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Floor Debate
April 09, 2009

[LB56 LB81 LB105A LB105 LB110A LB110 LB159A LB159 LB165 LB168 LB177 LB184
LB188 LB207 LB241 LB246 LB260 LB327 LB377 LB385 LB403 LB420 LB436 LB489
LB489A LB497 LB601A LR78 LR79]

SENATOR FISCHER PRESIDING

SENATOR FISCHER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-ninth day of the One Hundred First Legislature, First Session. Our chaplain for today is Senator Coash. Please rise.

SENATOR COASH: (Prayer offered.)

SENATOR FISCHER: Thank you, Senator Coash. I call to order the fifty-ninth day of the One Hundred First Legislature, First Session. Senators, please record your presence.

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Mr. Clerk, please record.

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

SENATOR CARLSON: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CARLSON: Thank you. Are there any messages, reports, or announcements?

CLERK: There are, Mr. President. A communication from the Governor. (Read re LB105, LB105A, LB110, LB110A, LB165, LB168, LB177, LB184, LB207, LB260, LB327, LB377 and LB403.) A report from the Investment Council. That will be on file and available for member review in the Clerk's Office. And that's all that I have at this time, Mr. President. (Legislative Journal pages 997-998.) [LB105 LB105A LB110 LB110A LB165 LB168 LB177 LB184 LB207 LB260 LB327 LB377 LB403]

SENATOR CARLSON: Mr. Clerk, the next item on the agenda: confirmation reports.

CLERK: Mr. President, the Government, Military and Veterans Affairs Committee reports on a series of appointments to the State Emergency Response Commission. (Legislative Journal page 998.)

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Avery, you are recognized to open on the confirmation report.

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

Floor Debate
April 09, 2009

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. The Government, Military and Veterans Affairs Committee brings to you and recommends for confirmation four members to the State Emergency Response Commission. These are all reappointments. The hearing was on Tuesday, April 7, at 8:30 a.m. The vote was 8-0 on all four. Let me briefly tell you a little bit about the commission, first, and then I'll mention some of the achievements of each of the four nominees. The State Emergency Response Commission was organized to carry out duties assigned under the Nebraska Emergency Planning and Community Right to Know Act. Each of the 93 counties was designed as emergency planning districts pursuant to state law. SERC, as it is known, appoints local emergency planning committee members and oversees the activities of these committees. The purpose, of course, is to work with first responders, healthcare professionals, city and county officials, school personnel, and the general public. We have four nominees as I indicated. Richard Christensen, who is the first nominee...Mr. Christensen comes from Hastings. He is a current member since 2002. He represents the chemical industry on the commission. He has been involved in a lot of activities relating to the work of the commission. The second nominee is Steven Danon. Steven Danon comes from Omaha, Nebraska. He has a broad background in risk control services, and he also has 22 years' experience in program development and safety procedures. The third nominee is Donald Eisenhower. Mr. Eisenhower is from Plymouth, Nebraska. He has a background in compliance and safety programs. He has been involved in a wide variety of safety programs over his career, and he has training in security awareness, propane dispensers, and hazardous material training. The final nominee is Larry Johnson. Larry Johnson comes from Omaha, Nebraska. He has served on a number of different boards, the Omaha Transportation Council, the Lincoln Transportation Council, the Nebraska Safety Council, and others. All of these nominees are well qualified to be reappointed to this commission, and the Committee on Government, Military and Veterans Affairs strongly recommends that they be confirmed. Thank you, Mr. President.

SENATOR CARLSON: Thank you, Senator Avery. You have heard the opening on the confirmation report. Is there any discussion? Senator Pahls, you're recognized.

SENATOR PAHLS: Thank you, Mr. President, members of the body. I just need to say I was impressed with the four individuals. And I personally know one, Larry Johnson, and I would just like to take this time to let the people know that this person is involved throughout the state of Nebraska in the area of transportation. And a number of meetings that I attend that you would not think somebody with the...working on transportation would be there and Mr. Johnson is there. So he does take an active part in the policies of the state of Nebraska. Thank you.

SENATOR CARLSON: Thank you, Senator Pahls. Seeing no other lights, Senator Avery, you're recognized to close. Senator Avery waives closing. You've heard the

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

Floor Debate
April 09, 2009

report on the adoption offered by the Government, Military and Veterans Affairs Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 998.) 34 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CARLSON: The report is adopted. Mr. Clerk, we return to the agenda for the morning.

CLERK: Mr. President, LB436, the first bill scheduled, offered by Senator Haar. (Title read.) The bill was introduced in January, referred to Natural Resources. Senator Langemeier presented the committee amendments yesterday, Mr. President. At this time the committee amendments are pending. (AM708, Legislative Journal page 776.) [LB436]

SENATOR CARLSON: Thank you, Mr. Clerk. (Visitors introduced.) Senator Haar, you're recognized for 5 minutes to bring us back up to date on your bill. [LB436]

SENATOR HAAR: Mr. President and members of the body, I'll be even briefer than that. First of all, I'd like to say that LB436 has no A bill connected to it, in case you didn't notice. Again, net metering is basically the process where if you have like a small generator or you have photocells on your roof generating electricity, when you're generating electricity to the grid, the meter runs backwards; when you're taking electricity from the grid it runs forward. And LB436 is about putting in place a statewide standard for smaller systems--systems that would be 25kW or less. And also with this opening I'd like to quickly say that there are copies of a magazine called Freeing the Grid on both sides on the table up at the front. You can have one of those if you'd like. We also have copies of the folder that the Natural Resources Committee handed out yesterday at the press conference on the resolution that we're going to be introducing. And those are also on the two tables on either side at the front and you're welcome to one of those if you'd like them. Answering a couple of questions that were asked yesterday. First of all, someone asked about the whole thing of safety and we talked about that, but in looking into this there has been no injury claims because of net metering anywhere in the United States. There has been absolutely none. Furthermore, somebody asked if you had a photovoltaic array on your roof and the power went out from the grid, would that still work? We tried to get some technical help on that one. Most inverters, which is the box that turns the electricity from the solar array into electricity that you can use or you can put out on the grid, most of those inverters that we're aware of--in fact, all of them that we're aware of--if there's no electricity coming from the grid, they shut down. Your other alternative would be to install a battery backup system, which is very expensive. So with that, I will close my introduction and answer any questions or whatever. Thanks. [LB436]

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

Floor Debate
April 09, 2009

SENATOR CARLSON: Thank you, Senator Haar. And the Chair recognizes Senator Langemeier for AM708 if you have anything in the way of review that you'd like to mention, you have 2 minutes. [LB436]

SENATOR LANGEMEIER: Mr. President, members of the body, I just wanted to remind the body that AM708 does become the bill and it was reordered for easier ability to read. And somebody asked me yesterday, he says, Chris, why did you totally reword and reorder the bill? And if you remember, Senator Haar coming in the body was...I had more time as the committee to look at the bill than he got after he got elected before it was official to make the legislation. So we did a good job with that, and with that I'll conclude and I'll answer any questions if there are any. Thank you. [LB436]

SENATOR CARLSON: Thank you, Senator Langemeier. We return to discussion on AM708, the underlying bill LB436. There are senators wishing to speak. Senator Louden, you are recognized. [LB436]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I've probably been involved with net metering for about 15 or 20 years by now. In fact, some of the first net metering was done by the Eldreds out there south of Lakeside in western Nebraska, and that was done nearly 30 years ago. There's some questions have been asked and some statements been made about your net metering. And usually with the net metering, this is something that the average person probably won't do. It costs anywhere from \$40,000 to \$60,000 to put up a wind generation system, and your solar panels are about the same price. For the average home, it would take at least 8kW and 10kW in order to run it. On the ranches out there, for our emergency power we have gasoline engine-driven generators and they run about 8 kilowatts and that...usually what you can do with that is run your lights, run your hot water heater and your water pump. But if anybody has ever been involved in that, why, whenever you push a toaster down you'll be surprised how much that will pull a 8 kilowatt generator down. So this isn't something that a lot of people are going to do. I think net metering is something that environmentalists have been working at and they want done. And this bill here, with the amendment, is something that's probably come forwards. It's been compatible with everyone involved. As far as your emergency power, Senator Langemeier mentioned that he was out of power for 17 hours. If he would have had something that was net metering, it wouldn't have made any difference because those are made so that when the grid is off, why, it shuts off and he can't...he's got to have some type of a manual switch. Usually in the ranch country where I'm sure Senator Fischer, Senator Hansen, and myself, we have our own generation because we run many a time we're out of power. And we have a manual disconnect switch. And our line companies out there install them anymore when they put the meter on, so that you're either generating with your power or else you pull the switch and you're on the grid system, but you can't be on both. And this is a safety factor which has to be taken care of. Part of your...with net metering it would be fine. It's a nice thing to talk about and it's lip service, but you won't

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

Floor Debate
April 09, 2009

see much wind generation in any of the cities because you have to have these towers. And I don't know what your zoning is going to be. When you talk about wind power, I probably have as much experience as anybody because we have over 40 windmills on the ranch and we pump water all the time with wind energy and have for years. And you can find dead spots. If you have trees or anything in the area, you're talking about at least a 60-foot tower, and I don't know how many 60-foot towers that the city of Lincoln are going to allow inside their city limits. So that will probably be strictly something with solar power would work there. And it's fine. I applaud anybody that wants to go to the trouble to do that and work with it. I don't know how many are left in the Legislature around here that lived when we didn't have electric power, but I grew up around...before we had REA into there. We had wind charges and they are...they're kind of a pain in the butt to take care of. Lightning will eat them alive, you know. They're sticking up in the air. Lightning storms come along and they'll fry some of the generation parts and the whole works in there. So they do take a lot of maintenance and it isn't something that anyone that figures they're going to do to make money, it isn't a money making project. [LB436]

SENATOR CARLSON: One minute. [LB436]

SENATOR LOUDEN: This is something that someone can go ahead and do. We had a person out in Scottsbluff put one up here awhile back, and I think at the time he didn't put one up that was big enough, probably about a 2.5 kW, and then at the end of the month he wondered how come he still had an electric bill. Well, his house is probably using 30 kW because he had a big house. So it isn't something that you're going to be generating power. And that was what Senator Preister...his plan was everybody is going to have this little generator and then there wouldn't be these big generation plants sitting around the world someplace. And it isn't going to happen that way. You have to have your generation plants from other ways to have your sustainable energy. So where in Nebraska where we have cheap power, it isn't as presentable as it would be in some places where the power is higher priced. So I certainly support the amendment. I support what Senator Haar has done and tried to do. The reason this has worked, I think, is... [LB436]

SENATOR CARLSON: Time, Senator. [LB436]

SENATOR LOUDEN: ...because of the time frame. Thank you, Mr. President. [LB436]

SENATOR CARLSON: Thank you, Senator Louden. (Doctor of the day introduced.) Senator Price, you are recognized. [LB436]

SENATOR PRICE: Thank you, Mr. President, members of the body. I would like to see if Senator Haar would yield to a couple of questions. [LB436]

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

Floor Debate
April 09, 2009

SENATOR CARLSON: Senator Haar, would you yield? [LB436]

SENATOR HAAR: Yes. [LB436]

SENATOR PRICE: Thank you, Senator Haar. In our off-mike discussions I did let you know I was going to ask on the mike. Page 3, line 17(g), we talk about the National Electric Code. And the question I had there--we're talking about following safety and being safe--and with that National Electric Code, which...and I don't mean to be facetious here, but I guess there are reiterations where there are updates to electrical codes. Is it your intent that it would be any electrical code, the newest electrical code, and what are we going to do in between as we are now? [LB436]

SENATOR HAAR: Okay. Thank you very much. That's a good question and we did talk about this on the floor a little bit. My understanding is that the Legislature has to designate which code, which national code the state electricians have to follow. I believe Senator Giese has a bill maybe coming up on this a little bit later. We didn't specify this, assuming that it would be simply whichever state code is currently adopted by the Legislature. [LB436]

SENATOR PRICE: All right. Thank you very much, Senator Haar. [LB436]

SENATOR HAAR: Yes. [LB436]

SENATOR PRICE: Okay. And I'm going to take a moment here to build a picture for everybody. And this will probably bring light to why Senator Giese's bill is very important and what Senator Haar is doing, what many things are going on here. We're going to allow, if this bill goes forward, up to a 25 kW generation plant. It private domiciles businesses. If you happen to have a business that you want to put one of these plants up, great. But we have to remember now, you're dealing with some additional rules that you might not have to...and laws that you don't have to deal with at a private residence. And let's say that that private...let's say that business is a retirement village. They like to put those in scenic places sometimes and if you have it out in the country on a hill, a great place for wind. The challenge comes in, if the Fire Marshal comes into this business and they don't like the way or--it's not that they don't like--if it isn't in agreement with their policies, they can impose a fine or they can have a finding and you're going to have to do some mediation to meet their finding. And what we're finding out more and more often is we have a national code that allows or it sets forth how something is to be done, and then we have local codes that are in disagreement as far as with the safety and the Fire Marshal, and so we have disagreements. So a business does what they're supposed to do by their national code, and then someone else comes in and we have a problem: Who has jurisdiction? And right now, ladies and gentlemen, there is no ability to really see who has jurisdiction except that the Fire Marshal can have you shut down and you can have to pay fines and things like that. And I'm sure

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

Floor Debate
April 09, 2009

that the Fire Marshal and the people in that position are only doing what's in the best interest of safety. But we have two codes, different jurisdictions, and we really don't have a good place to have things worked out between them. So again, it's a big issue. The next issue is, right now we're in between code years, I guess, or code revisions. If you're out there building a building today and you're in the planning phases--and, you know, economic development is so important--so you're out there and you're building a building and your engineers and architects are getting up to what may be the 35 percent point on the project, and they've spent many hours building the plans. Well, hopefully, they're building to the 2008 code. But guess what? In Nebraska we haven't adopted that yet. So you get to a point where you have to fall back to the old code and... [LB436]

SENATOR CARLSON: One minute. [LB436]

SENATOR PRICE: ...you've wasted a lot of dollars. Thank you, Mr. President. You've wasted a lot of money because a decision can't seem to be made. We can't come to an agreement. Then you go ahead, you revert back, you build the building in the 2008. And then if you haven't finished it and you have had all your permits, you could find yourself in jeopardy of having to spend more money to bring it back up to code. Now I told Senator Haar I'm not beating up on his bill but I'd use this as an opportunity to set the table for more things we have going on, and I appreciate Senator Haar working with me on this. Thank you, Mr. President. [LB436]

SENATOR CARLSON: Thank you, Senator Price and Senator Haar. Those still wishing to speak: Senators Janssen, Avery, and Karpisek. Senator Janssen, you're recognized. [LB436]

SENATOR JANSSEN: Thank you, Mr. President and members of the body. I actually attended most of the hearing that went until 7:30 in the night, and I think the only worse thing than being in a committee hearing that goes until 7:30 on a bill, is having the bill that is right after a bill that went until 7:30 in the night, which I did. And my bill didn't take that much time to go through. My staff and I spent a considerable amount of time on a net metering bill. If you'd like to read a version of it, it's now named AM708, parts of it. So I appreciate seeing parts of that back in there. I would like to commend Senator Haar because he did what I wasn't willing to do, was to bring all of the people together in that room that day. It seemed to be more of a natural fit for him to pursue this net metering. But I would like Senator Haar to yield to a couple of questions for me. [LB436]

SENATOR CARLSON: Senator Haar, would you yield? [LB436]

SENATOR HAAR: Yes. Yes. [LB436]

SENATOR JANSSEN: Senator Haar, do you think this would be a better bill, better net metering bill if it had a retail rate instead of a wholesale rate? [LB436]

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

Floor Debate
April 09, 2009

SENATOR HAAR: Yes. In my original bill we had talked about that in the...in order to get something that we could agree on and get something passed, that's called compromise. And so it was in the spirit of compromise, yes. [LB436]

SENATOR JANSSEN: Do you think it would have been a better net metering bill overall if we could have increased it to 40kW as opposed to 25kW? [LB436]

SENATOR HAAR: Yes. Again that was part of my original bill and I think it's...this is the sort of thing we'll be talking about this summer with the various utilities. In fact, some of the public utilities suggested 40kW. But again, in the spirit of getting everyone to work together on this, we settled at 25, recognizing there's more to come hopefully in the future. [LB436]

SENATOR JANSSEN: Okay. Another question is, you talked a little bit about this yesterday, but in your opinion do you think this would be a better net metering bill if it was 2 percent cap instead of 1 percent cap? [LB436]

SENATOR HAAR: Again, that was part of my original bill. Some people were suggesting 5 percent as a cap. If you get the magazine I passed out or that's available, some states go up to 5 percent. We're not there yet. And I think we have to crawl before we walk, and that's the basis of this compromise resolution, yes. [LB436]

SENATOR JANSSEN: I did see that you had that magazine available on the floor and announced that to everybody. In the future, I'd ask you not to do that because the rush of people running up there to grab that at one time did create somewhat of an emergency situation for us. The thing I wanted to point out today is, and actually before I ran or I was running for this job, I went down...I actually talked to Senator White, if you can believe that, and talked to him about what the job entailed. One of the things he told me--I'm kind of paraphrasing here--is that he always likes when people act against their own cause in some cases. And that's where I commend you in not doing that. But a lot of people that support net metering all of a sudden turn because the bill isn't exactly what they want. The spirit of compromise that you have shown here is admirable, and I think it needs to be pointed out that if this bill would have been the way you had wanted it or I had wanted it, it would look much different. But we see bills like that all the time. And I think it's interesting when somebody that supports the cause which they're pushing may be standing out in the front door opposing certain bills. So I applaud you for your...I guess, your hard work on this. I do support LB436 and especially... [LB436]

SENATOR CARLSON: One minute. [LB436]

SENATOR JANSSEN: ...AM708, and I'll yield my last minute to you if you'd like. [LB436]

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

Floor Debate
April 09, 2009

SENATOR HAAR: Yes, thank you, Senator. [LB436]

SENATOR CARLSON: Senator Haar, you have 53 seconds. [LB436]

SENATOR HAAR: Thank you, Senator Janssen. I appreciate your comments. And yes, there are compromises involved here and we'll continue to work on those. I also appreciate Senator Janssen's sense of humor. Thank you very much. [LB436]

SENATOR CARLSON: Thank you, Senator Janssen and Senator Haar. Senator Avery, you're recognized. [LB436]

SENATOR AVERY: Thank you, Mr. President and colleagues. AM708 reflects a compromise between Senator Haar, the Natural Resources Committee, and the Nebraska Power Association and the Nebraska Rural Electric Association. I was looking at the committee statement and I note that the Power Association and the Rural Electric Association all opposed this when it was originally heard. This represents a compromise and I think a good one. LB436, as amended by AM708, limits generation to 25 kilowatts and allows utilities to individually approve larger systems. It requires the generator to pay interconnection costs; it requires that the meters be paid by the utility. Generators must comply with the utility and the State Electrical Board's interconnection safety regulations. Excess generation is assigned a monetary value and not a kilowatt credit, which reflects the value of generated energy. And finally, the amendment caps net metering capacity at 1 percent average aggregate peak demand for the utility. LB436 represents a clear response by Senator Haar and the committee and the utilities to address a complex issue, trying to balance the interests of individuals who want to produce their own electricity with the public utilities' need to provide safe and affordable energy to their customers. This is important legislation. Nebraska is sixth in the country for wind potential. Wind is the fastest growing electric generating technology in the world, mostly because it's the most cost competitive renewable resource. In general, it is the only renewable resource that approaches the cost of energy produced by NPPD. So with this legislation, small wind electric systems can make a significant contribution to our nation's energy needs and can help those individuals who own those generating facilities. State and federal tax incentives are not available to public power utilities. We know that. However, NPPD has still pursued an economical, a practical, and a consumer-focused approach for developing wind generation in the state. They've invested more than \$80 million in wind generation since 1995. They have participated in the state's first wind facility outside Springfield, Nebraska. They have invested in all forms of renewable resources feasible in this state, including hydro, wind, and methane. NPPD has a strategic goal of achieving 10 percent of its wind supply from renewable resources by 2020. I hope that they can achieve that and I'd like to see that goal increased. I intend to vote for this committee amendment. I intend to support the underlying bill and I urge you to do likewise. Thank you, Mr. President. [LB436]

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

Floor Debate
April 09, 2009

SENATOR CARLSON: Thank you, Senator Avery. Senator Karpisek, you are recognized. [LB436]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I wanted to comment a little bit on Senator Price's questions on the electrical code. I did go talk to the NPPD representatives. Their understanding is that the installation would have to be inspected by a state certified electrical inspector to make sure that there isn't a feedback into the system, mainly for safety of the line workers, which the line workers are trained to always think that a line is live no matter what. But again, it would have to be inspected. The new code that Senator Giese's bill does pertain would not deal with this issue per se because the current code would deal with it. So whether his bill is advanced or not, we have that in place. However, that bill is out of committee and it's on General File. I don't want to belabor the point that Senator Janssen and Senator Avery brought up, but this is a compromise on this bill. I was asked to carry an amendment that would change the kW. I talked to Senator Langemeier and some others involved, and decided not to do that since there was an agreement made, there was a compromise made. I think that we have to go with that. When something comes out of committee and we get all parties at the table to agree, there's no reason to come out here and try to tear it apart. So I do thank everyone involved, because in my two years here this has always been a huge issue. And truthfully, I didn't think we would ever get a net metering bill on the floor. So I am very happy that we have it and congratulations to Senator Haar for getting it this far. And again, there were compromises made on all sides. So if we start to pick at some of the compromises, we're going to probably tear the whole thing apart, and it will go away and maybe not to be seen again for quite a while. So I think that this is a good start. We can see how this works. There won't be that many people. But those that want to, can start. And I'm sure in years to come that we can look at these numbers and do some more negotiating and come back to the table and find out if it is really a good thing, which I think it is a wonderful thing. So again, I just want to thank everyone involved. I think that we have a great start here, and we're being progressive on this issue rather than just ducking our heads into the sand and hoping it goes away. Thank you, Mr. President. [LB436]

SENATOR CARLSON: Thank you, Senator Karpisek. Those still wishing to speak: Senators Haar, Dubas, and Hansen. Senator Haar, you're recognized. [LB436]

SENATOR HAAR: At this point I will yield and just give a closing. Thank you. [LB436]

SENATOR CARLSON: Thank you, Senator Haar. Senator Dubas, you're recognized. [LB436]

SENATOR DUBAS: Thank you, Mr. President and members of the body. I, too, would like to take the opportunity to thank Senator Haar for his hard work bringing all of the vested people to the table. It's no easy challenge, and he took that and ran with it and

Floor Debate
April 09, 2009

has worked very hard. And we do have to give a lot of credit to our predecessors, especially Senator Preister, and Senator Dierks has been involved in this issue for many, many years. And they've laid the ground work for this. They've worked on educating people. They worked on putting things together. And, you know, sometimes it just takes a long, long time to get to where we want to go. And so if it weren't for the work that they did, we wouldn't be standing here with this bill today. So I want to take that opportunity to thank them. Net metering bills have run the gamut. You know, we've introduced net metering bills for years and we've tried to please everybody through those bills. And when you try to please everybody, you end up pleasing nobody. So this impasse has really kept us from moving any type of net metering forward. And net metering is a very, very important component to renewable energy production. If we don't have net metering, it's just like taking a big piece of the puzzle right out of the middle. And so we have to get something on the books. We have to start somewhere. Even if it's not where everybody wants it to be, it's a starting point. It's a foot in the door. It gives us the opportunity to really put something in place, get it going, and then be able to come back and evaluate. Where do we make changes? What's working? What's not? I just don't think we have the luxury of inaction anymore. It's just too important to the overall success of renewable energy production in our state. But I do understand the frustration of those citizens who have worked long and hard on promoting and even some of them developing renewable energy production in the state. You know, I understand where their frustration comes from, why they don't agree with this bill, the things that they want to see. You know, they've been in the trenches just like many of the people I mentioned before. They've been working very, very hard. And so for something to come forward that, you know, they just feel very strongly about and passionately about and have serious concerns about, you know, I see where they're coming from. And I guess the only hope that I put out to them is that if we get something passed and we're able to actually put something in place and start to put a net metering program and see what comes of it, that they will continue to come forward and be willing to work with us so that we do end up with a net metering policy that does serve the people of Nebraska, that does reward citizens, that does allow for citizen involvement. And so, you know, I just want you to understand...those people with their frustrations, I want them to understand that they aren't being ignored. Because you didn't get what you wanted in the bill doesn't mean you're being ignored. And I, for one, do understand your concerns, and I hope you will continue to come to the table, continue to visit with us; bring your concerns, your thoughts, and your ideas. They are important. They're important to the committee. They're important to this body. And so let's get something on the books and continue. I think the interim hearing that the Natural Resources Committee will have during the summer and fall will give us additional opportunities to evaluate and look at things. These are exciting times for Nebraska. We are on the verge of really breaking out and getting wind energy and other renewables moving forward, that ultimately our entire state is going to be the winner because of it. So I hope that we can continue to work together and work through our differences and really make good things happen for the citizens of Nebraska. Thank you. [LB436]

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

Floor Debate
April 09, 2009

SENATOR CARLSON: Thank you, Senator Dubas. (Visitors introduced.) Senator Hansen, you're recognized. [LB436]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Mr. President, I ask for a moment of personal privilege to relay a public service announcement that came from North Platte. It reads: Due to the recent budget costs and the rising cost of electricity, gas, and oil, as well as current market conditions and a few trillion dollars in bailouts for some corporations, the light at the end of the tunnel has been turned off. We apologize for the inconvenience, you're on your own. (Laughter) Thank you, Mr. President. [LB436]

SENATOR CARLSON: Thank you, Senator Hansen. Seeing no more lights, Senator Langemeier, you're recognized to close on AM708. [LB436]

SENATOR LANGEMEIER: Mr. President and members of the body, I just want to thank all those that were participating in this and bringing the idea over the years, even those that wished it was more. I do thank them for bringing the idea and those that all worked on it, the power, the senators, and the individuals across the state that have been champions for this issue over the years. Today is a good step in the right direction, and I would ask that you adopt AM708 and it does become the bill. Thank you. [LB436]

SENATOR CARLSON: Thank you, Senator Langemeier. You've heard the closing on AM708. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Are there any others wishing to vote? Record, Mr. Clerk. [LB436]

CLERK: 45 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB436]

SENATOR CARLSON: The amendment is adopted. We return to debate on LB436. Are there any senators wishing to speak? Senator Haar, you wish to speak? [LB436]

SENATOR HAAR: Mr. President, members of the body, I would just like to say very quickly that there are federal and tax incentives right now for installing small wind turbines and this sort of thing, and photovoltaics. I think if anyone's interested in that, they need to call the Nebraska Energy Office. And I would also say that if someone is interested in doing this residential kind of development, there's some reputable dealers all across Nebraska who have experience, can tell you what to expect so that we avoid the case as Senator Loudon related where somebody thought by putting up a small turbine they'd have no more electric bills. So, you know, my office, I've got names. If you have any questions, please contact my office. Thank you very much. [LB436]

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

Floor Debate
April 09, 2009

SENATOR CARLSON: Thank you, Senator Haar. There are no other lights. You're recognized to close on LB436. [LB436]

SENATOR HAAR: Mr. President, I'd waive closing. Thank you. [LB436]

SENATOR CARLSON: Thank you. You've heard the closing on LB436. The question is, shall LB436 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB436]

CLERK: 45 ayes, 0 nays, Mr. President, on the advancement of LB436. [LB436]

SENATOR CARLSON: LB436 advanced. Mr. Clerk, next item on the agenda. [LB436]

CLERK: Mr. President, LB188 is a bill introduced by the Retirement Systems Committee. (Title read.) The bill was introduced on January 12, at that time referred to Retirement Systems Committee. The bill was advanced to General File. There are committee amendments, Mr. President. [LB188]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Pankonin, you're recognized to open on LB188. [LB188]

SENATOR PANKONIN: Good morning and thank you, Mr. President, members of the body. LB188 was introduced on behalf of the Nebraska Public Employees Retirement Systems. NPERS is the administrative arm for Nebraska retirement plans. LB188 includes the following changes to current statutes regarding plan administration. It extends the window for state and county members to apply for vesting credit from 30 days to 180 days for years of participation in another Nebraska government plan in which credit was earned. It clarifies the state and county members employed and participating in the retirement system prior to January 1, 2003, who terminate but return to work after 120 days, but before 5 years, will be enrolled in the cash balance benefit plan. It provides a moratorium on required minimum distributions for members of defined contribution plans who have terminated and reached the age of 70 and a half for the calendar year 2009. This change is pursuant to the Worker, Retiree, and Employer Recovery Act of 2008, recently passed by Congress, and is intended to give relief to those defined contribution plan members who have likely suffered declines in their investments due to market conditions. The one-year moratorium will allow those persons to wait for the markets to recover somewhat before being forced to cash out the required minimum distribution amount. It also extends the window from 120 to 180 days of death for beneficiaries to file death benefit applications under state and county plans. And it provides that records received by the Nebraska Public Employees Retirement Systems from the Department of Administrative Services and other employers, for purposes of administering various retirement systems, are not subject to the Public Records Act and may be withheld from the public. Information considered a public

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

Floor Debate
April 09, 2009

record includes: the member's name, the retirement system in which the member is a participant, the date the member's participation in the retirement system commenced, and the date the member's participation in the retirement system ended, if applicable. And LB188 allows state plan members to transfer all or a portion of their accounts to the state deferred compensation plan upon termination, if the employee has an existing deferred compensation account. The advantage for state plan members is that fees on the state deferred compensation plan are lower than fees on private deferred compensation plans such as 401(k)s. Thank you, Mr. President. [LB188]

SENATOR CARLSON: Thank you, Senator Pankonin. Mr. Clerk. [LB188]

CLERK: Mr. President, I do have Retirement Systems Committee amendments, AM611. (Legislative Journal page 688.) [LB188]

SENATOR CARLSON: Senator Pankonin, as Chair of the committee, you're recognized to open on AM611. [LB188]

SENATOR PANKONIN: Thank you, Mr. President. AM611 amends LB81 into the bill. LB81 increases a State Patrol plan members contribution rate from 13 percent to 15 percent of monthly compensation effective July 1, 2009. The employer contribution would remain at 15 percent. It makes a technical change in Section 28 by deleting a statutory reference and it adds the emergency clause and inserts the operative date of July 1, 2009. Thank you. [LB188 LB81]

SENATOR CARLSON: Thank you, Senator Pankonin. You've heard the opening on LB188 and AM611. There are senators wishing to speak. Senator Nordquist, you are recognized. [LB188]

SENATOR NORDQUIST: Thank you, Mr. President. I stand in support of the committee bill and the amendment. AM611 represents LB81, which I introduced at the request of the State Patrol Association this year. June 30, 2008, the actuarial study showed that the plan needed about \$800,000 in a state contribution. The State Patrol Association came to the table and said, we are willing to step up, increase our contribution rates to be equal to what the state puts in. So now instead of the patrol paying 13 percent and the state paying 15, it's going to be 15 and 15, and that will generate about \$550,000 towards that \$800,000, so it will decrease our General Fund liability for this fiscal year. Thank you, Mr. President. [LB188 LB81]

SENATOR CARLSON: Thank you, Senator Nordquist. (Visitors introduced.) Senator Gay, you're recognized. [LB188]

SENATOR GAY: Thank you, Mr. President. I just wanted to rise and commend the Retirement Committee for several things that I read on here. One, the extending those

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

Floor Debate
April 09, 2009

windows to 180 days I think is a very good thing to do. I don't know exactly the cases they heard. But I'm actually in this plan. When we were county commissioners, you got to be a participant in the plan, so I'm familiar with the plan just for knowledge there. But anyway I do think that's a good thing when you extend those days, because people have...you know, it could be a lot of different reasons they come into, and they shouldn't make these rushed decisions. So I appreciate the fact that they're extending those days where people can make good decisions and understand. And also the part where you can come back into the plan...as the work force, I know right now we're in a different time with the economy, but as this work force, it gets tougher and tougher. I think that's good that we can get good employees back into the state if they need to, and they can still keep those benefits and come back. So I think those two measures, I just wanted to stand up and commend the committee. They got a good committee and commend Senator Pankonin and Senator Nordquist for their leadership on this. But those two particular items I think will be very good, long-term. Thank you, Mr. President. [LB188]

SENATOR CARLSON: Thank you, Senator Gay. There are no other lights on. Senator Pankonin, you're recognized to close on AM611. [LB188]

SENATOR PANKONIN: I'll waive closing. [LB188]

SENATOR CARLSON: Senator Pankonin waives closing. The question is, shall AM611 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB188]

CLERK: 40 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB188]

SENATOR CARLSON: AM611 is adopted. We return to debate on LB188. Are there senators wishing to speak? Seeing none, Senator Pankonin, you're recognized to close. [LB188]

SENATOR PANKONIN: Mr. President, I just want to thank the Retirement Committee and our legal counsel, Kate Allen, for the work on this bill. And we obviously worked with the Nebraska Public Employees Retirement Systems on some cleanup items, and would appreciate your support this morning. Thank you. [LB188]

SENATOR CARLSON: Thank you, Senator Pankonin. You've heard the closing on LB188. The question is, shall LB188 be adopted? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB188]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB188. [LB188]

SENATOR CARLSON: LB188 advances. Mr. Clerk, next item on the agenda. [LB188]

Floor Debate
April 09, 2009

CLERK: Mr. President, LB56 offered by Senator Fischer. (Read title.) Introduced on January 8 of this year, referred to the Natural Resources Committee. The bill was advanced to General File with committee amendments attached. (AM310, Legislative Journal page 459.) [LB56]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Fischer, you are recognized to open on LB56. [LB56]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB56 makes several changes to the Livestock Waste Management Act that address unintended consequences of the current law. LB56 clarifies the standard for a discharge violation and the ruling of a discharge violation by the Nebraska Department of Environmental Quality. This proposal only amends what falls under the scope of the Livestock Waste Management Act and does not eliminate or diminish any environmental protection law or regulation or decrease civil penalties for violating the act. The primary purpose of LB56 is to clarify that a discharge violation, otherwise known as a strike, applies on a facility-by-facility basis. As a practical matter, the strike will only apply to the permitholder and its partners with regards to the facility at which the actual discharge occurred and would not be applied against other separate facilities. Current law unduly allows for the partners of permitholders that operate an entirely different facility independent of the permitholder to have a strike applied against that separate facility. LB56 clarifies that a strike is tied to the particular facility and its respective owner or owners by which a discharge violation is found. LB56 distinguishes between a discharge and a discharge violation for the purpose of issuing a strike. A discharge is the very act or event of spilling, leaking, pumping, etcetera, pollutants into any waters of this state or in a place which will likely reach waters of the state. Therefore, regardless of the permitholder's intention in emitting the pollutant, the actual event is simply recognized as a discharge whereas a discharge violation is the actual finding by DEQ that identifies intent and negligence on the part of the National Pollutant Discharge Elimination System applicant or permitholder. In order to issue a discharge violation or strike, LB56 requires that DEQ complete a formal process, including an investigation, notice, and hearing. With the Natural Resources Committee amendment, AM310, the standard at which a permitholder is recognized to be at fault is discerned by negligence. By establishing the standard of liability, the possibility of applying a strike when the permitholder took all reasonable measures to prevent a discharge is eliminated. The permitholder is, however, still responsible for existing civil penalties as a result of that discharge. As previously indicated, DEQ has the statutory authority to enforce the Livestock Waste Management Act, and LB56 appropriately grants DEQ discretion in doing so. Thus, DEQ is given the opportunity to reject an application for a National Pollutant Discharge Elimination System permit, a construction and operating permit, or major modification of either type of permit, or to revoke a permit upon the finding of five strikes as designated in AM310. Granting DEQ such discretion with regards to permits

Floor Debate
April 09, 2009

will enable the department to proceed rationally with enforcing the statutes so that rejection and revocation are not mandatory. I would especially like to thank Senator Haar, a member of this committee, for coming forward with an amendment that did become the committee amendment to this bill. I appreciate his work on this and the work of all committee members. The state of Nebraska is largely rooted in agriculture and dependent on the economic success of agriculture production. It is crucial to identify that it is individuals' livelihoods in jeopardy if strikes are not applied fairly and uniformly. I reiterate that the environmental protections remain in place, and LB56 is important to assist with and not hinder economic growth in Nebraska's largest economic sector. Again, thank you to Senator Haar and the committee. And with that, I will yield my time to Chairman Langemeier. [LB56]

SENATOR CARLSON: Senator Langemeier, you have 5 minutes. [LB56]

SENATOR LANGEMEIER: Thank you, Mr. President, and thank you, Senator Fischer. We're going to move right into the committee amendment at this time, and this will be opening on that. AM310 is a committee amendment. It takes the original bill that took us from just negligence, the bill was attempting to take us to willful negligence, which would have been a higher level of proof for someone to prove that the operation was in negligence. The committee amendment takes it back down to negligence, which is the current law. It also adjusts the strikes from three to five for each producer facility. And with that, that is the committee amendment to the bill. And I do want to...again, I want to thank the Natural Resources Committee. It's been a pleasure working with them all. They've been very willing to work on a bill that had some issues when it came in. It had some opponents. We've had the opportunity to try and address all their needs and put something out that's a quality product at the end of the day. And so with that, I'd ask that you adopt AM310. Thank you, Mr. President, and thank you, Senator Fischer. [LB56]

SENATOR CARLSON: Thank you, Senator Fischer and Senator Langemeier. (Visitors introduced.) We have senators wishing to speak: Senator Dierks, Senator Wallman, Senator Haar. Senator Dierks, you are recognized. [LB56]

SENATOR DIERKS: Thank you, Mr. President. I have questions. I guess the first question I have is why are we doing this? We put the bad actor provision in statute back in the nineties, '92 I believe. I'm not sure anymore who did it--it was either Senator Schellpeper or Senator Morrissey. At this point, and we just visited with DEQ, there's never been anyone that had more than one strike. They have two or three permitholders right now that have one strike, and that's out of hundreds of permitholders that are presently in business. Senator Fischer said something about unintended consequences. I guess maybe if I could have a little dialogue with Senator Fischer, I'd like to know what those unintended consequences might be. [LB56]

SENATOR CARLSON: Senator Fischer, would you yield? [LB56]

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

Floor Debate
April 09, 2009

SENATOR FISCHER: Yes, I will. [LB56]

SENATOR DIERKS: Senator Fischer, you mentioned in your opening about there was unintended consequences that required this legislation to be brought. And I wonder if you could tell me what some of those were. [LB56]

SENATOR FISCHER: Certainly, Senator Dierks. At the hearing, we heard from a number of family farmers. And they were young farmers who are in business with their fathers. They may be in business at another facility with a brother, and then their father may be in business with their uncle or his brother at another facility. Under current law, if there is a discharge that is found to be in violation, which rarely happens, by the way, but if there is a discharge that is found to be in violation of the act, that applies to all of the sites that that person is involved in. So the son, if it happens at the site where he is involved with the father, it applies as strike against him there. It also would apply against him if he is in a partnership with his uncle at a different site. And it would also apply to him if he was in a partnership with his brother at another site. That was the reason we went to this being site specific. Because as you know, in rural Nebraska it's very difficult for young people to get involved and be able to maintain their family business and to continue to grow in agriculture. And so they sometimes develop a variety of partnerships with family members or with friends, in many cases, and so this would help them. [LB56]

SENATOR DIERKS: Thank you. Maybe I should repeat again that there have been no...there's been one notification, one violation to date, and those were on permitholders and their permitholders number in the hundreds. And they've only had I think three violations, and this is since 1992. I should tell you that the current statute also has a provision called the voluntary compliance statute, which means that before there's an infraction presented to a permitholder that the DEQ has to give them every opportunity to correct their situation before they get this designation. We were in a process a number of years ago where they were constructing these corporate hog palaces around the state. [LB56]

SENATOR CARLSON: One minute. [LB56]

SENATOR DIERKS: And one of the gentlemen from Iowa who was actually funding these pig palaces, who was a bad actor in Iowa, he'd had three violations and he could no longer construct over there. So I brought legislation at that time to provide reciprocity between Iowa and Nebraska. We didn't get that passed, but we haven't had that kind of a problem in Nebraska, and I guess I question the need for this legislation. Thank you, Mr. President. [LB56]

SENATOR CARLSON: Thank you, Senator Dierks and Senator Fischer. Senator

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

Floor Debate
April 09, 2009

Wallman, you are recognized. [LB56]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I have at least four cattle feeders in my district, and one of them was pretty doggone upset how much money it cost him to go by DEQ regulations, even though he was about a half a mile from a major stream. It cost those brothers a lot of money and to go buy permits. You talk about livestock friendly. Folks, if we want more livestock in eastern Nebraska, especially, we cannot be screwing down these rules and putting DEQ people on that turn you in for literally nothing. You know, we have seven, eight inches of rain one time at a crack, and one of my friends, it finally got down to a neighbor's pond. He wasn't turned in. Our own inspector drove around and could put a complaint out. He didn't obey by these rules. So rules and regulations for agriculture--sure. Corporate agriculture, local agriculture, my friend had to spend a lot of money to make it so it passed DEQ inspections for permits. They weren't polluting any water. One big rain--they spent hundreds of thousands of dollars. And in fairness to the good state of Nebraska, our university helped them design it and so I think it's okay. But do I like this stuff as an ag producer? No. I used to feed some cattle. Would I like this stuff? No. Most people do a good job and is this legislation necessary? It's sad if it is. So vote how you may. Thank you, Mr. President. [LB56]

SENATOR CARLSON: Thank you, Senator Wallman. Senator Haar, you are recognized. [LB56]

SENATOR HAAR: Mr. President and members of the body, I rise to support LB56 with AM310, the amendment we agreed on in committee. What was important to me was that it maintains current levels of negligence. The original bill talked about willful negligence, which is a much higher standard of proof back to simply negligence. The change of three strikes you're out to five, I don't know, three strikes is that...got popular I guess in California when they're talking about people getting into prison and three strikes you stayed in prison. So I'm not so concerned about the three versus five. I just think in any case those of us who are concerned about the environment, you know, we can call any time to the Ag Department or, I'm sorry, Department of Environmental Quality and get reports of how many people have strikes and what those strikes are for. So I...in that respect it continues to require watchfulness for those of us who have that concern. So working together we came out with this amendment, and I can certainly support the amendment. I think it's funny how people label all of us when we come into the Legislature, and there were rumors that Deb Fischer and I couldn't work together on things. And we've worked together (laugh) quite well and I'm pleased with that. Thank you, Deb. [LB56]

SENATOR CARLSON: Thank you, Senator Haar. Senator Dubas, you are recognized. [LB56]

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

Floor Debate
April 09, 2009

SENATOR DUBAS: Thank you, Mr. President, members of the Legislature. I am a member of the Natural Resources Committee, and we did have quite a bit of discussion about this bill. There were concerns with some of...when you're talking about negligence or gross negligence and those types of things. And I struggled with the bill and still struggle with it today because I agree with part of it. I agree with the part where the strikes should be specific only to the facility, because I do understand that, you know, we have people who are partners in multiple facilities. And so, you know, I understand the problem that this could create when you're applying the strike to the person rather than to the facility so I agree with that part, and I think it does need to be addressed. My concern comes in when we open up the livestock regulations because I understand the history behind it. I was involved in many, many, many meetings that were held across the state, gathering input that DEQ held when they were working on the Title 130 regulations. And there were, as you might guess, very strong opinions on both sides of this issue. And it took a lot of working and a lot of cooperation, similar to what Senator Haar did on the net metering issue, you know. There were, as I said, very strong feelings on both sides of the issue, and getting everybody to reach a point where everybody gave a little and reached a point where there was an agreement took a great deal of work. So my concern comes in if we're going back in to open up these particular rules and regulations, the difficulties or maybe some additional unintended consequences should come into play. I've worked with DEQ. I know how they work. I know they, you know, respond to complaints. If it's a valid complaint, if there are environmental infractions going on, I know they work as best as they can to help that particular facility come into compliance and address the concerns that have been raised. As Senator Dierks pointed out, to date we don't have any facilities that, you know, are on the verge of being closed down because of strikes. I think DEQ takes their job very seriously, and they understand the importance of livestock production to this state. I certainly understand the importance of livestock production to this state. I'm a cow/calf operator. I need livestock feeders in the state. That's who I sell my product to so, you know, I don't want anything so onerous that they can't continue with their business. But my concerns and my reservations come from the amount of work that went into crafting the regulations that we have in place. And by opening things up, do we again create some more unintended consequences? So while I agree with a portion of the bill that applies the strikes specifically to the facility rather than to the permitholders, I'm still struggling with the need to expand the strikes for the operators. Thank you. [LB56]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Harms, you are recognized. [LB56]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Langemeier, would you yield? [LB56]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB56]

Floor Debate
April 09, 2009

SENATOR LANGEMEIER: Yes. [LB56]

SENATOR HARMS: Senator Langemeier, I notice on your committee statement you did have people who were opponents. You had the Nebraska Sierra Club, the Nebraska League of Concerned Voters, the Nebraska Farm Union, and someone who testified on their own. Could you tell me basically what their concerns were and what the issues were that they felt strongly enough to testify against this bill? [LB56]

SENATOR LANGEMEIER: The word "willful" negligence. The argument was, and we had it in committee, was, is willful negligence, is that too hard to prove? And so we had that discussion and so we took it out of the bill, and we went back down to negligence, the way it is currently being enforced. They just thought willful negligence was just too high of a level to prove. And so we removed that, understanding that concern and hopefully dealt with their problems. [LB56]

SENATOR HARMS: So then they...after that was taken care of, then they were agreeable to the bill itself or was that just the major issue or... [LB56]

SENATOR LANGEMEIER: We have not heard back from them. Have I had them submit me letters? No, I guess I haven't asked them for letters to change their position. But in their testimony that was the concern is what is willful and is it provable? And it's kind of to the top end of negligence, and so their concern was is you can't prove it. [LB56]

SENATOR HARMS: Okay, thank you. Senator Fischer, would you yield, please? [LB56]

SENATOR CARLSON: Senator Fischer, would you yield? [LB56]

SENATOR FISCHER: Certainly. [LB56]

SENATOR HARMS: Senator Fischer, five strikes and I'm out. Can you tell me what are the penalties? I'm not an attorney and I looked through the bill, I read the bill, and maybe it's there and I just missed it. What is the actual penalty here? DEQ comes after me. I've had a violation. Is there any penalty at all or what is the issue? I'm not sure I understand that part of it. [LB56]

SENATOR FISCHER: Senator Harms, there are penalties, there are fines. I would have to get my notes out and get back to you on what those are specifically. And as you know, permits can be revoked. Permits then aren't granted. That was a concern of many, many farmers and ranchers and a reason why I brought this bill, too, because the possibility is there that because it's not facility site specific now, the law, it's facility-by-facility basis that you can be charged with a strike, your liability is tremendous in this because there are very severe penalties. And I will get that information to you.

Floor Debate
April 09, 2009

[LB56]

SENATOR HARMS: Okay. Senator Fischer, is there any flexibility in regard to this? For example, does the farmer or the rancher have an opportunity to fix this issue before this actually occurs or is it pretty strict and they go after them immediately? [LB56]

SENATOR FISCHER: Operations, of course, are inspected and you have to have a permit to even have a facility. So...and they are inspected fairly regularly. What we're talking about here on a discharge would be after a large rain event where you have a tremendous amount of water coming down and so you have a washout occur. And that is taken into consideration by DEQ. [LB56]

SENATOR HARMS: Thank you. I do support this amendment and the underlying bill. I just had a couple of questions. And thank you, Senator Langemeier, and thank you, Senator Fischer. Thank you, Mr. President. [LB56]

SENATOR CARLSON: Thank you, Senator Harms and Senator Langemeier and Senator Fischer. Those still wishing to speak are Senator Schilz, Sullivan, and Gloor. Senator Schilz, you are recognized. [LB56]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Good morning, everyone. I stand here today as a feedlot owner who has had an NPDES permit, which we're talking about here, since the mid-seventies, probably one of the first put up in the state. It's a big concern to me to sit here and think that, I don't care if it's one strike, I don't care if it's two strikes, if it's against me, I don't like it. And that's why it's so important in this bill to separate the facilities because what's happening at one facility shouldn't be tied to another facility and tie all owners of that facility. And what you'll find out these days, and at least in the feedyard business and any other livestock business, is we're bringing...is there's...it hasn't been the best times. And so what you're seeing is people partnering up, getting together, starting to work together to do this thing. And as you start to see that, you start to see more and more facilities coming under...I wouldn't say control of certain people, but there's ties out there now. And so we need to be real careful of this. And so I see this just like Senator Fischer had said, as a clarification of the realities of the day. So, you know, I look at it that way. The other part that I think is important, too, is that, you know, we look here and others here and Senator Dierks obviously has worked hard on these issues, and I think as you look and you see that there's only...you know, people have only been given one strike out there now, you know, I guess it does beg the question: Did we need this sort of legislation in the first place? And there are other tools, and I'm not talking about this legislation. I'm talking about the preceding legislation that brought us to this today. But there are other rules and other opportunities out there for the director of DEQ and even the Attorney General to revoke someone's license. And you were asking what the penalties are. Well, today if three strikes would be put against me, even if all of them weren't at my

Floor Debate
April 09, 2009

facility, my livelihood would be done. The feedyard permits would be taken away and I'm guessing they would use a cease and desist order and cause me to shut down my business. So it's a big deal and it's a lot of investment that goes into these things. And as we've heard from others today, it seems like the folks that are raising livestock and feeding livestock and doing things in Nebraska care about what they're doing, care about the environment and have taken care of that. So obviously for Senator Friend's benefit, I don't know if he's there, but I love this bill. I take this bill home at night and sit with it and read it. So I just hope that everybody else can come aboard on this bill and the amendment and let's move it forward. Thank you very much. [LB56]

SENATOR CARLSON: Thank you, Senator Schilz. Senator Sullivan, you're recognized. [LB56]

SENATOR SULLIVAN: Thank you very much, Mr. President, members of the body. I wondered if Senator Langemeier would yield for a question. [LB56]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB56]

SENATOR LANGEMEIER: Yes. [LB56]

SENATOR SULLIVAN: Senator, this is in connection to the amendment. I've listened to what Senator Dierks said about the number of strikes or fines levied over the course of several years. I'm just wondering what the magic number was and also I can appreciate Senator Fischer's concern about multiple owners in various locations because we certainly have that in some of the areas in my district. But then why was really the necessity of and the magic number of increasing from three to five? I just am not seeing that right now. [LB56]

SENATOR LANGEMEIER: Senator Haar brought that in the amendment as a compromise to remove the willful negligence back down to negligence, and so that was part of kind of a trading process there I guess. [LB56]

SENATOR SULLIVAN: But I'm referring to the number of strikes. [LB56]

SENATOR LANGEMEIER: Right. That was part of the amendment that was brought all together, said let's take down this unachievable high level of negligence, willful negligence, and go back down to the bottom end, which is just negligence. [LB56]

SENATOR SULLIVAN: Um-hum. [LB56]

SENATOR LANGEMEIER: And for that we would...he'd be willing to go from three to five, and so that's where we put it out at. [LB56]

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

Floor Debate
April 09, 2009

SENATOR SULLIVAN: Okay. And then also I like...I appreciate the feature of it being site specific. But would the strike be applied in multiple times for one event or would it have to be several events over time? [LB56]

SENATOR LANGEMEIER: It would be several events over time. [LB56]

SENATOR SULLIVAN: Okay, thank you. [LB56]

SENATOR LANGEMEIER: Yeah. [LB56]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Gloor, you're recognized. [LB56]

SENATOR GLOOR: Thank you, Mr. President. I wonder if Senator Fischer would yield to some questions. [LB56]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB56]

SENATOR FISCHER: Yes. [LB56]

SENATOR GLOOR: I think I'm finally starting to get the hang of the definition of strikes in my previous life with hundreds and hundreds of employee strikes meant something completely different. And I understand within the livestock industry strikes may strike the same level of fear as did the term strike I'm referencing. But is it possible for DEQ to shut someone down with just one strike because the violation is considered so serious? [LB56]

SENATOR FISCHER: I don't know the answer to that, Senator Gloor. [LB56]

SENATOR GLOOR: I wonder... [LB56]

SENATOR FISCHER: I know there's a process that has to be followed. You have investigations; you have hearings. In answer to Senator Harms's previous question, a strike can cost a farmer up to \$10,000 per violation, per strike, per day so it's...and we're not changing that, and we're not changing that, you know. This is serious. I think the main point of this in reference to a--I'm kind of getting off and it's your time. [LB56]

SENATOR GLOOR: It's okay. [LB56]

SENATOR FISCHER: If you don't want me to do this, I apologize. But in reference to Senator Sullivan's question to Chairman Langemeier, yes, we did go up to the five

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

Floor Debate
April 09, 2009

strikes that was brought by Senator Haar because we amended the bill from the willful negligence just down to negligence. And so there's, you know, there's been compromise throughout this. But if a permit can be pulled after one strike, I would have to look into that. [LB56]

SENATOR GLOOR: Thank you. I wonder if Senator Schilz would yield to a question. [LB56]

PRESIDENT SHEEHY: Senator Schilz, would you yield to questions? [LB56]

SENATOR SCHILZ: Yes. [LB56]

SENATOR GLOOR: Senator Schilz, would you be able to answer the question I directed to Senator Fischer or would you like me to repeat it? [LB56]

SENATOR SCHILZ: Could you repeat that please, yeah. [LB56]

SENATOR GLOOR: Is it possible that a strike or a demerit or an infraction would be considered so severe that DEQ would shut down an operation just based upon that single infraction? [LB56]

SENATOR SCHILZ: Well, I know that and not personally, no, I don't know that for sure, but I know that from what I understand from DEQ, Director Linder has told us that there are ways administratively for him to step up and if he sees something that is so egregious so that you're, you know, actively pumping into a stream or something like that he can come in...I think he has the authority to come in and just say, hey, that's it. We're not going to go on here. And so it does... [LB56]

SENATOR GLOOR: Okay. [LB56]

SENATOR SCHILZ: ...then it falls into another process. And I can't explain how that all works, but I know that there's that. And then, I mean even in certain cases where you would do something with intent, the AG's office may be able to file criminal charges. So those kind of things are what are out there now and in place. [LB56]

SENATOR GLOOR: Okay, thank you. [LB56]

SENATOR SCHILZ: Sure. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Gloor. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR78 and LR79. Continuing with floor discussion on the Natural Resources Committee amendment, AM310, to LB56, members requesting to speak: Senator Wightman

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

Floor Debate
April 09, 2009

followed by Senator Haar, Senator Hansen, and Senator Carlson. Senator Wightman, you're recognized. [LB56 LR78 LR79]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Certainly my district has a number of feedlots, commercial feedlots within the district, and this is a very important bill to them. I know that this started out as primarily to make this penalty and the three strike rule apply to specific sites rather than to the permittee. And as was discussed earlier, you may have one person having a 1 percent or a 10 percent interest in a number of feedlots across the state, and I've talked to some that do. And the question has always been one of whether they could look at that permittee and shut down all of the feedlots which he was a part owner. So obviously the making it site specific addresses that issue. I think there have been some fair compromises here. The negligence issue--certainly proving negligence is going to be much, much easier than if the DEQ were required to prove either intentional act or willful negligence. So I can see where the five strike rule might be a very fair compromise in that regard. We have to look at the fact that livestock industry is one of the major drivers of the entire Nebraska economy. We are, if not the largest livestock producer in the United States, we're certainly in the top three with Kansas and Texas, and it varies from year to year I think. But I think as far as total livestock, certainly as far as a percentage of the total economy, there probably is no higher state than the state of Nebraska. And there are penalties. As Senator Fischer discussed, there are penalties that can provide up to \$10,000 a day as long as the infraction continues, so there are major penalties. And the fact that we go to five strikes before we would shut down the entire feedlot, the particular facility is not that alarming to me because on each violation there are separate penalties. And those penalties can be extremely severe. My guess, and I don't know this for sure, but I think that in the event that the violation is not corrected that there could be a shutdown of the particular feedlot. So they do have to comply with the requirements once there is a violation. So I have no question that if they don't correct...if the facilities do not correct that, that one of the remedies by the DEQ would be to shut it down. So they would have to correct the violation. So I stand in strong support of both AM310 and LB56. Thank you, Mr. President. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Hansen, you're recognized. [LB56]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I would like to add just a little bit of what Senator Fischer was talking about fines and the question that was asked of her. DEQ is limited to \$10,000 a fine, \$10,000 per incident, and one of these strikes would certainly be in that case; \$10,000 a fine, \$10,000 a day amounts to \$300,000 a month or \$1.8 million in six months. If these bad actors, if there is a bad actor out there and continues to do this, is going to be put out of business very quickly. Even if the person isn't a bad actor, he gets his name in the paper, he gets the violation, he gets the notice that he's being fined \$10,000 a day, the community gets a

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

Floor Debate
April 09, 2009

bad eye, the state gets a bad eye, and that's why we don't want bad actors. We need something in the law, and we have it and we're not touching that today, that we need to get rid of bad actors in the feedlot industry in the state of Nebraska. I think we have that in place now. This LB56 does not affect that but there certainly is a fine involved with these strikes, and there should be, there really should be because it's a serious violation, people take them seriously. Take Senator Schilz; he takes his business very seriously and does what DEQ says that they should and has that permit and follows the permit to the letter of the law. The fines are there and they should be there, but we're not addressing those today. And if there's any questions of Senator Fischer or myself, I'm sure we could answer what some of those consequences have been. But there have been people who go out of business just because they've been fined \$10,000 a day and they don't know what to do. They say, I can't continue to operate, I can't afford to meet the new permit system. So the fine system is certainly there and it is used. Thank you, Mr. President. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Carlson, followed by Senator Haar. Senator Carlson, you're recognized. [LB56]

SENATOR CARLSON: Mr. President, members of the Legislature, for those that are interested, I think that this bill is very, very important. It's important that the law underlying it be addressed because the investments in these operations are big investments and to end up on the wrong side on something and actually close down an operation is a very, very serious proposition. To make an example here, I'd like to ask Senator Harms if he would yield. [LB56]

PRESIDENT SHEEHY: Senator Harms, would you yield to questions? [LB56]

SENATOR HARMS: Yes. Are you going to use me as an example? Is that what you're saying? (Laugh) [LB56]

SENATOR CARLSON: You and I are going to be partners here. [LB56]

SENATOR HARMS: Oh, okay. And then I'm agreeable to it. [LB56]

SENATOR CARLSON: But I'd also like to try to get the attention of Senator Dierks. I can't see him through you but, Senator Dierks, you brought up a good question to begin with: Is there really a need to change this law? And so I would say, as an example, and I'll try to make it quick, Senator Harms and Senator Dierks, the two of you are in partnership with me. We've decided to become partners. [LB56]

SENATOR HARMS: First you've got to consider we trust you. I don't know about that. [LB56]

Floor Debate
April 09, 2009

SENATOR CARLSON: Well, we'll have to see here. [LB56]

SENATOR HARMS: Okay. [LB56]

SENATOR CARLSON: But in our operation we've decided we need three tractors and so we get together and we go out and buy three tractors and the total cost of the three is \$600,000 and we become equal owners in those three tractors and then somehow we decide who's going to get what tractor and whichever one we end up with, we're responsible for the maintenance and taking care of that tractor, but we own them together. Now I'm the bad actor and you two don't have a whole lot of control over how I operate with that tractor. So the first day I take it out on the road and one of the front wheels falls off, rolls down the road, and it could have endangered somebody that might have met us, but that's my first strike. But because we're owners together, you two have a strike. Now the next week I go out on the road again with that tractor and the big wheel falls off and it comes right down in front of an oncoming vehicle. I'm bad actor number two and I've got two strikes, but so do you because we own it together. And the third time out I don't pay attention to the exhaust pipe and it falls off out on the road and I endanger some people again. Now I've had three instances, you had no control over it, but we own those...that...we're in partnership. So I've got three strikes and deserve it, and you've got three strikes, Senator Harms. Is that fair? [LB56]

SENATOR HARMS: No, and I'll tell you what. There's something about you I don't like all of a sudden. [LB56]

SENATOR CARLSON: Okay. All right. [LB56]

SENATOR HARMS: Okay? (Laugh) [LB56]

SENATOR CARLSON: Well, hopefully that illustrates why we need to change this and I think the underlying bill and amendment are good and appreciate the work that's gone into it. Thank you. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Haar, followed by Senator Dierks. Senator Haar, you're recognized. [LB56]

SENATOR HAAR: Mr. President, members of the body, being new to the Natural Resources Committee this year has been very informative. But I would like to say that I took two recent tours of the Capitol, of this building, that included looking at all the murals and those sorts of things, and one of the things they stress very heavily, I feel, is that Nebraskans all work together. We work together to make this a good place. City folk work with country folk, and country folk work with city folk. And we all want clean...we all want clean water, country and city folk. We all want clean air, city and country folk. And so this bill, the bad actor bill originally, really recognizes that. If

Floor Debate
April 09, 2009

somebody comes into this state and they don't care and they mess with our water, our air, that we need to do something about it. My understanding is that a strike is very serious and maintaining the current level, which is negligence, negligence means you should have known better. So that was the original bill and that's the amended language now, to maintain negligence. They have to prove negligence--somebody should have known better. The standard in the bill originally was willful negligence, which is, simply put I guess, you should have known better but you don't care. So really, we're back to the standard in the bill of...that you should have known better. That's what negligence is about. You get so many strikes and you're out of here. No matter if it's three strikes or four strikes or five strikes, it takes vigilance on the part of those of us who are in the Legislature to make sure that if there are these bad actors that are out there who should have known better and they're not doing anything about it, then we need to keep watching them. Thank you very much. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Haar. We have Senator Dierks, followed by Senator Gloor and Senator Pankonin. Senator Dierks, you're recognized. [LB56]

SENATOR DIERKS: Thank you, Mr. President. In response to some of the questions that Senator Carlson was asking, I don't believe that tractor accidents qualify as a bad actor. I think it has to do with environment and that sort of thing. And besides, after the first accident, we'd have that thing taken care of so there couldn't be a second accident. And the opportunity to move away from a bad actor would sure present itself after one...after one incident of...that the Department of Environmental Quality brought. The...I think the salient thing here is that we have the bad actor provision in our statute and you have three strikes and you're out. And we've had that there for over ten years. It's been there since the middle nineties and it's not been used. We've had three incidents of a violation but just one, one violation in all those years. We've not had two. We've not had three. And we've only had about three total out of hundreds of possibilities. So I think we're talking about an issue that isn't even an issue. The thing I'm wondering about is if we have...really do have some unintended consequences with this legislation because I think that Senator Fischer talked about unintended consequences earlier on describing the method of getting to where they're getting here with five people and places instead of names, we really don't have an issue. The unintended consequence I'm concerned about is, are we going to provide ourselves with some more costs with what we're doing today? So anyway, I'm going to vote against the bill. I just...I think it's...I just think it's not necessary. It seems to me like we do a lot of spinning of our wheels over here and some things we've done years ago that are still effective and I don't think we really need to redo them, and we're revisiting issues that we really don't have to. So my vote on this bill is going to be no and I wish that I could get some support for that opinion. Thank you. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Gloor, you're recognized. [LB56]

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

Floor Debate
April 09, 2009

SENATOR GLOOR: Thank you, Mr. President, members of the body. I am, I guess by classification in this august group, considered an urban senator, even though I come from what I still consider to be a rural community, but I have enjoyed this discussion and it has reminded me of what I have learned to really, really enjoy about this job and that is the opportunity to educate myself on issues that I knew very little about prior to coming here and it forces me to get outside my comfort zone which obviously are issues that have to do with healthcare in a variety of ways. This is a position that allows you, should you take the interest, to continue to learn, and I say this in part for elementary students who I know are in the balcony, that you always learn. You need to always learn. It's an important thing for you, not just when you're in school but also when you get out of school, to continue to learn. But your teachers become different and your teachers aren't necessarily somebody who stands in front of a classroom. When you get into this arena, they're people that you know, people that you learn to know, people who you trust and whose opinions you lean on. And my ability to go around the room and listen or ask questions or have people approach me and share information with me makes me more and more comfortable that I understand what I'm voting on and can defend it. And so I rise to point out the fact that I am very appreciative of the learning opportunity, the dialogue and where it's led me, and that I, therefore, am rising in support of LB56 and AM310. Thank you. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Gloor. (Visitors introduced.) Senator Pankonin, you're recognized. [LB56]

SENATOR PANKONIN: Thank you, Mr. President. I was wondering if Senator Carlson would answer a question. [LB56]

PRESIDENT SHEEHY: Senator Carlson, would you yield to questions? [LB56]

SENATOR CARLSON: Yes, I will. [LB56]

SENATOR PANKONIN: Senator Carlson, this morning when I hear about wheels falling off of tractors and I just wanted to make sure, I presume this but, that those were yellow wheels off of John Deere tractors, not the fine Case-IH tractors that I sell. (Laughter) [LB56]

SENATOR CARLSON: Senator Pankonin, the only thing I can say, I'm going to plead Senator Harms' problem--we're both color-blind. (Laughter) [LB56]

SENATOR PANKONIN: Thank you, Senator Carlson. Thank you, Mr. President. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Seeing no additional requests to speak, Senator Langemeier, you're recognized to close on the Natural Resources

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

Floor Debate
April 09, 2009

Committee amendment, AM310. [LB56]

SENATOR LANGEMEIER: Mr. President, members of the body, I ask that you support AM310. I think it takes a provision that is a good bad actor clause and makes it more practical to be used correctly. And I also want to commend Senator Dierks and his true demonstration that Nebraska livestock producers are very conscious of environmental conditions and are very concerned that they are good actors in Nebraska. And agriculture produces one out of three jobs in Nebraska and so I just want you to know that they're very proud of what they do and we'd ask for your support for AM310. Thank you. [LB56]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You have heard the closing. The question before the body is on the adoption of the Natural Resources Committee amendment, AM310, to LB56. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB56]

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB56]

PRESIDENT SHEEHY: AM310 is adopted. We will now return to floor discussion on LB56. Seeing no requests to speak, Senator Fischer, you're recognized to close. [LB56]

SENATOR FISCHER: Thank you, Mr. President and members. And I thank you all for the good discussion. This bill helps the state and it helps the farmers and the ranchers in the state while protecting our environment, while protecting our water. The bill also creates a due process which I think is important for all the citizens that live in this state, no matter what business they may be in. The law we currently have in Nebraska is among the most stringent of any state in the nation and considering we are a state that is very dependent upon agriculture, which is our main economic engine in this state, I think this step in moving forward recognizes that. The committee did advance this bill from committee unanimously. I'd like to thank Senator Carlson for his tractor analogy. That was very helpful when we met in our committee discussion of this bill and that it was also helpful on the floor. So thank you, Senator Carlson. Senator Pankonin, we promote all aspects of agriculture and I don't know what color those tractors were either. You know, we live on the land, we take care of the land. This bill doesn't change that. People who are in this business have a responsibility of taking care of the land and protecting the water, and we take that responsibility very seriously. That doesn't change under this bill. What changes is that we recognize that perhaps the law has been stringent, perhaps we do need to look at the real world where we live today, how business is conducted today, how we can help young farmers and young people in agriculture today. With that, I would ask you to advance the bill. Thank you, Mr. President. [LB56]

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

Floor Debate
April 09, 2009

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB56. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB56]

ASSISTANT CLERK: 34 ayes, 3 nays on the motion to advance the bill, Mr. President. [LB56]

PRESIDENT SHEEHY: LB56 advances. (Visitors introduced.) We will now proceed to, under General File, 2009 committee priority bills, Pahls division, LB497. [LB56 LB497]

ASSISTANT CLERK: Mr. President, LB497, introduced by Senator Fulton. (Read title.) The bill was read for the first time on January 20 of this year, referred to the Committee on Transportation, Telecommunications. That committee reports the bill to General File with committee amendments attached. (AM627, Legislative Journal page 946.) [LB497]

PRESIDENT SHEEHY: Senator Fulton, you're recognized to open on LB497. [LB497]

SENATOR FULTON: Thank you, Mr. President, members of the body. First, LB497, I would like to thank Senator Fischer and the Transportation Committee for making this their priority bill. This is a...oh, I'll go ahead and get into this a little bit. Last year this body recognized the need to improve our drunk driving statutes by utilizing ignition interlock technology. We passed LB736 last year overwhelmingly and, in doing so, we chose a policy that makes our roads safer by reducing drunk driving recidivism. LB497 is primarily a cleanup bill meant to, (1) ensure that state courts and executive agencies have clear guidelines for the implementation of LB736 and, (2) to maintain compliance with federal law that has changed since the passage of LB736. There are some primary issues within LB497 and I'll enumerate those here. Firstly, the bill clarifies the penalty for driving outside of the bounds of an ignition interlock permit. This can be found in the green copy of the bill, Section 3(3), page 11, but it will...there will be a committee amendment and there will also be another amendment after the committee amendment which will allow some broader discussion on this bill. In the committee amendments, you can find this provision, Section 2(3), on page 6. It would...the provision would establish a Class II misdemeanor and revocation of the interlock permit for operating a vehicle outside the stated limits of an ignition interlock permit. Those stated limits are driving somewhere other than to and from work, school, treatment, or probation officer or...to see the probation officer, or to an interlock provider facility. Number two, the bill establishes a clear calibration standard for ignition interlock devices. This can be found in the green copy, Section 6(1), page 25, and in the committee amendment, Section 7(1), page 25. It sets the point of the blood alcohol content at .03, which is actually the current DMV regulation level. This simply harmonizes and expresses as much for clarity within the statute. Number three, the bill provides a mechanism by which an ignition interlock provider notifies a district probation office or court of an interlock device violation. This is specifically found in the green copy, Section 6(10), page 29, and in the

Floor Debate
April 09, 2009

committee amendment it's found in Section 7(10), page 28. The interlock facility will notify the district probation office, if the interlock is the result of a probation order or notify the proper court, if the interlock is the result of a court order, that an interlock violation has occurred. Then the court holds a show cause hearing to determine if there's any evidence that would allow the interlock order to remain in effect. Lastly, the bill harmonizes state statute with regard to changes in federal law so as to allow ignition interlock for repeat offenders--in the green copy, Section 5, page 17; in the committee amendment this can be found, Section 5, page 14. And this harmonizing would require one-year revocation with a 60-day, no-drive period and an interlock for the remaining ten months. This is on repeat offending drunk drivers. LB497, in conclusion, is the product of several months of collaboration with the state courts, Department of Motor Vehicles, probation, interlock providers, and defense counsel to ensure that our state policy with regard to the use of ignition interlock can be properly effectuated, and I urge the body to advance this important measure to Select File. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Fulton. You have heard the opening to LB497. As was stated, we do have a Transportation and Telecommunications Committee amendment, AM627. Senator Fischer, you're recognized to open. [LB497]

SENATOR FISCHER: Thank you, Mr. President and members. I would like to thank Senator Fulton for introducing this bill this year and I do thank the committee for naming it a priority bill. There were some problems with the legislation that we passed last year. The courts did not know how to interpret many parts of it, which was why Senator Fulton introduced the bill. And also, as he said, he introduced the bill because there were changes made to federal law that we needed then to harmonize state law with that...those changes with federal law. The committee amendment, AM627, strikes the original sections and becomes the bill. In addition to further clarifying the ignition interlock process, the amendment also makes several policy changes to the bill which I will briefly touch upon. The specific restrictions of an ignition interlock permit are clarifying. The permit authorizes driving to and from work, school, alcohol treatment, and an ignition interlock facility. Visits with a probation officer are also added as an authorized use of that permit. The amendment adds a clarifying provision in Section 4 to give the courts direction on how to administer sentencing in accordance with the law on the date of arrest, regardless if the conviction takes place after the effective date of the bill. Section 5 clarifies the waiting period before a defendant is eligible for an ignition interlock permit. The waiting period includes 30 days for a first offense, 60 days for a second offense, and 45 days for a second high-risk offense that receives probation or any subsequent offense that receives probation thereafter. The 45-day waiting period is mandated by federal law. Any variance from this could result in the loss of federal highway funds. The section clarifies that if the court orders an ignition interlock permit, it is required for the defendant to obtain the permit. A mandatory alcohol assessment is also required for high-risk offenders who receive probation and are eligible for an

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

Floor Debate
April 09, 2009

ignition interlock permit. The mandatory assessment is required by federal law. The Department of Motor Vehicles is granted broader rule-making authority to administer the ignition interlock permit program. Section 8 reinstates 60-6,211.10 from repeal as in the original bill. This section creates the Ignition Interlock Device Fund. Last session LB736 created the fund to help pay for the installation of ignition interlocks for defendants who the court declared indigent. The committee felt that this was an inappropriate use of the permit fee charged to other defendants. Instead, the amendment directs the fund to be used for the reduction of alcohol-related accidents and for public education and awareness of the dangers and penalties associated with driving under the influence of alcohol or drugs. I know there has been some conversations concerning the last issue that I brought up about the fund and concern that money would not be available to people who are indigent. Did take care of that. I welcome the discussion on the floor. My committee decided that that fund was not fair to other defendants who purchase...have to purchase these permits and then the devices on their own, and I welcome the discussion on the floor. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to the Transportation and Telecommunications Committee amendment, AM627, to LB497. Members requesting to speak are Senator Ashford, followed by Senator Lathrop, Senator Hadley, and Senator Price. Senator Ashford, you're recognized. [LB497]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor and members. And I understand Senator Fischer's comments about changing the...or her rationale in changing the fee portion of the bill that was passed last year into law that I believe what she said was that the idea was, and it may be more than this and she can comment on that, but essentially she didn't want other people paying...or the committee didn't want other people paying for this indigent fee, and I understand that and that's a discussion we had in our committee. But this bill was in our committee last year. Senator Fulton brought it to the Legislature, came to our committee. We spent quite a bit of time on it and it's a complicated issue in many ways because it's new technology, it's something we haven't done in our state before. But what is clear to us, was clear to us in the committee is that Senator Fulton really brought us a great idea because we can...we can keep people driving, going to their jobs. With indigent defendants, this is a critical issue. It's a critical issue for everyone but it's really a critical issue for indigent defendants who have no other options. And if they can't afford the interlock, if they can't access the benefits of this law, it is going to have a traumatic impact on them. I mean, in reality, it will cause loss of employment with people who absolutely can least afford losing their jobs because getting a new job is that much harder. We know all that. We've discussed that issue in our...in this body many, many times. I believe Senator Council has an amendment offered to bring the money back and I'm going to support that. I think, in deference to Senator Fischer, who is very thoughtful and I understand her thought process, but I think, at least in our committee, the overriding reason for this bill coming out of committee other than the ideas behind Senator Fulton's technology was

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

Floor Debate
April 09, 2009

the...really, the fundamental point which is that we can keep people on the road that are indigent that have...it's difficult for them to find employment anyway. So I just feel very strongly about this. The committee felt, I believe, very strongly about it and Senator Lathrop can talk about it. He was there, obviously, and I think did some work on this bill as he does on most bills. But with that, Mr. Lieutenant Governor, I would...you know, I support most of what Senator Fischer says but not the part about the indigent fee fund. Thank you. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Ashford. (Visitors introduced.) Mr. Clerk, you have an amendment to the committee amendment. [LB497]

ASSISTANT CLERK: Mr. President, Senator Council had offered AM1015, will be offered to the committee amendments. I understand Senator White is going to offer that amendment. (Legislative Journal page 990.) [LB497]

PRESIDENT SHEEHY: Senator White, you're recognized to open on amendment to committee amendment, AM1015. [LB497]

SENATOR WHITE: Thank you, Mr. President. At the outset, I'd like to thank Senator Fischer for her courtesy. In allowing this to be debated now, it's going to be much more understandable and efficient, and it was certainly very collegial of her to do that. This has only one change to the committee amendments and it arises out of the indigent fees that Senator Ashford just addressed. And let me talk to you briefly and describe why I am convinced this amendment is not only necessary from a constitutional basis, it is absolutely fair in the best sense of who we are as Nebraskans. The bill provided, and this amendment would reinstate the money, that when someone who is, let's say, a working poor--we talked about Walmart and the people who are on Medicare or Medicaid--one of the wage earners in that family makes a mistake and they drive under the influence under our laws. I make the same mistake; I have the money; I get an interlock if I'm otherwise qualified and if the judge otherwise says I deserve that break. That person, though, that doesn't have the money to pay for the interlock has no choice but to lose then their job and they suffer a different penalty. Here's the essence of who I'm asking this body to decide the people of Nebraska are: If I violate the law, no matter how wealthy or well connected, I should stand on absolutely the same ground as the poorest citizen, neither better nor worse. I should have no more advantages in front of the law; I should have no fewer. I should not be able, for example, because I have extra money, buy better food in the prison. I should not be able to buy better blankets. I should not be able to have a better cell or live in a different place. I violated the law. All citizens are equal before the law. This allows, when I break the law, if I break the law and I have to pay for an interlock, a portion of that money goes into a fund administered by the probation court and that fund is available for the judge to look at the father of five kids who works in a relatively low-paying job and says, we are not going to throw your kid...you're not going to lose this job; you have screwed up; we are not going to throw

Floor Debate
April 09, 2009

your kids into welfare; you are...have been really stupid but we're going to give you a break; you can use this to keep your driver's license to get to and from work. That money, if it's available, makes sure that he stands on the same footing as I would when we're addressed in that court. If he deserves a break under the law and the judge determines he does, he gets it. And the fact that he works a modest...under a modest income and is different financial circumstances, he's treated no better, no worse than I. Now that is equal protection. The law doesn't favor one of us or the other. It's also called due process, same thing. The poverty or the wealth doesn't affect the penalty we pay because we both broke the law, we both put the public at equal risk, so we treat it the same. That's one thing that's fundamentally fair. It's also constitutional. There's another technical constitutional problem. We call this a fee. I have to pay a fee to get an interlock device. Nobody goes out and just pays for an interlock device, folks. You do that as part of a penalty and part of a court cost. We call it a fee because I have to pay the costs of my violation as a citizen. When it's a fine, if I have a fine, I was speeding and they fine me, our constitution clearly states all fines must go to the common school fund, and there's a real good reason for that. We don't want companies, we don't want businesses, we don't want different parts of government funding themselves with fines. So you can fine us and I need to be punished but you don't get a profit from it. Schools don't fine people. So the money goes to the school fund. If this money that I must pay, if I have the money, for an interlock device doesn't go to support the court's cost, the cost of probation, the cost of making sure justice is equal and fair among all of us, I believe it's a fine and it's not going to the school fund. But that's really less important. There are so many Americans come to me as an attorney and say, you know, rich people never go to jail; they get the great lawyers; they never really have to suffer like poor people. To me, my colleagues, that's not Nebraska. That's just not who we are. Rich or poor, we stand in front of that bench on equal footing. So I hope that you will support AM1015 so that this bill is constitutional. I think interlocks can provide a really helpful way to ensure public safety but also not destroy families and lives. And I would urge those in rural areas to recognize that the penalty suffered in a rural area for loss of your license is actually much greater than it is in my district. No matter how inconvenient, no matter how difficult, we have some public transportation. It's much more available. We also can get easier to and from our work. It's often much more closely located to where we live in urban areas. This is a bill that's important to make sure that a person in a rural area of Chadron of modest means in fact serves the same sentence as a wealthy person in Omaha. Thank you very much. [LB497]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the opening of the amendment to committee amendment, AM1015, to AM627. Members requesting to speak are Senator Lathrop, followed by Senator Hadley, Senator Price, Senator White, Senator Gay, and others. Senator Lathrop, you're recognized. [LB497]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate the amendment by Senator Council just introduced by Senator White as it addresses the

Floor Debate
April 09, 2009

concern I have with LB497. This...to give you a little historical perspective, the interlock issue was before the Judiciary Committee last year. When that was before the Judiciary Committee, we worked with Senator Fulton to craft a bill that would address the concerns of the public over safety, but also to address the concerns over the cost of incarcerating people. We are, in the Judiciary Committee, always looking for some alternative to incarceration, where it's appropriate and where it serves the public's purpose, which is safety and providing appropriate punishment. These interlock devices are important in the scheme because if all we do is incarcerate and suspend people's licenses for long stretches of time, folks lose their jobs, they drop out of school if they're students, they...and their families suffer because of some poor judgment. And the idea behind the interlock device is, instead of suspending somebody for some incredibly long period of time where they are...lose their job, where they can't reach their earnings' ability because they don't have transportation, we now permit them to--important objective here and we don't want to jeopardize it with an unconstitutional amendment. This, when it was before the Judiciary Committee, we considered the importance of having a process that was available to those with means and those who don't have means. The reason interlock became the law in this state is because we addressed that in the Judiciary Committee. Today, during the introduction, Senator Fischer said we over in Transportation, because this was referenced differently this year, we in Transportation thought it was unfair to the people who are paying this fee that they should help pay for the cost of the guy who doesn't have any money. Now that would be a good reason to eliminate the fee, but they don't. What they do is move the money to a roads fund. That doesn't address the unfairness. That's an explanation for why money in one cash fund was moved where it was providing interlock devices for people who can't afford it, allowing this form of punishment to be available to the rich and the poor alike, and moving it over to some place where we're now going to educate people, which I presume will free up some money which will then go to roads. But in any case, the answer to this isn't a fair fee isn't to change what it is used for, it is to eliminate the fee. I'm going to suggest, as Senator White has, that this is an appropriate fee when it is used to help allow this form of punishment or probation to be available to those who can't afford it. Otherwise, this break the law provides families will not be available to the people that need it the most. The guy who has the money can hire somebody to drive him to his job. The guy who drives the beat-up pickup truck and can't afford the interlock is the one that's going to lose his job. He's not going to have this available to him and his family isn't going to have the support. This was an important piece that the Transportation Committee is dismantling from the interlock scheme. It is an important reason this was here in the first place. We recognize the issue, we address the issue. The proponents addressed the issue when they brought us the bill in the first place in Judiciary Committee. I agree with Senator White, there are constitutional issues that relate to fining somebody and not sending the money to the school district, which is what happens when we divert the money to the purpose for which the Transportation Committee now proposes to divert the money. It was a constitutional scheme and a fair scheme for all Nebraskans the way the Judiciary Committee had it set up. Recognize

Transcript Prepared By the Clerk of the Legislature
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Floor Debate
April 09, 2009

the issue, and Senator Council's amendment, as presented by Senator White, addresses that. [LB497]

PRESIDENT SHEEHY: Time, Senator. [LB497]

SENATOR LATHROP: Thank you. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Hadley, you're recognized. [LB497]

SENATOR HADLEY: Mr. President, members of the body, would Senator White yield to a question? [LB497]

PRESIDENT SHEEHY: Senator White, would you yield to questions? [LB497]

SENATOR WHITE: Yes, I would. [LB497]

SENATOR HADLEY: Thank you, Senator White. I think for a first offense, driving under the influence, the maximum fine is \$500 and the minimum is \$400. What happens if the person says, I'm indigent and I have no money? [LB497]

SENATOR WHITE: Well, the court normally will set up a payment scheme. You know, they'll do probation, they'll work with them on different ways. You know, for example, I have seen them where they look at their income, they look at their family and then they pay in slowly over time. There are different things they can do to make sure the law is applied but, you know, one person who is impoverished isn't just thrown in jail because of their lack of money. [LB497]

SENATOR HADLEY: Okay. Secondly and I think another question, Senator White, and I think Senator Fischer may talk to this later, the interlock system is actually we rent it from a company. You know, it's not the state and such as that. So if the fund runs out of money, does that mean that basically, you know, we only have the interlock system for those people who have the money because we don't have the funding for the indigent driver to get the interlock system? [LB497]

SENATOR WHITE: My understanding is that the more people that get the interlock system, you know, the fund gets in there. We haven't crossed that bridge yet where I've seen there's been a lack of money, Senator Hadley, but I mean, for example, if I'm right...yeah, a couple of things would happen. One is you can have a deficit appropriation to cover costs if it's necessary. The court can, for example, say that, look, if it's not available to indigent defendants the application to people with money is unconstitutional, and suspend giving them to anyone. That would be also a possibility. What's not acceptable, Senator, I think constitutionally is that, for example, the wealthy

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

Floor Debate
April 09, 2009

can buy better treatment from the justice system that's not available to the poorest. I'll give you another example. House arrest with those bracelets, proximity ankle bracelets that they will put on your leg and they cost money, we cannot...and normally, defendants must pay for those, we cannot say, well, you don't have the money for that so you go spend the gray bar hotel living in an orange jumpsuit eating oatmeal and I get to stay home with a bracelet, cooking gourmet meals and watching Oprah on TV. I mean, I may not qualify for it because of what I did or you may. That's a different deal. But the presence or absence of money should never be allowed, ever be allowed to determine the nature and severity of the sentence. I mean if you do that, now we're respecting a man, not the law. We're a state of laws, a nation of laws and all men should stand equal before the law, and that is never more raw and important... [LB497]

SENATOR HADLEY: Thank you, Senator White. I appreciate that. I was on the committee and I will only speak for myself, but the sense of the committee was that in order to get caught driving DUI you've had to purchase alcohol or somebody has given you alcohol and the sense was is that you've broken the law. You had the money to do that. You have the money to have a car. So we felt that it was important that you basically pay part of the...or the costs of this interlock system and that somebody else didn't pay for it. It was part of your, to me, punishment for being caught driving under the influence. [LB497]

PRESIDENT SHEEHY: One minute. [LB497]

SENATOR HADLEY: So with that, I will support the underlying bill and will not support AM1015. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator White, you're recognized. [LB497]

SENATOR WHITE: Thank you, Mr. President. And, Senator Hadley, I deeply respect what you're saying. You're saying that, look, if you're on a financial level, you shouldn't be buying alcohol in the first place. I get that. I do understand that. I agree with that. But the point of this is not so much what that individual did or didn't do, it's what we do as a people, it's what we as a state stand for. And the point of this amendment is the judge who stands for all of us will judge you not based on what you have or don't have. He will judge you based on what you did, and you will be punished equally with someone who's rich based on what you did and compared to what they did. I don't dispute what the kind of the common-sense morality of what you're saying, Senator Hadley. I get it. But we're called as a state and when we act with a judge and a bench and he says the people of Nebraska, the state of Nebraska says, at that point we're not going to go and say, and you're poor and you never should have bought alcohol in the first place so we're just going to throw you in the gray bar hotel. And, by the way, you're poor so you should exercise a lot better judgment than that rich lunk in Omaha did, even though you both

Floor Debate
April 09, 2009

did the same thing. He gets to keep driving but you're poor and you don't. And by the way, your kids, they now can go on welfare. Maybe we take them away because you lost your job. We don't do that. It's not about him. It's about who we are, who we are as the people of Nebraska. We don't look at your back financial past. We don't look at whether you're black or white, male or female. We look at what you did and we try to punish you the same, no better, no worse, than the wealthiest or the poorest. So while I respect and understand the committee's common sense kind of impulse that why the heck should a wealthy person subsidize a method of punishment for a poorer person, I would tell you we do it now. If the prison system is supported by income taxes, and it is, the wealthy pay more for that than the poor do now. Nobody wants to go there, but if you do have to go to prison it should be no better, no worse, rich or poor. You did the crime, you should do the same time. So that's the essence of it. I get the committee's point, but there's a higher standard when we're acting. It's about us, not about the individual actor. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator White. Further members requesting to speak on AM1015 to AM627. We have Senator Gay, followed by Senator Fischer, Senator Louden, Senator Rogert, and Senator Janssen and others. Senator Gay, you're recognized. [LB497]

SENATOR GAY: Thank you, Mr. President. I wanted to bring attention to the body of the fiscal note and kind of, at least in my mind, again, I can only speak for myself as well but...and try to remember back how amendments were crafted and all that. I'm a member of the Transportation Committee as well. When you look at the fiscal note, though, that was based...that's \$756,000 of expenditures and we'd only pull in \$240,000 in revenue, so \$516,000 difference would then go to the...I assume the General Fund. So I'm going to throw some different ideas out there. When you look at the fiscal note again, 6,000 of these offenders would probably be, on this estimate, to get that \$240,000, 6,000 offenders would be ordered the interlock device at \$40 a permit. That's how we get to that. In 2007, the Department of Motor Vehicles, as it said, there were approximately 10,700 alcohol-related convictions and 8,000 of these persons were on probation for such convictions. But the point I'm making and I think Senator Hadley was starting to get to as well is when we look at this, my understanding again, and I know we had some documents given to us from Marty Conboy of Omaha and I understand this, 100 percent of these people are eligible for this interlock device, and the judges are going to have discretion on who gets it. Hearing the debate, Senator White makes a point and the standards should be fair, if you can afford one maybe, you know, you shouldn't be held out differently, I suppose, than somebody who couldn't afford one. The question we struggled with a little bit was that difference. I think the amendment there is a thing when the cash fund is out, it's done. So then do people that can afford it continue to get the interlock device and those that can't don't get it? There's some kind of balance we need to find here. But the question to me and for others to maybe answer or that I hope we discuss a little bit, I'm no lawyer but do we know how each judge

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

Floor Debate
April 09, 2009

makes these decisions of, oh, you're indigent and you should get help of getting this interlock device? This is a privilege; it's not a right. And I think the way we're looking at it is you're fortunate to be able to have this, we want people to continue to work, but it's a privilege. It's just not a right. So if it becomes a right and everyone gets it and we should pay for it. That concerns me a little bit. So maybe there's a way around there. But also can we set strict guidelines maybe if we know we could set guidelines? Out of Judiciary this came last year and having trouble enforcing this, but can we set the guidelines as a Legislature to say here's...this is what it is? And we made very sure that that person that's indigent truly is because Senator Hadley alluded to, and I think many of us said, well, you know, here's the thing, you've got a job. But we don't know exactly the standards of how much that person is earning and what is considered so maybe there is guidelines out there. If somebody knows, they can respond to that question. But the idea was if it's a privilege, you have a job, you should be able to afford this. I think the devices run from \$240 up to more. They're not extremely expensive devices, is our understanding. So we think it's a privilege. You get that privilege and you should be able to pay for it, so. But maybe there's something we can work out here as we continue to debate this to decide that it would make us all feel a little bit better about the situation, but until I know exactly and we can't set...tell judges exactly what to do, but I think we should...need to give them strict guidelines. So hopefully we can start having a little discussion on that as well. I'd yield the balance of my time to Senator Fischer. [LB497]

PRESIDENT SHEEHY: Senator Fischer, 1 minutes 10 seconds, and then you're next in the queue. [LB497]

SENATOR FISCHER: Thank you, Mr. President and members. As I said in my opening, we did have a bill come out of Judiciary last year and we did pass it here on the floor. [LB497]

PRESIDENT SHEEHY: One minute. [LB497]

SENATOR FISCHER: The courts had problems in trying to interpret what that law was and that's why it came back before us this year and we needed to make some of those changes. The Transportation and Telecommunications believes this is a very important matter and we spent a large amount of time on this. In fact, this amendment that's before you today as the committee amendment is the fourth time that we rewrote the bill in order to meet all of the federal mandates that are in law now, and in order to address concerns that were brought to us by officers of the court. I don't believe that the committee acted on an impulse. I don't believe we had this common-sense impulse when we made this change in the funding. [LB497]

PRESIDENT SHEEHY: Senator Fischer, you're now on your time. [LB497]

SENATOR FISCHER: Thank you, Mr. President. The device is a very small part of

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

Floor Debate
April 09, 2009

what's involved when someone gets a DUI, so the cost of that device is a small part. A person has to pay a permit fee, that's \$45, in order to get the device that's determined by the courts. The person has to pay a fine, which we all know can range into hundreds of dollars. And one of the biggest costs is their SR-22, which is an insurance certificate. If they want to drive, they have to get that insurance certificate and that is a huge cost to people. The state has seen fit to require those. We require the fine, we require the permit, we require the certificate of insurance, that SR-22. The state does not set up a fund to help with that. So I don't think it was a common-sense impulse that the committee said that this is a state that has shown throughout the years, and is showing more and more every year on the laws that we are passing, that we're tough on DUIs, and that's a stance of the state. I would like to clarify that the money does not go to roads, does not go to roads building. That is not the intent of the committee and that is not in the bill. We all know that education is definitely a pillar upon which we educate, we inform people, and that's a pillar for those that have problems with drug and alcohol abuse. And the money would go to the Office of Highway Safety which happens...or will be, I believe after this year with another bill, be located within the Department of Roads and that's why the money is going there, because the Office of Highway Safety deals with the education aspects. Another point: Is this bill unconstitutional? I guess any bill that we pass in here you can look at and say, is it unconstitutional? I think this is more of a policy decision. My committee counsel visited with attorneys last night on the question, is the bill constitutional. They were not able to find a case that would indicate that there's been any judgment made on it. I see Senator Lathrop smiling. Maybe he found one that there is. But my committee counsel with some other attorneys did not find one. They found one in Pennsylvania but there the cost was much higher than the interlock devices are here in Nebraska. We had a question brought up, is it a fee or a fine? I've never seen a fine that goes to a private company and that's where this money goes. It goes to a private company because that's who installs the devices. It's a permit fee that has to be paid that goes to the Department of Motor Vehicles. Again, I think this is a policy discussion. I welcome it. I know my committee members welcome it. And we need...but I think also we need to consider the reality of the situation and what's involved when a person is convicted of a DUI. What's involved with that? It's not just that they...that the state needs to help them pay for that interlock ignition device. [LB497]

PRESIDENT SHEEHY: One minute. [LB497]

SENATOR FISCHER: The policy is the state has taken a rather firm stance against DUIs. The policy is that the state requires that people, when they violate the law, they do have to pay their fines. In a DUI, you do have to get a certificate of insurance to prove that you have that insurance, and then you also pay the permit fee. We also need to look at what the federal mandates are here. There is a 45-day waiting period before you can even drive that's mandated by federal law, before you can even drive, before you're even eligible for one of these devices. That's mandated by federal law. Thank

Floor Debate
April 09, 2009

you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Louden, you're recognized. [LB497]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I had a problem with this bill and I certainly have a problem with the amendment. I agreed to vote it out of committee when we put this amendment on here because I had a problem with paying for the interlock device. That is, to me, is a privilege. I've seen these interlock devices used over the years and I know where they can be abused and I think they have to be considered a privilege and the judge can award them or whether or not someone used the interlock device. They're not that expensive and usually anyone that gets caught drunken driving their biggest expense is going to be to get their car insurance back so they can drive, let alone this \$60 a month or whatever it costs for this interlock device. Also, if these people have to be driving to and from work, I've known many cases where the judge has awarded them the benefit to drive to and from work or to and from the grocery store or whatever was necessary. That isn't uncommon for that to be done if this is a person that's probably the first time, first offense or something like that. Yes, when you get an offense about the third...second or third time or so, well, then they are a problem. I've known people about the third offense, they had the choice to either go to jail or had to take...the choice to go take alcohol treatment and they usually took the alcohol treatment. That wasn't paid for by the state or anyone else. They paid for that themselves. And that's a concern I have with this. If you start paying for this interlock device on people that they say can't afford it, then are you going to pay for any alcohol treatment that they have to go through? So that was one of the problems. The whole problem I had with it, and I agreed to let the...to vote the bill out of committee, but it was this .03 of 1 percent. You can buy...get an interlock device and you can drive half drunk, I guess, because .08 now is where you lose your license but you can get an interlock device and drive it at .03 with this, as this statute here, as this bill, is drafted and this amendment. So therein lies ways that it can be abused already. The interlock devices aren't new. They've been around for probably 15 years or more that I've known of people that have had to use them, especially in the rural areas. It was the only way they could get to town, was to have something like this in order to make it work for them. So I have a problem. I think there's a lot has to be done about this bill. This amendment is not helpful whatsoever. I didn't like the original bill to start with. I still don't like any of it because I think if you get caught drunken driving that should be up to the judges and the court to decide how to award any benefits that may come your way and how you apply those benefits and what you do to take care of them yourself. Most of the ones that I've known of, usually it's straightened them out and they pretty well were very careful of where they were and whether or not they drank any alcohol. I've known of some that...and some of the ruling of their probation was that they couldn't be where any alcohol was served. I've seen people that had to leave the brandings. After you rounded up the cattle, branded the cattle (laugh), they had to leave because they were

Floor Debate
April 09, 2009

going to have some alcohol or beer or something served at the brandings. They loaded up and went home because if they were seen there or caught there, they were out of probation and their driver's license was suspended again. So this isn't something that's taken lightly. And you talk about putting a nose under the tent with your cigar bars, this looks like to me, this is some place where you're going to put the nose under the tent with getting around drunken driving and DUIs. [LB497]

PRESIDENT SHEEHY: One minute. [LB497]

SENATOR LOUDEN: So I think this, you have to be very careful of what you're doing here because I think you're probably getting past getting around some legislation that's done a lot of good over a period of years. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Rogert, you're recognized. [LB497]

SENATOR ROBERT: Thank you, Mr. President, members of the body. I rise in support of LB497 and Senator Council's amendment. Senator Fulton and I have had several discussions over the last couple years about interlock devices and I fully support the expanded use of this type of...it's a treatment, is what it is. Folks, the reason we have recidivism in drinking and driving is because people need to get around and they're going to drive. So you want to stop them from drinking and driving, you give them an interlock device so they can't drive their car after they've been drinking. It works. It's proven. It is a darn good treatment program and it helps people get back into their lives, keep their moneymaking abilities in place so that they can continue to try and better their lives and better themselves when they get in trouble with drinking and driving. There are folks that cannot afford to lose their job. They cannot afford to pay for these devices, so it kind of puts them in a kind of a Catch-22. A couple hundred bucks to get it started may not seem like a lot of money. Some people don't have a couple hundred bucks. First of all, they're going to have to pay their fine for their penalty for getting caught and getting in trouble. Then they're going to have to pay for this interlock device. Then you got to pay for about \$70 bucks or so a month to rent the device while you got it on. And any time you have issues with it, you got to go have it fixed. If you don't go have it fixed, you get fined some more. And if you can't get off work, you can't drive over there to get it fixed, then you're in trouble. So paying for those folks to get these that can't afford it is something that everybody should really consider supporting. I've been a proponent of the expanded use of the interlock device for anybody and everybody who's gotten a DUI and needs to work. They should be eligible for one of these. Now that doesn't mean they have to get them, but they should be eligible to prove that they can continue down a path to make their lives better, continue to work and use this device in the way it's intended. They get in trouble with it and they abuse it, you know, then they get...that's another issue. But we have to give them the opportunity to keep working. Mr. President, I'll yield the rest of my time to Senator White. [LB497]

Floor Debate
April 09, 2009

PRESIDENT SHEEHY: Senator White, you're yielded 2 minutes 45 seconds. [LB497]

SENATOR WHITE: Thank you, Mr. President. I listened with great interest. Senator Loudon, you made some very good points about how devastating a DUI is to the person who gets it. One of the problems that we faced, however, as a society is people desperate to get to work who drive under suspension and then they end up in jail. And should they do that? Absolutely not. And I also worry that some of those folks drive intoxicated. What an interlock device does, in my view, for the right people is allow the court, which can look at their history on an individual basis, can get probation reports where they've been examined for alcohol abuse, whether or not they're amenable to being treated, and it can do two things. It can allow them the use of a car but still protect the public because we know they can't use that car if they're drinking. It does both of the things we want. It does substantially punish the person. It does prohibit them in many ways from using their car for anything but the necessities. But it makes certain that they will not be able to drive while intoxicated. So as technology moves forward, we are looking at a way to more effectively and selectively treat people who break laws. [LB497]

PRESIDENT SHEEHY: One minute. [LB497]

SENATOR WHITE: What we need to get past is the idea that all we should do is throw them in jail. California is doing that right now and now they're looking at an enormous number of people they're going to have to release from jail. The interlock device is important but it has to be available to all citizens regardless of their economic circumstances if the law on the case, the judge's mind, determines it's necessary. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator White. Members requesting to speak on AM1015 to AM627: Senator Janssen, followed by Senator Carlson, Senator Campbell, Senator Lautenbaugh, and others. Senator Janssen, you're recognized. [LB497]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. And, Senator Loudon, I never knew branding was that much fun so I might have to give that a shot sometime. I didn't understand how that went postbranding. I want to talk a little bit about--and Senator Rogert touched a little bit on it--about the interlock devices, the bill. Those are...I agree with him, those things should be used. They should be used far and wide in these cases. In committee, we talked about limiting the number of times you could have it and, to me, it was like, well, I agree with Senator Rogert that these people need to drive, they will drive. This is a way to stop them from continuing to drive. So we do support the...I do anyway, support the bill with the committee amendments. I do not support the current amendment, AM1015, and maybe, I don't know, I'm just kind of getting a feel here, maybe this is a little turf war of Judiciary Committee versus

Floor Debate
April 09, 2009

Transportation. I don't know. I sit on Transportation, not Judiciary, I'm thankful for that, so it wouldn't have mattered to me if it went one way or the other. I'm not a committee Chairman. Actually, I take that back, Intergovernmental Cooperation I am. We haven't met too much this year. We were thinking about doing that possibly for a Vice Chair, but certainly no turf war is going on there yet that I'm aware of. I heard that this is a common-sense impulse though about the...changing the amendment that would put this into an education fund instead of paying for somebody else's fines. And I guess if I'm part of a committee that is accused of common sense, I'm guilty as charged and I'll move forward with that. I also wonder about everybody being treated equal. We talked about everybody should be equal before the law. Well, I kind of pictured two people standing there and one person's fine going to pay for the other person's privilege to continue driving and, to me, that didn't meet the test of equal before the law. To me, it met the test of almost income-based fining--you can afford it so you're going to pay more; in fact, you're going to help pay his fine as well. So I'm certainly not dying on any hills on this but I do not support the current amendment up. I do support the bill and I do support the committee amendments. Thank you. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Janssen. Senator Carlson, you're recognized. [LB497]

SENATOR CARLSON: Mr. President and members of the Legislature, consider myself a conservative. In fact, Senator Fischer, one time we were arguing whether she was more conservative than me and she said, well, I sit on the right side and you sit on the left, and somebody who was listening to it said, well, Senator Carlson, if you sit on the left side that's about the only thing you're left on. And I took that as a compliment. So now what I'm going to say may surprise a few of you. I'm listening to this debate. One of the things I heard, incarceration is a last resort, should be a last resort, a last resort. I haven't heard it in this debate but we've all heard somebody somewhere along the line tell us that when somebody breaks the law we ought to lock them up and throw away the keys. Now sometimes in this area, what we're talking about today, as a last resort that may be appropriate. If a person has multiple DUIs, shows no tendency to change their ways, are very dangerous to society, violates the interlock law, maybe it's appropriate--lock them up and throw away the key. But interlocks, I believe, may help keep a violator as a provider for the family, keep the appropriate role as parent, give this individual a chance to become a positive member of society and positive to his or her family and community, and cost us less money. Now the Good Book says if you obey the laws you won't have to live in fear, but if you break the law be fearful because the government has the sword for a purpose. But I think we've got too many people that are incarcerated for too many things for too long a period of time. A fair judgment needs to be made on incarceration. Those who learn a lesson, who recognize they have a problem like anger management, that's the first step in the right direction, admitting you have a problem. And beyond that, our system must help prepare the incarcerated for their release so they can lead productive lives, so they can contribute rather than take.

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

Floor Debate
April 09, 2009

And if then they don't return to incarceration, they save us money. Senator White talked about fairness. Fairness is a moral issue and if a law won't allow us to comply, respond in a morally correct way, we need to change the law. We must be able to do the right thing for the people of the state of Nebraska. The interlock device is the right thing and let's enforce it in the right way. I would yield the balance of my time to Senator Fischer. [LB497]

PRESIDENT SHEEHY: Senator Fischer, you're yielded 1 minute 35 seconds. [LB497]

SENATOR FISCHER: Thank you, Mr. President, and thank you, Senator Carlson. As I said, I appreciate the debate we're having because I do view this as a policy issue. And I respect the actions of my committee members and all the members within this body on this issue. The amendment to the amendment that we're discussing right now, I have not had a chance to read all 32 pages of it but glancing through it, it looks like it is the amendment that my legal counsel and I brought to the Transportation Committee at our last Executive Session. Then we amended that, that amendment, and that is now AM627. I personally, and I'm not holding my committee members to this, I've had a chance to visit with most of them and I apologize to those that I haven't hit as I've been trying to run around the floor here in the last few minutes, but I personally support...can support the amendment to the amendment because it is the one that we had before our committee and discussed. With that, I do appreciate the discussion we're having. I'm sure that it will continue for a few minutes here yet today. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Campbell, you're recognized. [LB497]

SENATOR CAMPBELL: I call the question. [LB497]

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. [LB497]

CLERK: 27 ayes, 7 nays, Mr. President, to cease debate. [LB497]

PRESIDENT SHEEHY: Debate does cease. Senator White, you're recognized to close on the amendment to committee amendment, AM1015 to AM627. [LB497]

SENATOR WHITE: Thank you, Mr. President. Again, I want to thank Senator Fischer for just her real professionalism and courtesy in how this debate has been handled. It's been well done by her. I want to thank you for your attention and I would urge the body to vote for this amendment. And I would urge you, as I understand it from working the floor and talking to people, there is no other opposition to the bill, so if this amendment

Floor Debate
April 09, 2009

is adopted I think, if folks want to then turn off their lights, we can move the bill. There are couple of concerns. Certainly the fiscal note remains an issue. I am assured by Senator Fischer she'll continue to work with others on the fiscal note so we can get that sorted out and we can contemplate that between now and Select File. But once again, I ask all members of the body to realize this is really a test of us. When we punish, are we going to do it in a way that is no respecter of person or wealth? Or are we going to start setting up a subtle system where people with more resources can get better deals from our courts? It seems to me that is what we really must resist. All citizens should stand equal before the law. And I would appreciate your support for this and, if it is adopted, I certainly have no other objections to the bill and would urge you to not only adopt the amendment but then move the bill forward. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator White. You have heard the closing. The question before the body is on the adoption of the amendment to committee amendment, AM1015 to AM627. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB497]

CLERK: 32 ayes, 6 nays, Mr. President, on adoption of the amendment. [LB497]

PRESIDENT SHEEHY: AM1015 is adopted. We will now proceed to floor discussion on AM627. Members requesting to speak: Senator Lautenbaugh, followed by Senator White, and Senator Louden. Senator Lautenbaugh. Senator Louden, you're recognized. [LB497]

SENATOR LOUDEN: Yes, thank you, Mr. President. And again, I would just reiterate that when we discussed three days or so on what we were doing about a smoking ban, I think you have to be very careful here because you are actually circumventing part of your drunken driving. They are going to be able to drive with .03 alcohol blood content, so think about that, where you want to go with it, and if this is actually what you want to do. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Louden. Seeing no additional lights on, Senator Fischer, you're recognized to close on your Transportation, Telecommunications amendment, AM627. [LB497]

SENATOR FISCHER: Thank you, Mr. President and members. Again, I appreciate the discussion on the amendment and on the bill. We do need to consider the fiscal impact of this bill as we move forward, and I anticipate that it will be cash funds out of probation. It is not as high as on the green copy where you see the expenditures. That will not be as...that figure even close to it when we adopt the amendment. With that, we will keep our eye on the fiscal note and see what that will be when we reach Select File. Thank you, Mr. President. [LB497]

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

Floor Debate
April 09, 2009

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing of the Transportation and Telecommunications Committee amendment AM627. The question before the body is on the adoption of AM627 to LB497. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB497]

CLERK: 37 ayes, 1 nay, Mr. President, on adoption of committee amendments. [LB497]

PRESIDENT SHEEHY: AM627 is adopted. We'll now return to floor discussion on LB497. Senator Friend, you're recognized. [LB497]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Evidently we're hungry, we want to go to lunch, huh? Where do I begin? We're not going to lunch at the moment. Sorry, Mr. Speaker. I just pulled a bracket motion. It's 11:59. I can speak for 5 minutes, I can speak for 10 minutes, I can speak for 15 because I haven't spoken to LB497 yet. You know what's interesting about LB497? It's not a rhetorical question. I was actually wondering if anybody knew what was interesting about it. We haven't talked about the bill. We're about to move a bill from General File to Select. I know what interlock...I know what these devices are. I sat on Judiciary Committee for two years. I've worked on language like this with members of the Judiciary Committee. We talked about how some of the people in our society are not going to be able to pay for them. We haven't talked about what these did. When I threw my bracket motion up, I went over to a couple of senators who are very interested in this bill and they said, we need this legislation. One senator that I heard of actually talked about the value of this particular piece of legislation, one. Happened to be the Chair of the Transportation and Telecommunications Committee. I don't even know if I've said this, this session, but...and, by the way, this isn't grandstanding. This is real. I'm not too happy at...at this moment, I'm not too happy and I'll tell you why, because I think we can talk about this bill for another four hours. The ramifications to our society, to the people in Omaha, to the people in Lincoln, to the people in Scottsbluff, we can talk about what this legislation is going to do. You know what? I don't think we need it. Do you know the reason I heard that we need it is because we're going to lose federal funding. That's not a good enough reason. I've got a bill out there that if we don't do it we could lose federal funding. That's not a good enough reason to do it. I would expect one of you folks to stand up and tell me why my bill is either good or bad. Forget about the federal funding for a second. I've had three conversations today already about stimulus funding. You know what irks me? I don't care if we see a dime. I've said that before. I don't care. We have to maintain stability out here. We talked about...we talked about the fiscal impact of LB497 for about five minutes. It's not grandstanding. Call it a temper tantrum. I don't think we ought to move this bill this morning. Sorry, Senator Fulton. I know you like it. I know you need it. I know maybe as a state we need it. You know how long ago I got a chance to actually read the committee amendment? About four hours ago. You want the honest truth? I had not read the amendment that you...that we, as body, adopted. Senator Council's amendment, I had not read that amendment yet. That's the truth. I voted no on it and

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

Floor Debate
April 09, 2009

now I'm...am I going to take Senator White's word for it, minor changes...not minor, they're significant, but there are only two key changes? [LB497]

PRESIDENT SHEEHY: One minute. [LB497]

SENATOR FRIEND: I would consider Senator White a good colleague, an honest colleague. I would even borderline call him a friend of mine. (Laugh) I'm not going to take his word for it. I hadn't read that amendment. Go eat lunch, okay? I'm telling you, I'm voting no on LB497 and I'll go tell the lobby why. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Friend. Mr. Clerk, do you have items for the record? Seeing no additional lights on, Senator Fulton, you're recognized to close on LB497. [LB497]

SENATOR FULTON: Thank you, Mr. President, members of the body. This is a long process. This bill has been worked on by a number of interested parties. I appreciate the debate that we've had. I respectfully ask that we could move this bill forward to Select File so that we can continue to move the bill forward. Thank you, Mr. President. [LB497]

PRESIDENT SHEEHY: Thank you, Senator Fulton. You have heard the closing. The question before the body is on the advancement of LB497. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB497]

CLERK: 30 ayes, 2 nays, Mr. President, on the advancement of LB497. [LB497]

PRESIDENT SHEEHY: LB497 advances. Mr. Clerk, you have items for the record. [LB497]

CLERK: I do, Mr. President. I have a motion from Senator Pahls with respect to LB385. Enrollment and Review reports LB420, LB601A, LB159, LB159A, LB489, LB489A, LB246, all of those to Select File, some of which have Enrollment and Review amendments attached. Senator Dierks would like to print an amendment to LB241. Senator Pirsch would like to add his name to LB436. (Legislative Journal pages 1000-1005.) [LB385 LB420 LB601A LB159 LB159A LB489 LB489A LB246 LB241 LB436]

And I do have a priority motion. Senator Flood would move to adjourn the body until Tuesday morning, April 14, at 10:00 a.m.

PRESIDENT SHEEHY: You've heard the motion to adjourn until Tuesday, April 14, 2009, at 10:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.