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Transcriber's Office

Floor Debate
January 28, 2011

[LB25 LB26 LB77 LB78 LB81 LB293 LB303 LB326 LB331 LB332 LB334 LB383 LB474
LB592 LR38 LR41 LR42 LR43 LR48 LR49 LR50 LR63 LR64]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventeenth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator McCoy. Please rise.

SENATOR McCOY: (Prayer offered.)

SENATOR GLOOR: Thank you, Senator McCoy. I call to order the seventeenth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Yes, sir, I do. Your Committee on Education, chaired by Senator Adams, reports LB331, LB332, and LB334 to General File, LB334 with committee amendments attached. Banking Committee, chaired by Senator Pahls, reports LB25, LB26, LB78 to General File, and LB77 to General File with amendments. Those signed by Senator Pahls. Notice of hearings from the Education Committee and the Transportation and Telecommunications Committee signed by the respective chairs. New resolutions: LR63 is by Senator Flood, LR64 is by Senator Smith, both will be laid over. Report of registered lobbyists for this week to be inserted in the Journal. A series of reports received will be acknowledged and on file in the Clerk's Office, available for member review. And finally, Mr. President, potential conflict of interest declaration by Senator Mello. That will be on file. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 399-404.) [LB331 LB332 LB334 LB25 LB26 LB78 LB77 LR63 LR64]

SENATOR GLOOR: Thank you, Mr. Clerk. We now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Mr. President, Senator Carlson would move to withdraw LB592. [LB592]

SENATOR GLOOR: Senator Carlson, you're recognized to open on your withdrawal. [LB592]

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SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. LB592 was a bill that was introduced at the request of two agricultural groups for the purpose of providing a catalyst to initiate discussion over the upcoming interim regarding the need to update and develop uniformity in our state commodity development programs. LB592 made it clear that it did not create new checkoff programs or alter existing programs, but its introduction has caused unintended concern that there's a more far-reaching agenda behind it. We do plan to engage the various producer organizations over the interim in a project to review our checkoff programs and those who worked with me to develop LB592 pledge to be involved in that effort. So I would ask for the support for the motion to withdraw LB592. Thank you, Mr. President. [LB592]

SENATOR GLOOR: Are there senators wishing to be heard? Seeing none, Senator Carlson, you're recognized to close. Senator Carlson waives. The question is, shall LB592 be withdrawn? All in favor vote aye; all opposed, nay. Have you all voted? Mr. Clerk, please record. [LB592]

CLERK: 36 ayes, 0 nays, Mr. President, on the motion to withdraw the bill. [LB592]

SENATOR GLOOR: The motion is adopted. We now proceed to General File. Mr. Clerk. [LB592]

CLERK: Mr. President on LB81, it's offered by Senator Cornett. (Read title.) The bill was presented yesterday by Senator Cornett. At that time she opened on the bill, offered committee amendments. At this time, Mr. President, I have pending the Revenue Committee amendments, specifically AM14. (Legislative Journal page 333.) [LB81]

SENATOR GLOOR: That you, Mr. Clerk. Senator Cornett, you're recognized to lead us back into a discussion of LB81 and the committee amendments. [LB81]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Just to refresh everyone on LB81, LB81 limits a municipality's ability to impose a wheel tax outside of its municipal boundaries. This bill came about because Omaha implemented an ordinance to tax outside its municipal boundaries for people that work in the city. In response to a couple of things that I heard on the floor yesterday, we are not limiting a city's ability to tax its own residents. We are not limiting with this bill their ability to increase their own wheel tax on their residents. What we are saying is they cannot reach outside their municipal boundaries and impose a wheel tax on people that live in another municipality or jurisdiction. The reason that I have brought this bill has to do with state policy in regards to taxation. We do not need a patchwork of different tax policies throughout the state. If this statute is allowed to stand the way it is, you could see cities abutting against one another imposing a wheel tax on its residents, so an

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individual could end up paying or home could end up paying two or three wheel taxes or, theoretically, a wheel tax twice on the same vehicle. An example of this is if someone works at the Med Center in Omaha and the Med Center in Bellevue. They own one vehicle but could have a wheel tax imposed twice on that same vehicle. In regards to comments made by Senator Council yesterday, the present Legislature is not bound by the past actions of other Legislatures. What was good policy in the past might not be good policy today. When the wheel tax ordinance was originated, communities did not abut against one another. There was not as much working in one community and living in another. We have to look at this from a policy aspect. Is this something we feel is right for the state for municipalities to be allowed to reach outside their boundaries and tax others? And do we want to subject our citizens to the possibility of two or three different taxes for the same thing? Thank you very much. [LB81]

SENATOR GLOOR: Thank you, Senator Cornett. We now move to discussion. The Chair recognizes Senator Ashford. [LB81]

SENATOR ASHFORD: Thank you, Mr. President. And I'm thinking that we will have some more discussion today on tax policy, and I will...I agree that this is an issue of tax policy. And it's important in this body that we have a debate about tax policy, but I think we should talk about tax policy that applies to the entire state. I was thinking back to try to remember when, and there may be other examples, when the Legislature took away a revenue source from the cities. The only thing I can come up with, and maybe Senator Cornett can help me as we go through this discussion today, but the only thing I can recall is the personal property tax. And that was in the 1970s. We went from the cities had the ability to raise personal property tax but we substituted that with state aid, state aid to the cities in the seventies. And I believe...I'm not a tax expert, but I believe that that generally is how it went. So I think we have to think about the fact that what we are doing is, we are changing tax policy as it relates to one city, in this case it's Omaha. As we discuss this further, I had the occasion last night to read the Bates study. Bob Bates was the president and chairman of Guarantee Mutual in 2009 and he also created the Creighton school of business ethics at Creighton. A wonderful guy and very bright guy. And he was asked in 2009 to put together a group of experts to think about where we were in Omaha because of the pension shortfall. And what he concluded...I have the report here and I can read from it later, but what he concluded and what this committee concluded in May or June of 2009, just as the current administration came into office, that we were \$594 million underfunded in our pension and that this underfunding had occurred for a variety of reasons. One of the reasons was the recession of September of 2008, clearly. It also reflects the fact that going back many, many years prior to that, that the city had not properly funded its pension plan. Omaha is not alone. We talked about that a little bit yesterday. So when the current administration came into office dealing with a brand new city council, what was necessary was to pass a budget that addressed the pensions because if we hadn't done that, if we had not done that, we would have lost in the city of Omaha at least \$2 million to \$3 million in our bond rating.

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We lost our bond rating quite frankly from AAA to a level just below AAA and that alone reduced our ability to borrow...increased our interest rate on our borrowings by \$2 million to \$3 million. Had we not raised the revenue we raised through taxation and funded at least the police pension plan, and made changes to the police pension plan, including an increased contribution equally by the city and by the police union, which is required under our home rule charter that it be an equal sharing of the contributions, we would have been in dire straits, even worse than we are today in the city of Omaha. The city of Omaha is an economic engine of our state as is our production agriculture segment of our economy. The city of Omaha, if it does not work or function properly, if it has a low bond rating, if it's unable to borrow money... [LB81]

SENATOR GLOOR: One minute, Senator. [LB81]

SENATOR ASHFORD: ...at a reasonable rate, that hurts the entire state, obviously. It's where the new jobs are being created in the metro area. So the city council and the mayor made a decision on how to fund the pensions. And they raised revenue to do it just as the Bates business leader commission suggested that be done. The alternative was to raise sales tax. But, of course, the Legislature won't give us the authority to raise sales tax. If we want to talk about tax policy, let's talk about sales tax, because that could apply to all the cities in the state. So let's talk about tax policy as it applies to all the cities. Let's not put the city of Omaha in any more jeopardy than it already is. If you're going to change the wheel tax, don't do it in the middle of a budget year, give the city of Omaha the opportunity to react. But this is not the way the Legislature deals with tax policy in my view, though I will agree with Senator Cornett that it is a tax policy issue. [LB81]

SENATOR GLOOR: Time, Senator. [LB81]

SENATOR ASHFORD: But it is not normal, it is not ordinary. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Ashford. (Doctor of the day introduced.) Senator Smith, you are recognized. [LB81]

SENATOR SMITH: Thank you, Mr. President and good morning, colleagues. I am a cosponsor of LB81 and encourage my colleagues to support this bill with the pending amendments. I do represent Sarpy County but, as many Sarpy County residents, consider myself part of the overall Omaha metropolitan area. And as a member of that MSA, we really do want Omaha to succeed. We want Omaha to prosper and we understand Omaha has some problems, but this tax policy is not good. It...there are huge complexities with the administration of this policy of the wheel tax. And I'm particularly concerned with the precedent it sets. Senator Cornett mentioned this that what happens with other cities as they begin to look at the same way to raise revenues.

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Within a three mile radius of my home in Sarpy County there are five governing entities. Now what will happen to the businesses in those communities? What will happen to the residents in those communities, if all decide to use a wheel tax to raise revenues for their cities? This is a bad tax policy. It pits neighbor against neighbor in the Omaha metropolitan area, and I ask your support of LB81 and the pending amendments. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Smith. Senator Pirsch, you're recognized. [LB81]

SENATOR PIRSCH: Thank you. I ask just a minute or two to kind of make some comments about what went on in committee and then maybe, perhaps, ask some questions of Senator Cornett, the Chair of the Revenue Committee and the sponsor of this bill. I did vote to advance the measure at committee. It...there was a number of questions in my mind. I certainly understand the two arguments, the fairness argument, kind of a user fee argument that the city is making in terms of half the users of our roads are not chipping in for the roads and, on the other hand, the taxation without representation argument. And I guess I had kind of based my vote along another consideration that I think is worthy of...a worthy topic of discussion here. And that has to do with the actual implementation of the tax, the mechanism. And so to that end, I wonder if Senator Cornett might rise for a couple of questions. [LB81]

SENATOR GLOOR: Senator Cornett, will you yield? [LB81]

SENATOR CORNETT: I'd be happy to. [LB81]

SENATOR PIRSCH: It's my understanding, is it not, that ultimately the onus of the tax in terms of paying the tax would fall upon the employer businesses, is that correct? [LB81]

SENATOR CORNETT: That is correct and there's some considerations and concerns with that aspect of the ordinance also. [LB81]

SENATOR PIRSCH: And it's my understanding that's why the Omaha Chamber of Commerce came out against the bill...I'm sorry, in favor of the bill against the tax, correct? [LB81]

SENATOR CORNETT: The Omaha Chamber of Commerce and a number of the major business inside of Omaha have come out against the tax. [LB81]

SENATOR PIRSCH: Could you describe to me the mechanism by which this tax as it currently exists is collected or would be collected in the future? [LB81]

SENATOR CORNETT: The employer is required by the ordinance to collect the tax.

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That runs into difficulty when you...under the Nebraska Wage Payment and Collection Act, an employer may deduct, withhold or divert a portion of the employees wages only, I repeat, only, when the employer is required to do or may do so by state or federal law or by order of a court of competent jurisdiction or when the employer has written agreement with the employee to deduct, withhold or divert. If the employee does not give permission to do this, the employer, under the law, the way it is written, cannot collect that. When I spoke with the city of Omaha they said that if was not collected, they would collect it from the employer. [LB81]

SENATOR PIRSCH: Upon what basis...I mean, have problems then developed or are developing with respect to this particular issue then? [LB81]

SENATOR CORNETT: A number of the employers, even with the reimbursement the city has offered them for the collection, feel that it will cost them a tremendous amount of money to collect the tax and they feel that they will be the ones financially responsible if their employee refuses to sign or remit the tax to them. [LB81]

SENATOR PIRSCH: Well, thank you for that. And that is, I guess, in explaining my vote to committee, a concern that I had that influenced me greatly, is the outside type of influences in going forward or allowing this tax to go forward, to continue, that it is in a sense, I am concerned, going to have an affect upon businesses within the area. I would yield the balance of my time to Senator Cornett if she has any other comments she'd like to make. [LB81]

SENATOR GLOOR: Senator Cornett, 1:10. [LB81]

SENATOR CORNETT: Thank you very much, Mr. President. I would like to respond to some of Senator Ashford's comments. We all understand the financial situation the city of Omaha is in. We all understand their unfunded pension liability. That is their unfunded pension liability. While the other municipalities may be sympathetic and be facing similar situations with their pensions, that is their problem. Let me also refer to his comment on tax policy. Tax policy is we should have something that promotes (1) good relationships between communities, and (2) does not burden our citizens unduly as this could if other wheel taxes are imposed. Secondly, the cities have a number of means of raising revenues. The city of Omaha's property tax levy is considerably less than the majority of the other senators' property tax in this state. Senator Loudon has most of his districts up against their lid levies. I also suggest that the city of Omaha might have more revenues if they hadn't TIFed away such a large percentage of their property tax base. [LB81]

SENATOR GLOOR: Time, Senator. [LB81]

SENATOR CORNETT: Thank you. [LB81]

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SENATOR GLOOR: (Visitors introduced.) The Chair recognizes Senator Mello. [LB81]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Would Senator Cornett yield to a question? [LB81]

SENATOR GLOOR: Senator Cornett, would you yield to a question? Senator Cornett is not available. [LB81]

SENATOR MELLO: Okay, I will...here she comes. Would Senator Cornett yield to a question? [LB81]

SENATOR GLOOR: Senator Cornett. [LB81]

SENATOR CORNETT: Yes. [LB81]

SENATOR MELLO: Senator Cornett, it appears in the queue after the committee amendment, AM14, that you have an amendment, AM132, which I think provides a little bit more clarification on LB81. Would you be able to give us a brief synopsis on that amendment that's waiting in the queue? [LB81]

SENATOR CORNETT: Yes, I would be happy to. When we were looking at this, it was our original intent to draft this so no municipality could do that. We missed that section of the statute in the original draft. The amendment, AM132, clarifies that no municipality throughout the state, whether metropolitan, village, city of the first class, can impose a wheel tax outside of its jurisdiction. [LB81]

SENATOR MELLO: Thank you, Senator Cornett. There is a component of AM132 I might get up and talk a little bit about at a later point, but that should suffice for questions for right now. Colleagues, as a senator who represents both the city of Omaha and the city of Bellevue, I find myself in a very unique predicament. But as I have discussed with some colleagues and the way I interpret this issue and in discussing AM132 with Senator Cornett, I take a step back from some of my parochial fights that I think I have led in regards of fighting for the city of Omaha on numerous issues the last few years and take a look at LB81 as a statewide tax policy. With AM132 that we have not yet debated but will ultimately, I think, debate, what it does is it changes our state tax policy to ensure that no municipality can do or enact any kind of commuter fee on residents outside of their city. The facts are these, regardless of where the city of Omaha is financially, which I think as Senator Ashford and Senator Cornett this morning as well as Senator Council and others have mentioned, we understand that that municipality has financial challenges that it needs to deal with. But the Nebraska Legislature sets tax policy and the Nebraska Legislature provides and/or takes away taxing authority on local political subdivisions. What we have here is one municipality

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and one political subdivision exercise an existing state statute, that they interpreted, that allowed them to provide a commuter fee for street maintenance on those who do not reside within the city. That is up to interpretation because currently as you follow probably this issue in Omaha and the greater metropolitan area, there's a court case revolving this issue in Omaha regarding the city of Bellevue and some residents in the area versus the city of Omaha on the issue. That issue aside, our decision that lays before us with LB81, and I think the subsequent amendment, AM132, is whether or not the Nebraska Legislature wants to take the authority away from municipalities to levy a tax or a fee for that matter on commuters within their municipalities. It's not solely about the city of Omaha. This, as the way I describe it, issue has led us to, I think, the brink of where we would see a nuclear arms race of municipalities choosing to levy fees against each other to catch up for what they might see as an unfair fee levied against their property taxpayers or residents. Senator Fischer has numerous roads and infrastructure bills that I'm sure we will have plenty of time to debate as the session moves on. And at the crux of LB81, let us not forget the main debate. The main debate is this. [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR MELLO: We have an infrastructure financing problem in our state, not just at the state of Nebraska but counties and municipalities. We need to find innovative ways to help finance our cities and counties in regards to their infrastructure. I do not believe that levying commuter fees is an appropriate tax policy that municipalities should look to use. And I think it is with our purview as the Nebraska Legislature to take that authority away, not just to the city of Omaha, but to all municipalities because it is a statewide policy that should affect all municipalities and not just the largest city in our state. I have more to say about this, but for right now, I'll yield the remainder of my time to the Chair. [LB81]

SENATOR GLOOR: Thank you, Senator Mello. Senator Adams, you are recognized. [LB81]

SENATOR ADAMS: Thank you, Mr. President, colleagues. I don't have a dog in this fight, although I suppose maybe my hometown of York could, taking it to the limits, why we could tax some fees on our 81 expressway going around. But let's put that aside for a moment. The reason I rise is because I'm a member of the Revenue Committee and I voted this bill out and I feel an obligation to explain why I did. And as I thought about what I might say, I come at this from a little different perspective, for whatever it's worth to any of you. To me, in my simple mind, any tax ought to at least meet two criteria. They ought to be fair, and they ought be easy to administer. All right, let's start with fairness. I've heard the revolutionary rhetoric, no taxation without representation. It's emotional, it's real, it is heartfelt, but you all know it doesn't have a lot of legal substance to it. Whether it be school districts, as Senator Wallman brought up, whether it's sales tax that we all understand, it just doesn't carry a lot of legal basis. Let's take fairness a

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little further. Senator Council spoke yesterday very eloquently about a city's right in statute currently to impose wheel tax, and it's been there for years. And as a former mayor, I'm real concerned about the fairness of now shrinking that authority. I'm sympathetic with that argument. I don't think we're taking the authority away here, but we are reducing it. No question about that. Senator Ashford makes the argument that in effect we're cutting off the city of Omaha midstream on revenue in a budget year. When I sat in the Revenue Committee, I thought about that very thing. That bothers me too. But despite all I've listed, here's why I voted it out. It's the second criteria, administration. For the life of me as I listened to testimony that day, from not only Omaha city officials, but commuters, and tried to put myself in both sides of this argument, for the life of me, I don't know how you're going to collect this, I just don't. I'd like to say to the city of Omaha, despite your best efforts, go back to the drawing board. This isn't going to work. You know, I could lay out a million lists of what if, what if, what if, what if, what if. Carpooling, my car's registered in Papillion, but I work in Bellevue, but I swing north of Harrison and I drop my neighbor off at work and, aaah, you know, the list goes on. I just couldn't see how this could be administered very well, and that was the problem for me in kicking it out. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator Adams. Senator Council, you are recognized. [LB81]

SENATOR COUNCIL: Thank you very much, Mr. President. I again appreciate the opportunity to be on the mike to discuss LB81 and its amendments. And I want to make it clear for the record and clear to my colleagues, I think if anyone in this body that understands and appreciates the authority of this body to make policy changes, it's me, because in most of my legislation that's what I'm seeking is a policy change, so I understand that. And, in fact, kind of find it insulting to suggestion that I don't, when making a statement yesterday that the policy of this state has been and, as of today, still is that cities and villages could impose a wheel tax as a user fee. That is a fact. Now the Revenue Committee does have the authority to change tax policy in this state. No one disagrees with it. But the point is that to take an action changing a state tax policy or a so-called state tax policy after a city has relied in good faith of that being the policy governing their actions at the time they take that action, I think points directly to not being a change in tax policy, but being a bill introduced to punish and slap the city of Omaha into place. And I say that for a couple of reasons. Number one, Omaha has been collecting a wheel tax from nonresidents who live within the three mile zoning jurisdiction of Omaha since 2006. Senator Adams, if there is a problem with administration, I'm surprised it hasn't been presented now. While there may be an additional problem of administration because its nonresidents beyond a three mile zoning limit, it's been collected from nonresidents since 2006. And since 2006, the city of Omaha has relied upon stated state policy that they are authorized to do that, and can include in their budget funds generated from that revenue for the purpose of addressing street and road improvements. We talk about fairness. That's the fairness

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issue. And when we look at other changes in state policy, I'll remind and direct my colleague, Senator Cornett, to the bill she introduced on behalf of the Governor, LB383, that talks about changing state policy on aid to counties and municipalities and that may be the greatest policy change, no one can argue with it, needs to be made. But that bill doesn't contain an operative date of January 1. That bill doesn't place cities, counties, and municipalities in the same position that LB81 and its amendments, in fact, place the city of Omaha in. It provides time for those counties, municipalities to prepare for their next budget year. The city of Omaha relied on its ability to collect a wheel tax that is has collected since '06 from nonresidents and generating revenues approaching \$3.1 million. [LB81 LB383]

SENATOR GLOOR: One minute. [LB81]

SENATOR COUNCIL: Yet, we believe or those who support LB81 and its amendment believe that it's fair, it's fair to pass policy that retroactively, negatively impacts a city who relied in good faith on what was then stated policy. And in response to Senator Cornett's statement that perhaps the city of Omaha wouldn't be in this position if "we hadn't TIFed our way into it," I trust that if we erred in that regard any Bellevue residents or surrounding suburban residents, who are working for businesses that were established using those TIF dollars are willing to relinquish their employment, because that was bad tax policy. TIF money was used to create businesses, businesses that employ residents and nonresidents alike. [LB81]

SENATOR GLOOR: Time, Senator. Thank you, Senator Council. Senator Harr, you are recognized. [LB81]

SENATOR HARR: Thank you, Mr. President. So this is my first time on the floor, so I'm a little excited, so if I raise my voice, you'll know why. First, let's start out with, I look at what the policy is when I look at a bill. So I've been looking at the pros and the cons. Well, first of all, I hear outstate senators saying they don't have a dog in this fight and I think that's exactly right. This is an issue about Omaha. To call it anything else, is a farce. This is about Omaha. So the cons, I hear taxation without representation. All right, fine. I think Senator Adams was very correct in saying that that's a Trojan horse. There's really nothing to that. The people who live in Iowa work in Omaha, guess what, they pay state income tax. If we want to give that back to them because they have taxation without representation, then maybe we need to introduce an amendment on that. I heard other people argue, well, there's no choice but to work in Omaha. Again, you do have a choice. If you don't want to pay this tax, you don't have to live in Omaha. It is pretty easy against that. I've heard other senators talk about how, gosh, my constituents are really against this. The majority of my constituents work in Omaha and they're against it. Well, that's the exact reason why we need to pass this. The majority of your constituents are working in Omaha and they're not paying any taxes, but they're using our roads. I heard another argument that Lincoln may be able to tax Gering.

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Again, there has to be a rational basis. That's kind of garbage. The property tax issue saying Omaha is not at their levy for property taxes. Well, that may be true, but that's what this bill is, is a way of relieving property taxes. If some of the outstate senators later on down the road want to look for a relief on property taxes, they're going to have a tough time getting a vote out of me because apparently, you know, in the nineties and 2000s, the aughts, Omaha didn't ever ask to have our levy lowered from the current spot. And now you are, because you have a valuation. So I'm going to have a tough time coming down on property tax if you're not going to help us with property taxes. Administrative nightmare is a con against this, and that is probably the strongest argument for this bill. It is an administrative nightmare that the city of Omaha created itself. And why the Legislature wants to bail out the city of Omaha for making its own problem, I'm not quite sure. It feels like we're Monday morning quarterbacking what the Omaha City Council does. This is not the best bill, there's no doubt about that. But you don't throw the baby out with the bath water and say, everyone, this just can't exist anymore. Now the pros to this bill, user fee versus tax. Is this a wheel tax or a user fee? I would argue, it is a user fee in that only the people who use the streets in Omaha pay for it. You don't want to pay for this, don't work in Omaha. A fee is a paying for a service that you use. You're using the roads in Omaha. TRIP, which is a national transportation lobbying group, recently published a report that says Omaha drivers pay an estimated \$1,113 a year because of poor roads. We're going to be debating later on this session whether we need to increase or move sales tax money to pay for our poor roads. Well, this wheel tax, user fee, whatever you want to call it, only goes to improving the roads, the potholes. That's what it says. I guarantee you the people outside of Omaha drive on our roads more than one-twentieth of the time, which was more than that \$50, whatever the fee is, would more than equally, easily cover that cost. [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR HARR: Thank you. This bill when it was passed or the ordinance by the city, it kind of reminds me of when I dress my daughter in the morning. I give her two pair of socks. I don't care which one she wears. I say you have a choice of wearing this sock or this sock. She chooses. Whatever she chooses, I go with. Well, that's what we've done here as the Legislature, we've said, cities, we don't care how you tax yourselves. You can do this or you can do this. Well, Omaha did this, that what's in the right hand. And guess what? Now we're saying, no, no, no, no, no, you can't wear those socks, you have to wear these socks. We gave them this choice. If we want to change this, that's fine. We can change policy down the road, but when someone relies on what is currently good law, we can't retroactively punish those people or in this case the city of Omaha. And that's my problem with this bill. Could have been a better...could the ordinance have been better? Heck, yes. Is it an administrative nightmare? You bet. But this doesn't...this isn't the right answer. This is just merely attacking the city of Omaha. Thank you very much. [LB81]

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SENATOR GLOOR: Time, Senator. Thank you. Senator Janssen, you are recognized.
[LB81]

SENATOR JANSSEN: Thank you, Mr. President and members. I live close to...Fremont is very close to Omaha. I don't mind saying that I actually love going to Omaha and I go there quite a bit. I won't try to recite the chant from the recall election the other night of Omaha over and over again, but I feel very passionate about the city of Omaha. I, at one time, lived there, was a resident there. I worked there. Again the proximity makes it so close from Fremont it's really a 20 minute commute back and forth and tomorrow I'm going there. I don't work there. I'm going to get a haircut. I'll probably stop and eat lunch there. I'll probably take my wife with me, which means we're going shopping somewhere out there. That will probably be Village Pointe, Oak View, you name it. So we do use the streets of Omaha. So this tax would affect me in a couple of ways. My wife also commutes daily to Omaha so our household would be levied with that. Conversely, this morning I went to work in Fremont. I commute daily. They don't charge me in every little town I go through, Mead and Ceresco. They let me pass for free. Lincoln doesn't charge me either. But I employ 35 to 40 people in Fremont. They're very good paying jobs and probably a half to two-thirds of those people come from Omaha or the Omaha area. They drive in daily from Omaha and other communities, mostly from Omaha, though. And they drive on the streets of Fremont. They help create potholes in Fremont. I think the city of Fremont...I've talked to city councilmen there. There was one that wanted to run this same bill on Omaha people. And, in fact, our economic development wing in Fremont at one time did a survey and we found out we have just as many people going to Omaha commuting in as commuting out. So we'd basically be swapping dollars. It may not be that way in all communities. That's the way it hashed out for Fremont. It really comes down to being a good neighbor. I sit next to Senator Howard. She brings graham crackers in every day. She's not levied a tax on me yet. We rarely vote the same on many issues, but we still are good neighbors. I didn't move this year. We stayed together so I must be an okay neighbor. Senator Wightman, he doesn't say a whole lot to us, so that's a good neighbor. (Laughter) So we get along. If I went to Lexington, he probably wouldn't charge me this tax. It would be an administrative nightmare, it just would be. If you say otherwise, you're dead wrong. I don't know how you get this, but let's think about...let's think about the jobs in call centers, some of the jobs that aren't all that high paying in Omaha that people rely on and they commute for small distances, jobs that pay in the \$10 an hour range. If I'm sitting in this business now and maybe they do find a way to levy this tax, and they're going to come down on employers, we're all too familiar with that, that's always the easiest way to do it. Well, now I'm sitting in my company and I'm like, well, I've got a lower skilled job here, the production is this, all things being equal, I have to pay that person coming from Fremont, I have to pay my portion or the wheel tax. That could be a deciding factor. This could be a tax on really the lower income wage earners right outside the Omaha area. A different angle to kind of look at when you think about that. I implore you. I cosponsored this bill. I hope that this bill gets passed. I applaud Senator Cornett for bringing it. But it's

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in no way a slap at the face of Omaha. Again, I enjoy the community there. I will continue to enjoy the amenities of Omaha, and I hope Omaha can get things straight there with their taxation issues and their spending issues, because it is really important to, not only Fremont, Omaha is very important to the entire state. I just don't think it's...sending this message that we're going to tax you for something that really they shouldn't be, is just like Senator Howard starting to charge me for those graham crackers I have every day. And with that, I'll yield the balance of my time to Senator Larson. [LB81]

SENATOR GLOOR: Senator Larson, you have one minute. Senator Larson waives. The Chair recognizes Senator Krist. [LB81]

SENATOR KRIST: I'm back. Yesterday I talked to you about the SIDs so there is precedent for taxing within. Senator Cornett, I have some questions if you could stick around, please. Yesterday, I mentioned the SIDs so we've already taxed within the unincorporated part of Douglas County. I also mentioned that those SIDs, which currently exist in the planning stages of expansion of cities in La Vista and all the areas around Omaha, also have SIDs. So we have tax policy problems that we need to deal with and there's no doubt about it. Was this bill coming out or was the tax or was the fee coming out, whatever you want to call it, of Omaha, a good idea? No. Am I in favor of the tax? No. I think they could have done it in a much different way. Does that mean that we have to, in my opinion, follow incomplete legislation on the heels of poor guidance from the locals? No. But here's the deal. Local control, local control, local control, so we're slapping Omaha and telling them that this is essentially where we're at. I have a couple of substance questions, though. If Senator Cornett would yield to a couple of question. [LB81]

SENATOR GLOOR: Senator Cornett, would you yield to questions from Senator Krist? [LB81]

SENATOR CORNETT: I would be happy to. [LB81]

SENATOR KRIST: The bill originally drafted includes cities of all classes, but the committee amendment appears, if I can follow the train, and to limit the applications only to the city of Omaha. Can you tell me why, can you explain? [LB81]

SENATOR CORNETT: It's simply a drafting error. That's what the next amendment is about. [LB81]

SENATOR KRIST: Okay. Thank you. The bill also contains an emergency clause. Can you tell me why we want this bill to go in effect immediately upon passage? [LB81]

SENATOR CORNETT: Because people will not...they will not have had a chance to

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work the 30 days so this would not...the ordinance would not be in effect or the collection would not have taken place when this bill would go into effect. [LB81]

SENATOR KRIST: And we're speaking of Omaha? [LB81]

SENATOR CORNETT: Yes. [LB81]

SENATOR KRIST: So the purpose and the intent of the bill is targeted at Omaha? [LB81]

SENATOR CORNETT: It is targeted at the people that are going to have to pay this tax. It is not targeted at Omaha. It's targeted at the people that live outside the municipality to keep them from having to pay a tax in a jurisdiction they do not live in. [LB81]

SENATOR KRIST: Okay. Semantically, it's targeted at the tax that Omaha is putting on those people, so it's targeted at the people who are making decisions in Omaha. Would you agree with that? [LB81]

SENATOR CORNETT: Senator Krist, it sounds like you're trying to pick a fight with me in regards to what my intent was. [LB81]

SENATOR KRIST: No. Absolutely not. I'm just trying to put on the record that this is targeted specifically at an action taken by the municipality of Omaha, the municipal class of Omaha. [LB81]

SENATOR CORNETT: It is targeted at bad tax policy. [LB81]

SENATOR KRIST: Okay, that's as close as I'm going to get. I really think that we have a constitutional problem. I would invite the membership to open Article III, Section 18, and read the section. I would also invite you, and I will come back on the mike and talk about a few other things, but I would also ask you to look at the fact that while you're examining that, I have some documents here from the city of La Vista and others, and there is in here resident versus nonresident user fees. Now we've already established that this is a fee. It's a user fee. No matter how it's administered, it's a user fee. If we're going to make it tax policy let's make tax reform. Let's do it all-encompassing. Let's take our time and do it right. I made that point yesterday. I would also suggest that you think very clearly about what my colleague, Senator Council, had talked about... [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR KRIST: ...and that is, that the application of the tax has been going on in many municipalities and in Omaha for years that tax has been administered. We've been collecting those fees from unincorporated parts in the SIDs and we've been taxing

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people who have not been part or residents in the city of Omaha, right, wrong or indifferent. Now we're telling Omaha, you can't do that. Thank you, Mr. President.
[LB81]

SENATOR GLOOR: Thank you, Senator Krist. Senator Nelson, you are recognized.
[LB81]

SENATOR NELSON: Thank you, Mr. President and members of the body. I want to stand in opposition to LB81. We've heard some very good arguments this morning. I'm heartened by the fact that former mayors of our cities, such as Senator Karpisek and Senator Adams, recognize the importance of local control and the fact that there may be a need down the road for those particular cities and other cities across Nebraska to use this authority that we presently have in the statute. I want to ask those senators that are from the larger cities of Nebraska, Scottsbluff, Gering, Grand Island, Kearney, do you really want to limit yourself at this time by passing a bill that says that down the road you aren't going to be able to levy a registration fee? There was a mention made that some places are already up against their mill levy. What if you need to raise more money? If you're in Scottsbluff, I don't know the amount of industry there, but if you have people coming over from Wyoming and using your streets, tearing them up or coming into Omaha from Fremont, whatever, you may find that this is something that you would like to have that you'd be authorized to do. Now this may not be. But I think we have to be very wary if we're going to change tax policy across the board and make it applicable to everybody. You may very well have a dog in this race. I'm not too concerned that a city such as Kearney and Grand Island and the triangle out there are going to impose these taxes because I think that would be self-defeating to put a user fee. I mean, it just means that you're trading dollars, I think, as Senator Janssen said. But I think we have to be very careful and consider all the possibilities here. And I, for one, think that we're better off to let cities operate the way that they best can in raising the money that they need. I'm mindful of a small town out in south central Nebraska. They were able to institute a sales tax there and it was authorized under our state law. And although they were reluctant to do it, it's brought in good revenue from them, and certainly the people in surrounding counties that come in there didn't have any say about that. But it's been helpful all the way around. And it has helped that particular town and I'm sure this is true in other cities. I want to emphasize also that Omaha is, as was said before, an economic engine. We have people coming over from Iowa from as far as 40 or 50 miles away. They come into Omaha and they earn their living, they work for Peter Kiewit, they work for Union Pacific, some of the larger employers, and they have no place else to go, frankly. The idea that they can stay home and earn a living or that the wives can drive in and help support the family, there's really no choice. They pay sales tax when they come into Omaha, that's without representation. But they do use our streets in earning a good living and it seems to me as a matter of element of fairness that they should not mind paying that. The lowans, absolutely, have nothing to say. The same ought to be true of people that are driving back and forth. We have people living between Lincoln

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and Omaha. The wife may go down to Lincoln, come down here and use the streets, the husband may go into Omaha. Does Lincoln want to give up its ability to levy a registration fee if they find that it's necessary? [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR NELSON: Back to the lowans, they come across the bridge in Bellevue and they pay a tax there. I think, in a way, it's a little hypocritical of the residents of Sarpy County to charge them for coming across and then say, we don't want to go into Omaha and pay 20 cents a day, 20 cents a working day to help Omaha out with its streets. So these are some considerations I think that this body should take. Let's recognize that this is a change in established tax policy and let's be very careful before we change it just because we're unhappy with what a metropolitan city has done. Thank you, Mr. President and members of the body. [LB81]

SENATOR GLOOR: Thank you, Senator Nelson. Mr. Clerk. [LB81]

CLERK: Mr. President, some items, if I may. Thank you. Natural Resources will have an Executive Session at 11:15; 11:15, Natural Resources under the south balcony. Mr. President, Retirement Systems reports LB303 to General File; LB474 to General File with amendments. I have notice of hearings from Health and Human Services and the Executive Board, all signed by the respective chairpersons. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 404-405.) [LB303 LB474 LB81]

SENATOR GLOOR: Thank you, Mr. Clerk. We return to discussion on LB81. The Chair recognizes Senator Ashford. [LB81]

SENATOR ASHFORD: Thank you, Mr. President. You know, I certainly understand why members stand up, those who have...in Sarpy County and those senators who represent constituents who are not living in the city and would be paying this tax. I get that. And I get Senator Janssen's point about the fact that he comes to Omaha and pays a sales tax and as do many of you. And I get all that as well. I don't think that's really the issue. Senator Cornett has actually done us a great favor because she's brought to us a tax policy matter. We haven't done a lot of tax policy debates on this side of tax policy, the revenue raising side. In the last four years we've spent a lot of time talking about exemptions and sales tax exemptions for different products and so forth and so on. That maybe is a little easier to exempt a tax or to take a tax away and maybe a little more fun. It gets...it's tough when you have to raise revenue. And my only point about Omaha being in financial distress is not to say, poor us. And sure, we did make mistakes along the way to get us there. We have pension plans that are unaffordable and we're trying to change those. My point is this, we need to have a tax policy debate and we need to have all the options on the table, in my view. I've been...this is my thirteenth year. I've been almost every...not the last four years,

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necessarily, but before that, the idea of increasing sales tax for a city of the metropolitan class or giving the voters an opportunity to do so was always on the table. It was always an option. Omaha is a growing urban area, it is creating most of the jobs in the state. It attracts people from outside the state in greater numbers than the rest of the state simply because it's larger of an area. It doesn't make it any better than any other part of the state. The idea of raising property tax, sure, there's tax levy authority for the city of Omaha. But we're an economic engine for different reasons. We bring people in to run corporations. Property taxes on high value houses becomes more and more. We're taxed at 95 percent or 100 percent of value. It becomes a disincentive to raise property taxes too much over our competitors. Those are tax policy discussions that need to be had. The problem with this debate is not that everybody is wrong or everybody is right. Senator Cornett is not wrong to bring the bill because it's a good debate. The problem is we don't have all the options on the table. If we're going to talk about removing this tax, and I think eventually it probably should be removed, because it does create the kind of consternation that we're talking about here, but don't do it with the emergency clause, and don't do it today. Do it...give the city of Omaha and all the over cities the opportunity to address this in a comprehensive manner. And I think Senator Krist was getting at that point correctly. Let's do this as a tax policy discussion and debate where the city of Omaha, for example, would have the option of...and I realize it's taking the state tax base and I've heard the arguments a hundred times but giving the Omaha, city of Omaha, the opportunity to raise a sales tax by a half of a percent or a quarter percent upon a vote of the people. That's tax policy discussion. But when we take a revenue source out of the tax code with emergency clause, in the middle of an emergency in the city of Omaha, that's a problem, that's a problem and especially when we're not given another option. We're not...there's nothing on the...and I'm not going to put an amendment up. It would be silly. There's a bill in revenue about sales tax and we'll have a hearing on that. And I know we'll have a fair hearing. But we shouldn't, in my view, when we all know the problems that the city of Omaha has and to simply say, you cannot collect this tax, you cannot levy this tax even though you have been since 2007, and even though it has been in the tax code for a number of years prior to that, and even though it applies to every city in the state. It was fair for some Legislature to initially... [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR ASHFORD: ...enact and give to the cities the authority to raise this kind of tax, and to apply it to roads or user fee, as Senator Council rightly suggests, and apply it to roads. There's nothing irrational about that. It certainly affects people in Sarpy County to a greater degree than other counties because it's a bordering county. Omaha can't annex beyond the Sarpy County line. So you have Sarpy County and they have different tax policies in Sarpy County than we do in Douglas County and the city of Omaha. All I'm asking is we don't enact this bill for immediate...or we don't pass this bill and have it go into effect immediately. That's just plain not right. If we want to enact this

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bill and have it apply a year from now or put other options on the table that will allow the city of Omaha to address its financial crisis, then let's have that debate. It's a fair debate, but not in this context. And I would ask the body to please consider that very, very carefully because we're in a bad patch right now. Other cities...I remember when I first came to the Legislature, rural Nebraska cities were in a terrible place and we reduced sales tax on fertilizer, we reduced sales tax on a number of things. [LB81]

SENATOR GLOOR: Time, Senator. [LB81]

SENATOR ASHFORD: Thank you. [LB81]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Howard, you are recognized. [LB81]

SENATOR HOWARD: Thank you, Mr. President. First off, I would like to thank the doctor of the day. I fell on a patch of ice this morning and went back to see him and I really appreciate that he's here. It certainly is helpful. You know, I think back to the time when I started down here and I was reminded kind of on a regular basis that we're senators representing our districts, but we are, in fact, all Nebraska state senators. And then after I got that down pat, someone said to me, don't ever forget local concerns and local issues and local ordinances. And so then I incorporated that into my line of thinking. And then one day, Carol Hudkins, who I remember sat right over here, said timing is everything, Senator Howard, timing is everything. (Laugh) So I think those are three really valuable principles to keep in mind as we deal with this issue. And even though you may not feel that you drive into Omaha or work into Omaha or use the Omaha streets, we do, in fact, all have a stake in this. I think, if we're not very, very careful here and very objective, we're going to open a big Pandora's box. I got an e-mail from a gentleman that wrote to me, I recently wrote a fairly large check to Antelope County, Nebraska, for property taxes on land that I own, but I do not live on. I receive very little benefit from those taxes for I don't have kids that go to school there. I don't have any buildings for the fire departments to save, and I don't attend the county fair that they tax me on. I have no opportunity to vote for the county supervisors, county assessors, school boards, etcetera. If the argument that this is taxation without representation carries a lot of weight in the Legislature, wouldn't this be a good time to eliminate the counties ability to tax property on or out-of-county residents? Isn't this, basically, the same thing as road use fee? The argument could be that I choose to own land in the county, I do. Of course, the nonresidents ultimately have a choice on where they live and where they work. I think he makes a very valid point. We pay tax on a lot of things that we don't personally see a benefit from. I remember home schoolers, when I was campaigning a few years back, saying to me, I educate my children at home. Why do I pay tax to maintain the schools? Parents that have their children in parochial schools would ask the same question. And I see this as one example of things that we contribute to for the greater good, because we believe that our society should be

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always, always made better by our contribution. Sure, you have to pay to drive on the streets in Omaha. We don't have any toll roads. Senator Pankonin pointed out, way back in the dark ages, there were moats around your castle and you had to pay a toll I suppose to the troll that lived under the bridge, but we've move on from that. You know, as a resident in Omaha, and I'm moving on down my list of things to address here, as a resident of Omaha, my wheel tax has gone from \$35 to \$50. Now do I like that? Well, of course not, but it is as it is. It is as it is. I drive on those roads. I'm not driving in that direction to go to work. I come west. But I want those roads to be in pretty good shape. I've already blown out one tire on those roads and that's not what I want to have happen again. So I want those roads to be maintained. And it costs money to do that. We are not people in the state of Nebraska that say, hey, I'd like to get by without paying. We are people that say, yeah, I'm going to contribute. That's the right thing to do. [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR HOWARD: I'm sorry? [LB81]

SENATOR GLOOR: One minute, Senator. [LB81]

SENATOR HOWARD: Thank you. Thank you. In looking at this, and here's another thing. Senator Pankonin's mention of the toll roads, you know, a lot of places have those. When I go to visit my daughter in Chicago we're on the Dan Ryan turnpike, yeah, they're going to collect a toll. And if you don't have the money, they take your picture and they send you a bill, and if you don't pay it, they're going to bill you a whole lot more. In some places, I'm looking down here in Florida, we've got a whole list of these. Florida, they've got toll roads. Some of those toll roads, here's one, and the turnpike \$18.20 and that's with cash. They want you to give them money up-front. There's another one here that I thought they have a reason they want you to give money up-front because it's the Everglades Parkway. It's called Alligator Alley. You bet I'd want your money up-front if I'm going to have you driving down that. And even to get off of the tolls to get over to the airport, because you want to leave and go home, you've got to pay them another 50 cents. So, all in all, paying to maintain roads, streets that you drive on frequently, I don't see that as unreasonable. I think that is a fair cost, whether it's assessed the right way, collected the right way, I don't know about that. I suppose we could build little booths as you exit the interstate. [LB81]

SENATOR GLOOR: Time, Senator. [LB81]

SENATOR HOWARD: Thank you. [LB81]

SENATOR GLOOR: Thank you, Senator Howard. Senator Haar. [LB81]

SENATOR HAAR: Mr. President and members of the body, already Senator Burke Harr

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is creating problems. (Laughter) Anyway, you got the right Haar up here now, I think. I think this is a great discussion and I've been listening very carefully because I do have a dog in the fight even though I don't go to Omaha that much, because I think we're talking about state tax policy. And it does worry me, it does concern me that we have the emergency clause in this. Senator Adams is really good at analyzing things and he brought up two important points. Is it fair, is it easy to administer, and I'd like to add a third one. I think taxes have to be predictable, because as local bodies, as local control, we have so much local control in this state, which is a good thing, but those local bodies as they levy taxes have to have a predictable way of looking at tax structure. And for all of a sudden to attach an emergency clause to tax policy that's been in place for years and years, I think is truly counterproductive to local control. And not only this issue, not only to this issue, but it will be in the future. Okay, beyond that, you know, I get it. People don't want to pay taxes. And I had a friend that went to a...some party meeting and the person next to him leaned over and said, you know, we're such a rich country we shouldn't have to pay any taxes. So nobody really wants to pay taxes, but we have to look at the fairness of situations. And I think more and more from just going to taxes that sort of disappear into a General Fund, I think citizens more and more are willing to deal with fees. I look at this, the use of roads as an area of fees. And I know we've called this a wheel tax and so I have a question for Senator Cornett, if she'd be willing to answer. [LB81]

SENATOR GLOOR: Senator Cornett, will you yield? [LB81]

SENATOR CORNETT: Yes, I'd be happy to. [LB81]

SENATOR HAAR: Thank you. If all of a sudden this would become a permit instead of a wheel tax, would that...and I'm not...I realize the administration of that would be difficult, but would that be legal under this bill? [LB81]

SENATOR CORNETT: I don't understand the question. [LB81]

SENATOR HAAR: Okay, if instead of a wheel tax, somehow there was a permit that if you work in Omaha, you have to have a permit for your car, would that be legal under this...if LB81 passes? [LB81]

SENATOR CORNETT: I don't honestly know. I do not deal with permits generally. Permits fall under statutes that I don't typically deal with. I can get back to you on that but... [LB81]

SENATOR HAAR: Yeah, fair enough. I mean, for example, we have park permits so that if you use the park, if you use the park you have to pay a permit. [LB81]

SENATOR CORNETT: No, I understand that. I just...I would have to get back to you on

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that. [LB81]

SENATOR HAAR: Okay. Thank you very much. So, I mean, you know, if there may be another mechanism to accomplish the same purpose and that gets back to that whole area of ease to administer because I think we'd all admit...I think we'd all agree that people who use roads ought to pay for them. Again, how you administer that is difficult. So I don't know the arguments that have come forward about, okay, we tried a...you know, a sales tax is okay because people make a choice. [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR HAAR: Thank you. I would also argue that it's a choice whether you work in Omaha or not. And it's also a choice whether you want to drive your car to work in Omaha. For example, you can use the bus, you can carpool, those kinds of things. So I can't relate to that argument very well whether it's a choice or not, you know, this whole argument of are we being taxed without representation. But I'll leave it right there and I want to come back and talk again. Thank you. [LB81]

SENATOR GLOOR: Thank you, Senator Ken Haar. Senator Mello, you are recognized. [LB81]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I'd like to remind the body that while looking at the viewer, a lot of our debate is still focused on the city of Omaha. And by looking at AM132, once again this takes us back a step and reviews LB81 as a statewide policy, that it's not singling out the city of Omaha. It ensures that no municipality, regardless of size, can levy a registration fee on people who do not reside in their city or village. Just want to make sure that we clarify that. I know it's not on...that we're not debating that right now. It's AM14 we're debating, but that at the end of the day replaces most of the bill, AM132. So please take a look at that as I think that will be the crux of a lot of the debate we'll continue to see on LB81 which shifts it from solely being an anti-Omaha piece of legislation and interpreted as changing state tax policy to affect all municipalities across the state. I want to finish in regards to where, I think, we've started to have some conversations about, but ultimately we've not delved into a municipalities interpretation of the existing state statute and how that ultimately would be implemented. My understanding from the hearing on LB81 in the Revenue Committee is that is a major concern in regards to what we're currently seeing with the utilization of the occupation tax within a municipality who has chosen to use it, is how do they actually implement their policy change or their interpretation of what they can do under the current state statute? That implementation is key, I think, to this policy debate, because ultimately we don't lay out implementation policy in state statute. So while I understand that we are having the conversation in regards to whether or not, one, we should change state policy regarding occupation taxes, there's a whole nother issue that we're ignoring which is, how is that we are

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actually giving guidance to municipalities, if any guidance at all, in regards to how do you actually implement this, because in talking with some of the residents in the municipality, one of the municipalities I represent, the implementation of the current policy that many have discussed on this floor, is somewhat problematic. The reason it's somewhat problematic is because the occupation tax essentially is being interpreted as a tax on employers. And that is somewhat problematic, I think, in regards to economic...some economic issue, I know, that we have discussed before in this body. But that ultimately is not where, I think, the Legislature had envisioned seeing an occupation tax that would be used for road infrastructure to be used on taxing employers based on the residence of their employees because without trying to make this debate or turning this debate back into about one class of municipality, primarily the metropolitan class, that is what we are seeing with the implementation of the existing state statute, which is problematic on a host of fronts. So as we continue to discuss LB81, let us not forget the policy change that ideally, I believe, we need to make in AM132. There is a change, I think, we will need to make there in regards to...it's not very clear in regards to the registration fees in regards to full-time students attending postsecondary educational institutions regardless of where they live. That is a significant policy shift, I think, as well. But nonetheless, the underlying principles of AM132 is where I support, I think, LB81 needs to go. It clarifies it statewide. No municipality has this authority. We are thus taking that authority away from municipalities in certain aspects of the existing occupation tax law... [LB81]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB81]

SENATOR MELLO: ...but at the end of the day, it doesn't solve our problems. And to my colleagues who live in the greater metropolitan area, who represent other areas besides the city of Omaha, we have an obligation. The city of Omaha senators have an obligation and those senators who represent areas that surround the city of Omaha have an obligation regardless of what happens in LB81. And that obligation is to help find a solution to the growing need of roads and street infrastructure for the greater metropolitan area. Intergovernmental cooperation is something that needs to be continued and it needs to be focused on because, regardless if you live across the street from another municipality, we all utilize each others services and it's not solely financed and funded through our current state infrastructure financing through the Highway Trust or the gas tax. So we have an obligation, I think, as a greater metropolitan area... [LB81]

SENATOR LANGEMEIER: Time. [LB81]

SENATOR MELLO: ...to look at solutions. Thank you, Mr. President. [LB81]

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SENATOR LANGEMEIER: Thank you, Senator Mello. Those still wishing to speak, we have Senator Council, Krist, Hadley, Howard, Ken Haar, and others. Senator Council, you're recognized. [LB81]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise at this time to address some of the concerns, very legitimate concerns, that have been raised by some of my colleagues who have come to the mike, specifically Senator Adams. I don't know if he's in the Chamber, and I appreciate his breakdown of his analysis of LB81 and what led him to his vote and he emphasized the issue of administration. And I am not unmindful of the administrative nightmare that could be associated with implementation of the fee, the user fee that was enacted by the city of Omaha. But my question with regard to that administration issue does relate to the fact that Omaha has been collecting a wheel tax from residents within the three-mile zoning limit since 2006. Senator Adams, if you would yield to a question. [LB81]

SENATOR LANGEMEIER: Senator Adams, would you yield? [LB81]

SENATOR ADAMS: Yes, I will. [LB81]

SENATOR COUNCIL: During the course of the hearing and the opponents to LB81 who raised the administration issue, were there issues raised about the administration of the current imposition of the wheel tax on nonresidents within the three-mile zoning limit? [LB81]

SENATOR ADAMS: Not to my recollection. [LB81]

SENATOR COUNCIL: Okay. So the administration issue, and correct me if I'm wrong, relates principally to how do you collect the tax from nonresidents who are outside the three-mile zoning limit. [LB81]

SENATOR ADAMS: That's correct. [LB81]

SENATOR COUNCIL: And I am not unmindful of that because it's my understanding that in that instance, it imposes some obligation on employers that could be costly because those individuals do not actually register their cars in the city of Omaha, is that correct? [LB81]

SENATOR ADAMS: That's correct. [LB81]

SENATOR COUNCIL: So my question, Senator Adams, because I had asked members of the Revenue Committee whether or not the committee gave any consideration in an effort to address the very legitimate administration issue, gave any consideration to eliminating the city's ability to tax nonresidents outside the three-mile limit, and allow

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them to continue to collect the tax from nonresidents within the three-mile limit until such time as this body had an opportunity to fully consider tax policy changes? [LB81]

SENATOR ADAMS: You're right, we did. And if you'll allow me an extra second or two, I'll tell you where I was at personally on that. Yes, as a committee we discussed that, and I personally had a foot on each side of that. You know, the idea of stretching across, stretching a tax across a city limit line into what is meant to be a zoning and planning area bothered me. But on the other hand, I can see where it has been done for X number of years. It's being done. It's being administered. It is part of the budget plan, and so, therefore, I was more sympathetic with that side of it. [LB81]

SENATOR COUNCIL: Okay. And that's important to note because Senator Ken Haar did raise a third factor that should be taken into consideration when we're talking about changing tax policy and that's predictability. And predictability weighs on both sides of the equation. It was predictable to nonresidents of the city of Omaha within the three-mile limit that they would be expected to pay the wheel tax because they've been doing it since 2006... [LB81]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB81]

SENATOR COUNCIL: ...and to my knowledge have expressed not the level of outrage and opposition that is reflected in the current firestorm. And I think if this body wants to be fair, Senator Ashford has referred to it in terms of the effective date. You know, when the issue and the question comes up whether this was targeted at Omaha, you know, what really, in my mind, evidences the targeting in Omaha is the deliberate attempt to make this policy change effective as of January 1, which is the start of the city of Omaha's budget year, which is a start of a budget that provided for this revenue being collected, including revenue from people who have paid the tax since 2006. That's what makes this unfair; that's what makes this appear to be directed solely at the city of Omaha. [LB81]

SPEAKER FLOOD: Time, Senator. [LB81]

SENATOR COUNCIL: Thank you. [LB81]

SPEAKER FLOOD: Thank you, Senator Council. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR38, LR41, LR42, LR43, LR48, LR49, and LR50. Continuing with General File discussion on AM14 to LB81, Senator Krist, you are recognized. [LR38 LR41 LR42 LR43 LR48 LR49 LR50 LB81]

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SENATOR KRIST: Thank you, Chair. I believe that honest debate on any subject with all sides coming forward is what we do. And I believe, wholeheartedly, that this piece of legislation has evolved from the time it came out of committee and has gone in some different directions. And because of that, I still have some questions and I would wonder if Senator Cornett would yield to a question. [LB81]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Senator Cornett, will you yield? [LB81]

SENATOR CORNETT: Yes, I will. [LB81]

SENATOR KRIST: As I go through the changes in the amendments and what has gone forward, beginning on page two, line 13 through 16, and then again on line 23 through page three, line 1, there appears to be duplicate language. I just wanted to know, now is that language still in there after we've made the changes and why is there duplication? [LB81]

SENATOR CORNETT: That was actually brought to my attention by Senator Haar this morning and I believe looking at it that it possibly is duplicative language. And if it is, I haven't had a chance to speak with my legal counsel if there was a reason for that. If it is, we will take care of that in an amendment. [LB81]

SENATOR KRIST: So we can see another amendment. Thank you, Senator Cornett. Again, I believe that if you had an opportunity to look at the constitution, look at Article III, Section 18. And I'll just read the appropriate points that I think are pertinent here. And I'm not a constitutional lawyer nor am I a scholar but, you know what, I can read, and my interpretation, I think, is pretty sound. If, as Senator Adams has said, and Senator Cornett has said, and Senator Pirsch has said, and Senator Pankonin has said, who are all members of the committee, that this is legislation aimed at changing an...what they consider to be an inappropriate tax or fee that the local control, local community government has put on people within the law, within the existing law, then it would appear to me that Section 18 applies. It says, local or special laws prohibit it. The Legislature shall not, shall not pass local or special laws in any of the following cases, that is to say...I won't read the whole litany, but it comes down to: Chartering or licensing ferries, toll bridges, which would mean that we could go back and tell Bellevue they can't do what they're doing or Plattsmouth, remitting fines, penalties or forfeitures, creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which those said officers are elected or appointed. So in the first place, I think the emergency clause is completely inappropriate and unconstitutional. In the second place, I believe that if targeting the municipality of Omaha is what we...our intent was to do and stop them from an activity that they are engaged in, then it becomes an unconstitutional issue for me. I don't know how you would interpret that. I

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would invite you to call your lawyer, your best friend, whoever, and find out what their interpretation would be. But that's how I see it. Now I want to say for the record again, if I was the city of Omaha I would not have done this, but that's not my job. Our job is put forward good legislation, well-thought-out. I think the best of intentions went forward with LB81. I think that the League of Municipalities and the mayors of the local areas should have gotten together and worked it out. I, I...this is akin to me, to one community college... [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR KRIST: ...suing all the rest of the community colleges...thank you, Mr. President, one community college suing all the rest of the community colleges because they can't agree on something and coming to us for an answer. We didn't do that in this body. Members of this body helped to work through that process for the community colleges. There's some serious flaws with LB81. I know Senator Cornett is trying to work out all the details. I do not want to go at her on the mike or about anybody else. I just want to engage in a debate that says, is this the best piece of legislation that we can put out? We're talking tax policy. Can we take a breath, can we slow down, and then can we do this right? Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator. Senator Hadley, you are recognized. [LB81]

SENATOR HADLEY: Mr. President and members of the body, once again I find myself on Senator Mello's side. I agree with Senator Mello. I think this is the start of the wars between the cities. I understand that we have problems with revenue in every city. I would be very surprised in the Omaha area, for example, that if LB81 is not passed, the other cities around will start having a wheel tax. If their residents who work in Omaha are going to pay it there, they're going to have a wheel tax. So I question from a policy standpoint, how do we want to handle a person who pays a wheel tax in their city of residence and then also pays a wheel tax in their city of employment? And this can work both ways. I'm sure there are people who live in the city of Omaha right now that pay a wheel tax. If Bellevue is to institute a wheel tax, will they pay a wheel tax because they work in Bellevue? Just the same as the reverse could work that if you live in Bellevue and pay a wheel tax there and work in Omaha, you pay there? So I think this is the start of people, of cities scrambling for money. And so let's not forget the taxpayer. Let's not forget who is paying this and let's make sure that we end up with them paying one time. If you work in Iowa and live in Nebraska, you're going to pay Iowa income tax, but you're going to get a credit on your Nebraska income tax for what you pay there. So if we vote down LB81, I will predict that we will be back trying to referee what happens when we have the same vehicle being charged an occupation tax...or I'm sorry, a wheel tax from many different taxing authorities. With that, I believe Senator Cornett is not on the floor. I would yield to her if she would like the time, but I do not see her, so I will just close with that. Thank you, Mr. President. [LB81]

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SENATOR GLOOR: Thank you, Senator Hadley. The Chair recognizes Senator Howard. [LB81]

SENATOR HOWARD: Thank you, Mr. President. I think there's been some, certainly valid points of view expressed out here today. And I'm going to go into another concern that I have in addition to some of those that I and others have brought up. I'm on the Education Committee and we're looking at issues of how are we going to...how are we going to use the money that we have to get the best quality of education possible in every school district, every area here in the state of Nebraska. And the problem being, we're not going to have enough money. So some areas are going to...all areas, actually, I shouldn't say some, all areas are going to feel the pinch. What that will result in is a higher property tax. There's no other way to do it. Now there was a bill discussed here, I believe it was yesterday, regarding the municipalities and whether the state has an obligation to fund or provide money from municipalities as they have for many, many years. So if that money is withheld, that's going to have to be made up somehow. That's going to have to be with higher property tax. Any of us that owns property, not only in Nebraska, but wherever this is going to go into effect, we're going to pay the bill. If we start limiting the way that cities can look at financing, shoring up these issues, everybody that owns a home is really going to be paying on the bill. Is that the right thing to do? I don't think so. I don't think we should affect home ownership or purchasing of homes or in any way penalize people who are...or want to own property in our state. But we've got to be very careful about this legislation. Is the money collected in the right way? Again, I don't know. And I may have to put in an amendment regarding toll roads. Now you all probably will laugh. That's pretty good, pretty funny. But maybe that's a more fair method. Maybe everybody that comes off the interstate should have to be diverted into a little path that takes them right to a toll booth. I think that would be real inconvenient. We'd all be standing in line or driving our cars, sitting in our cars for a long time waiting until...for our next turn to get up to that toll booth. But maybe that's more fair. Maybe that's what we should do. Maybe the argument should be, how much we would charge, what's fair to charge at a toll booth. I see in California, \$3.50 seems to be an average price. Three dollars and fifty cents whenever you enter into Omaha, downtown Omaha, I would not like to have to do that. These are things that we need to consider, local control. We're state senators, that means we represent the entire state. All of these things have to be factored in. If Senator Krist is still interested in additional time, I'd offer that to him, and I see he's going to take it. Thank you. [LB81]

SENATOR GLOOR: Thank you, Senator Howard. Senator Krist, 1:45. [LB81]

SENATOR KRIST: Thank you, Senator Howard, for your courtesy. Thank you, Mr. Speaker, or Chair. I, at this point, having had off my conversations with Senator Cornett, do believe that, again, her intention and the committee's intention is aimed at stopping the fee from being collected, in this particular case, targeted against Omaha. I still

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believe that, but I do believe that we have a fundamental tax problem. And again I will remind you, since 2004-05, we have been collecting the tax from unincorporated parts. That goes on not just in Omaha, it goes on in La Vista, and... [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR KRIST: ...all the rest of those small communities that have SIDs. I honestly believe that we have an overall tax problem that we need to address. We need to take a breath. We need to make sure that what we're fixing is truly the rudimentary problem. And I don't think it is. I still can't support it even with AM132 popping off next. If you read AM132, it gets closer. I do have two amendments that I think are appropriate and I'll come back with those amendments at a later time. At this point I would encourage further debate because this is a tax issue across the board. If you don't think you have a canine in this particular skirmish, think again. Think again. Thanks. [LB81]

SENATOR GLOOR: Thank you, Senator Krist. The Chair recognizes Senator Ken Haar. [LB81]

SENATOR HAAR: Mr. President and members of the body, once again I come...I probably use Lincoln roads a whole bunch and I don't pay any of that wheel tax and yet I cussed at those potholes last spring that were popping up all over Lincoln but I wasn't paying for them. And I think it would be fair, it would be fair if I were. I think it's a user fee. I think there should be user fees to pay for the...that user fees should pay for driving. When you drive, you pay. And I think not too far down the road and, you know, this probably won't be while I'm in the Legislature, but the technology is there that we'll all have a GPS in our car that will attach a location to every mile we drive. And so if we drive in Lincoln, we'll, you know, we'll know how many miles were driven in Lincoln and if we drive in Omaha we'll know how many miles were driven in Omaha. And so I think the ease of administration is going to change with technology fairly quickly. And we'll know exactly how many miles we drive in Nebraska and how many miles we drive in each city. And then, I guess, it's going to be up to each city to decide whether they want to apply some kind of user fee to those miles we drive. And so, again, I think talking...I really appreciate Senator Krist's arguments that this is a bigger tax policy that we have to address here. Just jerking the rug out from under Omaha, and that may not be everybody's intent, but it feels that way, it feels that way to me, without addressing this issue of who pays for the potholes in Lincoln, who pays for the potholes in Omaha. Is it fair that Senator Cook pays for those potholes in Omaha, but when I go to Omaha I don't have to worry about it? And I wish you'd get all those potholes fixed, by the way. So again, I think we ought to slow down too and look at this bigger issue, are we going to finance roads with taxes, with fees? When electric cars come in, you know, they'll pay no gas tax. How do we deal with that? And so, again, I would predict that we're...at some point in the not too distant future we're going to pay by the miles we use the roads, depending on the weight of the car and all those other kinds of things. I would

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give the rest of my time to Senator Krist, if he wishes. [LB81]

SENATOR GLOOR: Senator Krist, 2 minutes. [LB81]

SENATOR KRIST: Think about, if you will, an amendment that would actually, after the committee has its AM132 in place and we talk about what this bill actually does, think about an amendment with thoughtful consideration to the local control, to the local government that would enact legislation, quality legislation, and give them a budget cycle to react and change the way they are doing business. That's one of the amendments I'm going to come forward with, because I...on the fundamental, rudimentary problem, I think we're not addressing our overall tax issue. Do I think it is a good legislative policy to prune the limbs as needed, in Senator Gloor's way of speaking? Yeah, sometimes you can take a limb, sometimes you need to take the whole tree. And we're taking the whole tree... [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR KRIST: ...and we're putting them in a position where we are really putting them in a bad position. If we're going to enact this legislation, think about that, because I intend to come forward with that kind of an amendment. I also think that as we're considering this kind of legislation, we should talk about tax policy and we should talk specifically about taking a breath, you've heard it before, I'm going to say it again, taking a breath, standing back, looking at what we're doing, and if we need to change tax policy, let's do it. Bad time for us to be enacting this kind of legislation, in my opinion. Thank you, Mr. President. [LB81]

SENATOR GLOOR: Thank you, Senator. Senator Cook, you're recognized. [LB81]

SENATOR COOK: Thank you, Mr. President. Good morning, colleagues. Much like my colleague, Senator Burke Harr, I've been thinking about this from a number of perspectives. As you are aware, I represent Legislative District 13, which I'm proud to say is perhaps one of the most diverse districts in among the 49, and that I represent people who live on working farms, people who live in urban areas, the impacted poor, working families of all stripes. I have constituents with their own airplanes and helipads, and constituents who are disproportionately unemployed. So as I look at this, I looked at it from a number of perspectives. Representing northeast city of Omaha and Douglas County as I do, I continue to get a number of letters from constituents related to that three-mile area user fee. Is it fair? Is it not fair? Some actually do say that they recognize that they go into Florence or into downtown Omaha or access 680 or I-29 or highway 75 or highway 133 within the district to get around the city and to get to Iowa. So many of the constituents recognize the benefit although they still have some issues related to the concept of its fairness in terms of applicability. So in kind of echoing what my colleagues have said related to this discussion focusing on tax policy, I agree that

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it's probably a good time, we've had this in place since 2006, to take a deep breath and decide, do we want this tool in the toolbox? It was there to use for the three mile radius. It was there when the City Council of Omaha determined that they were going to include this in their budget. So is this the time to remove it? I believe it has been there for about 50 years. Then on a more personal level of analysis, as many of you know, I am the proud mother of a 2006 Mini Cooper. Her name is Mini Me. And she gets around very well, most of the time, on the city streets of Omaha, zipping along the grid as I do, and up and down the interstate. Well, as you might imagine, a chuckhole or a pothole for a vehicle of her stature is a little bit more impactful than it might be for that enormous truck that Senator Langemeier drives. So these are concerns that I, as my own constituent, might want to bring to the table. We want our roads to be in good repair so that the diversity of vehicles are impacted proportionately. Thirdly, and probably one of my most prevalent thoughts on this, as we go forward and in our future orientation, the Governor spoke to it, I've spoken to it, we have invested energy and remaining innovative even in harsh economic times, what are we doing to ensure that our roads and city streets in Omaha and across the state are in good condition to not only provide access to develop new businesses and to get people into their jobs and back out to their homes, wherever they may be, but also to provide a good impression for visitors? And whether that visitor is a potential executive coming in to work at the Union Pacific Railroad or someone coming in from the coast, perhaps a child that has moved away to one of the coasts and is relocating to... [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR COOK: ...the Omaha area to be in closer contact with an aging parent, we certainly don't want someone landing at Omaha Eppley Airfield in Legislative District 13 and having the experience of noticing roads in disrepair. That goes to our image nationally and internationally and Omaha and the state through its investments and ideas have made an effort to position the city of Omaha and the state as a draw internationally for business and for visitors. So I'd certainly like the body to consider that. Don't just think about me and Mini Me and her very short wheelbase, but think about us as a state, our economic development and community development ideas. And with that, Mr. President, I will yield the balance of my time, if there remains any, to Senator Council. [LB81]

SENATOR GLOOR: Senator Cook, thank you for your comments. You had no time remaining, but the Chair recognizes Senator Council. [LB81]

SENATOR COUNCIL: Thank you again, Mr. President. Again, I appreciate the comments from Senator Krist as to possible amendments. I don't think anyone, as you can be deriving from the comments whether you're for or against LB81, believes that there needs to be a thoughtful and thorough discussion of state tax policy. And, you know, I just need for us to recognize the fact that we have somehow "backdoored" our

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way into, for a moment, addressing occupation tax policy and then that being set aside, and now focusing on wheel tax or road user fee consideration. And again, if the body believes that policy with regard to the imposition of wheel taxes should be limited based upon whatever argument is made, my point remains that this body has an obligation to be fair to all of its residents when it implements any policy, and particularly as it relates to tax policy. And in this regard, I will continue to reiterate the point that nonresidents within the three-mile zoning limit of Omaha have been paying the wheel tax. It's not collected by employers so there's no issue about administration. Those numbers, the revenue generated from that tax has been included in the city of Omaha's budgets since 2006, and was included in the budget that was adopted by the city council in August of 2010, and the city has been prepared to move forward on that basis. At a minimum, I urge all of my colleagues, if you're really concerned about all of the residents of the state of Nebraska and the impact of tax policy on all the residents of the state of Nebraska, then I urge you to consider supporting an amendment that delays the operation of LB81 as amended, and delays that implementation so that cities, and in this case the only city affected is Omaha, would have an opportunity to prepare for that projected loss of revenue. That's only fair. And if the body decides that the policy shall be that nonresidents don't pay, then again that policy should be effected at a time when it does not create the kind of financial and budgetary burden that LB81, even as amended, does. And I appreciate, and appreciated the comments of my colleague, Senator Mello, in pointing out that AM14 at least goes to specifically address the issue of nonresident payment of a wheel tax. But Senator Mello's comments didn't go far enough in terms of when that becomes operative and the negative impact it would have on the city of Omaha and the taxpayers of the city of Omaha. Yes, the city of Omaha could make cuts... [LB81]

SENATOR GLOOR: One minute. [LB81]

SENATOR COUNCIL: ...amounting to \$5.9 million in their budget. But is this body willing to say to the residents of the city of Omaha, that you should have to lose services, have services reduced in order to make up a \$5.9 million budget shortfall that was based on then existing state policy and that state policy was changed after the budget was set? I think in all fairness, I think in terms of carrying out our responsibilities in a manner that is cognizant of our duty and obligation to all of the citizens, that at least until we continue to debate on this, serious consideration be given to making this as fair as possible and removing any question or doubt that may exist as to whether this bill is directed solely at the city of Omaha as opposed to addressing statewide policy. Thank you. [LB81]

SENATOR GLOOR: Thank you, Senator Council, and that was your third time speaking. Mr. Clerk. [LB81]

CLERK: Mr. President, items: Notice of hearing or notice of change of room, I should

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say, by the Appropriations Committee. It's signed by Senator Heidemann. A confirmation report from Natural Resources by Senator Langemeier. Senator McCoy would like to add his name to LB326 and Senator Mello, LB293. (Legislative Journal pages 406-407.) [LB326 LB293]

Priority motion: Senator Flood would move to adjourn the body until Monday morning, January 31, at 10:00 a.m., Mr. President.

SENATOR GLOOR: You've heard the motion to adjourn until 10:00 a.m., Monday morning. All in favor say aye. Opposed, nay. We are adjourned.