment that it would be...it would catch their attention, make it worthwhile. [LB159]

PRESIDENT SHEEHY: Time, Senator. [LB159]

SENATOR GAY: Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Gay. You have heard the opening to LB159. (Visitors introduced.) Returning to floor discussion on LB159, members requesting to speak: Senator Wightman, followed by Senator Coash, Senator Carlson, Senator Pahls, Senator Friend, and others. Senator Wightman, you're recognized. [LB159]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. First of all, if I could, I would like to ask some questions of Senator Gay, if he would yield. [LB159]

PRESIDENT SHEEHY: Senator Gay, would you yield to questions? [LB159]

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

Floor Debate  
April 07, 2009

---

SENATOR GAY: Yes, I would. [LB159]

SENATOR WIGHTMAN: Senator Gay, generally I like the idea of this concept. I don't know if this is the year that we can stand a \$1 million hit, which is about what it appears to be with regard to the fiscal note, which would take that much out of revenue. Actually you show no fiscal impact until 2010-2011, is that correct, on the fiscal note? [LB159]

SENATOR GAY: Yeah, because it goes into effect then. Yes. [LB159]

SENATOR WIGHTMAN: That's when the first taxes would be due, would be after the end of 2010 for the 2010 calendar year. Is that correct? [LB159]

SENATOR GAY: Right. Your individual policies. You do your tax returns and it would be on the tax form. [LB159]

SENATOR WIGHTMAN: Now I wonder if it isn't possible we would see some impact from that even earlier than the end of the year 2010 from the standpoint that people might take it into account. I realize it isn't a very big deduction for any one individual, because you do limit it to \$250, is that correct? [LB159]

SENATOR GAY: That's correct. [LB159]

SENATOR WIGHTMAN: So it is possible, I assume, that somebody could take that into account in their estimates, if they made an estimate, that it might have a little earlier fiscal impact, but probably I would concede it would be very little. Now if somebody has used this as a federal...an adjustment to their federal adjusted gross income, then they would not qualify? [LB159]

SENATOR GAY: On their...well, you'd know... [LB159]

SENATOR WIGHTMAN: In taking the state exemption. [LB159]

SENATOR GAY: ...federal, you'd take it after, the way I understand it, after you've figured it out, it is credit. You then take it off what you owe the state at the end. [LB159]

SENATOR WIGHTMAN: Even though you've taken the adjusted...adjustment to federal adjusted income? [LB159]

SENATOR GAY: Yes. [LB159]

SENATOR WIGHTMAN: So you would still get it. So you aren't limiting it, at least in that regard. [LB159]

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

Floor Debate  
April 07, 2009

---

SENATOR GAY: Yeah. [LB159]

SENATOR WIGHTMAN: Now in addition to the \$250 limitation for a year, you have a \$500 limitation on a joint policy. But there's no limit. You would get the full \$250 for three years. Is that correct? [LB159]

SENATOR GAY: Well,... [LB159]

SENATOR WIGHTMAN: Credit. [LB159]

SENATOR GAY: ...it depends on which policy you buy. And a little bit on the fiscal note is based...I'm basing it on the max policies. You're going to try to buy the minimum policy, so when the fiscal impact...we don't know. I think it's something new. People aren't going to be rushing to buy this. If they do, you know, we'll see, but people wanting the lowest premium they can pay. So the policy I gave you in my example, the highest 2,000, it could be 4,000 people get insured. But I will check on what you're talking about when you're talking about the federal level. [LB159]

SENATOR WIGHTMAN: Right. [LB159]

SENATOR GAY: Yeah. [LB159]

SENATOR WIGHTMAN: It says here no taxpayer can use this credit if he or she has used the adjustment to federal adjusted gross income as a participant. That's in the Nebraska long-term savings plan, so that may not... [LB159]

SENATOR GAY: Senator Wightman, I will check. They're checking right now as we talk. We have the state...we have a long-term care savings plan in the state from the Treasurer. This is different. This would be...that's where you insure yourself somewhat and you can get a deduction, where you go to the bank and get the savings. I had that bill, too, and that didn't get out committee. But that's where you save yourself. This would be a policy you buy. So what they're saying, you can't take that one, by the way, and put money aside in a bank and then go, also go buy a premium and take both the credit. You can't take a credit and a deduction. [LB159]

SENATOR WIGHTMAN: Thank you, Senator Gay. I agree with Senator Gay that on a long-term basis this may be something that saves the state a lot of money. We don't know when that will be. We don't know traditionally how early probably people do buy long-term care insurance. My guess is that the savings will be probably reflected maybe as much as 20 years from now... [LB159]

PRESIDENT SHEEHY: One minute. [LB159]

Floor Debate  
April 07, 2009

---

SENATOR WIGHTMAN: ...that there won't be very many people that buy this that would immediately, or within the first five or ten years even, that we would save any money on Medicaid expenses, but I don't know that. I am concerned, as Senator Friend and Senator Pahls have indicated, that we have to look at all of these exemptions we're granting. And while I think, long term, this may be beneficial for the state, I have a lot of problems perhaps as to what it's going to do in the next two years. Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Coash, you're recognized. [LB159]

SENATOR COASH: Thank you, Mr. President, members of the body. LB159 is my priority bill and I thought I would take just a moment to share with the body some of the reasons that I have chosen LB159 as my priority bill. As I looked ahead and I saw what we have in our state as far as some big obligations, the list got pretty long. Among them, we talked about them this morning, services to people with disabilities, services to the elderly, and we're working on a bill to assist children with behavioral health issues. Most of those services are provided by Medicaid. And if we continue to fund these kinds of services, our Medicaid costs in our state are just going to continue to rise. So I had to ask the question: How are we going to keep the cost of Medicaid down? One of the answers is to reduce the number of people who need and require Medicaid services. On the handout that Senator Gay passed out, on the third bullet it says that the aged population, while it only accounts for a little less than 9 percent of all Medicaid-eligible people, that same group accounts for 22 percent of all Medicaid expenditures--22 percent. When people have these policies that are incented in LB159, they don't need Medicaid. They don't come to the taxpayers for more assistance. And every dollar that we save can go to help someone else. This bill is intended to commend those who are proactive, and I like that idea. Quickly, I'd like to share a story that got me thinking about what I could do as a legislator to address this issue. My wife came home one day and she is a social worker and she frequently assisted families in getting Medicaid services, and she came home and told me a story of a farmer who got in an accident. Fell off of his tractor, injured his head and was no longer able to farm. He did not have long-term care insurance but did have some medical needs, some pretty significant medical needs, and he ended up having to liquidate his farm. Couldn't pass it on to his kids. Had to sell his equipment. Had to downsize. And as a result, he's no longer able to provide for his family and his family lost their livelihood. Long-term care insurance would have prevented that. The \$250 or the \$500 per policy credit that's proposed in this bill I think is a pretty small price to pay. I appreciate Senator Gay bringing this bill because, as he said in his opening, if we're not going to look ahead now, when are we going to look ahead? So I would encourage the body to consider that. I would encourage you to ask questions and support LB159. Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Carlson, you're

Floor Debate  
April 07, 2009

---

recognized. [LB159]

SENATOR CARLSON: Mr. President and members of the Legislature, I rise in support of LB159. As we look at bills like this and from my position in the Legislature this year versus a year ago, I can look around and see how many people aren't paying attention. This is an important matter. I've spent the better part of 30 years selling long-term care insurance to people to protect themselves. And I know you get tired of hearing figures, but think with me, a little bit if you would. In 2009, out of about a \$3.5 billion budget, General Fund budget, about \$372 million will be spent for Medicaid long-term care, the aspect of long-term care that could be insured: full care, assisted living, home healthcare. Using projected revenue figures, ten years from now it won't be \$372 million. It will be \$595 million for long-term care services. You know, we're looking, according to the Nebraska Medicaid biennial report, we look at Medicaid, we look at state aid, and we look at all other services. Now all other services takes in a wide range of responsibilities. In 2009, all other services in our budget will account for about \$2 billion. And based on revenue projections, not changing tax rates, and the fact that we have to have a balanced budget, think of it, this year we have about \$2 billion for all other services. In the year 2025, we would have \$600 million for all other services. In 2025, we would need about \$2 billion for long-term care under Medicaid, \$2 billion. So what do we do? We're heading toward a time that we don't have any money for all other services. The only thing we're going to be funding is Medicaid and state aid because we have a balanced budget, and that's good. So when we have legislation that comes forth that provides at least some kind of an incentive for people to take care of themselves, take their own responsibility, we should pay attention to those pieces of legislation. And in my experience in selling insurance, every once in awhile somebody will tell me, I don't care about long-term care insurance; I'll just let the county take care of me. They have no clue what they're saying because when they face that reality it's not fun. And I've worked with people... [LB159]

PRESIDENT SHEEHY: One minute. [LB159]

SENATOR CARLSON: ...that are in that position. It's not pleasant. And something that Mom and Dad may have set aside with good intention to go on to the kids, is gone. The kids were kind of looking at that little nest egg that Mom and Dad had and it looked pretty good. It's gone. So whatever we can do to help people make the decision to take care of themselves is the right thing to do and it's becoming more and more serious year after year. I support LB159. Thank you. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Members requesting to speak on LB159: Senator Friend, followed by Senator Fischer, Senator Wallman, Senator Campbell, Senator Gay, Senator Gloor, and others. Senator Friend, you're recognized. [LB159]

Floor Debate  
April 07, 2009

---

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. This morning I opened by discussing what I consider to be a lot of our fiscal...what I believe to be a lot of our fiscal reality or what we're going to be up against. You know, I look at this bill and I was joking with Senator Gay off the mike. I said, hey, Tim, do you want me to beat the heck out of this for a little while and, you know, give you a nice running start? I don't think I had to. I think we're all starting to warm up to the idea that anything with a fiscal impact (laugh), you're just going to automatically get that. Here's the way it sits for me. This morning I wasn't preaching. This morning I was trying to make a point. I have at least three bills this session that had a significant fiscal impact. One of them I disagreed with the thought process or what they determined...maybe the Department of Revenue or the Fiscal Office determined to be fiscal impact. Bottom line is I have three bills that affect our budgetary bottom line. I wasn't preaching this morning. I'm telling you, I'm in the same boat with all of you. Before you leave here someday, you're going to have a bill with a fiscal impact. No matter how fiscally responsible you think you are and no matter how conservative you think you are, that is part of our job because we prioritize some of these items. As I looked at that agenda last night, I was talking about this morning, I realized we had a slew of bills again, not only did what some of mine were doing but some of the ones that I actually voted for. I voted for this out of committee. You know why? Back in January, when we heard the testimony, it sounded like a really good idea. Things change quick around here. We kicked it out of committee only about a half a month ago because it still seemed like a fairly decent idea. The problem is we ended up getting to a point where we end up having to prioritize, and we start prioritizing right now. I'm not telling you it's not a good idea to move this forward. What I'm saying is that because we had that reality in front of us, the priority is either going to be ours, we're going to make a decision not to move this off of General File. Well, guess what? Senator Sullivan has a bill right after this that has a fiscal impact too. She likes that bill. I've read it. I don't mind it either. The problem is it's half a mill she's going to have to deal with. Is she going to make a decision right now to move off of a bill like this so that she thinks that she might have an opportunity to drum up funding for her bill? We can start making those priority decisions as a body or we can just let it sit on Select File and let it die a weird purgatory type of death, or we can wait till the Grim Reaper, Lavon Heidemann, comes out and says, no, it's not going to happen. Oh, there he is. He is. He's a Kool-Aid-drinking Grim Reaper. And when he comes out here (laugh)...how much time do I have left, Mr. President? [LB159]

PRESIDENT SHEEHY: One minute 30 seconds. [LB159]

SENATOR FRIEND: That's a lot. When he comes out here...I don't mean to make light of this. What I said this morning, I meant. And we're going to see fiscal notes, we're going to see committee statements and we're going to do things that we think is right and makes a lot of sense. Senator Gay's bill makes a lot of sense to me. The problem is, we are at a crossroads now, and I think Senator Gay understands that too. [LB159]

Floor Debate  
April 07, 2009

---

PRESIDENT SHEEHY: One minute. [LB159]

SENATOR FRIEND: The crossroads will be made...the decision will be made on those crossroads by us as a body on this bill, or we'll go, you know what?, I think it's a good idea too; I don't want to, you know, make the insurance lobby angry; I'm going to move this to Select File and just let it go away. Because when the Grim Reaper does come out, after he's done finishing his pitcher of Kool-Aid, he will knock it down. There will be no argument then because we're only going to have X amount of money, and the X is not going to be very much. So there's a race to Select File right now. Should this be at the front of the race? I would say I don't have any problem moving this to Select File. I moved it out of committee. I think it's a good idea. It's still a good idea. But in a week, will my mind have been changed because of the fiscal forecast? I don't know. [LB159]

PRESIDENT SHEEHY: Time, Senator. [LB159]

SENATOR FRIEND: Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Senator Fischer, you're recognized. [LB159]

SENATOR FISCHER: Thank you, Mr. President and members of the body. A lot of people think this is a good idea. I don't think that I'm one of them. We hear talk about incentives and this is an incentive for people to buy long-term care insurance. That's great. That's going to help the state in the long run. I would propose to you that the people who can afford to buy long-term care insurance won't be coming to the state for help. I would propose to you that this isn't the best policy. Must we incentivize everything that we think people need to do to take care of themselves? I don't think so. People who have assets usually make plans on how to take care of those assets, and they can afford to do so. I believe, in essence, with this bill we're just rewarding them for having the means to already take care of themselves and they have the means to pay for those plans and to take advantage of another state tax credit. Are we helping people who need the help? People who can afford this insurance, my guess would be they're not on Medicaid. They are not going to become the state's responsibility when something horrible happens to them. We just had a discussion about exemptions from Senator Pahls and others on this floor, about sales tax exemptions. And, oh my goodness, we have sales tax that just has...it looks like a piece of Swiss cheese. It has holes all over in it. This is another hole but we like to call it an incentive. In this state, we offer a lot of incentives and I have voted for many of them. We have the Nebraska Advantage Act and many of us in here have voted for that. We have rural economic development incentives and I have spoken in favor of those. But this is another incentive. We're talking about possibly \$1 million loss in revenue to the state when this takes effect. What program do you want to deduct \$1 million from? We need a balanced budget. We are seeing a decrease in revenue, and I believe on April 23, when the forecast comes out, it is not going to be pretty. So what program would you like, those

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

Floor Debate  
April 07, 2009

---

of you who support this, what program do you want to deduct \$1 million from? Behavioral health? Children? Education? We are in tight times, and in this state we are in a favorable position because we have been fiscally responsible. We, I believe, have been good stewards of taxpayers' money. [LB159]

PRESIDENT SHEEHY: One minute. [LB159]

SENATOR FISCHER: But to offer incentives to give people a gift, in my opinion, who can afford this already to protect their assets, I do not believe is sound policy. And if you want to do this, fine, but what are you going to cut out? And who--who possibly needs the state's help more, who needs our help more--are you going to take that program away from? Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Wallman, you're recognized. [LB159]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I'd like to ask Senator Gay a question. [LB159]

PRESIDENT SHEEHY: Senator Gay, would you yield to questions? [LB159]

SENATOR GAY: (Inaudible) [LB159]

SENATOR WALLMAN: Just kind of lighthearted. Is this retroactive? Can I get... [LB159]

SENATOR GAY: No. New policies only. [LB159]

SENATOR WALLMAN: (Laughter) I think it's a good bill. My family has had long-term health insurance, my parents did. Can some people pay it? I don't know. You know, we're talking about incentives. I think this is a pretty good incentive. You know, is it another hole in the tax structure? Sure. The very wealthy people have a lot of holes too. One of the richest persons in my district--he's gone a long time, he was a banker--got rid of all of his assets and he was on our dollar, the state's dime. So this might leave a bad taste in our mouth. But I think it's the right direction to go so I would urge you to vote for this. Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Campbell, you're recognized. [LB159]

SENATOR CAMPBELL: Thank you, Mr. President. I'm going to follow up a little bit with what Senator Wallman talked about and that is, really when do people start using the state's dime? Former State Senator Don Pederson, who was the head of the Appropriations Committee and is an attorney, told the Medicaid Reform Council that

Floor Debate  
April 07, 2009

---

years ago people took care of Grandma and Grandpa. No matter what it cost, it was their responsibility. They took care of them. I saw that with my own father-in-law, who took care of his two parents and took care of his mother-in-law until her death. But nowadays, as Senator Pederson said, people walk into my law office and they say, how can I shelter the assets of Grandma and Grandpa and have the state take care of them? And to some extent, that is a key issue, a very long-term issue. And I appreciate what Senator Fischer said, but the Legislature also has to balance today with what is going to be the needs long term. And if we believe anything else today, we should listen to Senator Carlson's projections. Medicaid will spiral out of control and, unbelievably, may even cost more than state aid, if at some point we do not begin to look at ways in which we can, yes, incentivize people to put into place long-term care. It is a critical, long, future issue for the state of Nebraska. Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Senator Gay, you're recognized. [LB159]

SENATOR GAY: Thank you, Mr. President. And I appreciate the discussion on this and the concern Senator Friend made, Senator Fischer. I just want to address a little bit about this. Why should we do this? Because we look at long-term problems, and if you have a solution you try to bring it to there. I'm a little worried here that we're getting...that let's just...if there's any spending measures, let's don't look at them at all. I don't want to do that, but I respect what they're saying and I agree a little bit. But why do you do this? Because somebody...and more and more people, middle class--whatever middle class is--I forget what middle class is at this point now because, you know, I hear all these things: We're going to take care of the middle class. Well, not only rich people buy long-term care. I've talked to several of you colleagues in here that I know have looked into it or have bought it, and I don't know if you're all rich or what, but I want to dispel that. Do wealthier people plan a little more? Sure. Do middle-class people plan? Yes, they do. And Senator Carlson knows that; he discussed that. I know that for a fact. So I don't think...I don't want to go down that direction because I do think this will benefit a lot of different people, not just wealthy people. It is what it is. That's why there's a cap on it. We looked at this for a long time and said: Here's our cap. That's why it's 25 percent. That's why it fades away, it limits itself. All those things have been discussed and we look at it. But what I want to do is let's not just say, well, we can't do this; today is the day we can't do anything, because if that's it, then it's a lot easier down the road here on the next bill and the next bill and the next bill that has spending. So I do respect that, and I know what he's saying and I've said that many times too. It all comes down to a funnel. End of the day, you're going to have a decision and say, you know what? And that's where we prioritize, people, at the end of the year, after the budget is done. We say: Here's what's left, what's prioritized. This may be one of those things we don't. What I'm saying, let's talk about the policy, let's move on. I'd like to move this, of course, today, but I don't want to get that we...I'm hearing that we do anything, and so I disagree with that. The second one is when we look at these projections, if I'm hearing what

Floor Debate  
April 07, 2009

---

you're hearing, we're talking big, big, big numbers--hundreds of millions of dollars. And I'm not going to say \$1 million isn't a lot. I even wonder if we'd even get to the \$1 million, because it's such a hard sale quite honestly. It's going to take time to work through the process of people selling the policies; accountants and insurance people understanding that there's even something available. Because you still got to disseminate this information to the public, so that takes years to do. So I don't think we're...you know, I don't know. Can we come back and look at it? Of course. Maybe that's something we need to do on Select. I don't know. But when we look at these revenue projections, you know, we need to talk--and we've had this discussion--roads, then. Let's talk about roads; Medicaid; education, both K-12 and higher education. We're not talking a little tweak here and a little tweak there. We're talking major policy changes if we're going to deal with this budget, if it becomes what it's going to become. So I don't want to get hung up on this is the end right here. And I...but I do respect what they're saying, so...but I just wanted to dispel a couple of those things that were out there. Also, back to those conditions. This is not only the younger you buy something the cheaper you're going to get it. Someone said, well, are these 10-pay policies or are they lifetime policies? It's different. For 49 people in this room, your circumstances would all be a little bit different than the other, so we can't just say this one thing does it all. So I appreciate the conversation. I respect my colleagues on that spending but I have a difference of opinion on what needs to be done. [LB159]

PRESIDENT SHEEHY: One minute. [LB159]

SENATOR GAY: I think we need wholesale changes. With that, too, I was so eager to explain how the bill works, and I still want to do that and take any questions, but I was remiss in not thanking my good friend Senator Coash for prioritizing this bill. He had came to me and we had talked about it and I really appreciate him doing that. And along the way I know others who have been helpful all summer and even up to this point, but I did want to mention Senator Coash. Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Gay. Next requesting to speak, we have Senator Gloor, followed by Senator Cook, Senator Langemeier, Senator Janssen, Senator Lathrop, Senator Hadley, and Senator Karpisek. Senator Gloor, you're recognized. [LB159]

SENATOR GLOOR: Thank you, Mr. President, members of the body. I rise in support of LB159 although I do so not without having thought long and hard about this bill, and I appreciate Senator Coash introducing it as his priority bill for a number of reasons. I think it's the right thing to do. It's the right thing to talk about, and it's appropriate that we struggle over this issue of short-term impact versus long-term impact. This is the time of year where in my previous life I would be budgeting for my own organization, going through the same struggles, knowing that there are limited dollars to spend in the upcoming fiscal year, too, but at the same time trying to look out for the long-term best

Floor Debate  
April 07, 2009

---

decisions for an organization and what that meant for my community. And this fits into the same general category for me. There's no doubt in my mind that it will be a struggle to come up with the funds necessary to offset the lost revenue on this. On the other hand, there's clearly no doubt in my mind that it's the right thing to do for budgeting for the state of Nebraska. This will save us...actually let me rephrase that. This will save a Legislature more painful decisions at some future date, and it may be 15 to 20 years from now that the impact of somebody who has long-term care insurance will actually find its way to the beneficiaries, being the Legislature, well into the future. There is an example. There is an organization, a long-term care facility in my community, where 85 percent, 85 percent of the residents of a rather large long-term care facility are Medicaid patients--85 percent. You can't tell me that with this bill and with the benefits of the bill, that at least two or three of those individuals might well have had long-term care insurance which would save the state from having to pay that bill. And with just those two or three individuals alone, given the cost on an annual basis were they to be in that facility for ten years, we would have paid for one year's worth of this impact on the state of Nebraska. And that's just one long-term care facility in one community across the entire state of Nebraska. The impacts of this will be dramatic, I believe, long-term, and that's always the difficult decision. Can we find a way to make this happen this year knowing that there's no doubt in my mind that this will be the right decision for long-term budgeting for the state of Nebraska? Again, I rise in support of LB159. Thank you. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Cook, you're recognized. [LB159]

SENATOR COOK: Thank you, Mr. President, members of the body. I would like to echo the support for this measure. Thank you, Senator Gay, for bringing it and working so hard on it, and thank you, Senator Coash, for making it a priority. We've talked about the policy implications. Certainly I was one of the freshmen or "freshwomen" senators whose eyes widened when we got to the pie chart that showed how big Medicaid would grow over the next few years. But I want to add just a personal perspective as somebody who spent a couple of years as a caregiver to two hardworking parents who saved and did all the right things. My father is a retiree from the United States Air Force and enjoys those benefits. But what I can offer is that any three-month period where I was opening those statements and seeing how much that bill from the nursing home is or how much the last visit to the hospital was, would wipe out even the most forward thinking, fiscally conservative or cheap family that you might run into. So I would like to offer to the body the encouragement to press green to move this measure forward. It is going to be more and more "impactful," I think, as families are more far-flung and resources dwindle. Thank you. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Cook. Senator Langemeier, you're recognized. [LB159]

Floor Debate  
April 07, 2009

---

SENATOR LANGEMEIER: Thank you, Mr. President, members of the body. I find myself in a unique position. I've supported a lot of incentives over the years that I've been here, and I'd like to support this one, but as I read through it, first of all, we're only giving credits for three years. And I think the people out there that buy these policies, today I have good intentions; I want to protect my assets; I want to go buy this policy. But it's just like my household right today, as I just got my life insurance policies the other day and my wife is trying to decide what I'm worth. And as she looks at those policies. They really sounded good--we need to protect for our kids; we need to protect our house; we need to protect our car--when that policy came. Now it's five years later and she's looking at those policies saying, God, I don't want to pay \$560 for a guy that's working in the Legislature, not making any money. There's getting to be a lot of questionable discussion. But let me tell you how this is going to work then, because I have some firsthand experience in the real estate business, is I, on a daily basis, help people move assets to protect them from this exact thing. So when you pass this, what I'm going to do, what you're going...you're going to drive my business up, because what we're going to is we're going to buy these policies. You're going to give me a tax credit for three of those years, and all I need a policy for is five years because once I move that policy and move those assets today, within five years they're protected. So I'm going to buy this policy for five years. You're going to give me a tax credit for three. I'm going to pay the premium for two and then my assets are protected. I'm going to cancel my policy and I'm going to laugh at the state for giving me a 25 percent tax credit. My assets are protected and it's over. This isn't long term. They aren't going to do this long term. People buy these policies looking into the future. They start to think, God, I'm starting to become...my knee starts to hurt or my grandma just went into the nursing home: I'm going to buy this policy. But the main person buying these policies is a tool to protect during that gap five years, till I get your assets moved where they're protected. That's what we buy these for. And agents love them because they get a big premium update the first time they write the policies, which slowly diminishes over the years, so we like these. And the truth is, we're going to use these as a tool to protect that gap of those five years. Each year to protect your assets just gets to be a little longer, a little longer. Now it's five years; it used to be a lot less. So what you're going to use this for exactly is a tool to protect your assets for the five years till you get it in the trust and get it in the kid's name. Once that five-year window of look back is gone we cancel the policy, and I say thank you, state of Nebraska. So I rise in opposition. I really...I really rise in great support of the idea, but I rise with the idea that this is how we're going to use it and we thank you for that opportunity, but the reality is, is that's how we're going to use this bill once it's passed. And with that, thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. (Visitors introduced.)  
Members requesting to speak on LB159, we have Senator Janssen, followed by Senator Lathrop and others. Senator Janssen, you're recognized. [LB159]

Floor Debate  
April 07, 2009

---

SENATOR JANSSEN: Thank you, Mr. President, members of the body. First off, I want to clear up a few things. Senator Langemeier's wife was wondering how much he's worth, and it's \$12,000. And I'd like to state that that would pay a state senator; not necessarily buy a state senator, as was mentioned earlier. Also, I wouldn't mind having Senator Langemeier take a look at my insurance needs, from the sounds of it, if this bill passes. I may want to be the first one over there to Schuyler. I've had the same concerns, and I don't know if it's just rubbing off in this area or not, that Senator Fischer had when I started looking at this, and I almost thought I should have a conflict of interest in this. So I got to thinking, well, who does have disability insurance? And I think Senator Carlson kind of touched on it when he started mentioning that, that how great disability insurance is. And I think it is a great tool. I think everybody should have it, but everybody is not going to get it. I'm still going to go buy it. My business partners have done so. I'm not going to go into their W-2s but they do well for themselves. I think most people, many--I don't know, I'm theorizing on this body--right now may have this insurance because it's a good thing. It's a responsible thing to do and responsible people do responsible things, and the other side of that is people that are not responsible do not do responsible things. They do not look forward and they're going to end up in the same situation. So in a way I'm almost declaring a, not in reality, but a conflict of interest here because I think this would be a tax benefit, to me perhaps, especially with the help of Senator Langemeier. And when I look at some of the other things that could be done, some of the other fundings or some of the things that you could do when you talk about the people that I think we're trying to take care of or we're trying to help, the Medicaid. And I guess I'm torn because I don't have a better idea yet, Senator Gay. And you're trying to do something here that I think is admirable, and I just think that's a loophole that may be unintended. But with that, I am going to yield the balance of my time to Senator Gay. [LB159]

PRESIDENT SHEEHY: Senator Gay, 2 minutes 45 seconds. [LB159]

SENATOR GAY: Thank you, Senator Janssen. I appreciate it. One thing: Senator Langemeier is correct. Is there a loophole in tax laws? Absolutely. No one can dispute that. Would that happen? Possibly could. This is still...the fact is this: People are looking for policies and the trend is going towards this. They want to stay at home and get home-based community services through other providers. It's cheaper that way, to do it that way. So premium rates are going down. There's three things they're looking at: your age when you buy it, your age, your health. You could get group discounts possibly. Those are growing. So there's a lot of different reasons. Most people do not buy these policies--and I know it from experience--they don't buy these policies and then dump them. They set aside a certain amount of their income that will generate dividends or some kind of payment to pay the premium, because they have dealt with a family member that has...and it is traumatic, let me tell you. But they look at their elimination days, how long they're going to pay out of pocket, how long can I possibly pay out of pocket. There's a lot of moving parts to this thing. But most of the people that we're

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

Floor Debate  
April 07, 2009

---

trying to get in here would be in their fifties or possibly younger. They've had to deal with a family member, and they've seen their life savings washed away in a short amount of time and they want to do something about it. So is there going to be a loophole, or...? Of course, I suppose we could point those out in unintended consequences, unfortunately, and I know we can't prepare for everything like that. But that situation he gave, I think is a little bit...possibly that could happen, I guess. But anybody doing that with the intention you're just going to drop it, I don't know. I guess it could happen. [LB159]

PRESIDENT SHEEHY: One minute. [LB159]

SENATOR GAY: But I did want to...the point I want to get to is, if we're looking for people...again, Senator Price brought up earlier, well, we're giving all these exemptions to corporations and this and that. This is a credit to individual taxpayers who want to take care of their future and be responsible and go buy a policy, and that's the intention of this bill. Now I've heard some good suggestions that I...very good. I appreciate the input and I like the dialogue, don't get me wrong. I just think there's a difference of who's going to be buying these policies. Will wealthy people plan? Of course. But there are a lot of people, trust me, middle-class people, trying to save and take care of their futures, and this would be an excellent idea for them, to help. And it goes away after three years. It's not an ongoing, but it's a nice incentive that we say thank you very much for helping take care of our budget and your future. Thank you, Mr. President. [LB159]

PRESIDENT SHEEHY: Thank you, Senator Gay. Mr. Clerk, do you have items for the record? [LB159]

CLERK: Mr. President, I do not other than a priority motion. Senator Lathrop would move to adjourn the body until Wednesday morning, April 8, at 9:00 a.m. []

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