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Floor Debate
March 29, 2012

[LB235 LB239 LB387 LB670 LB711 LB715 LB731 LB750 LB751 LB751A LB799
LB806A LB806 LB814 LB817A LB820 LB821 LB824 LB825 LB825A LB830 LB833
LB834 LB842 LB845 LB858 LB867 LB870 LB872 LB882 LB901 LB905A LB905 LB907
LB916 LB924 LB928 LB933 LB950A LB950 LB959 LB962 LB963 LB970 LB983 LB985
LB993 LB993A LB998A LB1020A LB1049 LB1053A LB1053 LB1054A LB1057A
LB1057 LB1063A LB1072 LB1079A LB1079 LB1080 LB1087A LB1091A LB1091
LB1097 LB1114 LB1128 LB1134 LB1145A LB1145 LB1155 LB1158 LB1160 LB1161
LR358CA LR611 LR612 LR613]

SENATOR CARLSON PRESIDING

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

SENATOR HANSEN: (Prayer offered.)

SENATOR CARLSON: Thank you, Senator Hansen. I call to order the fifty-second day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: (Read corrections, Legislative Journal page 1207.) That's all that I have.

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

CLERK: Enrollment and Review reports LB1053A, LB1054A, LB1087A, LB1145A to Select File. Enrollment and Review also reports LB830, LB882, LB993, and LB993A as correctly engrossed. And that's all that I have, Mr. President. (Legislative Journal pages 1207-1208.) [LB1053A LB1054A LB1087A LB1145A LB830 LB882 LB993 LB993A]

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

CLERK: Mr. President, Senator Krist moves...introduces and offers LB998A. (Read title.) [LB998A]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Krist, you're recognized to open

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

Floor Debate
March 29, 2012

on LB998A. [LB998A]

SENATOR KRIST: Thank you, Mr. President. Good morning, Nebraska and colleagues. LB998A, as I stated yesterday, is essential because we want to make sure that the new agency that we have formed, the Foster Care Review Office, is funded as the Foster Care Review Board was. It simply transfers the funds across and makes sure that that transfer can be made. I ask for a green vote. Thank you. [LB998A]

SENATOR CARLSON: Thank you, Senator Krist. Members, you've heard the opening on LB998A. Are there senators wishing to speak? Seeing none, Senator Krist, you're recognized to close. [LB998A]

SENATOR KRIST: Thank you, Mr. President. [LB998A]

SENATOR CARLSON: The question is, shall LB998A be advanced? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB998A]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB998A. [LB998A]

SENATOR CARLSON: LB998A does advance. Mr. Clerk, next item. [LB998A]

CLERK: Mr. President, LB1161 was a bill originally introduced by Senator Smith. (Read title.) Introduced on January 19 of this year, referred to the Natural Resources Committee, advanced to General File. I do have committee amendments, Mr. President. (AM2381, Legislative Journal page 911.) [LB1161]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Smith, you're recognized to open on LB1161. [LB1161]

SENATOR SMITH: Thank you, Mr. President. And good morning, colleagues. Mr. President, members of the Legislature, LB1161 deals with an issue that we are all very, very familiar with, the siting of an oil pipeline in Nebraska. I have worked very closely with Senator Langemeier and the Natural Resources Committee's legal counsel to make certain that LB1161 addresses the legitimate concerns that have been raised to date and to also ensure that the bill gives our, that is, the Nebraska Department of Environmental Quality the authority and ability to move forward with an evaluation of a pipeline route. I would like to put this bill in context with what has transpired over the last year. I know we've been very busy with this session and I think just a slight review might be helpful for everyone. In November of last year, we entered into the special session with the federal government having already conducted and approved an environmental impact study that would have allowed a pipeline route to go directly across the Sandhills of Nebraska. We heard loud and clear from our citizens during that special session. We

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

Floor Debate
March 29, 2012

listened carefully and later directed our local agency, once again, the Nebraska Department of Environmental Quality, to examine other potential routes outside the Sandhills and to do so in coordination with the Department of State. With the leadership of Speaker Flood and Senator Langemeier, and with all of your support, the Legislature passed LB1 and LB4 during the special session. LB1 was intended as a long-term solution to address the fact that Nebraska had absolutely no laws in place with respect to oil pipeline siting. LB4 was passed to allow the Department of Environmental Quality to study and to evaluate potential pipeline routes on a more near-term basis. In LB4, we directed once again the Nebraska Department of Environmental Quality to enter into a memorandum of understanding with the Department of State to lay out responsibilities and schedules for the route evaluation. DEQ had nearly finalized the MOU, the memorandum of understanding, and had already hired HDR as a consultant when the federal government's actions late last year abruptly stopped the process. That takes us to where we are today. And, colleagues, I know it's been a few late nights but I'm asking you to really pay close attention because even as I came in the Chamber this morning and had a few conversations, there still seems to be a great deal of misunderstanding and miscommunication of what this bill is about and how it addresses certain issues that I think are important to all of us. So let me go through what this bill does. The advancement of this bill, and with the adoption of some amendments that will follow, has the effect of, one, extending the effective date of LB1 until after January 1, 2013, so that the Public Service Commission has sufficient time to create rules and regulations to implement LB1. This also has the effect of adding protection for Nebraska citizens regarding eminent domain by conditioning the use of eminent domain on the compliance with both LB1 and LB4. LB4 beefs up the eminent domain provisions in law so that the Governor has to approve before eminent domain proceedings can begin. That currently does not exist. It allows the compromise to stay in place in the event that federal law changes, and it does so by decoupling once again the Nebraska Department of Environmental Quality's review from the Department of State. It also has the effect of allowing Nebraska to recoup its cost for the review should the review not become part of a federal application, and I believe we heard loud and clear on that one and it's a fair resolution. And finally, it has the effect of describing explicitly what review and evaluation means, including public review, analysis of economic, social, and environmental aspects of the project by the Department of Environmental Quality. So, colleagues, I wish to once again thank Senator Langemeier for his assistance and his leadership in helping move LB1161 forward. I also want to thank members of the Natural Resources Committee for working with me to create good solutions in this legislation. Once again, colleagues, I ask that you advance LB1161 after we have the appropriate amendments listened to and discussed and debated, and I welcome any discussion we have here this morning. Thank you, Mr. President. [LB1161]

SENATOR CARLSON: Thank you, Senator Smith. As the Clerk indicated, there are amendments, committee amendments. Senator Langemeier, as Chair of the Natural Resources Committee, you're recognized to open on AM2381. [LB1161]

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

Floor Debate
March 29, 2012

SENATOR LANGEMEIER: Mr. President, members of the body, I first want to thank the Natural Resources Committee for the effort they've put into this and everyone that is on the committee and fellow senators that have input on this. We've worked on this issue a long time and we've got a sliding scale at the federal level that we're trying to keep up with. And so at this time, I'm going to conclude my opening on the Natural Resources Committee because there will be a following amendment that I have. The Natural Resources Committee amendment was something to get it out and get it on the queue. I think we have a much better amendment to follow. So at this time, I'll conclude and wait for that opportunity. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Clerk for an amendment. [LB1161]

CLERK: Mr. President, yes, first of all, with respect to the committee amendment, Senator Smith, I have AM1161 (sic), but I have a note you want to withdraw that, Senator. [LB1161]

SENATOR SMITH: I withdraw. [LB1161]

CLERK: AM1161? Or AM2401, I'm sorry. Yes, sir, excuse me, I misspoke. Thank you. [LB1161]

SENATOR CARLSON: AM2401 is withdrawn. [LB1161]

CLERK: Senator Langemeier, AM2530. (Legislative Journal page 1025.) [LB1161]

SENATOR CARLSON: Senator Langemeier, you're recognized to open on AM2530. [LB1161]

SENATOR LANGEMEIER: Mr. President, members of the body, thank you. AM2530 becomes the bill and so this is what we'll spend the day talking about. There's five components within AM2530, and I'm going to go through them and not in particular order to the way they're in the bill but just in an order I want to talk about them. The first one makes it clear that any pipeline carrier that has a federal permit application filed before the end of the year has to comply with the provisions within LB4 from the...as amended by this amendment through the special session, and that LB1, Senator Dubas' bill that was passed in special session, applies for all applicants after the first day of January 2013. And I'll get into more detail as I go on. Number two makes it clear that a pipeline carrier must be granted a route approval by the Governor pursuant to the Department of Environmental Quality's evaluations and that are authorized within this bill or have an approved application under the Major Oil Pipeline Siting Authority (sic) Act before the use of eminent domain can be used. Number three, it allows the

Floor Debate
March 29, 2012

department to conduct an evaluation of a route submitted by any pipeline carrier that will be used in a federal National Environmental Protection (sic) Act, or a NEPA pipeline application. Four, if any pipeline carrier subsequently does not file for a federal NEPA application or does not use the department's evaluation, it will be required to reimburse the state the costs of the evaluation. And in number five it requires DEQ to conduct a comprehensive analysis and submit a route allowing for public review and input. Now with that all said, I'm going to kind of go through some of the components of the bill and we're going to talk about where we are today and where this takes us, and I'm going to start off with probably the most controversial issue. Let's talk about eminent domain. Let's talk about where we sit today. Prior to special session, the eminent domain was kind of a fuzzy, fuzzy area. You know, if you read it and you interpreted that you had to have a federal permit before you use eminent domain, that was one interpretation of our eminent domain. Other interpretations out there, TransCanada even took this interpretation and started sending out letters and thought they had the right to do eminent domain immediately. And so it was pretty fuzzy. Well, we went into special session. With LB4 we didn't address eminent domain. It stayed just like it was. But in LB1 we changed eminent domain in Nebraska and the current law states, if we don't do anything here today, the current law, because of LB1, states that to use eminent domain you have to have a federal permit. That was passed in LB1. So what this says is to keep true, the goal of this whole thing was to keep true with what we've done in special session. We've created LB4 for anything...for all applicants for pipelines prior to a date. And so we've got to extend that date to our current circumstances. And so within the eminent domain component in here, it removes that back to a level where you still would have to have a major oil pipeline permit on one hand, if you went through LB1 or you have to have the Governor sign off on a pipeline route. So if you obtain one or the other, you'd have the opportunity to use eminent domain. So we had to back that up so we're still more restrictive than we were in special session through LB4. Second component in this bill talks about the Major Oil Pipeline Siting Act. This bill, this amendment delays that, the start of LB1, to January 1, 2013. Now it also talks about in here the decoupling from the ability through LB4 to get a MOU or a memorandum of understanding. And right now I'm handing out a letter that came from DEQ at my request. I asked them to lay out what they're going to do. Because in LB4 we talked about that they had to do a NEPA study, and so within a NEPA study there's kind of a...it's not a one, two, three type of a study, but it kind of gives you guidelines of what you're going to do and it talks about the ability to have public input. We all wanted public input. Our citizens of Nebraska want to have public input. And so when we talk about that, I asked for that letter to say what are you going to do and how are you going to do it. And so if you read that letter, they talk about how, when they get an application for this new route or any route that could come in before the end of the year, they're going to have...first of all they're going to go out and have public hearings. They're going to go out and get public comment session, have people give their ability to comment on the route, and they're going to take that all back and they're going to try and deal with glaring things that come out that people, the citizens of Nebraska, as our watchful eye, look over that route and

Floor Debate
March 29, 2012

say, oh, you can't go there, you can't go there because of this and why, as they evaluate that. And once they ask the pipe to be rerouted around problematic things or if there's no problematic things, then the next step is they ask for the more detailed study on that exact pipeline. Once they do that more exact study on that pipeline and the results come out, then they're going to go back out and continue those comment sessions to allow the public to weigh in. And so this all is going to happen in a NEPA-like process before this gets sent over, approved by DEQ, I shouldn't say approved but put together by DEQ and sent over to the Governor for their processing. And so that's the component that talks about a NEPA study. The reimbursement: In the start of the special session there was a lot of concern out there as to who is going to get hired to do any kind of evaluation, who is DEQ going to partner with. Well, we made the commitment in special session by this body is the state of Nebraska was going to pay up to \$2 million to do this. I get the question all the time: Where do we stand today? Well, we spent about \$100,000 and DEQ is sitting still. They're not doing anything until we take some action. And so we were concerned that if this pipeline or any pipeline that would be applied for would get denied at the federal level again or something would change there again, what about our investment as Nebraskans? And so that's why we put the component in there to recoup our \$2 million if nothing does happen, and I think that's an important component of it. So with that, I've kind of given you a brief outline of what we're doing with this amendment and I'm more than happy to take any questions that anybody has. Thank you, Mr. President. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. Members, you've heard the opening on AM2530. The floor is now open for debate. (Doctor of the day introduced.) Senators wishing to speak include Senator Schilz, Dubas, Avery, Burke Harr, and Ken Haar. Senator Schilz, you're recognized. [LB1161]

SENATOR SCHILZ: Thank you, Mr. President. Good morning, members of the body. I'd like to thank Senator Smith for introducing LB1161, Senator Langemeier for all of his work on this, and obviously the Natural Resources Committee and the whole Legislature through the issues that we've dealt with on pipelines. I think that Senator Langemeier's comments and his amendment make this a much better bill. I think it shores things up. I think it gives the state of Nebraska and the people of the state of Nebraska a very definable process that everyone can look at and say, okay, this is how it's going to happen, this is where I have the opportunity for input. And I think Senator Langemeier handed out a letter that he received from Mike Linder from the DEQ and in that letter, if you'll read it, it will basically outline everything that's going to happen in the process that he perceives there. And the one thing that this...one thing that we do here is we make sure that this is available to any pipeline that would want to come in. You know, we want to make sure that we have a process in place, both short term, as we mentioned before, and long term going forward. And it takes a while for rules and regs to be drawn up and the Public Service Commission needs to have that time so that they can put the proper things in place so that they do it correctly from the beginning, so they

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

Floor Debate
March 29, 2012

can plan it out, put it in place and execute what they have to do for the protection of the people of the state of Nebraska. The process that DEQ lines out will have multiple public input sessions, and even after that they're setting up a Web site. There will be a virtual library where anyone can comment on what's happening there. These meetings have to be held in the affected areas where a pipeline may be routed. And they'll work with other groups, other agencies in the state of Nebraska, to make sure and to understand exactly what issues there are in any of the proposed routing areas. I think this is the right thing to do for the state of Nebraska. I think it's the right thing to do for our nation. And I believe that this gives anyone the same opportunities to bring a pipeline to and through the state of Nebraska. So it's important that Nebraska keep its word and I believe, with LB1161 and the following two amendments, both the Natural Resources Committee amendment as well as Senator Langemeier's amendment, keeps that in place, keeps the integrity of the state of Nebraska and this Legislature and helps this whole process move forward in a much more transparent fashion than had happened before. Thank you very much. [LB1161]

SENATOR CARLSON: Thank you, Senator Schilz. Senator Dubas, you're recognized. [LB1161]

SENATOR DUBAS: Thank you very much, Mr. President. Good morning, colleagues. None of us are a stranger to this issue and I for sure am no stranger to this issue. TransCanada pipeline project has been on my radar screen for a long time. I began way back, three-plus years ago, attending local meetings where they presented their plan and allowed for questions, and they always, always assured the people in attendance that this would be one of the safest pipelines ever built and that this is a project that requires a federal permit, so states really don't have any jurisdiction. And that was a point that I heard repeated many, many times, and unfortunately we accepted that as fact. Then the BP oil spill happened and the public's attention was elevated and the voices of our Sandhills ranchers began to be heard. I remember another meeting I was at with TransCanada representatives and my comments to them were, fair or not, you have a major public relations problem on your hands because of what happened in the Gulf; do not underestimate the tenacity of our farmers and ranchers because they know firsthand the harsh realities of living and working in the Sandhills. They will not be deterred. I don't believe they took that warning seriously, as they continued to lobby against any attempts to provide a statewide review process. Again, we were continually told states have no authority. So Senator Sullivan and I conducted an interim study in 2010 to really try to find out what authority do we or don't we have, and it became very clear to us or to me, I guess I'll speak for myself, that we had far more authority than we had ever been led to believe. Landowner anxiety over the threatened use of eminent domain motivated me to continue to be involved with this issue. I have been on the record, I am not opposed to this pipeline. All I ever wanted was for a state agency to have the ability to look out for the well-being of our citizens and our state. And I do not believe that any company should be able to come into our state and threaten the use of

Floor Debate
March 29, 2012

eminent domain without any permits in place or without any input or approval from our state, and perhaps more cooperation from TransCanada early on in this process would have prevented the turmoil that we're in today. Again, every attempt to introduce legislation and have it advanced for full debate was effectively lobbied against. We were lobbied very early on in the stage of the game to become uncertain about what our rights really were. TransCanada is not a victim here, unless one would say they're a victim of their own devices. So here we are today and the games continue, and to be quite honest I am very angry that all of the hard work that we put into before and during the special session has been thrown under the bus by political games and lobby efforts being played out in Washington, D.C. During the special session, I challenged my fellow committee members by stating that this pipeline issue has been placed squarely on the shoulders of the Legislature and it is time for us to own it and work diligently to craft a solution that will serve our citizens today and into the future, and we did accept that challenge and we found a workable... [LB1161]

SENATOR CARLSON: One minute. [LB1161]

SENATOR DUBAS: ...solution, thank you, Mr. President, and we were ready to move forward with finding an alternative route and present those findings to the State Department. And now, because of the self-absorbed political posturing of our federal government, we are caught in the cross hairs again. How do we honor the work and commitment we made in November? How do we ensure our citizens have the ability to be a part of any siting process and feel a level of confidence that the best interests of our citizens and our state will be a priority? That's why we're here today. I did not vote to advance this bill from committee because in its original form I felt it was far too vague and open-ended. The amendment is an improvement. My number one concern is that our citizens have the opportunity for a public review of any new route and to voice their questions and concerns on any proposed new route, and that we follow a NEPA process. Director Linder has.. [LB1161]

SENATOR CARLSON: Time. [LB1161]

SENATOR DUBAS: Thank you. [LB1161]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Avery, you're recognized. [LB1161]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. Many of you know that I raised the concerns during the special session about eminent domain and I was persuaded not to pursue an amendment to LB1 or LB4 at that time. I brought before the Judiciary Committee this session LB1134, which was a comprehensive revision of our eminent domain laws to provide greater protection for our landowners. That bill is still in committee because of concerns that were raised during the hearing

Floor Debate
March 29, 2012

about some various provisions as it related to public power districts and some of the activities and procedures of cities. So I have requested that we conduct an interim study. And all of this, of course, took place before this amendment was drafted and it was filed after the referencing. So the Judiciary Committee did not get a chance to weigh in on this. I have been looking at Section 1 of the amendment and I am not so sure that it is clear, and I would like to know if Senator Langemeier would answer a question or two about Section 1. [LB1161 LB1134]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB1161]

SENATOR LANGEMEIER: I will. [LB1161]

SENATOR AVERY: Thank you, Senator Langemeier. I need to have you help me understand exactly how eminent domain authority is to be exercised here. It looks to me as if eminent domain authority is given to one company building a pipeline. Is it the case that eminent domain authority can be granted to the pipeline company only if they...let me put this differently. Can they be given eminent domain authority with the approval of the Governor of the route only? [LB1161]

SENATOR LANGEMEIER: Well, let me clarify your first statement there, and you talked about one company. This eminent domain authority could be given to anybody that applies for a pipeline application before the end of the year, so it's not one company. It could be anybody that applies. Now to get it you have two options. You either go through the process, through DEQ, and you get the Governor to sign off on the route. Once the Governor signs off on the route, yes, you'd have that authority, any pipeline that applied. Your other option is to go get it through the pipeline Major Pipeline Siting Act, which there's not a process to go through that so the reality is you can't go through that. But you have those two options. [LB1161]

SENATOR AVERY: So eminent domain authority can be granted if the Governor approves the route. [LB1161]

SENATOR LANGEMEIER: Yes. [LB1161]

SENATOR AVERY: And that...would that bypass then the Section 3 of LB4? [LB1161]

SENATOR LANGEMEIER: I don't have that in front of me. [LB1161]

SENATOR AVERY: Well,... [LB1161]

SENATOR LANGEMEIER: I'd have to get it. [LB1161]

SENATOR AVERY: But in your amendment though, on page 2, in line 2, you say that

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

Floor Debate
March 29, 2012

the company shall comply with Section 3, LB4 of the special session and receive approval of the Governor for the route, and then you say or, beginning in January 1, 2013, shall apply for and receive, etcetera. It seems to me that... [LB1161]

SENATOR CARLSON: One minute. [LB1161]

SENATOR AVERY: ...that the...a company could actually have, as you just indicated, two ways to have...to get eminent domain authority. They go through the DEQ permitting process or review process or they get approval of the route from the Governor, right? [LB1161]

SENATOR LANGEMEIER: No. There is two processes but those are not correct. You have to apply to DEQ, go through the process, as the letter lays out from the Department of Environmental Quality. They will go through their evaluation of a route. Then they will have to submit that to the Governor. Then the Governor would sign off, and that's how you get the approval. You can't just call the Governor today and say, hey, we want to put a pipeline and we want to put it this way, would you sign off on it and we're going to go do eminent domain. [LB1161]

SENATOR AVERY: So the DEQ process would have to first take place. [LB1161]

SENATOR LANGEMEIER: Correct. [LB1161]

SENATOR AVERY: The Governor would have to approve a route, right? [LB1161]

SENATOR LANGEMEIER: Right, that's how you get it to the Governor. You have to go through...you have to apply to DEQ... [LB1161]

SENATOR CARLSON: Time. Thank you, Senator Avery and Senator Langemeier. Senator Burke Harr, you're recognized. [LB1161]

SENATOR HARR: Thank you, Mr. President and members of the Legislature. And I'm going to follow up on Senator Avery a little bit and what Senator Dubas said. It is too bad we're here today. We spent a lot of time and personal sacrifice to come up with a compromise to work a deal the Nebraska way and it was destroyed by D.C. with an artificial time line, and I think that's unfortunate that we're back here today. But we are where we are, so let's move forward. Eminent domain, I want to appreciate the fact that...well, the hard work, first of all, that the Natural Resources Committee has done on this, especially Senators Langemeier and Smith. And Senator Langemeier's reference earlier that eminent domain is probably the most controversial, and since I'm on Judiciary and we looked at that, I do have some questions about eminent domain and I wondered if Senator Langemeier would yield to some questions. [LB1161]

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

Floor Debate
March 29, 2012

SENATOR CARLSON: Senator Langemeier, will you yield? [LB1161]

SENATOR LANGEMEIER: More than happy to. [LB1161]

SENATOR HARR: Thank you, Senator Langemeier. And eminent domain is obviously when an individual can act as...or a company can act as the state and take land from private landowners, which I think we need to be judicious to allow that power, especially to a private company. So I just want to ask you a couple questions. If a private company is given the power of eminent domain, so in my hypothetical let's say Keystone, and let's say the route is approved by the Governor, is their power of eminent domain limited merely to the pipeline route that's been approved or can they use the power of eminent domain wherever they wish? [LB1161]

SENATOR LANGEMEIER: No, the power of eminent domain is...and the reason you give eminent domain is to create a route. So it does not go outside that route that is approved by the Governor nor would it need to. [LB1161]

SENATOR HARR: Good. And that's your intent, right? [LB1161]

SENATOR LANGEMEIER: Yes. [LB1161]

SENATOR HARR: Okay. And then my next question would be, and I think it's pretty logical, I mean I think the answer from your earlier statement is logical but I just want to clarify for the record, how long does that power of eminent domain remain with Keystone pipeline? Meaning, once they have acquired all the land along the route, does that terminate their power of eminent domain or does it remain out there for eternity? If they choose to do another route, would they have to go and get eminent domain powers again? [LB1161]

SENATOR LANGEMEIER: Any pipeline that applies goes through the DEQ process, has a route approved by the Governor, would have the right to use eminent domain on that route for their purpose of doing their pipeline. Are there expiration dates in the use of eminent domain? No, not on any eminent domain, but the reality of it is if something happens where they can't physically put the pipeline down that route, they're not going to expend the money in going through eminent domain to try and gain ground that they can't use. They currently own a bunch of ground in Nebraska that they won't be able to use through the Sandhills. I mean that just practically doesn't make sense. So by default it terminates because the need for it is gone. [LB1161]

SENATOR HARR: And I appreciate that. Okay. And to clarify, they don't own the land, they own a right to the land. [LB1161]

SENATOR LANGEMEIER: They own an easement, right. [LB1161]

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

Floor Debate
March 29, 2012

SENATOR HARR: Easement, correct. [LB1161]

SENATOR LANGEMEIER: Correct. [LB1161]

SENATOR HARR: Okay. Thank you. [LB1161]

SENATOR LANGEMEIER: Duly noted. [LB1161]

SENATOR HARR: And I guess that's what I was concerned about is...and I think you've answered my question, is my concern is...was you get the power of eminent domain for a pipeline and that pipeline is completed and now you want to build a second or a third pipeline and my concern was did that...did you still have a remainder power of eminent domain for that new area. [LB1161]

SENATOR CARLSON: One minute. [LB1161]

SENATOR HARR: Thank you, Mr. President, and I think you answered that question and I believe the answer is, no, the power of eminent domain is limited to that pipeline route and not to wherever they wish. [LB1161]

SENATOR LANGEMEIER: Right. [LB1161]

SENATOR HARR: So with that, I think this is a good piece of legislation. It continues the agreement we worked on last November that, unfortunately, for external reasons was not able to go forward. I appreciate and I think...well, I will vote, unless I hear otherwise, green on this. Thank you. [LB1161]

SENATOR CARLSON: Thank you, Senator Harr and Senator Langemeier. Senator Ken Haar, you're recognized. [LB1161]

SENATOR HAAR: Mr. President, members of the body, just as we're all tired here and it occurred to me that probably the biggest job creator in the last six months has been, well, before that, the Keystone pipeline, the lobbyists, the media coverage, all the money that's been spent. So here we go again. However, I must say that we've got to remember that without the special session construction would right now be going on in the Sandhills over the Ogallala aquifer where it's the deepest, so I think no matter what happens today Nebraska is a winner. We are now in the process of approving routes for crude oil pipelines. Like South Dakota, like Montana, like North Dakota, we now have a place at the table. And I would imagine that Kansas and Oklahoma and Texas south of us wish they had similar processes. Just as sort of a broad overview, if LB1161 passes I think it will be settled in court, and I'll go through that in a little while. If not, we have LB1 in place for any pipeline to use. To me, it sort of boils down to this. There's kind of this

Floor Debate
March 29, 2012

argument that we owe it to TransCanada to keep giving them that process that we created through LB4, that we owe it to TransCanada, and I am going to vote against LB1161 because I think TransCanada...well, there's two ways to interpret it. One is that TransCanada is a victim of an unruly Congress or another is that they're a victim of their own machinations. And I'd just like to point out to you that on December 2, 2011, this was right after the special session, guess what? TransCanada was in Washington testifying to the House Committee on Energy and Commerce, Subcommittee on Energy and Power saying, we got to speed up this pipeline approval process. Well, they got it put into a bill forcing the President to make a decision. He said no, they lost, and now they come back to us and say, oh, wouldn't you just extend this one more year for us. Well, I think there are scenarios in which a year from now we might hear, wouldn't you extend this one more year for us. Anyway, I believe that TransCanada is the victim of their own machinations. I believe that LB1 is the law that should be applied in this case. I do believe there are some problems around the eminent domain process and I would like to ask a question of Senator Langemeier, if I could. [LB1161]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB1161]

SENATOR LANGEMEIER: Yes. [LB1161]

SENATOR HAAR: Okay. Around this use of eminent domain, and I'm going to come back to the issue of unconstitutional in a minute, but around eminent domain and the \$2 million, let's say, for example, another pipeline, like Enbridge, decided to build this pipeline, and we're committed and they came to Nebraska, they just came to Nebraska and asked for a permit. Then under this, under LB1161,... [LB1161]

SENATOR CARLSON: One minute. [LB1161]

SENATOR HAAR: Thank you,...under LB1161 NDEQ would be required to study that route as well. Is that correct? [LB1161]

SENATOR LANGEMEIER: That is not correct. [LB1161]

SENATOR HAAR: Okay. Could you tell me how that... [LB1161]

SENATOR LANGEMEIER: It's correct in...well, it's kind of part correct and kind of not correct. Can they come in and apply for one? Yes, before the end of the year. And would they be eligible to go through this? Yes. The part that is negotiable here is DEQ does not have to do it. It is up to the Governor and DEQ whether they're going to voluntarily enter in this arrangement. So, yes, they could apply. Is DEQ required to do it? No, they're not. [LB1161]

SENATOR HAAR: Okay, so if another organization came...if TransCanada applies,

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

Floor Debate
March 29, 2012

we're going to do it. I think that's a done deal. And if another one would come and we said no, couldn't they sue us for that for special treatment? [LB1161]

SENATOR LANGEMEIER: No, it's clearly within the bill that this is a system... [LB1161]

SENATOR CARLSON: Time. [LB1161]

SENATOR HAAR: Okay. Thank you. [LB1161]

SENATOR CARLSON: Thank you, Senator Haar and Senator Langemeier. Senators wishing to speak include Sullivan and Avery. Senator Sullivan, you're recognized. [LB1161]

SENATOR SULLIVAN: Thank you, Mr. President. And good morning, colleagues. I wonder if Senator Langemeier would yield for some questions. [LB1161]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB1161]

SENATOR LANGEMEIER: You bet. [LB1161]

SENATOR SULLIVAN: Thank you. Admittedly, although it sounds like we've been dealing with pipeline issues for a long, long time, still a lot of questions remain. And is it fair to say that in this legislation we're really dealing with both LB1 and LB4, right? [LB1161]

SENATOR LANGEMEIER: Yes, we are. [LB1161]

SENATOR SULLIVAN: Okay. And the application that would be received for a pipeline before the end of the year will deal with the features of LB4. Is that right? [LB1161]

SENATOR LANGEMEIER: Correct. [LB1161]

SENATOR SULLIVAN: And then if it comes after the end of the year it's LB1. [LB1161]

SENATOR LANGEMEIER: Correct. [LB1161]

SENATOR SULLIVAN: I know we've had lots of questions relative to eminent domain but again clarify for me that with LB1161 and we're dealing with the features of LB4, it requires not only the Governor's sign-off but also the approval of a permit or not for eminent domain to go forward? [LB1161]

SENATOR LANGEMEIER: No, there's two components. You have to go and apply to DEQ. DEQ has to voluntarily do the study. And once the study is completed, then that

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

Floor Debate
March 29, 2012

finished product gets given to the Governor, after all the public hearings and the public comments, both prestudy and poststudy, as indicated in Mr. Linder's letter, and then the Governor then has the decision to be made in 30 days. And once that's made then they would...that would be the trigger that would give them the right to use eminent domain. [LB1161]

SENATOR SULLIVAN: Under LB1161. [LB1161]

SENATOR LANGEMEIER: Correct. [LB1161]

SENATOR SULLIVAN: Now fast-forward to another application after the first of the year, so it doesn't have anything to do with LB1161. [LB1161]

SENATOR LANGEMEIER: Okay. [LB1161]

SENATOR SULLIVAN: Then we would be operating under the guidelines of LB4, right? [LB1161]

SENATOR LANGEMEIER: After January 1, 2013? [LB1161]

SENATOR SULLIVAN: Uh-huh. [LB1161]

SENATOR LANGEMEIER: No, your only option at that point is to apply to the Public Service Commission. Public Service Commission... [LB1161]

SENATOR SULLIVAN: Right. [LB1161]

SENATOR LANGEMEIER: ...would go through their process. They would grant a permit based on science... [LB1161]

SENATOR SULLIVAN: Uh-huh. [LB1161]

SENATOR LANGEMEIER: ...and that could be anywhere in the state of Nebraska in LB1. [LB1161]

SENATOR SULLIVAN: Okay. Let's get back then to, as you said, you passed out the letter from DEQ and I haven't had a chance to look at it really carefully, but they right now would receive the proposed route from the pipeline company under scrutiny and then they would have public hearings on that. Is that right? [LB1161]

SENATOR LANGEMEIER: Correct. [LB1161]

SENATOR SULLIVAN: And then they would go back and do more in-depth work and

Floor Debate
March 29, 2012

come out with their suggested suggestions or approval and have additional public hearings? [LB1161]

SENATOR LANGEMEIER: What will happen is the pipeline company will offer a route to DEQ. DEQ will then...and I would guess that that route is going to be somewhat vague that says this is the way we're going to go, we're not going through this quarter section but we're going through this mile in a preliminary route. DEQ, based on their letter, is going to go out and have public comment sessions so people that are in that area can say, you know, here's a wetland you need to think about, here's a cemetery you need to think about, here's something out there, and that could be anything under the spectrum of the sun. And then DEQ will take that information back and they'll evaluate that further, and then if they seem to say it needs to move one way or the other to get past something that they think is a problem, and once they have instructed the pipeline company of that, then they have hired HDR to come in... [LB1161]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB1161]

SENATOR LANGEMEIER: ...and evaluate that in more detail to get down to the smaller issues, whether there are endangered species, there are pollution issues and that. So then that's the second component of it. And then from there then they go back out and have a public hearing, public comment, as it says in the letter, public comment session to allow people to weigh in on the more formal route. [LB1161]

SENATOR SULLIVAN: And we know then, because at this point DEQ issued that topographical map that shows where in fact the Sandhills are located, that whatever route comes forward for review will not include going over the Sandhills. Is that correct? [LB1161]

SENATOR LANGEMEIER: Through this process. That is not the case through the LB1 process in any way, but through this process they've agreed to honor that they will not provide us a route to consider that has that portion as deemed by DEQ in their earlier suggestion of what the Sandhills are, won't be through them. [LB1161]

SENATOR GLOOR: Time, Senators. [LB1161]

SENATOR SULLIVAN: Thank you. [LB1161]

SENATOR GLOOR: Thank you, Senator Sullivan and Senator Langemeier. Treats currently being handed out in the Chamber are being done to celebrate Senator Krist's 39th birthday today. Happy birthday, Senator Krist. Chair recognizes Senator Avery. [LB1161]

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

Floor Debate
March 29, 2012

SENATOR AVERY: Thank you, Mr. President. I wonder if Senator Langemeier would once again yield to some questions. [LB1161]

SENATOR GLOOR: Senator Langemeier, would you yield? [LB1161]

SENATOR LANGEMEIER: Yes, I would. [LB1161]

SENATOR AVERY: Thank you, Senator Langemeier. Returning to eminent domain, we didn't really get very far on that my last time on the mike, is there any language anywhere in your amendment that says that the eminent domain authority is limited to the property along the route approved by the Governor or is it possible that eminent domain authority might exist in perpetuity and could be applied to a different route? [LB1161]

SENATOR LANGEMEIER: You know, what...is there exact in this bill? No, but the reality of it is the Department of Roads that use eminent domain on many occasions has to go through the process every time they want to build a road. It will be given with the idea the Governor has approved a route, you have the right to use eminent domain on that route. [LB1161]

SENATOR AVERY: And so if that route should for some reason become undesirable to the company, the eminent domain authority would not transfer to another route. [LB1161]

SENATOR LANGEMEIER: Then they got to start over. [LB1161]

SENATOR AVERY: Okay. Let me refer you also to page 4 on your amendment, starting with line 24. This is the repayment clause. [LB1161]

SENATOR LANGEMEIER: Yeah. [LB1161]

SENATOR AVERY: In the event that the company chooses not to apply for a federal permit or chooses not to use the DEQ-approved route, do they do lose then eminent domain authority completely or that authority would still apply to that route? [LB1161]

SENATOR LANGEMEIER: If they do not choose to use it and they don't...and they have to pay the \$2 million or whatever is spent back to Nebraska, it would be my understanding they would not have the right to use eminent domain. [LB1161]

SENATOR AVERY: What about easements? Can the company transfer easements? Can they sell these easements or these are unique to the route and to the company? [LB1161]

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

Floor Debate
March 29, 2012

SENATOR LANGEMEIER: Once you have an easement, it's your easement. That goes for anything in Nebraska. Once you have an easement, it's your ability to transfer that easement at any time. [LB1161]

SENATOR AVERY: And you... [LB1161]

SENATOR LANGEMEIER: That's long after the eminent domain issue. [LB1161]

SENATOR AVERY: And you own the easement in perpetuity or at least under the terms of the...you could have a time limit on an easement or not? [LB1161]

SENATOR LANGEMEIER: No. [LB1161]

SENATOR AVERY: Easements are in perpetuity. [LB1161]

SENATOR LANGEMEIER: Easements are...well, you can get a temporary easement. That's all negotiated with the individual that you're getting the easement from. You can get...for example, in a pipeline easement, they'll take an easement for where the pipe permanently lies. They'll also take a temporary easement which is a larger area so they can take the topsoil off and set it to a side while they dig. And then when they put it back then that temporary easement goes away. [LB1161]

SENATOR AVERY: All right. Thank you, Senator Langemeier. I'm not trying to harass you on this. It's just that I think that eminent domain authority is extremely important and we have to be very, very careful how we structure our laws that govern the use of condemnation. Because essentially what we're doing with eminent domain is that we are transferring the sovereignty of the state of Nebraska into the hands of a company, in this case a private company, and they can then act as if they are sovereign, and that is a very, very significant transfer of authority. We have to be very, very careful and very clear in our law as to how we do that. My preference would be... [LB1161]

SENATOR GLOOR: One minute. [LB1161]

SENATOR AVERY: ...that we debate a bill, separate bill, on eminent domain. I wish we could have done that this session. I hope that we'll be able to do it next session and I intend to work on that. Thank you, Senator Langemeier. You want to make a comment? Go ahead, please. [LB1161]

SENATOR LANGEMEIER: Can I? [LB1161]

SENATOR GLOOR: Please. [LB1161]

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

Floor Debate
March 29, 2012

SENATOR LANGEMEIER: Senator Avery, I agree. You know, the eminent domain portion of this is something we've struggled with for a long time. This is nothing that we are creating. We didn't create eminent domain through LB1. We didn't create it through LB4. We didn't create it through this amendment. It's been on our books for years and years and years and years and years and years. And so what we're trying to do is figure out how to make it best work for Nebraskans and how to make it work, best work, for a system that just works. And... [LB1161]

SENATOR GLOOR: Time, Senators. [LB1161]

SENATOR LANGEMEIER: Thank you. [LB1161]

SENATOR GLOOR: Thank you, Senator Avery and Senator Langemeier. Senator Carlson, you are recognized. [LB1161]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I want to start by thanking Senator Smith for bringing LB1161 forth and thank Senator Langemeier and the Natural Resources Committee and Laurie Lage, our committee counsel, for the hard work that was put into this, as well as the work that was done in the special session. I also want to thank the public because they are the second house. And I can look up in the balcony this morning and I see people that I recognize from being at various hearings that we've had and they've registered their concerns. I respect their concerns. I'm not always in agreement but that's part of our process and it is very, very important that the people remain the second house and that they step forward, even sometimes when it's uncomfortable, and express their views on policies that we are in the process of determining. But I've thought about defining what I believe are five different populations that have an interest in what's happening with LB1161. I think there's a population of people that want the pipeline, that feel strongly about wanting the pipeline, that believe that the pipeline does not present a serious threat to the aquifer. This population wants further development of fossil fuels because they want reasonable energy rates for the citizens of Nebraska, and this population of people wants all options open in the future for pipelines because of security to Nebraska and because of national security. Now there's a second population of people that pretty much agrees with the first population except they don't want a pipeline through the Ogallala aquifer. Everything else that I mentioned they're okay with. And I think I'm right on this statement that every single pipeline in Nebraska goes through an aquifer. Every pipeline that would be built in the future will go through an aquifer. Every pipeline in Nebraska goes under a river. Is there a risk to that? Yes. But we can't go through life with zero risk, and we assess the risk and we try and manage it to the best of our ability, and I think that's what this process is all about. There's a third population, and I respect their position. They don't want a pipeline anytime, just don't want it. There's a fourth population. They not only don't want a pipeline but they don't want further development of fossil fuels. They're willing to accept higher energy rates. And there's a sixth population that I

Floor Debate
March 29, 2012

believe exists. They don't want pipelines, they don't want further development of fossil fuels, and they really don't mind fossil fuel rates going much higher so that wind and solar become more economical. And I think that takes care of most of the people in the state of Nebraska that fit into one of these populations. I want us in the United States and in Nebraska to be energy independent. I want us to develop our own fossil fuels. When we buy,... [LB1161]

SENATOR GLOOR: One minute. [LB1161]

SENATOR CARLSON: ...I'd like to buy from a friendly neighbor rather than a country that doesn't like us. I'd like to see us leave options open for national security in future years. And I want Nebraska to stay in a competitive position on energy rates for our citizens in future years. I do support LB1161 and the underlying amendments, and I would ask the body to do the same. Thank you. [LB1161]

SENATOR GLOOR: Thank you, Senator Carlson. Senators wishing to be recognized: Dubas, Ken Haar, Krist, Louden, and Sullivan. Senator Dubas, you are recognized. [LB1161]

SENATOR DUBAS: Thank you. Thank you very much, Mr. President. You know, this is a good discussion. I think there's appropriate questions being asked, but it can get a little confusing as we're talking about different things and especially when we're talking about eminent domain easements, those types of things that on a daily basis very few of us, if any, deal with. I just want to make some clarifying points about some of the questions and comments that have been made. LB1, the Pipeline Siting Act, doesn't allow eminent domain after federal permits are issued. Eminent domain is allowed after the Public Service Commission approves them as a common carrier, and that's a process that the Public Service Commission is very familiar with. With all the pipelines that come through our state, they have to be approved as a common carrier. So that's the process that's outlined in LB1 that any applicant would go through that approval process to receive that common carrier designation status. So it's not contingent upon the federal permits. It's contingent upon what the Public Service Commission decides, yes or no, as far as being a common carrier. And there's been reference to a NEPA application. There is no application to NEPA. NEPA is the procedure or the process that you go through to evaluate the environmental impact. I think the acronym, and I'm probably going to forget it again and I just asked, it's the National Environmental Policy Act. So again, that's not a permit you're seeking. It's a part of the permit process and how the proposed route is being evaluated. There is public input required along the route. That's in LB1. What we're talking about today talks about providing opportunities for a review and comment, and if you haven't read Director Linder's letter yet I invite you to do so because he's laid out very specifically the procedures that would be followed with DEQ in allowing for public comment. And as I said my first time at the mike, to me, this is probably one of the most...one of the most critical components of what we're

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

Floor Debate
March 29, 2012

doing is making sure that we give the public that opportunity for review, evaluation, and comment. And so the director has laid out what he would do by immediately making any proposed route available for inspection on their Web site. They would hold a series of three to five public information sessions where they would present that information. The public would be able to examine the route. Then after those sessions are completed, DEQ would give that information back to the applicant and then they would finalize the alternate route that they want DEQ to evaluate. Then the applicant would move to a more in-depth, on-the-ground definition of the proposed route, and then DEQ and its contractor would evaluate and prepare the draft supplemental environmental impact statement, and that's where the NEPA criteria comes into play. And through that there would be some required public hearings. After the completion of that draft statement, the document is made available for the public. I guess I got ahead of myself a little bit. That's when the public would be able to make comments on that draft document. And then they would go back and prepare the final supplemental environmental impact statement and present that to the Governor. This is a process that I've been told and it's stated in this letter that would take seven to eight months, probably a similar time frame. When I asked the Public Service Commission, how long would it take you to complete an application, that was the time frame that they outlined that usually happens with other types of pipeline applications. Then it should be noted that the two solicited comment periods... [LB1161]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: One minute. [LB1161]

SENATOR DUBAS: ...with meetings would not be the only opportunity for public comment. So there's going to be many, many opportunities for the public to be engaged in this process, which again I think is so critical. And then when we're talking about eminent domain, eminent domain is that one-time authority for taking. It's for a very specific project. Easements are the contractual arrangements, so if you're doing what you should do and hiring a competent attorney, you are making sure that every base is covered through your contract with the easement so that your particular property is protected and you aren't giving up anything that you shouldn't be giving up. So I think those are just points of clarification that needed to be made. I hope it's been helpful. I know, as I said, it's a little bit... [LB1161]

SENATOR CARLSON: Time. [LB1161]

SENATOR DUBAS: ...confusing as to what we're doing. Thank you. [LB1161]

SENATOR CARLSON: Thank you, Senator Dubas. (Visitors introduced.) Continuing with debate, Senator Ken Haar, you're recognized. [LB1161]

Floor Debate
March 29, 2012

SENATOR HAAR: Mr. President, members of the body, again, I rise in opposition to LB1161, remembering that whatever happens we win because Nebraska is now in the process. We have a place at the table. Before this, an important lesson I learned is that often big companies and the federal government have no concept of what's good for Nebraska. The thing...right now LB1 is law in Nebraska. It's a process for pipelines and I think it's a very good law. And TransCanada, because of their own machinations, going to Congress and pushing the issue and they lost, now they come back to us and say, oh, but wait a minute, wait a minute, we want you to...you have an obligation, we want you to continue with what was going on before. Without the intervention of Congress forcing the President to make a decision, right now the process would be going on. But they pushed, they lost, and now we're to come back and give them special compensation. I think this will be settled in the courts. We had a prominent lawyer, that I respect a lot, did an analysis and I'd like to read you some of that. I believe it's unconstitutional, that it's special legislation and will be challenged in court. The hearing for LB1161 was transcribed. Upon examination, it appears that there was a strong consensus among supporters that only the TransCanada application was likely to receive the benefits of the bill. Senator Smith being questioned by Senator Haar said, "but it would appear to me unlikely that another pipeline from scratch could take advantage of this," unlikely, unlikely. And then Mr. Robert Jones, an officer of TransCanada, said this. Senator Haar asked about the possibility, for example, of the Enbridge company proposing to come through Nebraska and claiming rights under LB1161, quote, this from Mr. Jones, couldn't they then be treated in the same way...I'm sorry, this is my question: Couldn't they then be treated in the same way not only by DEQ but Nebraska taxpayers paying for the study? Mr. Jones responded to the effect that realistically that would not happen. Quote, "I think...first of all, let's look at the business aspects. Is there reality of another pipeline ready to apply across for a route in Nebraska? And the answer is no." And then Mr. Lee (sic), a TransCanada attorney, and we had lots of those here, testified about the likelihood of additional applicants and he said, quote: I would agree it's a theoretical possibility; I think from a practical standpoint it's quite unlikely. I believe this is special legislation that will make it unconstitutional. I believe it will be challenged in court, but LB1 is the law right now. If the challenge goes forward and is successful, LB1 will still be the law of Nebraska and we will have a place at the table. Thank you very much. [LB1161]

SENATOR CARLSON: Thank you, Senator Haar. Those still wishing to speak include Senators Krist, Loudon, Sullivan, Burke Harr, and Lautenbaugh. Senator Krist, you're recognized. [LB1161]

SENATOR KRIST: Good morning. Thank you, Mr. President. Good morning, Nebraska and colleagues. I wonder if Senator Langemeier would yield for a couple of questions. [LB1161]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB1161]

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

Floor Debate
March 29, 2012

SENATOR LANGEMEIER: Yes. [LB1161]

SENATOR KRIST: Being an end result kind of guy, I mentioned this to Senator Schilz off the mike, it would be very useful, I think helpful, if we saw the end product in terms of what that would look like, what that product would look like, defining either in geodetic or lat., long. where the easements are, etcetera, and I would hope that somehow you would point us either to the Web site or maybe a hard copy example of what that eminent domain document would look like as it was given to the company. And if you wanted to comment on that, I'd be happy to yield that. [LB1161]

SENATOR LANGEMEIER: I'm taking all that in. First of all, I'm trying to figure out whether you're the end guy or I'm the end result guy. [LB1161]

SENATOR KRIST: Well, after it comes from... [LB1161]

SENATOR LANGEMEIER: I'm just kidding. [LB1161]

SENATOR KRIST: Thank you. [LB1161]

SENATOR LANGEMEIER: I'm just kidding. Okay. [LB1161]

SENATOR KRIST: Humorless. Sorry. [LB1161]

SENATOR LANGEMEIER: Humorless, okay, I'm with you. You asked a lot of things there. Is the question is what document the pipeline company gets that authorizes them to have eminent domain? [LB1161]

SENATOR KRIST: Obviously, after this process is done, and that's what you've given us in this letter from the department, there's going to be an issuance of a contract or a legal document that defines easements and defines eminent domain, where they can and cannot operate their equipment and construction, what needs to be put back together. [LB1161]

SENATOR LANGEMEIER: Got it. [LB1161]

SENATOR KRIST: It would be very helpful to see that. I think that would answer a lot of our questions. [LB1161]

SENATOR LANGEMEIER: What you're going to have is you're going to have a document produced by DEQ, and I don't know what that end report looks like. It will look similar to the federal EIS that has been given at the federal level, which is a big, thick book that I've taken the opportunity to read. But they will produce that kind of a report.

Floor Debate
March 29, 2012

That report will be given to the Governor. The Governor then, if he so chooses after that whole process has been completed, signs off. Once they have that sign-off then they have the right to use the eminent domain that sits within this bill and then at that point they go out and start to voluntarily negotiate new easements within that approved route that's in that report. And so is there a final product? No, because we've never created one on the state level. The best I could do is give you the EIS, which was done on the federal level. [LB1161]

SENATOR KRIST: Okay. But there are similar products that they've issued on gas pipelines, LP pipelines, etcetera. [LB1161]

SENATOR LANGEMEIER: I don't think to this extent of study, but I'll do some checking. [LB1161]

SENATOR KRIST: Okay. [LB1161]

SENATOR LANGEMEIER: I would have to do it with PSC. [LB1161]

SENATOR KRIST: Thank you. And just in terms of work done, the federal folks have done their due diligence. They've completed their surveys. Are we capturing that so we don't have to repeat the same product again? [LB1161]

SENATOR LANGEMEIER: Yeah, they'll have the opportunity to take in to evaluate all that stuff that has been studied. I mean they've studied what kind of...that's the advantage to this. As you know, you've studied just about every bug, bird, plant in Nebraska, so they'll have all that data to use to then evaluate to a route as they've looked at whatever endangered species exist in Nebraska and try and determine whether they are in this new corridor or not. And so they will utilize all that data and that's why they think they will be able to do this for less than the \$2 million. [LB1161]

SENATOR KRIST: Okay. And then one final question. Senator Dubas related, I think, that the citizen should arm themselves with a lawyer. [LB1161]

SENATOR CARLSON: One minute. [LB1161]

SENATOR KRIST: As far as the citizens are concerned, who pays for "lawyering" up on this thing? [LB1161]

SENATOR LANGEMEIER: If this...and I always recommend the citizen, as they get approached by the land agents for TransCanada, hopefully the pipeline company would step up the quality of those agents from their first go-around. It was not good. They're always recommended to seek legal counsel and that is...it is their own expense but as someone that negotiates...not with pipelines but for roads through farms I manage, we

Floor Debate
March 29, 2012

take into account those costs when we're negotiating, because what they'll pay you in any easement, and we deal with the Department of Roads a lot, is they'll pay us for the value of the land plus what I would call incidental costs, and we build that into that. [LB1161]

SENATOR KRIST: Thank you, Senator Langemeier. Thank you, Mr. President. [LB1161]

SENATOR CARLSON: Thank you, Senator Krist and Senator Langemeier. (Visitors introduced.) Continuing with debate, Senator Louden, you're recognized. [LB1161]

SENATOR LOUDEN: Thank you, Mr. President and members. As we've somewhat got hung up on this eminent domain, and as I've never been that involved with pipeline eminent domain but I have been involved with railroads quite a lot with eminent domain. And when you look at what's been in statutes for years, I think Senator Langemeier pointed out, that some of this has been in statutes probably since the state was formed in one version or another. But on page 1 of the amendment there, if you'll notice it says "being unable to agree with the owner or lessee" of the land and so forth, and then it goes on to say "as may be reasonably necessary for the laying" and relaying and the operation of the pipeline. And therein lies a clue, and I'll point out why. A few years ago the Burlington Northern Railroad wanted to move their railroad on what's called Angora hill there south of Alliance, which is a big hill and it took a helper engine to push it up over the hill. And they got the idea that they could move that railroad about four or five miles west of there and they wouldn't have to push up that hill, so they proceeded to go out and acquire that land by eminent domain and some of the landowners refused and they went to court over it. And the judge ruled in there that they didn't have the authority for eminent domain because they didn't necessarily have to have that land. They already had a railroad right of way. They could develop their own right of way more and put double track or do whatever they wanted to. But they weren't entitled to that land by eminent domain so, consequently, they didn't pursue it any further. So it can be done. And that part about which "may be reasonably necessary" is a big key to eminent domain in any of these issues. What I noticed in this amendment is what we went ahead and as you go through the language then, "and receive the approval of the Governor for the route of the pipeline," and that's probably quite important for pipeline's eminent domain, whether they'll find that unconstitutional or not. But as they go through the process somewhere along the line the Governor has to give approval of the route that they were going over. Now the other thing is, a question is, and I think somebody said that...whether or not to have pipelines and I think mentioned different people that were against pipelines and against any energy coming through Nebraska. Let me point out that that Bakken oil field is probably going to be more important right now, you're talking about the tar sands out of Canada, but that Bakken oil field is going to produce a lot of oil here in the not too distant future. And that oil is going to be moved three ways, one of three ways, or maybe two of three ways; it's going to be either moved by truck, it's going

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

Floor Debate
March 29, 2012

to be moved by train, or it's going to be moved by pipelines. And the pipelines are, by far, the safest way to move it. We certainly don't want trucks hauling all that oil out of that Bakken oil field. If any of you go to...even from North Platte west, the amount of trucks that are going north with oil field supplies and hauling hay back from South...well it goes to North Dakota, then they pick up a load to go back to Texas in South Dakota, it's unbelievable. I think the other day I was in North Platte and there was four truckloads of hay running in a fleet together. Here last December or so, we were going from Alliance to Chadron and we met ten truckloads of hay that were coming back from the Dakotas. And this is the amount of truck traffic that's going across western Nebraska now. And you know where our roads will end up with the truck traffic like that. So trucking to me isn't the way. The other alternative is railroads and tank cars. And that's fine, I don't have that much of a problem with it... [LB1161]

SENATOR CARLSON: One minute. [LB1161]

SENATOR LOUDEN: ...but the fact is, right now we're moving a lot of coal on the railroads and they probably have...they probably have a train wreck about every three weeks, whether you believe it or not. But they'll set 35 or 40 carloads of coal that will be dumped on the ground and then they're running about somewhere once a month to clean that mess up. If you bring a hundred-car tank-car of train down one of those tracks and you dump 35 cars of crude oil off on the ground, you're going to have a lot bigger mess than any oil pipeline you've ever thought of in your life. We barely missed it here a couple of years ago, I think I circulated pictures here, there was a big coal train wreck right on the Middle Loup River there by Thedford, it missed the Middle Loup River by about ten feet, otherwise that coal would have been washing down the river. If you dropped off a carload of crude oil... [LB1161]

SENATOR CARLSON: Time. [LB1161]

SENATOR LOUDEN: ...or 25 cars, why you'll have the same. Thank you, Mr. President. [LB1161]

SENATOR CARLSON: Thank you, Senator Louden. Senator Sullivan, you're recognized. [LB1161]

SENATOR SULLIVAN: Thank you, Mr. President. As has been said, we have had laws on the books regarding eminent domain for a long time. But that doesn't necessarily mean that they shouldn't be revisited and looked at, so in response to Senator Avery's comment, I think that's a good thing down the road. But...because...eminent domain can be a fearful thing, sort of an emotional thing, certainly, when you're dealing with your own land. But there also can be other ways to approach providing some safeguards to how that land is used once a pipeline or whatever of additional use comes in. And I will remind you that last year we passed the Oil Pipeline Reclamation Act and you're on

Floor Debate
March 29, 2012

your way to improving that act this session with my priority legislation. And that assures that when a pipeline company comes in and disrupts the ground that they restore that land to what it had formerly been. And I think that's a good thing, and as we're concerned about land being used for a different purpose. With respect to eminent domain and easements, I think it's important to remember that, yes, we would be granting eminent domain to a company, but it then goes back to that initial contact with the landowner and that contractual agreement that will be arrived at between the pipeline company and the landowner. And that's very important. And with respect to that, I wonder if Senator Langemeier would yield for a couple of questions. [LB1161]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB1161]

SENATOR LANGEMEIER: More than happy to. [LB1161]

SENATOR SULLIVAN: Thank you, Senator Langemeier. As you've indicated, you were privy to some of the negotiations with the first pipeline; you've been involved in negotiations on contracts in other situations. And it's quite conceivable that in the not-too-distant future landowners will be approached and involved in contract negotiations. What advice and what important recommendations do you give to a landowner when they're faced with that situation? [LB1161]

SENATOR LANGEMEIER: That's a tough question, because that's the business I do when I'm not in here, so do I want to give you the secrets of what most people pay me to do? You know, the reality is, is if you don't feel comfortable talking to these individuals that come talk to you, always step back, get an attorney. Get somebody that you want to feel that can represent you. You know, the reality is, is a lot of Nebraskans, and this is not a bad thing, but a lot of Nebraskans just haven't experienced this before. So when you get somebody knocks on your door, no matter how gingerly they put it or how abrasively they put it, it comes across as abrasive. And that's just the way it is. It's kind of uncharted territory. By golly, I bought the family farm, I bought the family ranch, it's mine, I want to use it. I understand that. So my advice to them is, is find somebody, and I always tell you a middle person, whether it's your attorney or whoever you want to get, it's always good advice to have somebody in the middle. And mainly because if I ask you a question, and that's also why I tell you to hire a realtor when you're selling your house, because what happens is a buyer comes in and says, well would you take \$48,000 and would you leave that "refrig"? Well, the seller thinks they have to answer that question. Where you get the middle person in, it gives you the opportunity to step back and think about what they offered you. So, when they're coming in to do an easement, you get somebody in the middle as they make that offer, you can go back and you can sit back and have an opportunity, whether it's a day, an hour, a week, or whatever it is, it gives you that opportunity to step back and say, okay, what did they really offer me? So, a middle person is always good. [LB1161]

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

Floor Debate
March 29, 2012

SENATOR SULLIVAN: Well, and I think it's important, as you mentioned, to get legal counsel because a landowner can certainly be their best advocate, but sometimes it takes more than one to get the job done. [LB1161]

SENATOR CARLSON: One minute. [LB1161]

SENATOR SULLIVAN: One other quick question. With respect to the easements that have currently been inquired for a route that probably will be no longer used, NPPD has told me that they never filed the easements that they acquired for the transmission line. Do you know what's happened with the easements by the pipe...that have been acquired by the pipeline company? Have they filed those with the county clerk, the register of deeds? Or have they held them? Of if they've given them back? Do you know anything about that? [LB1161]

SENATOR LANGEMEIER: You know, I don't know anything about that. But typically, once they've paid for them, they file that easement immediately and so there would be a record. I don't know of any that have been given back; they've been paid for, so I doubt they'll give them back. [LB1161]

SENATOR SULLIVAN: Is that something that is well within the right of a landowner to ask for? [LB1161]

SENATOR LANGEMEIER: Well, sure. The landowner can, you know, and I've even brought it up to you in some of our negotiations, you were in some of those, to TransCanada... [LB1161]

SENATOR CARLSON: Time. [LB1161]

SENATOR LANGEMEIER: ...to figure out how they're going to sell those back. [LB1161]

SENATOR SULLIVAN: Thank you. [LB1161]

SENATOR CARLSON: Thank you, Senator Sullivan and Senator Langemeier. Senator Ken Haar, you're recognized, this is your third time. [LB1161]

SENATOR HAAR: Mr. President, members of the body, I'd like to ask Senator Langemeier a couple of questions. [LB1161]

SENATOR CARLSON: Senator Langemeier, will you yield? [LB1161]

SENATOR LANGEMEIER: Yes. [LB1161]

SENATOR HAAR: Okay. Thank you very much. Has TransCanada revealed its

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

Floor Debate
March 29, 2012

proposed route at this point? [LB1161]

SENATOR LANGEMEIER: I'm not aware of the new route. [LB1161]

SENATOR HAAR: Okay. Have they made an application yet at this point? [LB1161]

SENATOR LANGEMEIER: Application to who? [LB1161]

SENATOR HAAR: To anybody now, to... [LB1161]

SENATOR LANGEMEIER: I don't know. [LB1161]

SENATOR HAAR: Okay. And is there anything in writing that requires TransCanada to avoid the Sandhills or the Ogallala aquifer? [LB1161]

SENATOR LANGEMEIER: No. [LB1161]

SENATOR HAAR: And you said earlier that, I forget the words you used, but they've agreed to honor, right? [LB1161]

SENATOR LANGEMEIER: They've agreed to honor their statement that they won't go through the Sandhills. [LB1161]

SENATOR HAAR: Okay. But it's not in writing. [LB1161]

SENATOR LANGEMEIER: No, I wasn't part of that negotiation. I guess you'd have to ask Speaker Flood. [LB1161]

SENATOR HAAR: Okay. And then is there any money put aside to cover the \$2 million we're going to spend in case they don't use the study? [LB1161]

SENATOR LANGEMEIER: We've already appropriated the \$2 million. [LB1161]

SENATOR HAAR: No, but has TransCanada put any money aside? And are they required by this law? [LB1161]

SENATOR LANGEMEIER: They're not required to. I don't...I don't know what they've put aside. [LB1161]

SENATOR HAAR: Okay. And then I guess, finally, as Mr. Jones said, is there really...is there reality of another pipeline ready to apply across for a route in Nebraska, the answer is no. Do you think that's...would you agree with that? [LB1161]

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

Floor Debate
March 29, 2012

SENATOR LANGEMEIER: I think his comment was...is TransCanada willing to put in another pipeline? He can't speak for anyone else. And so TransCanada, you typically only build one pipeline at a time. But I don't think his reference has any merit into whether Enbridge or another pipeline company would consider putting a pipeline in. [LB1161]

SENATOR HAAR: Okay. And I guess the courts will decide on that one. So going back, I believe that LB1...well, I don't believe, LB1 is the law right now. I think it's the law that should be followed. I believe that TransCanada is a victim of their own machinations pushing Congress to push the President to make a decision. They lost and now they're coming back to us. I believe that the law in place, LB1, is sufficient and that we don't owe this special dispensation to TransCanada. That's my own opinion. And I think, eventually, this will be settled in court. Thank you so much for all your answers. [LB1161]

SENATOR CARLSON: Thank you, Senator Haar and Senator Langemeier. Senator Louden, you're recognized. [LB1161]

SENATOR LOUDEN: Thank you, Mr. President, and members. As I've stated before on how you're going to move this product, it's going to be moved out of North Dakota and it's probably going to be moved across Nebraska. So you have some choices here. To me this is just the beginning of a lot of legislation on pipelines. You're going to have more pipelines built in the future across Nebraska someplace. It probably will be some across western Nebraska. But that product, for the most part, will move south to where...to the Gulf Coast for two reasons. One way it can be shipped out into the world, and the other way that's where most of the facilities are to produce your gasoline, your fuels, and everything down there, your refineries are down there. We have a few...we have one in Cheyenne, and there's a few around in Wyoming, but they are all small ones. So at any rate, as we talk about this, you have to decide how you're going to do work with the future. When we look back at the past, part of your problem was, there was people asleep at the switch when this was first talked about. Well, the first thing that I noticed that came on the horizon was when they were trying to work with the federal government and they were asking for a waiver to build a pipeline out of lighter material than what was specified. And that right there should have been...somebody should have been awake to that right there, whether it's our Department of Environmental Quality, or whether it was our Department of Natural Resources, or someone in executive branch, but somewhere along the line there should have been some questions raised then. Then when they did come up with a siting and that so forth, there should have been some questions raised when they were trying to dig an eight-foot ditch across the swamps in that country and seen where their plans were for that. So there was a lot of things that weren't done right in the past. Now with this legislation we've come out, we've tried to correct that. And it looks like to me you've come quite a ways and I think this is something that needs to be done. We need this

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

Floor Debate
March 29, 2012

amendment that we have coming here that I...and the bill, LB1161, with the amendment on there is something that is probably a work in progress in the future. My guess is, next year or the year after, you will be in here, probably, making some more amendments to this bill and working further ahead. Nebraska is a transportation state and we have to prepare our regulations and have people in places to be able to have some control over how that is done. With that I support the amendment and I support the bill. Thank you, Mr. President. [LB1161]

SENATOR CARLSON: Thank you, Senator Louden. Senator Langemeier, there are no other senators wishing to speak. You're recognized to close on AM2530. [LB1161]

SENATOR LANGEMEIER: Mr. President, members of the body, I've made a list of the issues that have come before us today. And one is, is there a cutoff for eminent domain? That something we'll look at for Select File. And we'll deal with the things that were asked of us for Select File, so you'll see me again with something on that. The whole purpose of AM2530 was...is to keep with the spirit of what was negotiated within the special session. And I know that doesn't make everybody happy; I know that makes for issues out there. But the intent is to fully participate with what was decided that day and to coincide with the agreement that there wouldn't be things through the Sandhills. And so with that, we'd ask for your adoption of AM2530 into the Natural Resources Committee. And, again, we will start to address this stuff for Select File. And I appreciate all your comments and thoughts. Thank you. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. Members, you've heard the closing on AM2530. The question is, shall the amendment be adopted? All those in favor vote aye; all opposed, vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB1161]

CLERK: 33 ayes, 2 nays, Mr. President, on the adoption of Senator Langemeier's amendment. [LB1161]

SENATOR CARLSON: AM2530 is adopted. Mr. Clerk, for an amendment. Mr. Clerk, items for the record. [LB1161]

CLERK: Thank you, Mr. President. I have a hearing notice from Judiciary regarding a confirmation hearing. New A bills. (Read LB1020A and LB817A by title for the first time.) LR611, resolution by Senator Nordquist; that will be laid over. Urban Affairs reports LB924 to General File with amendments. Senator Campbell, amendment to LB821 to be printed; and Senator Schumacher to LB239. (Legislative Journal pages 1209-1212.) [LB1020A LB817A LR611 LB924 LB821 LB239]

Mr. President, the next amendment, Senator Langemeier has FA58 with a note that you wish to withdraw, Senator. [LB1161]

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

Floor Debate
March 29, 2012

SENATOR LANGEMEIER: Yes. [LB1161]

SENATOR CARLSON: The amendment is withdrawn. [LB1161]

CLERK: Senator Smith, AM1984. I have a note you wish to withdraw. Thank you, Senator. [LB1161]

SENATOR CARLSON: Amendment is withdrawn. [LB1161]

CLERK: Senator Avery, AM2672. Senator. [LB1161]

SENATOR CARLSON: Senator Avery, you're recognized to open on your amendment. [LB1161]

SENATOR AVERY: Mr. President, I wish to withdraw that at this time and consider refiling it on Select. [LB1161]

SENATOR CARLSON: The amendment is withdrawn. [LB1161]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB1161]

SENATOR CARLSON: Thank you, Mr. Clerk. Returning to discussion of LB1161 and AM2381. Ken Haar, Senator Haar, you're recognized to speak. [LB1161]

SENATOR HAAR: Thank you, Mr. President, members of the body. I wanted to get up one time and talk about something that happens in this Legislature, and that's that we all respect effort and commitment. And so I want to recognize Senator Smith for his effort and commitment, even though I disagree. I want to go way back to the beginning of the special session when we started to talk about this and the one day I met with Speaker Flood and Chairman Langemeier and Clerk Patrick, and we talked about...that was way back in August, and we talked about what could and couldn't happen. Certainly Senator Dubas for her persistence. And the members of this body to put in the discussion, the effort, and the commitment to deal with this issue, and we have come a long way. So I wanted to get that in before we take a vote on this. Thank you very much. [LB1161]

SENATOR CARLSON: Thank you, Senator Haar. There are no other senators wishing to speak. Senator Lautenbaugh, you're recognized. [LB1161]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and members of the body. I did have to leave the Chamber when I was going to speak earlier. And I'm not even sure why my light was on earlier, but I thought that was an invitation to let somebody know

Floor Debate
March 29, 2012

how I felt about this. Someone must have been desperate to find out. So, I'll oblige briefly. I do support this bill. I did, actually, have some conversations about the concerns about special legislation and did some looking into that myself. And I don't see them as a serious issue. So, I am confident that this is properly done. I'm confident that this is good legislation and I think we're moving in the right direction and I would urge you to support the underlying bill. [LB1161]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Flood, you're recognized. [LB1161]

SPEAKER FLOOD: Thank you, Mr. President, good morning, members. First of all, I want to say thank you to all those that have been engaged in this process, especially the citizens that showed up and the Natural Resources Committee members that have been working on this overtime for the last year. I think that we are at a place in the session where a lot of different bills and a lot of different ideas are being considered. And as we head toward that sixtieth day in this short session, on this issue I'd like to see us, between General and Select, spend a little bit more time on the bill as it relates to the concerns presented by Senator Ken Haar, specifically relating to special legislation. I think we have to be very careful. And we have to be very mindful of our state constitution and some of the parameters that exist as it relates to where we go with any particular bill, especially in this type of a situation. I think what the Natural Resources Committee has done has been based, largely, in an effort to recognize what we did during the special session and to continue that same framework into the future. Obviously, in between the special session and today, the United States Congress made some decisions that have, in many ways, derailed what we agreed to do in November. And I don't have ideas on the top of my head as to what, if anything, the bill should look like at the end of the day, but I do think that the concerns presented by Senator Ken Haar have to be ferreted out carefully between now and the time that this bill should pass. I also know that we are not aware of, or privy to, or have seen any proposed route as it relates to any current projects that exist. And I know there are some people here today that have travelled a great distance that maintain a very sincere interest in this process and that whatever is done that the process have opportunities for input along the way so that our own citizens are weighing in as any plans or proposals are released or unfolded. So, I just appreciate what they're working on and what the bill attempts to do. I think that we need to be cautious and have open minds as we get to Select File. And I say that because I believe some of the statements on the floor today, and the committee testimony, should give us some pause to keep an open mind going to the next step. Thank you. [LB1161]

SENATOR CARLSON: Thank you, Senator Flood. Are there other senators wishing to speak? Seeing none, Senator Langemeier, you're recognized to close on AM2381. [LB1161]

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

Floor Debate
March 29, 2012

SENATOR LANGEMEIER: Mr. President, members of the body, again, we're going to look at, and make it clear to a cutoff date, Senator Harr, Burke Harr and I had talked about that, to talk about looking at a cutoff date to make sure it's clear that the right to have eminent domain does not go on forever, the practical reason it's not, but we'll make sure we clear that up. And we're also going to look at trying to find a report for that big picture that Senator Krist was talking about. And so there will be continued work done on this bill by the introducer and Senator Flood, and we look forward to that communication. And we'd ask for your adoption of AM2381. Thank you, Mr. President. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. Members, you've heard the closing. The question is, shall AM2381 be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB1161]

CLERK: 34 ayes, 2 nays, Mr. President, on the adoption of committee amendments. [LB1161]

SENATOR CARLSON: The amendments are adopted. We return to discussion on LB1161. Are there senators wishing to speak? Senator Lathrop, you're recognized. [LB1161]

SENATOR LATHROP: Thank you, Mr. President, and colleagues, good morning. I wish...I would like an opportunity to ask Senator Langemeier a couple of questions if I might. [LB1161]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB1161]

SENATOR LANGEMEIER: Yes. [LB1161]

SENATOR LATHROP: Senator Langemeier, I have...I'm looking at the amendment in front of me, your amendment, and it's on page 3, line 13 through 21, where we strike some language and insert some other language identifying to whom the new legislation will apply. Do you see that? [LB1161]

SENATOR LANGEMEIER: Uh-huh. [LB1161]

SENATOR LATHROP: Where it says, the Major Oil Pipeline Siting Act shall not apply to any major oil pipeline that prior to January 1, 2003, (sic) has submitted an application to the Department of State pursuant to executive order and the executive order...can you tell me what that executive order says? [LB1161]

SENATOR LANGEMEIER: The... [LB1161]

Floor Debate
March 29, 2012

SENATOR LATHROP: Just generally, I don't expect you to recite it for me, but... [LB1161]

SENATOR LANGEMEIER: I could...we...we're... [LB1161]

SENATOR LATHROP: ...is it applicable to this particular pipeline? [LB1161]

SENATOR LANGEMEIER: The executive order is an executive order that was given by a president, I don't think it was President Obama, I think it was actually President Bush, but don't hold me to that, but it was an order given that set up the guidelines for anyone that wants to build a pipeline that has an interstate...or, country crossing from Canada to the U.S., or the U.S. to Mexico, it was an order given to set out the guidelines in which the President would, through the Secretary of State, would make a decision on a pipeline. [LB1161]

SENATOR LATHROP: Okay. Thank you. That helps. My next question is...has to do with the class. We've created a class, and that's anybody who has an application in before January 1, 2013. [LB1161]

SENATOR LANGEMEIER: We didn't create a class, we created a deadline. [LB1161]

SENATOR LATHROP: Well... [LB1161]

SENATOR LANGEMEIER: So anybody could have... [LB1161]

SENATOR LATHROP: We created a class in the sense that people who made an application before January 1, 2013, have...are treated one way under our law, and people who apply afterwards, after January 1, 2013, are treated a different way. Is that true? [LB1161]

SENATOR LANGEMEIER: Very true. Anybody could apply on both sides. [LB1161]

SENATOR LATHROP: Okay. What does it take to make an application? Is that as simple as dropping a form off at the Department of State or is that a lengthy process? [LB1161]

SENATOR LANGEMEIER: This application, actually, would be here in Nebraska with the DEQ, as well as making application to the federal level, no, it's not easy. And that's what brings us to this whole bill is, is there was a lot of discussion out there as to why doesn't TransCanada, for example, of one of the pipelines that could do this, why don't they just go apply for a new route in Washington? Well the reality is, is to go apply for a new permit you got to have a EIS study with your pipeline route in it. [LB1161]

Floor Debate
March 29, 2012

SENATOR LATHROP: Before you make the application. [LB1161]

SENATOR LANGEMEIER: Before you make the application. So they can't go... [LB1161]

SENATOR LATHROP: Is anybody engaged in that process right now? [LB1161]

SENATOR LANGEMEIER: Say that again. [LB1161]

SENATOR LATHROP: Is anybody besides TransCanada engaged in that process right now? [LB1161]

SENATOR LANGEMEIER: I don't know. [LB1161]

SENATOR LATHROP: Are you aware of anybody that is? [LB1161]

SENATOR LANGEMEIER: I haven't asked it; it hasn't been a concern of mine. [LB1161]

SENATOR LATHROP: Okay. Here's the...I want to maybe take an opportunity to express a concern that the Speaker just cautioned us about and that is, I'm going to make an observation about this whole TransCanada pipeline process. It seems like every time we try to fix something, whether we're doing it in Lincoln or doing it in Washington, D.C., we've made matters worse. And I think every time it's been in response to something TransCanada wanted, but we need to be careful with what we're doing with LB1161, and this is my point, we don't want to pass something that creates litigation that slows this thing down again. And when we talk about a closed class, which is against the state constitution, a closed class is a... [LB1161]

SENATOR CARLSON: One minute. [LB1161]

SENATOR LATHROP: ...class that no one else can get into. And if we talk about a class, that is anybody that has applied for a permit with the Department of State before January 1, next year, if no one else can fit in there but one company, then we've created a closed class and now we're going to see this bill in court, I believe, because of a closed class and it will be tangled up for two more years. And Nebraska will then end up being a big question mark and you'll see the feds say we can't...this is what happened, we can't approve the pipeline until Nebraska is resolved, and Nebraska has a big question mark over it because the bill that would enable it is now tangled up in litigation. So, I'm going to affirm/reaffirm the admonition Speaker gave us which is, we probably need to look at this very, very carefully before we get to Select File to make sure. [LB1161]

SENATOR CARLSON: Time. Thank you, Senator Lathrop, Senator Langemeier.

Floor Debate
March 29, 2012

Senator Dubas, you're recognized. [LB1161]

SENATOR DUBAS: Thank you, Mr. President. I would like to just express my thanks to the Speaker for his comments, and then Senator Lathrop's follow-up comments. This is a very detailed and involved issue that we're trying to find our way through. And I don't think...caution is definitely in line for what we're doing right now. And so, again, I'm just very appreciative that we're going to be taking some time between General and Select to really look at this thoroughly to decide what is the best course of action for us to take. Again, I've never been opposed to the pipeline. We accomplished so much. And as Senator Haar said earlier, you know, no matter what happens, we really...we really have put some good things in place; if not for now, at least for the future and we should take some pride in that that our citizens will have a specific agency that they will be able to trust and be involved with for any future projects such as this, but the fact that we're going to step back a little bit and really look at this. If we're going to do it, we need to do it right. And so I'm just, I guess, again, just rising in appreciation for those words that were expressed and would hope that I could, maybe, be a part of that process of looking at what we put in place so that we can move forward, taking all citizens' views into consideration, and that's not always easy when you have people who are on such opposite ends of the spectrum on this issue. But, you know, it's not been a problem for us in the past to find that middle ground, that ability to help us put sound policy in place. And I think we still have an opportunity to do that with this legislation. So, again, I appreciate the Speaker and Senator Lathrop's words of caution and look forward to what we're able to put forward between now and Select. Thank you. [LB1161]

SENATOR CARLSON: Thank you, Senator Dubas. (Visitors introduced.) Returning to discussion of LB1161. Senator Langemeier, you're recognized. [LB1161]

SENATOR LANGEMEIER: Mr. President, members of the body, in referring to what Senator Lathrop asked, I want to be very clear, and Senator Haar brought it up earlier in the testimony about Robert Jones making the comment that there would be no other pipeline. I want to put this into context. Senator Haar, at the time, had a brochure that TransCanada had put out that had about seven more routes over time that were coming. And his question was, is...are you going to build all these seven pipelines? And Jones said, no, we're going to build one at a time. And so it's not out there that...it's not inconceivable that you're going to see more pipelines. And so we want to make sure that is correct in the record and there's transcripts for the committee, that's not a problem. But it's more than just a...his ability to speak for himself. And so I appreciate Senator Flood's comments. And as always, we're always open to continued work and we always appreciate everybody's input and that is what makes this all work. So with that, thank you, Mr. President. [LB1161]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Ken Haar, you're recognized. [LB1161]

Floor Debate
March 29, 2012

SENATOR HAAR: Thank you, Mr. President, members of the body. Just to clarify that a little bit. I found a 2007 Canadian Association of Petroleum Producers, a CAPP report showing four major pipelines coming down through Nebraska. And only one of those, or maybe at the most, two of those were TransCanada. So, we weren't talking about TransCanada plans, we were talking about four possible pipelines. And, actually, I'll get that out to everyone just so we clarify that. Thank you very much. And thank you very much, Senator Langemeier, again for fielding all these questions. [LB1161]

SENATOR CARLSON: Thank you, Senator Haar. Seeing no other senators wishing to speak, Senator Smith, you're recognized to close on LB1161. [LB1161]

SENATOR SMITH: Thank you, Mr. President. And, colleagues, thank you very much for being engaged on this issue and for standing at the mike and asking questions and I definitely appreciate that. And I just...in regards to, I guess, what began with Senator Lautenbaugh's comments and then Speaker Flood spoke to this, and then Senator Lathrop spoke to this, unfortunately, we do not have a crystal ball and we...we simply cannot know whether there's going to be another pipeline company that's going to fall within the class that's created by LB1161. It is simply all speculation. But there is no legal impediment to new entrance to this class, and that is, this is not a closed class. But I could not agree more with what Speaker Flood said. We do want to have thoughtful discussions between General and Select File. And I know Senator Langemeier has been very helpful and in working with anyone's concerns on this. I will do likewise, anything that we can do to remedy any concerns colleagues have, we will work to do that. Once again, colleagues, this bill strengthens the process we agreed to in our special session. Protecting Nebraska's resources and creating a responsible and reasonable siting process for all pipelines going forward. Thank you, colleagues, and thank you, Mr. President. Please support LB1161. [LB1161]

SENATOR CARLSON: Thank you, Senator Smith. Members, you've heard the closing on the bill. The question is, shall LB1161 be advanced to E&R Initial? All those in favor vote yea; all opposed, vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB1161]

CLERK: 35 ayes, 2 nays, Mr. President, on the advancement of LB1161. [LB1161]

SENATOR CARLSON: LB1161 does advance. Mr. Clerk, do you have items? [LB1161]

CLERK: I do, Mr. President. First of all, Banking, Commerce and Insurance will meet underneath the south balcony immediately; Banking Committee, south balcony immediately. And I have two amendments to be printed to LB1161, Mr. President. And that's all that I have at this time. (Legislative Journal pages 1212-1213.) [LB1161]

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

Floor Debate
March 29, 2012

SENATOR CARLSON: Thank you, Mr. Clerk. Mr. Clerk, next item.

CLERK: Mr. President, LB806. Senator Larson, I have Enrollment and Review amendments. (ER229, Legislative Journal page 1085.) [LB806]

SENATOR CARLSON: Senator Larson for a motion. [LB806]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB806 be adopted. [LB806]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. [LB806]

CLERK: Mr. President, I now have a series of amendments. The first amendment to be considered, Senator McCoy, I have AM2229. [LB806]

SENATOR CARLSON: Senator McCoy, you're recognized to open on your amendment. [LB806]

SENATOR McCOY: Thank you, Mr. President. I wish to withdraw that amendment. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Mr. President, the next amendment, Senator Lautenbaugh, AM2331. Senator, I have a note that you wish to withdraw AM2231 and offer as a substitute AM2678. (Legislative Journal pages 1213-1215.) [LB806]

SENATOR LAUTENBAUGH: That is correct. [LB806]

SENATOR CARLSON: Senator Lautenbaugh, you're recognized to open on your amendment. Are there any objections to this substitution? Seeing none, Senator Lautenbaugh, you're recognized to open. [LB806]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. This is LB806 again regarding historic horse racing. When we were talking on General File at length, I proposed an amendment in good faith to try to address some of the concerns that were expressed by the opponents of this bill. This amendment is what is meant to address those concerns. Simply put, it adds additional authority or additional verbiage in the turnback language to set, you'll see on page 2 of the amendment, specifying...as we added in racetracks when we passed this turnback authority a couple of years ago, this adds the language "including, but not limited to expansion to racetrack enclosures licensed by the commission in 2013." That allows for the economic development,

Floor Debate
March 29, 2012

economic activity to take place around the racetracks that are licensed facilities for these. What we also added in this amendment are some provisions to address concerns that were expressed about this leading to some expansion of gambling on reservations and some additional authority for, I don't know, slot machines, casinos, and whatnot; so we've added a provision here on page 4 of the amendment that states, "if the passage of this would allow for any additional Class III gaming authority other than horse racing, including historic horse racing, then the authority for historic horse racing goes away." And we can offer that with a fair amount of confidence, because as you've seen from the Husch Blackwell legal opinion, this would not lead to additional authority. The specific type of gaming is what we're talking about here, if you authorize it in one place, you have to allow it on reservations. So as the law currently is, the reservations could have racetracks and horse racing because we have horse racing. We believe it also would authorize this constitutionally so the reservations could already install historic horse racing if they wanted to and they could have Keno and lotteries if they wanted to because we authorize that. But, and there are federal decisions on point on this, that does not mean that we somehow would be authorizing slot machines or casinos because they are different animals than what we're talking about here, so to speak, and extending this authority does not extend that authority to the reservations. I believe that is abundantly clear from the federal holdings that have looked at this in other states as far as adding one form of gambling and seeing if it would allow a different form of gambling than on the reservations. But I said we would put this in an amendment making it clear that if this did somehow allow expanded gaming beyond historic horse racing and horse racing on the reservations, then this whole authority goes away. So I'm assuming that concern would be addressed. We also put some other provisions in here as what I called our "put up or shut up" amendment because there were questions whether or not we would continue horse racing. One of the opponents of this has sent out e-mails saying, well, once they get these, they're just going to do away with all the horses in some fashion. This amendment takes care of that concern, even though I don't believe it was a valid concern. This amendment provides that after four years there must be a track constructed in a county where the city of the primary class is located, which, of course, is just Lincoln. There has to be statewide an increase of live days of 30 percent over that four-year period, 40 percent in Omaha. And the purses have to increase by at least 25 percent over that four-year period or this authority goes away. And I hope it's clear why we're putting these things in here, because I took the opponents statements at face value. If they legitimately have these concerns, let's address them. This is about horse racing plain and simple, an industry, again, I can't stress enough, that it affects thousands of jobs right here in Nebraska. And when the opponents of this suggested, well, those are going away anyway, once you get these, nobody is going to do live racing. They fail to take into account, as we've pointed out, that these are not-for-profit organizations that run these tracks dedicated to the promotion of horses; horse breeding, horse racing, and the whole industry in Nebraska. And this amendment makes clear that if this doesn't work, some suggested this will never work, nobody will ever go play these things at the track, people don't like them,

Floor Debate
March 29, 2012

well, than what's the problem I would argue. But if this doesn't work or it doesn't result in a new track in Lincoln, and again, I should point out as an aside, we destroyed the track in Lincoln with our action a couple of years ago moving the state fair and giving the university the technology park. If it doesn't result in increased racing days, live racing days, and if it doesn't result in increased purses, which is kind of a chicken and egg thing, live days and increased purses one tends to lead to the other, then the authority goes away. And I think I've...if I've conveyed anything, I hope I've conveyed that, you know, I don't own horses; I don't even go to the track we have, but I understand this. And I understand the people whose livelihoods are depending upon this. And this is not what the opponents have presented it as. You've heard many times if it walks like a duck or talks like a duck or quacks like a duck or whatever, I think I showed a lot of you that I downloaded a slot machine app for my iPad. Well, I guess that makes my iPad a slot machine then because it looks just like one. I told some of you correctly that we could program the machine that the lobbyists use out there to track our bills, that kiosk, to make the screen look like a slot machine if we were of a mind to, but it wouldn't pay out and it's not a slot machine. I would really be grateful if we could focus on the realities of this bill. This amendment is brought forth in good faith to address the concerns that were expressed on General File. I've had discussions with some of the opponents of this outside the body trying to clear up over the weekend their misconceptions regarding Class III gaming and what that means and what is constitutional and what isn't. And there are a fair amount of misconceptions about this in the opposition. I'm going to hope to clear this up. I'm going to hope we advance this bill again. I would urge you to support this amendment. I would urge you to support the underlying bill. I would urge you to actually do something concrete for jobs that actually exist now in real life. Not hypothetical jobs, not jobs we hope will come if we provide an incentive; people who are simply just asking us to get out of the way and let them help themselves. And that should be refreshing. It shouldn't be controversial. It should be what we encourage people to do. That's all they want. That's all I want. Please don't turn your backs on these people. Please don't surrender to disinformation and misinformation. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Members, you've heard the opening on AM2678. The floor will be open for debate. (Visitors introduced.) Welcome to your Nebraska Legislature. Senators wishing to speak include Fulton, Schilz, Dubas, and McCoy. Senator Fulton, you're recognized. [LB806]

SENATOR FULTON: Thank you, Mr. President, members of the body. Good morning, we are here again and I'd like to once again say that I oppose LB806. I will likely oppose AM2678, but I'll have some questions for Senator Lautenbaugh. Before we get to that, I simply ask you to consider why are these machines needed. If indeed these machines are simply horse racing, then why not just engage horse racing that already exists? And this is logic. These machines are needed because they allow for the act, the gambling act, to occur more frequently. It's that simple. They can and are dressed up like a slot

Floor Debate
March 29, 2012

machine so as to make them more attractive and we can dispute that. And Senator Lautenbaugh is right, he did...I saw the app on his phone and that, his phone, looks like a slot machine does not therefore a slot machine make. I'll grant that. Then let us talk about what these machines are. They allow one to gamble multiple times in a short period of time, in a shortened period of time, I'll phrase this in such a way as all sides should be able to agree; to allow for the act of gambling on a horse race to occur more frequently. In the example that Senator McCoy brought when we were on General File, brought to your attention, we saw one of these machines looking a lot like a slot machine, but the part where the historic horse race occurred in the course of, I think it was 20 seconds, you saw three races. Now one could adjust that I'm certain. I've done some programming in my time and you could adjust that 20 seconds, 30 seconds, a minute, but the reason these machines are needed is to apprehend the dollars of a bettor more frequently than what occurs presently. If that's not the reason, then I don't know why they're needed. Would Senator Lautenbaugh yield to a question? [LB806]

SENATOR CARLSON: Senator Lautenbaugh, would you yield? [LB806]

SENATOR LAUTENBAUGH: Yes, I will. [LB806]

SENATOR FULTON: Senator, I don't know if you were able to listen to what I was saying. Why are these machines needed? [LB806]

SENATOR LAUTENBAUGH: Well, much like when we allowed simulcasting, this is another way for people to wager on horse racing. It's another source of revenue for the tracks. [LB806]

SENATOR FULTON: Would the wagering occur in a more frequent fashion than what occurs at the tracks now? [LB806]

SENATOR LAUTENBAUGH: Well, that's impossible to answer because as you, I think, know, the simulcast races are going on all the time all around the world so you could bet on ten of them at once and just walk away and not watch any of them. You could bet on tomorrow's races today and never show up at the track physically at all if you had someone run down there for you. So I understand what you're asking, but I don't think we have anything in the law that says now you have to sit there transfixed as the race is run, or that you have to watch the 300 simulcast screens in front of you, or that you can only bet on ten of the 300 simulcast screens, or that you can only bet on the screens every 20 or 30 seconds, or anything like that. So it's really not that different than what we do right now. [LB806]

SENATOR FULTON: If it's not that different than what we do right now, then why are they needed? And that really comes back to the logic of the original question. [LB806]

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

Floor Debate
March 29, 2012

SENATOR LAUTENBAUGH: Well, there's only so many...I say there's a lot of simulcast races, but there...this is more...this would be more races. I mean, we're talking hundreds of thousands of possible races to choose from. [LB806]

SENATOR FULTON: Would you have any concern if on these machines, were this to be enacted, were it to become law, were these machines to be employed at the tracks, if these machines were to show three races over the course of 20 seconds, would that cause you any concern? [LB806]

SENATOR LAUTENBAUGH: Well, the only way that would cause me concern was, I think, as we... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR LAUTENBAUGH: ...discussed on General File, when we had this whole discussion about what the screen looked like and what it showed, and I offered to talk about any amendment you might think would address that and I didn't hear anything. So, my concerns didn't really exist, but I was happy to try to address yours, I should say. I just never heard back. [LB806]

SENATOR FULTON: And that's fair. I'll put my light on again; we'll have an opportunity, I'm sure, and I'll have some questions on AM2678. I do recognize the rationale and reason behind it, but I'm still back to the crux of this is needed in order to help LB806 move forward. And so I guess that question remains. That's good, Senator Lautenbaugh, thank you. I pose that to the body. Does that cause you trouble if these machines would allow for three races over the course of 20 seconds? It does me. I'm running out of time, I think, Mr. President. We'll stop there. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Fulton and Senator Lautenbaugh. Senator Schilz, you're recognized. [LB806]

SENATOR SCHILZ: Thank you, Mr. President, and members of the body, good morning again. And as we sit here and talk once again about LB806, which I purely believe is a jobs bill that makes sense. You know, we...once again we're hearing the same talk. We've dispelled that these machines are not slot machines. We know that; you can see that by looking at the screen as it would be configured under our laws for those places that are qualified. And when we talk about betting on races and how much of that goes on and will this increase it or decrease it, I think...if people don't understand how, you know, it works, wagering on a horse race, I mean, you can go to the track and there can be 9 to 12 live races a day. But then you've also got the simulcast that are going on at the same time. You can place as many bets as you want on one race, on all the races, and you can bet on the simulcast as well at the same time. So to talk about increasing

Floor Debate
March 29, 2012

that, I think it is...I think it is one of those things of another misdirection and that opportunity is already there. You can do that. So if it does concern you, I would hope that you would go and study a little bit up on how you can wager today on a horse race in the state of Nebraska. The opportunities are already there. And that's why this doesn't expand gambling and that's why we should all be in support of this. It really is about the jobs, guys. We dispelled it before with our vote that we took the other day. People understood it then. And I would hope that those same people are not going to be swayed by some of the information that's given out today. And most of it, I think, comes down to the fact that maybe people just don't understand what's in place today. And so I'm going to sit here, speak up when I think I need to, when I think...when I think that we need to, perhaps, set things straight or get a better understanding of what's going on. And with that I would once again hope that you could support the amendment and LB806. Thank you very much. [LB806]

SENATOR CARLSON: Thank you, Senator Schilz. Members, I ask that you please keep the conversations down so that the testimony can be heard. (Visitors introduced.) Welcome to your Nebraska Legislature. Continuing with debate, Senator Dubas, you're recognized. [LB806]

SENATOR DUBAS: Thank you, Mr. President. I really appreciate Senator Lautenbaugh's work on this issue and bringing this amendment forward and I think it's a good amendment and it's an amendment that will give this very important industry in our state an opportunity to prove themselves. I understand those of you in this body who just flat out oppose gambling in any way, shape, or form. And I respect you for that position and so for you there is no compromise. And all of us have those issues here in the body where there is no compromise so you can throw up any amendment, good, bad, or otherwise, and we're just not going to be there because we just...those are the issues we don't feel there is any room to compromise on. But for those of you in here who may be on the fence or who have just not quite decided yes, no, or otherwise, I hope that this amendment will give you that little nudge or that level of comfort saying, okay, you know maybe I don't agree with gambling, maybe I've got some issues, but with this amendment we're giving, again, a very important industry in our state an opportunity to go out and prove that they can make this work. And if they can't, well, then the chips fall where they may under those circumstances. But, you know, I have people in my district, just like those of us who farm who are four and five, and if you're lucky enough, six generations farmers, it's not the work we do, it's our life. It's a part of...it defines who we are. You know, you just as well cut off one of our appendages rather than have us leave that way of life that we feel so passionately about. And for those people that I've had the opportunity to get to know since I've been in the Legislature, that's what this is for them. Their horses, their training facilities, everything about what they do defines who they are. And they are committed to helping keep this a very viable and strong part of our Nebraska economy. They're looking right now at acquiring the needed land in Nebraska...or in Lincoln, excuse me, to build this new

Floor Debate
March 29, 2012

racetrack facility. They're putting their blood, sweat, and earnest money into making this happen because they believe in their industry. They believe their industry is a positive part of our Nebraska economy. And that what they bring to the table are good things, jobs, keeping their family...you know, we're so fortunate that we have one of our children that have come back to farm with us, we are so fortunate to have our son farm with us because he is the future and he is going to take that farm into the next generation. And that's exactly how the people who are in the horse racing industry feel. They want to have that opportunity to bring their next generation and to carry this...this, I call it a business, but for those people who this is their livelihood it's not a business, it is their life. It is their life. So I hope, again, you know, for those who are just absolutely opposed to any type of gambling, you know, that's fine, and I can respect that. But for those of you who have been just a little bit uncertain about which way you're going to vote, I think the amendment that Senator Lautenbaugh has offered is a very sincere amendment, one that is very worthy of your consideration and will, I hope, will allow you to vote yes on the amendment and yes on the underlying bill so that...this is a sign to those people involved with horse racing in our state... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR DUBAS: ...that they have an opportunity to prove themselves and they have an opportunity to make a future in Nebraska. I know one particular gentleman in my district who is ready to take his whole business, and we're talking about something that's worth in the millions of dollars, he's ready to take it elsewhere because he is fearful for the future, his future in Nebraska. But with this bill he feels like he'll have the opportunity to stay here and invest his money here, invest his money in Hall County and in Grand Island and in the surrounding areas and support all those businesses that support him. So, again, I really hope that you can see your way clear to support this amendment and the underlying bill. Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Dubas. (Visitors introduced.) Senator McCoy, you're recognized. [LB806]

SENATOR McCOY: Thank you, Mr. President, and members. Would Senator Larson yield, please? [LB806]

SENATOR CARLSON: Senator Larson, would you yield? [LB806]

SENATOR McCOY: And while he is making his way to the microphone, I stand in opposition to this amendment, which is probably no surprise, as I stand in opposition to the underlying bill. I see Senator Larson has reached his microphone. I have a couple of questions for you, Senator Larson, since I haven't had the opportunity up to this point to direct them your way. In the testimony at the hearing in this bill in Judiciary Committee, there was an interesting dialogue between you and a testifier from West Point regarding

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

Floor Debate
March 29, 2012

this bill and historic horse racing in the...and your comparison to investing in the stock market. Do you recall that exchange, Senator Larson? [LB806]

SENATOR LARSON: I'm not sure if that was the one from West Point, but I do remember a similar stock market exchange. [LB806]

SENATOR McCOY: It actually was, Senator, it was Mr. Wimmer from, as many of us know, from Wimmer's Meats who testified in opposition to this bill, I believe, in committee. And I believe he compared this bill to many Nebraskans investing in the stock market. And perhaps you would like to elaborate on that. I'm interested in that theory along the lines of this bill and comparison to...and your comparison during the committee of investing in the stock market and gambling, in particular gambling on historic horse racing if that was ever to be allowed in the state of Nebraska. [LB806]

SENATOR LARSON: I can; would you mind if I asked you a few questions along the way? [LB806]

SENATOR McCOY: Well, that's actually my question to you, Senator Larson. Number one is, did that occur? And I have the transcript with me so I know that it did. But I would like to hear why you believe that investing in the stock market, which many of us do, many Nebraskans do, why that is the same, or close to the same, as advancing LB806. Why is that? [LB806]

SENATOR LARSON: I think the stock market has many similarities in terms of, especially in types of bets such as horse racing. If you've seen a race card you, essentially, have previous results of horses, previous training times, and when you look to invest, a smart investor, I'm not sure how everybody invests, but a smart investor will definitely look at historical precedence of stocks and make educated decisions on how they go about that. And in terms of betting on horse racing I think many smart players of the horse racing do very similar things. And as you look at the different products that the stock market provides in terms of types of investments and what types of investments are allowed by the SEC, when you start looking at things such as credit derivatives and derivatives, and I'm not sure how familiar you are with credit derivatives or what your extensive knowledge is on those, but those are actually more fundamentally risky in terms of they have no prior experience, they have no prior indexes, you are essentially betting on a market product that has no value; and yet many of our investors, if you own a mutual fund or you invest in a number of other ways, are invested in credit derivatives, in options. Options are as well, you're essentially paying a premium, or a bet, if you want to call that on an option,... [LB806]

SENATOR McCOY: Well...well... [LB806]

SENATOR LARSON: ...you're essentially paying a premium on how... [LB806]

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

Floor Debate
March 29, 2012

SENATOR CARLSON: One minute. [LB806]

SENATOR McCOY: This is not a discussion on credit derivatives, Senator Larson, although I appreciate your (inaudible)... [LB806]

SENATOR LARSON: But it's all stock market related and that's what I was getting at. [LB806]

SENATOR McCOY: Well, but most specifically, do you view investing in the stock market as involving skill or chance? [LB806]

SENATOR LARSON: I think it is a little of both. Whenever you buy a stock you are always taking a chance that you will lose or gain money. [LB806]

SENATOR McCOY: And would you view, if LB806 were to be advanced, involving skill or chance on the part of Nebraskans? [LB806]

SENATOR LARSON: I think it is a little of both, and that's why I compared it to the stock market. [LB806]

SENATOR McCOY: Okay. Well, based upon the fact that at Kentucky Downs when three races could be run in 20 seconds, explain to me how that could be skill on the part of a bettor? [LB806]

SENATOR LARSON: Again, smart investor, just as a smart bettor will look at the race card and make smart decisions... [LB806]

SENATOR McCOY: Three times in 20 seconds, Senator? [LB806]

SENATOR LARSON: ...you can make three stock purchases in 20 seconds, not invest wisely and lose all your money that way, as well. [LB806]

SENATOR CARLSON: Time. [LB806]

SENATOR McCOY: Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator McCoy and Senator Larson. Senators wishing to speak include Avery, Brasch, Harms, Fulton, and others. Senator Avery, you're recognized. [LB806]

SENATOR AVERY: Thank you, Mr. President. A few minutes ago we heard opening on AM2678. And it was characterized as a "put up or shut up" amendment. And by that, the

Floor Debate
March 29, 2012

introducer meant that this meets all the objections raised on General File to LB806. Well, I appreciate the effort in this amendment. And if I were a supporter of expanded gambling, I would be in support of this amendment. But my objection to LB806 has been...is, and always has been, that expanded gambling is the wrong direction for the state of Nebraska to go. And the reasons that I have given are two: one, is that gambling, in essence, is a negative economic activity because it produces no product, it adds no value to an existing product, it is merely a sterile transfer of money from people who don't really have it to people who do. That's the first argument. The second argument that I have consistently made has to do with the social pathologies of gambling. And I went through an exhaustive list of some of those social pathologies. I also went through a number of objective studies about the economic consequences of gambling. And by the way, these studies that I cited were not funded by gambling interests, and they were not funded by antigambling interests. And this amendment does not address those concerns because this amendment continues to be based upon a bill that would expand gambling in a form that, I believe, and many of my fellow opponents of this bill believe, might even be unconstitutional, but certainly it is an expansion of gambling. And I cannot see any reason to vote for a bill, call it a jobs bill, that is essentially going to create additional negative economic activity in our state. This is not sound, solid public policy. The state of Nebraska has enough gambling already. I'm not going to stand here and call for a repeal of existing laws. But I intend to resist, as long as I'm here, efforts to expand upon the gambling platform that we currently have. It is not good economic policy and there is abundant evidence that it leads to additional social pathologies. If it didn't lead to these pathologies, why would we be devoting so much of the projected income from LB806 to treatment of problem gambling? So I am going to oppose this amendment. If I were a...I will repeat, if I were supportive of expanded gambling, I would probably embrace this amendment, but I am not and I am not for good reasons and I can go into those good reasons if you wish and I might do it later in another time on the mike, but at this point I want to be clear that this amendment is not a "put up or shut up" amendment for all of us. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Avery. Senator Brasch, you're recognized. [LB806]

SENATOR BRASCH: Thank you, Mr. President, and it is a good morning, colleagues. I do stand opposed to LB806 and AM2678 not because I don't approve of horse racing. Horses are beautiful creatures. I can't stress that enough. My husband and I are farmers. Some of our neighbors there in Bancroft, back in the day they had horse races, they traveled to Kentucky and across the country and I'd sit down and enjoy a good story with Jack and Earlene about the great days of horse racing that have gone by. About 20 years ago I was the marketing director at the Nebraska State Fair. I think some of you may know that. And a good friend of ours, Leo, God rest his soul, he had a passion for horse racing. I, too, enjoyed going over to the winner circle with a blanket to present to the winners. A live racing, there's camaraderie, there's children running, I met

Floor Debate
March 29, 2012

the jockeys, their wives, it's a fun day, fresh air, there's time to talk, time to laugh, time to chew your nails a little bit, it was like a family. There were jobs in horse racing. The worry really should be, what did we do to State Fair Parks' horse racing arena there? I believe that's a problem. What was...what I experienced years ago is not what you get from Senator Lautenbaugh's laptop and what looks like a slot machine. I start to wonder if he would put PayPal on that and start to do a little wagering on that, maybe he could have a little casino operation going if people are dropping money in there and taking a chance. I don't know. Again, I don't support expanded gambling. We have forms of wagering currently, but when you start to take this piece of hardware and replace that beautiful horse blanket and the smiles and the people where people have fixed eyes upon this nonhuman machine on races gone by. Simulcast racing, that's fun, that is fun because you are watching someone in California while it is a blizzard in Nebraska and there are horses that you have...you're viewing. There's a difference here, a huge difference. I understand that the purses are needed for the horse owners and the operations and for the horsemen's fund and it's a business. I'm thinking you do need to work on ways through sponsorships, kind of like the car races, have other entities...people, entrepreneurs, other ways to bring in revenues. Surely it's saveable. This is the "sport of kings." Earlier on the floor I mentioned the horse fairs. I read up on it and it seems phenomenal. You bring in thousands of people to see a horse, to touch a horse, to ride a horse, to learn about the history of horsing, then they will go to the track. Let's bring the tracks back. Let's not let these casinos move us over, move us off the page. Again, horse racing is a great sport. I don't...you know, I just...I don't see the, you know, the problem there. But there is a problem when we believe that a sport like horse racing can be replaced by historic horse racing and machines. Thank you and I do oppose LB806. [LB806]

SENATOR CARLSON: Thank you, Senator Brasch. Senator Harms, you're recognized. [LB806]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in opposition to the amendment, as well as underlying bill. And there's a couple of reasons why I feel this way. First of all, the most addictive form of gambling, colleagues, ever in the history is video gambling. And that's exactly what this is. And the amount of money that it costs us to address this issue in society with pathological gamblers is staggering. And, secondly, we give this industry more tax breaks, I think, than any other industry that I know of. And I...to me it's hard to understand that this is not all about trying to keep their doors open and they're going to move to video because on the track they can't make it. And for example, they pay no taxes on the first \$10 million in gross wages, period. The first \$10 million they pay no taxes. And in the State Fair grounds all wages are exempt. And from \$10 million to \$73 million they only pay about 2.5 percent. Now what would happen in this great industry if we decide to put together an amendment and let's just get rid of these tax deductions. Let's just get rid of everything and let them play on a fair ground, would this help them? No, it wouldn't. They are already in trouble. And that's why all this

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

Floor Debate
March 29, 2012

is coming before us. And I think in previous testimony that I've given you, even the larger races that we have nationally are struggling; they can't make it, it's impossible. And so what you have here, regardless of how you want to say it or not, it's simply a dead industry. And I don't know how else you can get it out other than just moving in a casino and saying that's what we're going to do, colleagues, there's no other way. And take away the tax breaks, they're even worse, they couldn't make it completely, it's gone, it's dead. And so I ask you to really think about this very carefully, no matter what happens here, no matter how you vote on this and what comes to the end, it's not going to improve it. We'll be back again some time in the future with people wanting to bail them out even...that there will be even a deeper involvement of loss of money. So I would urge you not to support LB806, as well as this amendment. I thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Harms. Senators wishing to speak include Fulton, Lautenbaugh, Wallman, Gloor, and others. Senator Fulton, you're recognized. [LB806]

SENATOR FULTON: Thank you, Mr. President, members of the body. I wonder would Senator Lautenbaugh yield to a question? [LB806]

SENATOR CARLSON: Senator Lautenbaugh, would you yield? [LB806]

SENATOR LAUTENBAUGH: Yes, I will. [LB806]

SENATOR FULTON: A question or two, I guess I should say. Okay, I'm going to get into this amendment a little bit more now. AM2678, I'm on page 4 of the amendment, Senator, so if you can get to there we'll be on the same page. [LB806]

SENATOR LAUTENBAUGH: Yes. [LB806]

SENATOR FULTON: Line 5, what is the significance of one year? Why was one year chosen? Why not immediately if indeed these are found to be unconstitutional? [LB806]

SENATOR LAUTENBAUGH: Well, that isn't really what it says here. This provision doesn't say if it's found unconstitutional. What it says is that if it is found to lead to expanded other types of Class III gaming on reservations then the authority would terminate in a year so that argument for the alleged authorization for expansion would go away as well. [LB806]

SENATOR FULTON: Why was one year chosen? Is there a significance to one year because it could have been six months, it could have been immediate, this is a chronological measure and so you or someone chose one year. Is there some significance to that? [LB806]

Floor Debate
March 29, 2012

SENATOR LAUTENBAUGH: Well, as I've tried to discuss in this debate, these things do exist in the real world and not in the hypothetical of floor debate and I wouldn't envision a circumstance where a court order came down and then something was authorized and we would send the sheriff out just to flip a switch. The one year would be a proper winding up time in my estimation. Maybe you would prefer six months. I would have been able to discuss a variety of different periods had I heard anything from you between General and Select. [LB806]

SENATOR FULTON: Okay. Well, you might hear from us on Select yet. The question of one year...it sounds like it was a judgment call and that's fair. The next question, and this is where...I think I had a handle on that and I wanted to get an idea of whether you and I have an agreement, whether there could be some movement there. This is one where I'll just tell you I don't have a clear handle on it and so I'm making a cardinal sin when it comes to opposing, but I'm going to ask you to explain a little bit with more clarity what is meant in lines 6 through about 14. And again, I'm focusing now on this turn on the microphone I'm focusing on chronological considerations within the amendment, "so all licenses issued pursuant to this subdivision," I'm in line 6. [LB806]

SENATOR LAUTENBAUGH: Yes. [LB806]

SENATOR FULTON: "All licenses issued pursuant to this subdivision and the authorization to license and regulate under this subdivision terminate after four years of continuous use of historic horse racing machines starting from the date of the original order of the commission permitting the use unless," and then there's...it follows, but could we start with the four years, was that also a judgment call? [LB806]

SENATOR LAUTENBAUGH: Yes, it was. The...this would not be something that would immediately lead to the same stream of revenue the minute you installed them. There would be a start up time. And in that four years some things that...some things have to happen that actually take time, like the construction of a new track in Lincoln, is the bigger one...the biggest one that comes to mind, and one year wouldn't be enough and seven years seemed too long. [LB806]

SENATOR FULTON: Okay. Is there any tie to experiential knowledge of what occurred in Kentucky? And part of this...part of the...one of the inputs to that decision would have been how long it takes a racetrack to get built. And I concur, that seems reasonable if that's the only consideration. There's also a consideration of revenues gleaned, have the revenues ramped up? Are the revenues at maximum? Are the revenues coming down? Was that a consideration in choosing four years? Was that a secondary, additional consideration in choosing four years? [LB806]

SENATOR CARLSON: One minute. [LB806]

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

Floor Debate
March 29, 2012

SENATOR LAUTENBAUGH: Well, what we've done with that, and it's once again it's...we're projecting, basically. But projecting from the success that these machines have had in Kentucky and Arkansas in increasing purses, increasing live race days, all of the things that we want...we say we want to do to support this industry that is so important in Nebraska, it was looking forward and based upon the experience that we've had to date in other states, that seemed like a reasonable amount of time to create a stream of revenue that would allow for the financing for the construction of the track in Lincoln and so that's why it was chosen that way. [LB806]

SENATOR FULTON: Okay. Then we get to the exceptions, or the "unless" which is in line 10, "unless the commission determines that (a) a racetrack enclosure is constructed in a county which contains a city of the primary class, and (b) racetrack enclosures at which historic horse racing are in use for four years of continuous use." Can you explain that because the "and" is conjunctive, both of those have to be met and it's that second "and" that I have some concern about. [LB806]

SENATOR CARLSON: Time. [LB806]

SENATOR FULTON: Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Fulton, Senator Lautenbaugh. Senator Lautenbaugh, you are recognized. [LB806]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I wonder if Senator McCoy would yield to some questions? [LB806]

SENATOR CARLSON: Senator McCoy. I don't believe Senator McCoy is in the Chamber. [LB806]

SENATOR LAUTENBAUGH: I wonder if Senator Harms would yield to some questions. [LB806]

SENATOR CARLSON: Senator Harms, would you yield? [LB806]

SENATOR HARMS: Sorry about that, colleagues. Yes, I will. [LB806]

SENATOR LAUTENBAUGH: Thank you, Senator Harms. You mentioned the tax breaks that this industry currently gets; could you elaborate on what you meant by the tax breaks? [LB806]

SENATOR HARMS: I'm just saying that they don't pay any taxes on the wages for up to \$10 million. [LB806]

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

Floor Debate
March 29, 2012

SENATOR LAUTENBAUGH: So you're referring to the pari-mutuel tax. [LB806]

SENATOR HARMS: Um, yes. [LB806]

SENATOR LAUTENBAUGH: Do you feel that you pay a disproportionate share of the pari-mutuel tax, vis-a-vis the horse racing industry because they have this tax break? [LB806]

SENATOR HARMS: I just don't think that it's the right thing to do. First of all it's gambling, and first of all I don't think they ought to be doing that sort of thing. It all boils down, Senator, to a point of the gambling. And I don't think we ought to be doing that. I've said it from the beginning and I'll continue to say it, that's what my argument is. You can twist this all you want, turn it around, do whatever you want to do, but it boils down to the same thing, I do not believe that we should be doing this. [LB806]

SENATOR LAUTENBAUGH: And I apologize, Senator. I'm just trying to address the concerns that you professed. You talk about the tax breaks they get. And thank you for your time, Senator Harms. [LB806]

SENATOR HARMS: Yep, you're welcome, thank you, it was a pleasure. [LB806]

SENATOR LAUTENBAUGH: That is a red herring that continues to be repeated. The first \$10 million of pari-mutuel revenue is tax-exempt. These are the only people that pay the pari-mutuel tax. So when someone stands up and says they get unfair tax breaks compared to everyone else, they're the only ones who pay this tax at all. And yes, the first \$10 million is exempt, but guess what, you and I don't pay it at all because we don't pay the pari-mutuel tax. So I hope you noted that exchange. When asked for the specifics, when asked why this tax is so unfair and what these unfair breaks are the response was, well understand, I just don't like gambling. That's fine, but I'm trying to pass a bill here and I'm trying to save some jobs and these people are here watching us to see what we do. And if you don't like gambling, then fine, just say that. But I've been trying to take your concerns at face value and address the matters that are raised. I've got an amendment here that Senator McCoy just stood up and said he didn't support and then he went into a long discussion with Senator Larson about the stock market. Well, Senator McCoy, why don't you support this amendment? It says we'll build the new track in Lincoln. It says purses will be up. It says race days will be up. It says we will support a charity that has offices in Senator McCoy's district that provides equestrian therapy for special needs kids and disabled veterans. So I want to know why the opponents of this don't support this amendment of all things? I took you at your word. I took it at face value. When this filibuster started on General File Senator McCoy said, well, this first amendment I had was serious, I meant to talk about it and we treated it like it was a filibuster because it was. This amendment that is before you

Floor Debate
March 29, 2012

addresses the matters raised in his first amendment. And he doesn't support it, but you were told it was meant to be a serious offer, not part of a filibuster. Folks, this is a filibuster. I know that's not a shock to any of you. But we heard on General File, boy, we don't have a lot of time left, are you sure you want to spend time on something like this because we're going to make you spend time on this. I'm not the one making you spend time on this. I'm trying to address concerns that I... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR LAUTENBAUGH: ...foolishly thought were legitimately raised on General File. Apparently that's not the case because this is a good amendment. And I've supported amendments on bills that I don't even like. It's possible to make a bill you don't like more palatable. This amendment does a lot of things that people said they wanted addressed and we're trying to do it. And when you stand up and say, well, I oppose the amendment, of course, and then I want to talk to Senator Larson about something else, well, I want to know, what about the amendment do you actually oppose. What is the problem here? If you don't want gambling, if you don't like horse racing, just stand up and say it. But I'm not going to continue to try to address concerns that are expressed if it doesn't provide any more support for the bill and they're not even legitimately held concerns in the first place. We don't have a lot of time left and I don't want to spend all afternoon on this, but thousands of jobs are on the line and, by God, I'll spend the time it takes. [LB806]

SENATOR CARLSON: Time. Thank you, Senator Lautenbaugh. Senators wishing to speak include: Wallman, Gloor, Hansen, McCoy, and others. Senator Wallman, you're recognized. [LB806]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Thank you, Senator Lautenbaugh, and thank you to the horsemen. I tell you what. This is where the West began. We used to have a sign right outside of Lincoln. This brings tourism as well. And if you're against gambling, that's okay but then let's have an amendment: keno is gone, pickle cards are gone, lottery cards are gone. If we're against gambling, folks, we can't be hypocritical about this. Everything is gone. So is this expanded gambling? I don't think so. The lottery price went up to \$2. Did anybody holler about that? Come on, folks. Be either for it or against it. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Wallman. Senator Gloor, you're recognized. [LB806]

SENATOR GLOOR: Thank you, Mr. President, and I appreciate Senator Wallman's comment. I am reminded of a bumper sticker I saw: Nebraska, where the West begins and the East peters out, thank God. (Laughter) Which gets us back to our whole discussion here on ag roots, our western roots, and what horse racing is about. And I do

Floor Debate
March 29, 2012

appreciate Senator Lautenbaugh's amendment which in this case is a comfort to me, because those folks who know me know I don't buy Powerball tickets, I rarely play keno, don't buy pickle cards. I'm covering all the gambling I can think of that we do take a look at at the state and appear to look at in a different way. Bingo halls. I can't tell you the last time I was in a bingo hall. Probably there to visit folks and shake hands but not to play a game of bingo. I don't get involved in all of that and would not be involved in this...support of this bill if I thought it was a shell to allow more expanded gaming. I just wouldn't. And people who know me know I wouldn't. It's not my nature. But I enjoy horse racing. I enjoy its roots. I enjoy, as Senator Brasch talked about, the whole atmosphere around it. I went to the races at Fonner Park last Saturday. It was a beautiful day, saw friends, shook hands with people. It was a politician's delight because of all the people who were there who knew me, and none had any idea of how I voted on this. I think they might have had an assumption. They really didn't care. What they did was say, please, continue to advance this bill. It's important to us. It's important to the community. It's important to racing. It's important to what we love. And these weren't owners. These weren't jockeys. These weren't people who had a direct investment. These were people who were there enjoying what they like doing on an occasional weekend afternoon. Families were there. I'm trying to remember how many bags of popcorn that we might have gone through in the tables around me of the people who were eating, having something to drink, taking a look at the basketball games on TV in between the races that ran. It was a carnival atmosphere and you would be hard-pressed if you landed on this earth from another planet to see what went on there and say, these people look like they're having a great time. And why would you not make the added effort to allow them to expand on this form of gaming to continue having a good time? Therein lies the challenge. One of the things that I find interesting in our discussion is that we very quickly go to discussions about casinos and slot machines. And it dawned on me that people don't understand pari-mutuel racing and what that means. What it means is that there isn't a traditional house owned by whoever the giant gaming corporation is that takes a cut. What it does mean is that you put together a pool based upon all those other folks who made a decision to bet on that specific race, and as a result of that you have a pool that you'll pull out of. The track, a not-for-profit organization, or the agricultural society, however they defined and have set themselves up, certainly gets a set amount that they used to pay for the operation and the tractors to clean up the track, and the security that's there, and the housekeeping people, all of the jobs that go hand in hand with running that track. But all they're paying for is the overhead associated with this, the pari-mutuel handle. You are basically betting against your friends, acquaintances, certainly strangers, in a pool to pull money out of that pot. [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR GLOOR: Thank you, Mr. President. So dissimilar from the big casinos and the boats that people are talking about, so dissimilar. We go back to again to our ag roots, and this is a form of gaming that our forefathers and foremothers felt very

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

Floor Debate
March 29, 2012

comfortable with for a variety of reasons, that being one of them--a form of betting in a pool that they all contributed in. And these were the same people who had a problem with drinking and passed prohibition, yet this form of gaming they found extremely comfortable with and an extension of a community and community interests and something that historically has been done going back probably to the origins of the first time a man or woman got on a horse and somebody said, I'll bet I can run this horse faster than you can. That's what we're trying to extend. And I understand people's concern about a slippery slope. [LB806]

SENATOR CARLSON: Time. [LB806]

SENATOR GLOOR: Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Gloor. (Visitor introduced.) Mr. Clerk, are there announcements or items for the record? [LB806]

CLERK: Just one item, Mr. President. Senator Council would like to add her name to LB825 as a coinroducer. (Legislative Journal page 1215.) [LB825]

And Senator Karpisek would move to recess the body until 1:30 p.m.

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. We are at recess until 1:30 p.m. (Gavel)

RECESS

SENATOR CARLSON PRESIDING

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

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

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

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

SENATOR CARLSON: Thank you, Mr. Clerk. We'll proceed to the first item.

CLERK: Well, Mr. President, back to LB806. When the Legislature recessed, Senator Lautenbaugh had pending AM2678. [LB806]

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

Floor Debate
March 29, 2012

SENATOR CARLSON: Senator Lautenbaugh, would you summarize your amendment and whatever you'd like to review on the bill for the body? [LB806]

SENATOR LAUTENBAUGH: Thank you, Mr. President. But I would ask leave to substitute AM2687 for the pending amendment. [LB806]

SENATOR CARLSON: All right. There's a request for a substitute amendment. Is there any objection? Seeing none, AM2678 is withdrawn. [LB806]

CLERK: Senator Lautenbaugh would amend or offer AM2687, Mr. President. (Legislative Journal pages 1216-1218.) [LB806]

SENATOR CARLSON: Senator Lautenbaugh, you're recognized to open on AM2687. [LB806]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. This amendment is essentially the same amendment I had before, but where we specified in there that if, and I don't believe it's possible, but if this somehow led to authority for additional gaming beyond historic horse racing on reservations or otherwise, that the authority for historic horse racing itself would go away. This just clarifies the intent of that provision which says if this allows any additional gaming beyond historic horse racing or horse racing, the amendment would go...or the authority for historic horse racing would go away. And I'd ask your approval of the amendment. [LB806]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. You've heard the opening on AM2687 to LB806. The floor is now open for debate. Senators wishing to speak include: Senators Hansen, Schilz, Ashford, and Smith. Senator Hansen, you're recognized. [LB806]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I do have some questions for Senator Schilz if he would yield. [LB806]

SENATOR CARLSON: Senator Schilz, would you yield? [LB806]

SENATOR SCHILZ: Yes. [LB806]

SENATOR HANSEN: Thank you, Senator Schilz. Since we're neighbors out there in the West, and Senator Avery told me that the West begins at Schumacher's truck stop as you go west of Lincoln, we live pretty much in the central of the West I guess. (Laugh) I do have some questions for you, a series of questions, that I asked Senator Lautenbaugh, but I want to go a little more in-depth with them and get a little deeper in this subject. And the comparison would be between live horse racing that we have now, similar to what they had here in Lincoln, similar to what Fonner Park does, and similar to

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

Floor Debate
March 29, 2012

a lot of racetracks around the country, the similarities between live horse racing and simulcast. Simulcast is a live horse race where you have a racing forum, you know the jockey and all that. And you said earlier this morning that it's all about the jobs. And the folks that are walking around here in the green shirts that says, save our jobs. And I want to go over a list with you if I could. The horse owners are certainly a part of this, so that would be part of their job. Is that correct? [LB806]

SENATOR SCHILZ: Yeah, absolutely. [LB806]

SENATOR HANSEN: We're saving that job too. What about the trainers and the farriers? [LB806]

SENATOR SCHILZ: Once again, there's more jobs that the simulcasting helps, yeah. [LB806]

SENATOR HANSEN: Okay. What about the exercise jockeys? [LB806]

SENATOR SCHILZ: Once again, all important parts of the cog. [LB806]

SENATOR HANSEN: And hay producers that produce really high-quality hay and sell them to the horses at the track? [LB806]

SENATOR SCHILZ: Once again, absolutely necessary. [LB806]

SENATOR HANSEN: Okay. Groundskeepers, both at...that keep the racetrack itself in good shape and the grounds and clean out the stalls, those are all good-paying...I mean, they're good jobs. They're hard jobs but they do that too. So that's...is that one of the jobs we're trying to save too? [LB806]

SENATOR SCHILZ: Absolutely. [LB806]

SENATOR HANSEN: Okay. And then we...on race day, we have the race jockeys and they may or may not be the exercise jockeys but they're a very highly specialized field and we're trying to save those jobs, too, I assume. [LB806]

SENATOR SCHILZ: Absolutely. We want to keep them in Nebraska. [LB806]

SENATOR HANSEN: The same with veterinarians, the ones that work on the horses, either the quarter horses that take the thoroughbreds around or whatever horses are there. [LB806]

SENATOR SCHILZ: Sure. Yes. [LB806]

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

Floor Debate
March 29, 2012

SENATOR HANSEN: Okay. And probably the medical doctors that treat the jockeys and the physical therapists that treat the jockeys, those would probably be jobs we're trying to save, too, then, wouldn't it be? [LB806]

SENATOR SCHILZ: You haven't gone wrong yet. [LB806]

SENATOR HANSEN: Okay. What about the bartenders, the wait staff, and maybe the deli owners at the tracks? [LB806]

SENATOR SCHILZ: There could be some that could say those are some of the most essential jobs, yes. [LB806]

SENATOR HANSEN: (Laugh) Have I missed any of the jobs that you're trying to save? [LB806]

SENATOR SCHILZ: Oh, I mean, I think as you look at it, the tendrils that go...the fingers go out so far, and in these communities where these tracks are, I mean, it's a big part of the community. [LB806]

SENATOR HANSEN: Okay. [LB806]

SENATOR SCHILZ: And so who knows how far those impacts extend? [LB806]

SENATOR HANSEN: Okay. I appreciate that. Now tell me the difference between live horse racing and simulcast as a group of live horse track racing. Tell me what jobs we're going to save by making historic horse racing legal in the state of Nebraska. [LB806]

SENATOR SCHILZ: You know what? They're all the same jobs that we talked about with the simulcast. And... [LB806]

SENATOR HANSEN: But the horses aren't even alive anymore. More than likely they've already passed on to their heavenly reward. [LB806]

SENATOR SCHILZ: Well, that... [LB806]

SENATOR HANSEN: There's no racing forum. There's no track...no one to look at the track and give you track conditions. [LB806]

SENATOR SCHILZ: Well, and I think... [LB806]

SENATOR HANSEN: Jockeys. [LB806]

SENATOR SCHILZ: I think that if you look at...if I understand it right, some of that

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

Floor Debate
March 29, 2012

information is available through these machines. I mean, I can't say 100 percent but I know that there are...there are...not only is it the historic horse races there, but there's also the race cards... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR SCHILZ: ...things like that that they give you indications of the history of the horses, how they've run before, so that you can make those kind of decisions. [LB806]

SENATOR HANSEN: Okay. But when you walk up to one of these machines, it may or may not look like a machine in question, and what type of information do you get before you drop the money into the machine? [LB806]

SENATOR SCHILZ: You know, that's a good question. I can find out for sure. But I do know that there is some information, but I can't tell you exactly what it is, but I will find out. [LB806]

SENATOR HANSEN: But...okay, thank you, Senator Schilz. I just really question whether this is saving the jobs that really need to be saved. It looks like we ought to be expanding live horse racing rather than going to historic horse racing where I don't think that's going to save the jobs. I really appreciate the horse tracks that are in Nebraska, and the simulcast is the next best thing. But when it comes to expanded...to historic horse racing, it looks to me to be an expanded type of gambling. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Hansen and Senator Schilz. Senator Schilz, you're recognized. [LB806]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. And thank you, Senator Hansen. I think that as we look at this, you know, all those jobs that we talked about are all jobs that go on around the track. And I think that as you look at it...what we're doing here and what's being made available to folks are basically other horse races. I mean, you can look at it however you want, but they're horse races and that's where the wagering is going on. I think those jobs can be saved that way. I think as we look out there, we can see a number of different industries where, you know, they're doing things that don't necessarily or they have an aspect of them or they have a division that doesn't necessarily...you know, they take care of all their...all the jobs that are handled there but also spill over into other areas that provide cash to pay off other jobs, other people to do their jobs as well. And no one business has every single aspect of their business that's a money maker or that supports all the jobs at once or that have a direct tie to those jobs. But in cases like this, and we talked about, you know, what have the horsemen looked into to what things can they do to help save their industry, and over and over this is the one aspect that's been out there that has been proven to

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

Floor Debate
March 29, 2012

show that this can raise...you know, this can raise, you know, how much money you can have to put out there for prizes for the winners of the horse races. And that will increase live horse racing and that's what we're talking about. I would hope and I would suggest to everyone here that's never been to a track and never seen horse racing to go on to just go take a look at what happens everyday at those tracks. It's not a 9:00 to 5:00 job. I mean, these folks are there are 4:00 in the morning, 5:00 in the morning, and maybe there till midnight making sure that everything is taken care of. This is about livelihoods. This is about people wanting to continue what they do and they've found a way that in other places it has been demonstrable that it works. And that's why this bill is here. That's why LB806 is up. That's why it made it through the first round is because the people understand, we are starting to understand, that it's not expanded gambling. You're still only betting on a horse race. And whether it's on a TV screen as in simulcasting, or whether you walk up to a window and then look out onto the track itself, or whether you watch a video monitor, it's all horse racing. And it's a great industry in the state of Nebraska and I hope for your support. Thank you very much. And if Senator Ashford would like to have my time, he may have it. [LB806]

SENATOR CARLSON: Thank you, Senator Schilz. Senator Ashford, you have a minute and a half, and then your light is on next. [LB806]

SENATOR ASHFORD: Thanks, Mr. President. I'm going to try to talk a little bit about...put this issue into the context that I have. And to do that I have to...with some trepidation, I know Senator McGill always wonders if I'm going to do a history lesson, and I'm going to do maybe a little history. In the 1930s when we started pari-mutuel betting, we expanded gambling on horses from zero to pari-mutuel betting. We did it actually as a compromise in the Legislature with the Unicameral Legislature. We were in the Depression. And I remember...I don't remember, but I remember hearing stories about a couple of retailers in Omaha, one of whom was my grandfather and the other was George Brandeis. And they were part of, at that time, the governors of Ak-Sar-Ben, and they had started the development of Ak-Sar-Ben Coliseum. And they were trying to think of a way to bring the agricultural community and the city of Omaha together to promote both. They came up...my grandfather was a conservative Swede who came up with the idea with George Brandeis if we're going to do pari-mutuel betting with others...they didn't come up with the idea themselves, and they promoted it and it worked. And as a result of the pari-mutuel betting, not only did they complete the building of the Ak-Sar-Ben Coliseum during...prior to World War I, bringing hockey to Omaha in 1941, and that same board of governors using the...of Ak-Sar-Ben using... [LB806]

SENATOR CARLSON: Senator, you're now on your own time. [LB806]

SENATOR ASHFORD: Thank you...using the proceeds partially from pari-mutuel betting and racing, built the Memorial Park in Omaha. And then went onto help build

Floor Debate
March 29, 2012

Rosenblatt Stadium with dollars that came from pari-mutuel betting. When I left the Legislature in 19--whatever it was--94, I sat on what was called the RACECO board, which had been set up by Douglas County to try to administer the horse racing at Ak-Sar-Ben. And we struggled. And at that time, the lobbyist for the Knights of Ak-Sar-Ben was one of the great gentlemen of this Legislature though he never served here but as a lobbyist, Bob Skochdopole. And during the time that I was here, the eight years, every year we reduced the pari-mutuel tax, tried to. Why did we do that? We did that because we felt as a Legislature that horse racing was critical to our state, not only to Omaha because it brought 15,000 people on a weekend from Kansas City in buses, but to the agricultural sector of our state. Now maybe that was naive. Maybe we were looking through rose-colored glasses, but we in Omaha who lived in Omaha and didn't live in rural Nebraska felt that we were doing our part, I think, as a city to have pari-mutuel betting and horse racing in Omaha. Anyway, the RACECO board had to make a decision, and that was whether we would do slots to keep horse racing going, and we voted no. After we voted no, Ak-Sar-Ben closed. Ak-Sar-Ben then eventually was replaced by PKI and all the wonderful things that have happened over in Ak-Sar-Ben. But what has happened in Nebraska since the loss of Ak-Sar-Ben as a track is emergence of these small tracks, the Omaha track, for example, and now the potential track in Lincoln, and obviously Fonner Park and the other...Atokad, and the other racetracks around the state have been maintained. I give this background only to give you some perspective on two things. One is horse racing was a means to help get us through the Depression. There is no question about that. It is a historical fact. We expanded gambling to get through...in some way, through the Depression. And all of our families got through the Depression one way or the other and have made this a great state in spite of the Depression. And I'm not saying it was because of horse racing, but I'll tell you, in that day it made a difference. I have been skeptical of the historic horse racing not because of horse racing or gambling to keep horse racing going because I was worried that even if we did this, we wouldn't have the tracks. And these places would only become places for artificial racing, so to say, horses that weren't actually running at the track. And I went to Scott Lautenbaugh. He's sitting right over there. He's shrunk. But (laughter) and I said, if you could...anyway, if we could figure out a way to more closely intertwine this ability, this expansion...and of course it's an expansion of pari-mutuel betting. It is pari-mutuel, but it's an expansion, just like in 1937 we expanded gambling in order to help save...and, albeit, maybe not in a small way but agriculture in our state. But it would...in a small way, we would be expanding horse race gambling. [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR ASHFORD: But as long as it results in more horses running, I don't see it a lot different than it was in 1937. Our state is absolutely intertwined with horse racing. I don't want to expand gambling and we voted no to slot machines in 1996. Ray Simon (phonetic) was on that board. He was a great guy. He was on a county board in Omaha

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

Floor Debate
March 29, 2012

and he was a real good guy. And he...and you remember Ray Simon (phonetic), Gwen, and he didn't want to see horse racing go down. But he and the rest of us on the board said we can't do slots in order to make it happen. We're not at the slots. We're not doing slots. We're giving horse racing a chance and the amendments allow it to happen. They allow... [LB806]

SENATOR CARLSON: Time. [LB806]

SENATOR ASHFORD: ...the horses to run and we ought to do this. Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Ashford. Senator Smith, you're recognized. [LB806]

SENATOR SMITH: Thank you, Mr. President, and good afternoon, colleagues. I just wanted to stand up and speak on this just briefly. I've been speaking with many of you. I've spoken with Senator Lautenbaugh many, many times. I've spoken with many of those that have lined up in support of the bill, as well as in opposition to the bill to try to get some of my questions answered. I think everyone has really been very helpful to me to give me the information I need to know how I cast my vote on this. I did oppose the vote, the bill on General File. And I do oppose expanded gambling, and I oppose expanded gambling for the primary purpose, primary purpose, economic issues that are related to gaming, and the drag that it can create on businesses, particularly in those areas where there's an abuse of gambling. We do have a problem with that and...but I've campaigned and I was elected to office on the basis of I oppose expanded gambling. And so, therefore, I wanted to look at this and understand, does this...is this truly expanded gambling. And I wanted to say also. I just appreciate Senator Lautenbaugh. He's a real stand-up person and I don't believe he's playing any games. I think he's been very straightforward answering my questions and I appreciate that. But there were three things I was looking at on this to determine if it's expanded gambling. At the presentation of the game, the speed of the game, and the chance related to the game. And on the presentation of the game, I believe it is an issue, you know, how it's presented to the player. But it does in and of itself make me feel that it's expanded. I believe that's a...the presentation is the issue but it's not a strong issue. And then I looked at the speed of the game and I said, well, it's much like the keno bill that we voted on earlier that this mechanism fails to mirror or simulate the live horse race wagering experience. Once again, it's an issue for me, but in and of itself it's not what I would hang my hat on in terms of showing expanded gambling. Then there's the issue of chance. There's information presented. I think it attempts to simulate but it falls short. So if it's not any one of these issues that troubles me and makes it expanded gambling for me, then what is it? And I think it is the collective package. It's all of the above. It's not any individual issue. It's all of the above. And, once again, I know there's jobs at stake here. It troubles me with that. But I have to vote in opposition to LB806 because I do believe, colleagues, that this is expanded gambling. So thank you, Mr. President.

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

Floor Debate
March 29, 2012

[LB806]

SENATOR CARLSON: Thank you, Senator Smith. Senators still wishing to speak include: Karpisek, Dubas, Hansen, Schilz, and others. Senator Karpisek, you're recognized. [LB806]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I don't have too much cold medicine in me yet today but some, and if I start gagging too much I'll probably yield my time. I just have so many problems with the way we go about this whole expanded gambling thing. I think Senator Schumacher pointed out a while back that all gambling was expanded at one time. I do not see, number one, how a shorter length of time on keno could ever be thought of expanded, but I'll try to get off that. Bringing these machines in, I don't think it is. Some think it is. I guess my point is, if Senator Lautenbaugh can draw something up that it doesn't affect anything else, who cares. I know there are people that care and I know there are people that are on the phones calling, big money, that have to have their nose in this all the time. And I know that they've paid a lot of money for campaigns. I wish that some of those people would come and try to run and sit here instead of with their fat wallet on the other end of a phone threatening people, but it happens. They've tried to run for other things, not very successfully, one of them. But if somebody thinks that they can sit on the other end of a phone and threaten me, they're sadly mistaken and they don't even try. But go ahead if you'd like to. That would be a little bit of fun for me. What is the deal here? Now we're into jobs, if it's really jobs, if it's not jobs. We do all these things to create jobs. I don't know how much money we give in tax incentives to create jobs. But we don't want these jobs. These jobs aren't that important. I don't understand that. Sure, the horse racing industry is having a little issue. Is Senator Ashford gone? I don't know what happened...here comes Senator Ashford. When he gets here, I'd like him to yield. [LB806]

SENATOR CARLSON: Senator Ashford, would you yield? [LB806]

SENATOR ASHFORD: Yes. [LB806]

SENATOR KARPISEK: Thank you, Senator Ashford. Whatever became of the Ak-Sar-Ben then? Why did that close? [LB806]

SENATOR ASHFORD: What happened was that racing was on a decline, and in order to bulk it up, there was...the Ak-Sar-Ben track was sold to Douglas County. And the...some of the leading businesspeople in Omaha took the risk on that sale. When racing finally went down because the slots didn't come in, at that point then it essentially...they created what was called the Ak-Sar-Ben Future Trust, and that's what was then...the development that's there now is because of that. But it was an effort to give the track to the county. In order to go forward, they needed...well, at that time it

Floor Debate
March 29, 2012

was the slots, slot machines. And as I said, on the RACECO board we voted not to go forward with slot machines. And after that, it was the track closed. [LB806]

SENATOR KARPISEK: Okay. Thank you. I wasn't sure. I've tried the slot machine idea too. Didn't work for me either. [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR KARPISEK: Thank you, Mr. President. Now the point is that the university is coming in and the track is going away with absolutely no help of how they're supposed to get another track in Lincoln, which is huge. Now we can say, well, they've had a long time to try to get a track, but how? What I want to say last, I'm going to try not to talk anymore on this, but I'm sure I'll get irritated and I will. But we all do other things. Almost none of us don't have another job in here because it doesn't make enough money. Money makes the world go around, folks. If they don't have enough money, they've got to try to get more somehow. That's why we're here today. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Karpisek. Senator Dubas, you're recognized. [LB806]

SENATOR DUBAS: Thank you, Mr. President, and thank you to Senator Ashford. That was a great history lesson. And I think it truly points out the difference between when we talk about gambling and you think about casinos and those types of operations and horse racing. And it's very obvious horse racing has been a part of our state's history for a long, long time, and not just a part of our history but a very important part of our history and it's contributed in very many positive ways to the well-being of our state. I have a copy of the Grand Island Independent in front of me. It's dated Saturday, February 25. It's opening day at Fonner Park. And the headline, I mean, this is front page news in the Grand Island Independent. It's serious. It's fun. It's race time. Fonner Park's opening day, a rite of late winter for central Nebraskans. So very clearly what goes on in Fonner Park has just been a very important part of Hall County and the central Nebraska region. And if there were any major downsides to an industry like this, I just can't believe that a paper like the Independent or the community of Grand Island and the surrounding areas would be embracing what Fonner Park does like they are in this news article. And it talks about there's a family that they're talking to, a mother and a father, who have brought their young children to the races. Their ages are eight and three and five. The kids were out of school today and we wanted something fun to do. They weren't betting. They were just letting the kids watch the horses and pick out which ones they liked. The pretty ones, she said is how they picked the winners. I like the ones with green, one of the little kids said. I can't envision or imagine taking your family to a casino. I'm thinking it would probably kind of be frowned upon. But yet with horse racing, it is and can be a family event. It's someplace that you can go, whether

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

Floor Debate
March 29, 2012

you choose to engage with betting or not, or you get to see incredibly athletic animals, lots of colors, a lot of different things going on. So, again, I think it points out that there...in my mind, there is a real difference between the horse racing industry and what we think of as expanded gambling in regards to casinos and slot machines and those types of things. So just kind of going back to some of the comments that I made this morning about giving an industry an opportunity to prove themselves. And, you know, with farming, with any of our businesses, we aren't doing it like we did 10 years ago, 20 years ago, or 30 years ago. I mean, when my husband and I started farming, we brought different ideas into the farming operation that my father-in-law had some struggles with. Now we have a son who's in our farming operation who's is wanting to do things differently than we've done it, and, you know, we have to kind of step back and this is the way progress happens. And to stay economically viable, we have to change our methods of operation and get engaged with new technologies and new ways of doing business. And that's all that the horse racing industry is asking from us, is allowing them...we have put some pretty serious restrictions on this industry. We have not allowed them to expand and change with the times so that they can be competitive. We really have...we often talk about the free market and being competitive, but we've put some pretty serious restrictions on this business that doesn't allow them to be competitive, that doesn't allow them to compete with some of the other things that are out there, you know, demanding or trying to attract people's attention and get... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR DUBAS: ...them to come and participate in whatever activity it is that we're trying to go. So, again, I think Senator Lautenbaugh's amendment is a good amendment. It's allowing this industry to...giving them time to prove themselves not only to themselves but I think to all of us whether or not there's a future. And if there's not, well, I guess, you know, then we look at moving on. But we need to at least give them that opportunity, that chance to be competitive, to be able to change with the times and show what they have to offer. So I, again, hope that if you're on the fence, not quite sure how to vote, that because of the information that's been presented through this amendment that you'll vote yes and give them that opportunity to show us what they can really do. Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Dubas. (Visitors introduced.) Returning to debate, Senator Hansen, you're recognized. [LB806]

SENATOR HANSEN: Thank you, Mr. President. If it'd be all right with Senator Schilz, I think I need to carry on another little conversation if he would yield. [LB806]

SENATOR CARLSON: Senator Schilz, would you yield? [LB806]

SENATOR SCHILZ: Yes. [LB806]

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

Floor Debate
March 29, 2012

SENATOR HANSEN: Senator Schilz, you remember being at home and not having a TV? [LB806]

SENATOR SCHILZ: (Laughter) Actually, no, I don't. [LB806]

SENATOR HANSEN: I was 11 years old before we had a TV in our house. And just how things have changed, I assume you go to horse races, is that correct, I mean occasionally? [LB806]

SENATOR SCHILZ: I've been to a few, yes. [LB806]

SENATOR HANSEN: I do too. Do you remember when you got your first Internet service or your Internet provider or a PC or any of that equipment maybe at your home or your business? [LB806]

SENATOR SCHILZ: Yes. [LB806]

SENATOR HANSEN: Okay. Do you remember a company called Intergalactic Computer Network? [LB806]

SENATOR SCHILZ: I can't say that I do, Senator Hansen. [LB806]

SENATOR HANSEN: It was in 1965. [LB806]

SENATOR SCHILZ: Okay. [LB806]

SENATOR HANSEN: So if you remember back that far. [LB806]

SENATOR SCHILZ: I wouldn't have been able to remember that. [LB806]

SENATOR HANSEN: Okay. A gentleman named Joseph Licklider created that in 1962, and that was the first Internet service in the United States and maybe the world, I'm not sure. But since then we've had a lot of changes. We've had...well, I'll just ask you a question. Have you ever done any on-line gambling? [LB806]

SENATOR SCHILZ: No, I haven't. [LB806]

SENATOR HANSEN: Okay. It's very easy to do. It's very, very easy to do. And I think that's part of the problem with the horse racing industry is just the competition between easy ways to sit in your den and gamble. Have you ever fed cattle? [LB806]

SENATOR SCHILZ: (Laugh) Yes. [LB806]

Floor Debate
March 29, 2012

SENATOR HANSEN: Is that a gamble? [LB806]

SENATOR SCHILZ: Some would say yes. [LB806]

SENATOR HANSEN: Would you consider a projection sheet a racing form? [LB806]

SENATOR SCHILZ: In a sense I suppose you could, yeah. [LB806]

SENATOR HANSEN: Yep. What about the betting parlors, would that be a sale barn? [LB806]

SENATOR SCHILZ: (Laugh) Some might make the argument, yes, it would be the beginning of the process. [LB806]

SENATOR HANSEN: And could the bet be considered the last hand in the air? [LB806]

SENATOR SCHILZ: Can you say that one more time? [LB806]

SENATOR HANSEN: Could the bet be considered the last hand in the air? [LB806]

SENATOR SCHILZ: I would suppose it could, yes. [LB806]

SENATOR HANSEN: Or tip of the hat or whatever that is. Is there a difference between a hedge and a speculator when you own cattle and look forward to the future to sell those cattle? [LB806]

SENATOR SCHILZ: Yeah, there's some of that, absolutely. [LB806]

SENATOR HANSEN: Okay. If you own the cattle, you can hedge the cattle; if you don't own the cattle, you have to be a speculator, is that correct? [LB806]

SENATOR SCHILZ: Absolutely, yes. [LB806]

SENATOR HANSEN: Is that a form of gambling, high stakes? [LB806]

SENATOR SCHILZ: In some...yeah, in some people's mind it could be, yes. [LB806]

SENATOR HANSEN: I think in the eyes of the regulators that speculation is a form of gambling and they're taxed different too. Thank you, Senator Schilz. I just Googled on-line gambling on the Internet the other day when we were talking about this, and Google on-line gambling is all you have to go. There's cardschat, Bet Online poker, on-line casinos. They have roulette, black jack, baccarat--that's the one with the little

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

Floor Debate
March 29, 2012

triangles--mobile gambling, tablet computer. You can do it on your tablet, your computer, your smartphone and mobile phone. And they have fund transfers, too, where you can transfer money so you can to the on-line gambling and you can use a credit care or a debit card, electronic money services. They've already outlawed three of them because they found fraud in those. But you can make payment by check or wire transfers. So it's pretty easy to do. Right now, there are 1,536 players right now playing no hold...Texas Hold'em on the Internet. Full Tilt Poker, there's 46,040 players at 21,794 tables. There's 2,014 tournaments going on right now. That's a competition for gambling and I think that's a huge factor. I'm not in favor... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR HANSEN: I'm not in favor of LB806. I think we need to do something for the tracks. I talked to Senator Larson a little while ago and, you know, if it takes a constitutional amendment, let's take it to the vote of the people and have simulcast racing in a place where you don't have to have a live track race. I think that's the wrong way to go. But if you're trying to save one track in the state or two tracks in the state, I think that's an option we ought to look at instead of having historic horse races. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Hansen and Senator Schilz. And Senator Schilz, you're now recognized. [LB806]

SENATOR SCHILZ: Thank you, Mr. President. Thank you, Senator Hansen. I just wanted to run down, and we talked about...you know, and we've always talked about the jobs here and what they really are. And I just wanted...went and got some information from some folks about the racetracks here in Lincoln and the Horsemen's Park in Omaha, I believe, and what they spend every year. And if you look here and you start to go down the line, it's somewhat amazing. Food and beverages for here in Lincoln for 2011 was almost \$900,000 that they spent. Okay. That goes to all sorts of businesses around town. They gave \$57,492.14 in sales tax and restaurant tax expense. Paper supplies are \$26,000. So as you start to see, this isn't something that just is helping one or two segments of an industry, this is something that helps a community. Payroll for live racing: ticket offices, \$37,720 per year; cleaning was \$48,329 per year; maintenance, \$61,119; the live racing officials, \$156,781; the mutual part of it was \$100,585; security, \$30,000, give or take; payroll taxes, \$45,275. They spent \$45,000 on local advertising; \$26,000 in promotions; equipment rentals, which are all local, \$53,000; fuel was \$16,000; insurance was \$53,000; and other various things that added up to quite a bit; printing, \$39,000; garbage removal, pari-mutuel tax was \$67,000. Now here's the simulcast payroll: administrative was \$166,000 a year; maintenance, \$79,000 a year; cleaning was \$69,000 a year for the simulcast; security, \$39,000; and telephone cost \$27,000. Oh, and there's one other one that I haven't even spoken to yet and that's the utilities that they spend to keep the lights on and the doors

Floor Debate
March 29, 2012

open, and that was \$365,700.87. We didn't even talk about the retirement plans and things like that. It doesn't sound like that's an industry that's dead to me. Let's talk about Horsemen's Park. That was just Lincoln. Horsemen's Park: \$150,000 in sales tax revenues a year; \$90,000 in payroll, state; \$240,000 in payroll, feds; \$60,000 in unemployment taxes; \$750,000 in pari-mutuel dollars. Folks, this is real money going to real people that are going out in those communities where they live and spending it to keep the economy going. This is what we are saving. This is what will be saved and expanded. The economies of this industry will be expanded by allowing them to do what LB806 wants to do. It makes sense. We've heard around here... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR SCHILZ: ...how are we going to pay for a tax cut. Well, if we doom these folks to failure, it becomes even harder as we go forward. Remember, the state can only spend what it takes in or it should and here in Nebraska that's the case. Why would we want to put it around our own throats and say we're willing to lop this part of our anatomy off and not have those dollars to spend? Thank you very much, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Schilz. Senators still wishing to speak include: Gloor, Brasch, Mello, and Nelson. Senator Gloor, you're recognized. [LB806]

SENATOR GLOOR: Thank you, Mr. President. Good afternoon, members. There is and has been reference made, there are concerns about reference been made to how fast you could be betting on races with this machine, and none of that has ever made sense to me. And I think it's because there's a misunderstanding on the process and these machines and how they work. I wonder if Senator Schilz would yield to some questions? [LB806]

SENATOR CARLSON: Senator Schilz, would you yield? [LB806]

SENATOR SCHILZ: Yes. [LB806]

SENATOR GLOOR: Senator Schilz, bear with me. My guess is that you have seen on TV or in the movies somebody play various types of poker and, therefore, have a way of knowing how poker is played. Would that be a fair representation? [LB806]

SENATOR SCHILZ: Yes. [LB806]

SENATOR GLOOR: So let's play the game of black jack here a minute, which you've got a dealer who deals cards to the players, one down and one up. And you look at that down card that nobody else can see, including the dealer, and decide how close you are to 21 and whether you want another card or not. Is that a fair representation of how

Floor Debate
March 29, 2012

the game is played? [LB806]

SENATOR SCHILZ: Yes. [LB806]

SENATOR GLOOR: Couldn't you play much faster if you didn't look at that card that was down? [LB806]

SENATOR SCHILZ: Sure. I would suppose. [LB806]

SENATOR GLOOR: Quickly. I mean, if you didn't take the time to look at that card and add up what that card and the one face up came up to, you could play much faster. Why would you not do that, Senator Schilz, since you can play so much faster and gamble so much faster? [LB806]

SENATOR SCHILZ: Well, in my opinion, you are given an opportunity to see that card and, depending on which card is up and depending on which card the dealer has, you make certain decisions based upon relativity and how it works. [LB806]

SENATOR GLOOR: So you bring a thought process into it as opposed to pulling a one-armed bandit where apples and cherries and things pull up. In this case you're thinking through and doing the math. If you were playing some sort of a five-card poker and were given a chance to draw the three cards to replace some of the cards in your hand that were bad, couldn't you play much faster if you just said, forget it, I don't want any additional cards, I'll play with the hand I was dealt? Wouldn't that also speed things up dramatically? [LB806]

SENATOR SCHILZ: It could, yes. [LB806]

SENATOR GLOOR: And why would you not do that if you could gamble much faster by not slowing things down by taking cards? [LB806]

SENATOR SCHILZ: Well, once again, and depending on who you are and how you're playing poker, you know, that makes it a little different than black jack because poker you don't necessarily have to have any hand at all. If you're good enough and skilled enough at manipulating the other players at the table, you can use your skill to make sure that you don't fall into a bad place. [LB806]

SENATOR GLOOR: So there is skill that's brought to play in these things. So on the historic racing machines we're talking about, aren't you given the opportunity to look at information about what the odds are on the horses that are running, the records of the jockeys that are riding them, the trainers, the same sort of information you're giving on a racing form, the same sort of information that might come about in tout sheets that you've looked at? Isn't that same sort of information available to you that is available to

Floor Debate
March 29, 2012

live racing? [LB806]

SENATOR SCHILZ: And thank you, Senator Gloor, for that question. And I did go out and check for Senator Hansen, and you're exactly right. All of that information is available, just like the racing forms, just like the daily forms that you get when you go to the racetrack. All of that's there. Track condition, everything. [LB806]

SENATOR GLOOR: Thank you, Senator Schilz. Well, it's an obtuse way to get there, but my answer to those who say you can run through these races very quickly is you would no more do that if you're interested in playing one of the historic racing games than you would ignoring looking at the card that's dealt to you face down in black jack, ignoring the opportunity to take cards and improve your hand in playing a game of poker. Why would you do that? You're throwing your money away. You're given the opportunity and need to play the game to gather that information... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR GLOOR: ...in order to do so. Thank you, Mr. President. And the same is true with historic racing. People aren't going to sit down and ignore odds, ignore the opportunity to take a look at the information available about the horses that are in that race and about the jockeys and the trainers and the track condition, all the same things, for the most part, that are brought to bear when people make decisions on racing. There is a skill and there is information brought there and it takes a while to digest that information when you look at it. People aren't going to be racing through here and placing bets multiple times per minute. There's no way to absorb that information and make the sort of decisions that people who like to play these games will do to improve their chances, to improve their odds. It's the reason it's set up the way they are, to replicate as much as possible the same conditions when that race was run originally. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Brasch, you're recognized. [LB806]

SENATOR BRASCH: Thank you, Mr. Speaker, and good afternoon, colleagues. I just wanted to mention one thing. When Senator Ashford talked about the great horse races during the Depression, it triggered something in my memory that during the Depression there were also phenomenal car races, live car races, that were taking place at Nebraska State Fair Park. I did a quick Google and the reason I know about it is because Bill (phonetic) and his wife here in Lincoln, they talked about those days where the National Guard there right next to the racetrack would come over and they would push the race cars at that time to get them to started. And there were throngs of people that would come to the live car races. And we tried to make a comeback of those car races, help build another track around the horse track back in 1990. We held all kinds of

Floor Debate
March 29, 2012

festivities, had a pretty good turnout for a while, and car racing did make somewhat of a comeback. But, again, car racing industry has sought different marketing venues, different sponsorship venues. They are still growing strong. I enjoy horse racing. The beauty. The sport. The art of live horse racing. We're not debating here about bringing another live track back here to Lincoln. We're talking about, in my mind, it's replacing those beautiful days of the past with, again, hardware. Mechanical horse racing. You know, if you're an operator, if you own the track, it's probably really inexpensive. You pay for hardware, maybe you need tech support once in a while. Maybe you need to upgrade your program, upload, download. You put in an old program and you run, you know, the machine until the machine needs a new machine. You don't need a veterinarian. You don't need the personnel. You don't need all the payroll. You don't need, you know, all of the livelihood, all the dollars that we are talking about with a track that consists of historic horse racing. It's apples and oranges. If we're talking about a purse that the horse racing industry do to locate these, low attendance can no longer sustain and provide the dollars to run a track. That's a whole different issue. But expanding gambling is not bringing back the love of horses. That's what the challenge is. That's what the fight should be. They should be wearing stickers and T-shirts that say, "Take a friend to the track today." I mean, that's what it's all about is asking a friend to bring a friend, to bring their friends, to bring their families. That will bring people back. That will...those are the type of races where people wear the beautiful Kentucky derbies, they drink the mint juleps, they talk to people at their tables, they sit in the clubhouse. I just don't see this being the solution to declining attendance at live racing. So I...again, it's a good amendment here but I do not support it. I don't think it's the solution. Thank you, colleagues. [LB806]

SENATOR CARLSON: Thank you, Senator Brasch. Senator Nelson, you're recognized. Senator Nelson, you're recognized. [LB806]

SENATOR NELSON: Thank you, Mr. President, members of the body. Colleagues, we had an interesting history lesson here from Senator Ashford. He goes back a ways in Omaha; so do I. I think there's a little more to the story, not that he left anything out in particular, but he said that racing at Ak-Sar-Ben declined. And he's absolutely right. The serious question is why did it decline. It was a going industry. A lot of people there. A lot of trainers, horses, all the collateral, the things that you could buy there, the drinks, the food, and everything. The nemesis was the advent of dogs over in Council Bluffs and slot machines. And why did people abandon Ak-Sar-Ben? Because they could only bet once every half hour, and they could go over into Council Bluffs and bet on the dogs at a much faster rate and certainly on the slot machines at a much faster rate. It was all about speed and the number of times that you can bet. Ak-Sar-Ben had two courses. There they go. First of all, they tried to improve their facility. It was pretty good as it was. I think they put \$8 million in there and it really, really looked good. And that was supposed to attract the bettors. It didn't. It continued to decline. The revenues and the handles went down. And so then the push was let's get slot machines in here so that we

Floor Debate
March 29, 2012

can compete with the racing over in Iowa. And I don't remember exactly what it was. I know that it was...it was a little south of my neighborhood, but I know there were a lot of petitions circulated, and maybe they were petitions to...probably the county board, I don't know. Anyway, there was a lot of push back, a lot of objection to having slot machines in Ak-Sar-Ben. It may have...would have required special legislation, I don't know. But the end result was that it got voted down. There were no slot machines in Ak-Sar-Ben to save racing so they could continue to race. Ak-Sar-Ben finally had to negotiate something with the county and sold for a reasonable price. It was valuable land. The body that controlled that did a pretty good job. But look what we have there at Ak-Sar-Ben now. We have the Scott Center. We have housing. We have Ak-Sar-Ben Village, a lot of jobs there. A lot of ground still to be developed there that will provide jobs and income. The point is, if change is coming, then you have to adapt to it. You have to accept to it, accept there will be a loss of jobs probably, at least to a certain extent. Although I do think the racing industry can survive by going outside the state of Nebraska. We haven't really talked about that. But this is what happened at Ak-Sar-Ben, and I just want to point that out to you. We're talking about IRTs, instant racing terminals, with emphasis on the word instant. That's what the attraction is. And my good friend Senator Gloor talks about Grand Island where they have Fonner Park. I can understand, you know, why he's supportive of that. Senator Dubas as well. Why wouldn't the Grand Island Independent support that? It's part of their economy there. They want to keep it alive. But we have to be realistic about it. So now let's come down to the IRTs, the instant horse racing, as it's embodied here in historic horse racing. At the ordinary race, you have to wait 30 minutes. So you get these machines... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR NELSON: ...and you can kind of regulate the amount of time. I guess you could take five minutes to look at all the data and then place a bet. Why would you do that? Why isn't like a slot machine where you can make a quick calculation, say, well, I'll vote for these three? Except the bells rang, you didn't get anything. So you go in again. Again, it's a matter of the amount of time, the amount of bets that you can place in the hope that the more times you're able to bet, the more chances you have of winning some money. I just have to stand here. It's an expansion of gambling if only because of the instant amount of time, the reduced amount of time it takes to bet. I think Senator Ashford, as far as he's concerned, it's an expansion of gambling. It's not very different from slot machines. It's practically identical. If we can't have slot machines, then why are we pushing this as a way of trying to save the racing industry? Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Nelson. (Visitors introduced.) Returning to debate, senators wishing to speak include: Avery, Wightman, Krist, and Karpisek. Senator Avery, you're recognized. [LB806]

Floor Debate
March 29, 2012

SENATOR AVERY: Thank you, Mr. President. We keep hearing that this is the salvation for horse racing, that we've got to do this or we lose the industry and that it's partly our fault because of what we are doing out at Innovation Campus. I would submit to you that Innovation Campus is going to have a huge impact, economic impact, on this state over time that will so outweigh and overshadow any kind of income that horse racing could have produced, ever could have produced, ever will produce with or without this bill. I'm telling you, Innovation Park was the right thing to do and we did not do it to get rid of horse racing, believe me. The reason why this is not the solution to the problem with horse racing is that the problems with horse racing and the decline of that industry are endemic to the actual sport itself, as Senator Nelson just pointed out. These gaming machines have been found to actually hurt horse racing in some tracks. Racing revenues decline because of increased competition for racing dollars. Placing machines in the track venue usually means you are putting the competition right in the house so that the bettors then instead of hanging around and waiting 30 minutes to get a bet in on a horse race, they're down in the basement or wherever your slot machines are playing the machines. The machines do not bring more people to the tracks. Machine bettors are not necessarily race bettors. In fact, machines in racing venues mostly divert attention from the horses rather than creating more interest in racing. Another point that I think is worth making is that horse racing's problem is more a customer problem than it is a revenue problem. The evidence that we have over the past decade is that horse racing attendance is down about 30 percent nationwide, and horse racing wagering is down about 37 percent. Now I realize some of that can be explained by the recession. But the facts are that horse racing has problems that are endemic to the industry. Horse racing is losing its fan base at about 4 percent a year, about another 2 percent of the fans are dying, and you're adding about 3 percent. So if you do the numbers, you can see that over time, the industry is shrinking. The projected decline in the fan base in the next ten years might reach 64 percent. That we can't fix with this bill, folks. This bill will not fix that. Racing is simply not attracting new fans and it is certainly not attracting the kind of fans they need, and that's young people, people who are going to be around for a while. It's mostly a sport that's attended by older people, and younger people are the ones who want to get to the casinos where they can get the quick fix or the quick rush or the quick kick from betting on slot machines and on the tables. You don't find that at racetracks. I came across an interesting piece of information. In I think it was 2009, about \$318 million was given to subsidize horse racing in this country. The result, continued decline in the fan base. In fact, here in the state of Nebraska we subsidize horse racing to the tune of at least \$10 million a year. And it goes like this. We have in law... [LB806]

SENATOR CARLSON: One minute. [LB806]

SENATOR AVERY: ...a 2.5 percent increase in the sum of wages...of wagering, excuse me. That first \$10 million is exempted from the 2.5 percent. Then the next tier is from \$10 million to \$73 million. That's taxed at 2.5 percent. And over \$73 million is taxed at 4

Floor Debate
March 29, 2012

percent. So the first \$10 million collected on the bets are tax free. I have a bill in...or not a bill but an amendment up there that would eliminate that. Now is that a serious amendment? I might pull it, but I think it's worth discussing. If we are not going to be able to save this industry, let's quit pouring money into it. This bill will not save it. Believe me, folks. It is a false promise and we should not be taken in by it. Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Avery. Senator Wightman, you're recognized. [LB806]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I haven't weighed in on this issue since about two years ago I think. Last year, I was out most of the time. I'm not even sure whether there was a bill up, but at any rate I thought perhaps it was time that I did so. I agree that gambling does come in many forms, and to some extent I think Senator Larson probably is even correct in some of the statements he made this morning. Taken to excess, betting, or whatever you call it, investing in derivatives, investing in stock options, investing in many things, is gambling and leads to the same thing, unfortunately, that gambling does because there are bankruptcies caused by that as well. But I think there's more glitter and glistening to horse racing and certainly more to the casinos than if you go to Las Vegas and drive through the city. There are a lot more ways that people are pulled in I think. As an attorney, I did do not a lot but some bankruptcies for a long time. The referee in bankruptcy earlier and later trustees in bankruptcy asked a question of, I think, everybody who had filed bankruptcy in the first creditors hearing as to whether or not any of this resulted from gambling debts. And, probably not to the surprise of many of you, that question was often answered in the affirmative, that gambling did contribute to the bankruptcy and many families suffered as a result of that all across the state of Nebraska and they still do. So while I think you can gamble in other ways, I just don't think the attraction is the same as we're going to see. And you can argue that this is a slot machine or is not a slot machine, but I think for all practical purposes, it's a long ways from a horse race. So I will say that with regard to commodity options, security options, and to some extent derivatives, there is a legitimate business purpose for these. I find it hard to find a legitimate business purpose in casino gambling and really that's, I think, what we're doing. We're broadening the base. There are going to be many, many people--and I don't think we should kid ourselves--that are going to go to these racetracks to participate with regard to the historic racing on something much like a slot machine, whether we call it that or whether we don't. I think it's going to lead to a lot more financial problems. I came here opposed to expanded gambling. I do believe this is expanded gambling. So I find it difficult and impossible to even support LB806 or take any action here with regard to this bill that will lead to expanded gambling. So with this, I am announcing that I will not support LB806 and probably will not support it getting to a vote. Thank you, Mr. President. [LB806]

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

Floor Debate
March 29, 2012

SENATOR CARLSON: Thank you, Senator Wightman. Senator Krist, you're recognized. [LB806]

SENATOR KRIST: Thank you, Mr. President, and good afternoon, Nebraska and colleagues. I spoke once on General and I'll speak once on Select. I don't want to use the term hypocrite, but we stand almost on a daily basis and realize the revenue produced from forms of gambling in this state. Part of that gambling is the lottery, and it has grown under the supervision of the Department of Revenue and has created many options that we would not have in the state. Keno, my favorite subject, has prospered and grown, and there isn't one person on this floor that wouldn't be lobbied hard from your local officials if Senator Karpisek and I lost our minds and decided to make it ten minutes between games rather than five. Every one of the people that you work for that put you in office and is locally elected to represent your communities would have a fit because they rely on gambling money to do many, many good things. Is this an expansion of gambling? I don't see it that way. I hope everyone who has lobbied me who knows me well, who knows that I don't want to see gambling expanded, will hear this and hear this loud and clear. This is the concept of a loss leader. Not everything in your business produces money. Some things in your business you lose money at. I gave you the example during the General File discussion about the aviation industry. There are things that I do that I have to do that I lose money at. But I have other things that make money and the balance is there. That's what this is. In my mind, this is truly an option for those folks in the horse industry to make a recovery. Now I will also tell you, and I told you on General, this is a chance. It may not work. Senator Avery may be absolutely right. It may not work. But it's the last time I'm going to vote for anything that's not going to be an increase in live horse racing in order to prop up the industry and get them back together. And I hope that logic rings true. I really want to see horse racing continue in the state of Nebraska. I do not want to drive them out of the state as we have heard other folks say. I want to give them an option. One other thing I'd like to add, and I think it just needs to go on the record again, this body, I was not part of it when the decision was made, but some of you were. And I will say we, the Legislature, because as a 49, we have a heritage and a history. I'll take some responsibility for being here and saying it now. We should have made sure that Fonner Park raced when the fair went to Fonner Park. We should have made sure that those live horse racing days went there so that our kids and our families and our kids' kids could enjoy the sport that we did. With that, I will tell you that I will support a clotured motion if it's made and I will support LB806 in whatever form it continues to be. Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Krist. Senator Karpisek, you're recognized. [LB806]

SENATOR KARPISEK: Question. [LB806]

SENATOR CARLSON: The question has been called. Do I see five hands? I do. The

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

Floor Debate
March 29, 2012

question is, shall debate cease? All those in favor vote yea; all opposed vote nay.
Record, Mr. Clerk. [LB806]

CLERK: 29 ayes, 0 nays to cease debate. [LB806]

SENATOR CARLSON: Debate does cease. Senator Lautenbaugh, you're recognized to close on AM2687. [LB806]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I believe we've amply discussed this amendment and I think I've explained to you exactly what it does. I believe it improves the bill vastly by taking into account concerns. It guarantees that if this goes forward there will be a new track in Lincoln, there will be more live race days, purses will increase, and the things that we have represented to you that are the purpose for bringing this bill, the things we want to bring about, either occur or the authority goes away. It clarifies the charitable purposes for which some of this revenue can be used and sets that forth in statute as well. And again, it also provides a provision that states that if in any way this could lead to different forms of gambling on the reservations because of this authority granted in this bill, then the authority goes away. I think it's a good amendment. I think it addresses things that I heard from a lot of you on General File, and I would ask for your support. [LB806]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Members, you've heard the closing on AM2687 to LB806. The question is, shall the amendment be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB806]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Lautenbaugh's amendment. [LB806]

SENATOR CARLSON: The amendment is adopted. We return to discussion on the underlying bill. Mr. Clerk for an amendment. [LB806]

CLERK: Mr. President, the next amendment I have, Senator Langemeier had a motion. Senator, I understand you'd like to withdraw FA49. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Senator Lautenbaugh, I now have AM2359. [LB806]

SENATOR LAUTENBAUGH: I'd like to withdraw that amendment. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

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

Floor Debate
March 29, 2012

CLERK: Senator Harms, AM2226. [LB806]

SENATOR CARLSON: Senator Harms. [LB806]

SENATOR HARMS: I would like to withdraw, please. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Senator Nelson, AM2223. [LB806]

SENATOR CARLSON: Senator Nelson. [LB806]

SENATOR NELSON: I'd like to withdraw that amendment. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Senator Fulton, AM2222. [LB806]

SENATOR CARLSON: Senator Fulton. [LB806]

SENATOR FULTON: I'd like to withdraw. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Senator Fulton, AM2221. [LB806]

SENATOR CARLSON: Senator Fulton. [LB806]

SENATOR FULTON: I'd like to withdraw that amendment, Mr. President. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Senator Fulton, AM2220. [LB806]

SENATOR CARLSON: Senator Fulton, the amendment is withdrawn. [LB806]

CLERK: Senator McCoy, AM2219. [LB806]

SENATOR CARLSON: Senator McCoy. [LB806]

SENATOR MCCOY: Wish to withdraw. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

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

Floor Debate
March 29, 2012

CLERK: Senator Christensen, AM2227. [LB806]

SENATOR CARLSON: Senator Christensen asks to withdraw. The amendment is withdrawn. [LB806]

CLERK: Senator Avery, AM2216. [LB806]

SENATOR CARLSON: Senator Avery. [LB806]

SENATOR AVERY: I wish to withdraw that. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Senator Avery, AM2217. [LB806]

SENATOR AVERY: I wish to withdraw. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Senator Avery, AM2218. [LB806]

SENATOR AVERY: Same, withdraw. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Senator Avery, AM2225. [LB806]

SENATOR AVERY: I wish to withdraw. [LB806]

SENATOR CARLSON: The amendment is withdrawn. [LB806]

CLERK: Mr. President, Senator Lautenbaugh, AM2681. (Legislative Journal pages 1219-1220.) [LB806]

SENATOR CARLSON: Senator Lautenbaugh, you're recognized to open on your amendment. [LB806]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. As you probably surmised, there were some discussions off the mike about how to go forward. And by way of an agreement, we brought the prior amendment, that I think improves the bill, to a vote and that's been adopted. I have agreed to offer AM2681. Simply put, on existing pari-mutuel wagering the first \$10 million is not taxed and funds

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

Floor Debate
March 29, 2012

above that are taxed. This would eliminate that \$10 million exemption. This, and understand this is part of a discussion, those who have been opposed to the bill have not agreed to vote for the bill if I do this. The consideration was they would pull their amendments. I don't know that they'll vote for this amendment, but I agreed to bring this amendment and so I have. Simply put, what it does is it removes the exemption on the first \$10 million of existing pari-mutuel revenue. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Members, you've heard the opening on AM2681. Floor is now open for debate. Those wishing to speak, Senator Schumacher, you're recognized. [LB806]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Would Senator Lautenbaugh yield to a question? [LB806]

SENATOR CARLSON: Senator Lautenbaugh, would you yield? [LB806]

SENATOR LAUTENBAUGH: Yes. [LB806]

SENATOR SCHUMACHER: In the event that the Supreme Court declares that the underlying machine racing is unconstitutional, what will be the status of the tax? [LB806]

SENATOR LAUTENBAUGH: They would...it would depend on if they struck down the entire bill as a whole which this is a part of or if they struck down provisions of it. [LB806]

SENATOR SCHUMACHER: And if they struck down enough of the racing portion of the bill to make it dysfunctional but still existing, would the tax exemption be gone? [LB806]

SENATOR LAUTENBAUGH: Arguably, yes. [LB806]

SENATOR SCHUMACHER: Okay. So that's the wager here. [LB806]

SENATOR LAUTENBAUGH: Yes, sir. [LB806]

SENATOR SCHUMACHER: Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Schumacher, Senator Lautenbaugh. Senators wishing to speak: Senator Krist, Senator McCoy. Senator Krist, you're recognized. [LB806]

SENATOR KRIST: Thank you, Mr. President. Senator Lautenbaugh, would you yield for a question? [LB806]

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

Floor Debate
March 29, 2012

SENATOR CARLSON: Senator Lautenbaugh, would you yield? [LB806]

SENATOR LAUTENBAUGH: Yes, I will. [LB806]

SENATOR KRIST: We all see deals made and in this particular case I have to tell you, and I'd just like to have a discussion with you on the mike for the record, to me this is like building the coffin but not really nailing it closed. If we're trying to save the industry or trying to help them save themselves, we're taking one of those legs out of the...off the table at this point, whether there's severability and they're able to declare parts of it constitutional or not. Can you talk to me about your thoughts versus that? [LB806]

SENATOR LAUTENBAUGH: Senator, this is what I agreed to do to get the amendments taken off of the bill. [LB806]

SENATOR KRIST: Okay. Thank you. [LB806]

SENATOR LAUTENBAUGH: I understand your concerns. [LB806]

SENATOR KRIST: Thank you, Senator Lautenbaugh. I would hope you share that concern. I'll still support LB806 in its form, but I think everyone who has talked about the industry and the physical...actually, the fiscal condition of the industry, we're putting another nail in the coffin. I don't know how else to say it. I have some reservations about what we would do here. Guess that's all I have. Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Krist and Senator Lautenbaugh. Senator McCoy, you're recognized. [LB806]

SENATOR McCOY: Thank you, Mr. President. Thank you, members. I think this is an important discussion to have. This tax exemption and the first \$10 million of profit has been in place in statute for a very long time. I think it's an important discussion to have. I don't support this amendment and I still don't support the underlying bill. But as we all know, on the fifty-second day we've got a lot of ground left to go. We've got a lot of ground left to cover and we've got a lot of other bills to get to. And so this discussion is a good one. The withdrawal of these amendments on both sides of this issue allows there to be a vote--I, however, am still opposed to it, as I know others are as well--but allows there to be a vote on this issue so that we may get to other pieces of legislation that we all value before the end of the session. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator McCoy. (Visitors introduced.) Senator Karpisek, you're recognized. [LB806]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, thank you for pulling those amendments. I agree with Senator McCoy, there's a lot to go. There's a lot

Floor Debate
March 29, 2012

of things that we all do in this body that we don't always like to do. It happens. I talked to some FFA kids today and I said I consider this place a lot like a football game and teams. And you might not always like everyone on your team but you have to get together to play and to win. And it might be the next play or it might be the next game, but sooner or later almost everybody in here is going to be on a team, so I do appreciate that. I do not support AM2681 and if we're going to start talking about taking away tax breaks, I will bring a long, long laundry list next year. Even with Senator Pahls being gone, I'm sure I'll get ahold of him and we could do away with some tax exemptions too. So if that's the way that the body would want to go, we would have a very, very long conversation. This money was put in for a reason. It's still needed. There's a lot of issues here and we can look at almost any industry in this state that has had its tough times and its good times and if they've had a little bit of help along the way. I really hope that you do not support AM2681. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Thank you, Senator Karpisek. Those wishing to speak include Senators Krist, Pahls, and Gloor. Senator Krist, you're recognized. [LB806]

SENATOR KRIST: Okay, I'm back again. Thank you, Mr. President. I guess I left something on the table unsaid. I cannot support AM2681. It is...it's ridiculous. We're trying to help an industry and yet we're going to take away their tax exemption. It doesn't make any sense. I was just talking off the mike with several senators and the thought comes to my mind, let's just put a floor amendment on here. Let's kill the slot machines, as they like to call it, and let's put a \$30 million tax exemption on here if we want to help them. But we don't. It's a disingenuous effort to move forward. But we need to move forward because we're short in the session, we've got a lot of other things to discuss. But I just...I can't support AM2681. See through this. This is ludicrous. [LB806]

SENATOR CARLSON: Thank you, Senator Krist. Senator Pahls, you're recognized. [LB806]

SENATOR PAHLS: Thank you, Mr. President, members of the body. You know, whether you vote yea or nay on this bill doesn't affect me. What I like about it, at least the topic came in front of us. Whether you support it or not, there is a starting point. Like I say, whether this goes up or down, it means that at least we are looking at the other direction occasionally. Instead of always adding exemptions, I know this is not a sales tax exemption, but instead of adding we're at least taking a look, and that's basically what I've asked from the beginning, two or three years ago--take a look at what's happening. You can vote it up or down, but occasionally we have to go back and look at what we have done. I've expressed that intent on tax...sales tax exemptions, not to get rid of them but at least to talk about them, and that's what I see that we're doing today. I'm not proposing to do away with it but I'm saying at least it has given us an opportunity to realize there are issues out there that we have established in the past through negotiations. So I'm assuming how some of these exemptions and this particular

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

Floor Debate
March 29, 2012

exemption came about. A series of groups and senators got together and said, okay, this is good for this time. And it may have been good in the past and it may still be good, but what I like about it is at least it's on the table. Thank you. [LB806]

SENATOR CARLSON: Thank you, Senator Pahls. (Visitors introduced.) There are no other senators wishing to speak. Senator Lautenbaugh, you're recognized to close on AM2681. [LB806]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I think we had some discussion on this. And again, what it does is it removes the existing exemption for the first \$10 million of pari-mutuel wagering. Thank you, Mr. President. [LB806]

SENATOR CARLSON: Members, you've heard the closing. The question is, shall AM2681 to LB806 be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB806]

CLERK: 2 ayes, 24 nays on the amendment. [LB806]

SENATOR CARLSON: The amendment is not adopted. [LB806]

CLERK: I have nothing further on the bill, Mr. President. [LB806]

SENATOR CARLSON: Senator Larson for a motion. [LB806]

SENATOR LARSON: Mr. President,... [LB806]

SENATOR CARLSON: Excuse me. Go ahead, Senator Larson. Senator Fulton, for what purpose do you rise? Okay, Senator Larson for a motion. [LB806]

SENATOR LARSON: Mr. President, I move that LB806 be advanced to E&R for engrossing. [LB806]

SENATOR CARLSON: Members, you've heard the motion. Senator Fulton, for what purpose do you rise? [LB806]

SENATOR FULTON: I request a roll call in reverse order, please. [LB806]

SENATOR CARLSON: All right. The question is on the advancement of LB806. Senator Lautenbaugh. [LB806]

SENATOR LAUTENBAUGH: I'd request a call of the house. [LB806]

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

Floor Debate
March 29, 2012

SENATOR CARLSON: There's been a request for a call of the house. The question is, shall the house be called? All those in favor vote yea; all opposed vote nay. Record, Mr. Clerk. [LB806]

CLERK: 34 ayes, 0 nays, Mr. President, to place the house under call. [LB806]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator McCoy. Senator Ken Haar, the house is under call. All senators are accounted for. Mr. Clerk, please proceed. [LB806]

CLERK: That was reverse, right, Senator? [LB806]

SENATOR CARLSON: Reverse order. [LB806]

CLERK: (Roll call vote taken, Legislative Journal page 1220.) 26 ayes, 18 nays on the advancement, Mr. President. [LB806]

SENATOR CARLSON: LB806 does advance. Mr. Clerk, items? Raise the call. [LB806]

CLERK: I have one item, Mr. President, thank you: a confirmation report from Banking, Commerce and Insurance. And that's what I have. Thank you. (Legislative Journal page 1221.)

SENATOR CARLSON: Next item, Mr. Clerk.

CLERK: Mr. President, LB806A. Senator Larson, I have no amendments to the bill. [LB806A]

SENATOR COASH PRESIDING

SENATOR COASH: Senator Larson for a motion. [LB806A]

SENATOR LARSON: Mr. President, I move that LB806A be advanced to E&R for engrossing. [LB806A]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB806A is advanced. Next item, Mr. Clerk. [LB806A]

CLERK: Mr. President, LB970. Senator Larson, I have Enrollment and Review amendments. (ER224, Legislative Journal page 1055.) [LB970]

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

Floor Debate
March 29, 2012

SENATOR COASH: Senator Larson for a motion. [LB970]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB970 be adopted. [LB970]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The amendments are adopted. [LB970]

CLERK: Senator Cornett, I have FA57 with a note you want to withdraw. [LB970]

SENATOR CORNETT: Yes, please. [LB970]

SENATOR COASH: So withdrawn. [LB970]

CLERK: Mr. President, Senator Schumacher would move to amend with AM2620. (Legislative Journal page 1201.) [LB970]

SENATOR COASH: Senator Schumacher, you are recognized to open on AM2620. [LB970]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. It's probably no secret that I am not the biggest fan of LB970, and my reason for not being a big fan of it is because I think we may very well find ourselves in a position where we are revenue short and have only an option of raising taxes, something that I certainly would refuse to do. I am also not a fan because it disorganizes capital in that it takes \$50 million, \$60 million eventually, maybe more, and instead of keeping it organized where we can put it into roads, into schools, into infrastructure for which we can grow this state, it dissipates it into tiny amounts which have very little power and are going to be consumed rapidly without even enough quantity for consumption. Quite frankly, LB970 exceeds my risk tolerance level. But having said that, I ask myself, suppose I'm wrong? If the underlying assumptions of LB970 are correct and there is 3 percent real revenue growth just from growth of the economy, maybe 4 percent, 5 percent, then the computer down in the Appropriations war room begins to make things look pretty rosy that we will have a healthy economy, a healthy budget situation without having to sacrifice a small tax cut now. I also ask myself, is there a way that we can do something to bring into action all the private capital that's sitting on the sidelines to...while things are cheap, while our contractors and engineers are sitting on the sideline to get them to work so that we...actually, in order to do that we would need more money into government, but you can't have it both ways. So this particular amendment is...I'm not sure if it's a pioneer or a guinea pig, but I'd like to share it with you and maybe we can have some discussion. What it says is that your spread between what the new tax would be under LB970 and the old tax--in the case of most families that's a buck or two a week--probably closer for the average family, a dollar a week, times 100, up to times

Floor Debate
March 29, 2012

100 you can make an election and you can deposit or leave that money with the state so that the state can begin to do things like roads and projects while times are cheap and contractors are willing to work cheap and before any inflation kicks in, if there's going to be inflation. And what you get for leaving that money and maybe putting a little extra up to 100 times with the state--it becomes the state's money, not an obligation or a debt of the state--is you get down the road a credit and that credit is equal to your purchasing power at the time you put it in. In other words, it's adjusted for the cost of inflation. And the interest rate on the 10-year Treasury which is now a little over 2 percent for as many years as you left it in, and that interest rate is fixed in the year that you put the money into the system so that down the road you can claim a credit against your income tax that is basically your money inflation protected with a modest rate of return. Now there's a downside. If you and your wife die before you claim the credit, the only thing you get out of your money is a credit against your inheritance taxes, and then the rest is history. But it does create an investment vehicle. Now whether or not people would buy into this, I don't know. I actually think I would. Rather than having, say, \$5,000 in the bank drawing zero percent interest, if I figure I don't pass away and my wife won't pass away for a few years at least, I think I'd sooner have it in this program where I'd be experiencing some growth on that money. And I think it's a way that we can give to people who are willing to invest in this state a return on their investment, at the same time amass capital for projects now which would really be good to do, and give those people in the future a benefit of what amounts to a future bite at their taxes that is reasonable in size. And so today it's a very simple proposition. I think it's unique. I haven't heard of this anywhere else, and it maybe will help us begin to focus on some future tax policies as to how we mobilize private capital in the public sector for a return on investment for the people that invest. Because the bad thing about taxes are that the people who pay them get maybe disproportionately less in return, and this is a way maybe to mitigate that. So simple proposition. You don't take your tax cut. You can multiply that tax cut by what would amount to almost a gift to the state, and you buy a future tax credit to compensate you for that tax investment, which in order to make it meaningful you can up the ante to up to 100 times that amount. So if your tax savings under the tax plan was a dollar a week, you could actually put an equivalent of \$100 a week toward this plan. And we could see whether or not money would be raised this way, people rewarded and encouraged to save, and hopefully maybe instead of going into a holding pattern where we're worried about having to raise taxes or what program we've got to really cut beyond the bone, we'd actually be able to expand. Whether people buy this or not, what you think of it I don't know, but Senator Flood, when we began this discussion on LB970, said bring your ideas. So folks, here's an idea, and I wouldn't mind having a little discussion on it for a while. Thank you. [LB970]

SENATOR COASH: Thank you, Senator Schumacher. Members, you've heard the opening to AM2620. The question for the body...oh, excuse me. There are members wishing to speak: Senators Conrad, Hadley, and Cornett. Senator Conrad, you are recognized. [LB970]

Floor Debate
March 29, 2012

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I rise with no specific opinion on AM2620 at the present sense, but I've just had a chance to review it and am looking forward to hearing more about Senator Schumacher's idea, because it does indeed sound innovative and interesting, which are two adjectives that we haven't heard a lot in this tax debate. And I think that those kind of innovative ideas do belong in this debate. Friends, I don't anticipate a protracted debate strategy in regards to this issue, but I do think that it's important that the record is very clear about where we are, and I'm going to utilize my time over the next many lights to clarify that record in regards to where I see it. As noted on General File, we have really two separate and distinct policy avenues which we need to think about when it comes to LB970 and the ill-advised and unaffordable tax cuts contained therein. The first would be fiscal issues and looking at our bottom line and our budget projections we have to ask ourself whether or not this legislation, like any legislation before us, is affordable. And if we do choose to fund this tax cut, what impact is that going to have in terms of other critical state obligations like healthcare, education, public safety, natural resources, infrastructure. The list goes on and on and on. The second and distinct yet equally important policy avenue that we need to think about and should be thinking about in regards to this or any other legislation that affects our revenue infrastructure so dramatically should be the policy issues related to who really benefits from this legislation. And I think there were a lot of misconceptions and maybe some misinformation on General File about how this legislation impacts all Nebraskans, and I would contend that it has a disproportionate impact on Nebraska's most wealthy and leaves out Nebraska's most vulnerable, which is additionally problematic. So let's be clear, because I have yet to hear a compelling argument in terms of fiscal narrative or a policy narrative as to why we need to enact LB970 today or this year. It remains to be seen. I read and reread the committee transcript and the General File debate, and we'll have a chance to go through some of the arguments that have been put forth in support of this legislation. But what it really comes down to, from what I can tell, is tax cuts at any price no matter what the consequence. That seems to be our M.O. this session. And let's not forget as we frame this debate and start to think about it, that LB970 would create the second largest deficit in Nebraska in at least the last 15 years. LB970 costs \$97 million through the next biennium, bringing that projected deficit to \$556 million. Collectively, the 60 percent of Nebraskans that make less than \$50,000 a year are only going to receive about 24 percent of those tax cuts, and 65 percent...64 percent, excuse me, of those Nebraskans that make less than \$20,000 won't receive any tax cut at all. The average Nebraska family would get about \$2 a month and about \$4.33 a month in year two. Approximately \$7 million to \$9 million will go to non-Nebraskans who file income taxes in Nebraska... [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: ...and this legislation--thank you, Mr. President--really flies in the

Floor Debate
March 29, 2012

face of previous tax cuts that have been implemented during a much stronger economy. Revenues are still below prerecession levels and aren't expected to fully recover in the future. So we have to ask ourselves is LB970 affordable? Are these tax cuts affordable? And if they are going to be funded, what will the impacts be? The information that I'm utilizing has been shared with each of you in your e-mail in-boxes and otherwise, and widely shared and generated for discussion. It is based off of information generated by the OpenSky Institute and other advocates, whether they be representing the elderly, the low-income, the disabled, or children who are deeply concerned and opposed to this legislation. And it's utilizing nonpartisan numbers from the Legislative Fiscal Office. So if people have any questions in terms of how these projections... [LB970]

SENATOR COASH: Time, Senator. [LB970]

SENATOR CONRAD: Thank you, Mr. President. [LB970]

SENATOR COASH: Thank you, Senator Conrad. Senator Hadley, you're recognized. [LB970]

SENATOR HADLEY: Mr. President and members of the body, I'm not going to speak to LB970. I think we had a full discussion last time. But would Senator Schumacher yield to a question or two? [LB970]

SENATOR COASH: Senator Schumacher, will you yield? [LB970]

SENATOR SCHUMACHER: I sure will. Thank you. [LB970]

SENATOR HADLEY: Senator Schumacher, we briefly touched on this when I stopped down to talk to you earlier. From a cost-benefit standpoint, do you think the cost to the state, the Department of Revenue, of trying to maintain two taxing systems would be significant or the transaction costs, so to speak? Because they're going to have to look at every tax return and determine which tax schedule they want to use and which is...and how much is the difference, because they're going to have to run both...the tax return under both methods. I just wanted your thoughts on kind of the transaction costs of doing this. [LB970]

SENATOR SCHUMACHER: Well, certainly. Had I not put the up to 100 times in there, none of this is probably worth it because we'd be dealing on the average taxpayer's situation with pretty little money. However, right now, the Revenue Department keeps track when you make a deposit on your taxes like a quarterly deposit or even what's credited towards your account on withdrawals, they keep track of how much money you've put in, by a Social Security number. That basic infrastructure is there. It may need to have a few lines of code to tweak it through, but it should be able to fairly easily record the amount of your excess deposit and the date that was made or the year it was

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

Floor Debate
March 29, 2012

made and put that in your...associate it with your Social Security number. As far as the tax proceeds are concerned, how much you'd be eligible to put in, I don't see why that would be a whole lot different than an extra chart in the tax book that shows what you would owe under Plan A or Plan B or a Web page where you can put a little calculator on there. I think that this could generate some money because there's functionally you'd be getting about 4 percent interest right now as compared to nearly nothing in the bank. And I think there would be some interest in deposit. It would be interesting to find out. And I really don't think it's a great computer guru project or problem in order to make the...to keep track of who is participating and who isn't. [LB970]

SENATOR HADLEY: Thank you. The second concern I have is that would the higher income people be much more able to do this than the lower income, because they, you know, we talk about the middle class and lower income basically using the money for day-to-day expenses whereas the higher income could say, well sure, I could invest it. So Senator Schumacher, would you think it would be skewed at all to the higher income being able to make use of this? [LB970]

SENATOR SCHUMACHER: That concerned me some because the higher income people have access to sophisticated stockbrokers and computer stock companies and things like that. So that's why there's a limit in here that keeps it in the normal range of what I think the Washington people call nonwealthy Americans, and there's a \$10,000 per person, and \$20,000 married, limit on what you can put in this particular plan. It's a simple investment tool that would encourage people to save a little, and that's not being done right now. And rather than have a dollar just get consumptively thrown out, it may be enough bait in the program to save. [LB970]

SENATOR HADLEY: Okay. Thank you. You know, I certainly don't want to...would not want to vote no on this because it's a bad proposal. I'll probably vote no but I would recommend that maybe next year we look at this as a possibility and maybe not even tie it to the difference in the tax rates. [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR HADLEY: Maybe just some kind of proposal that people could invest in some kind of fund with the state on some kind of checkoff system. So with that, thank you, Mr. President. [LB970]

SENATOR COASH: Thank you, Senator Hadley and Senator Schumacher. Senator Cornett, you are recognized. [LB970]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Maybe today is my day to pick on Senator Schumacher a little bit. Senator Schumacher has offered us a radical new idea. The problem, first of all, with this new idea is it hasn't had

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

Floor Debate
March 29, 2012

a public hearing. If he was interested in this, where was his bill this year in Revenue? Some of the other issues that the bill has, there's a number in drafting. A couple of them I will go over, but essentially what we're doing is making the state a bank. Is that something we want to do? That's a question each one of us is going to have to answer individually. But some of the problems that I see with it are...this would permit taxpayers to choose to pay income tax at a higher rate now and defer that in years to come, when in his own bill he's saying 62 or older, I mean seven years or 62, when a lot of these people who have a lower tax liability than they do now. One of the drafting problems is it doesn't amend Nebraska's existing tax statutes that authorize individual income tax credits without amending that section of the statute, the tax credits that AM2620 purports to offer taxpayers will be forever deferred, because there's no way of returning it to them. I'm not going to take a lot of time on this but I would be happy to work with Senator Schumacher, even though I will not be here next year, if he wishes to look at maybe a better way to draft this for next year. Primarily the big issue is this has not had a public hearing. It has had no vetting. We don't even know if it will work. In the language...if I could ask Senator Schumacher a question or two? [LB970]

SENATOR COASH: Senator Schumacher, will you yield? [LB970]

SENATOR SCHUMACHER: I sure will. [LB970]

SENATOR CORNETT: You're laughing like a little school boy over there. Anyway,... [LB970]

SENATOR SCHUMACHER: Hey, turnabout is fair play. [LB970]

SENATOR CORNETT: Without a doubt. When you talk about the deferred investment when someone is deceased, who would exactly apply for that credit? [LB970]

SENATOR SCHUMACHER: When they figure up their county inheritance tax, okay, they would then on the county inheritance tax calculation basically whatever they would end up owing otherwise, they could take money from what they were otherwise going to lose to the state and apply it toward that tax. Their county inheritance tax would be reduced by up to the balance of their credit. No money actually changes hands and that's why there's no refund needed because it's just an internal credit. [LB970]

SENATOR CORNETT: That brings me to the second point. On page 3, lines 2 through 5, "on a first earned, first claimed basis and once claimed are extinguished. The state may redeem outstanding tax credits by paying to the taxpayer entitled thereto the deferred benefit multiplied by the program rate." So you're actually talking about a cash payout. [LB970]

SENATOR SCHUMACHER: If the state at some point said we no longer want this

Floor Debate
March 29, 2012

program, there has to be a way to square up with the taxpayer, and at that point the state will have had use of the money. They can buy them out. [LB970]

SENATOR CORNETT: I believe that you need enabling language for the Department of Revenue to be able for them to do that, particularly with the "may" rather than "shall" language. [LB970]

SENATOR SCHUMACHER: You're very correct on that, and should this get advanced...I guess we're on Select File at this particular time, but there would probably be some administrative tweaks that have to be made to it. [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR CORNETT: Further, in regards to your comments in regards of ease of operation for the Department of Revenue and this shouldn't be very complicated, that unfortunately is not the feedback I'm getting from the Department of Revenue. I think the exact words were, it could be an administrative nightmare. Your response to that? [LB970]

SENATOR SCHUMACHER: My response to that is it also could be a dream in revenue to the state. And I think that we have a tendency in this body or particularly in the administrative agencies to say, hey, the computer processing things are way too expensive. This is not that much more complicated than what they do right now in keeping track of when you make a quarterly deposit. [LB970]

SENATOR CORNETT: So, Senator Schumacher, would you consider this more of a pioneer legislation or are we making the state a guinea pig, in your own words? [LB970]

SENATOR SCHUMACHER: I would say that this is not... [LB970]

SENATOR COASH: Time, Senators. [LB970]

SENATOR SCHUMACHER: Oh. (Laughter) [LB970]

SENATOR COASH: Thank you, Senator Schumacher and Senator Cornett. Senator Burke Harr, you're recognized. [LB970]

SENATOR HARR: Thank you, Mr. President and members of the body. Well, I heard it said yesterday we need to be pioneers. This is definitively an area of pioneering in the tax code. Would Senator Schumacher yield to some questions? [LB970]

SENATOR COASH: Senator Schumacher, will you yield? [LB970]

Floor Debate
March 29, 2012

SENATOR SCHUMACHER: Yes. [LB970]

SENATOR HARR: Thank you. I've got to admit this idea is intriguing. I'm not quite sure if this is the time or the place for it. I know you brought amendments on Final Reading on my bill, so having a public hearing doesn't bother me. (Laugh) I guess my question is, why should we do it this year and not take some time and maybe bring this back next year? [LB970]

SENATOR SCHUMACHER: There is a convenient vehicle in motion that would be able to implement it. Now I'm not saying that this idea couldn't be expanded, tweaked. It has a lot of potential to be doing next year, but it fits here. [LB970]

SENATOR HARR: It does fit, and again I find it very intriguing. Okay, let me ask you another question. The interest made on this account, is that taxable or nontaxable? [LB970]

SENATOR SCHUMACHER: You know, we had some discussions on that, and I'm sure that if this advances, some tax attorneys are going to be scratching their heads. My guess that your deposit...if your deposit is deductible, the credit would be taxable. But if it's not deductible, then the credit shouldn't be taxable. I mean...and it's kind of like, do the companies that get these super advantage stuff, when they get a credit do they get taxed on that credit? I think that would be analogous. [LB970]

SENATOR HARR: Okay. All right. I'm not sure if that answered my question. (Laugh) [LB970]

SENATOR SCHUMACHER: You don't know the answer either, huh? [LB970]

SENATOR HARR: Again I think this is a great idea. It's a way for the state...it is a question that Senator Cornett hit the nail on the head, too, when she said it somewhat makes us a bank. Do you want to address that issue? [LB970]

SENATOR SCHUMACHER: Well, not really, because you can't...you can spend money out of a bank. You can take and go buy something else. This is just kind of your own pocket and your state is getting to use your advance payments. Just like if you put a quarterly payment in now that's too big, the state gets to use that money until April 15 or whenever you claim a refund. It's not being a bank then but it's got your money. [LB970]

SENATOR HARR: Okay. And what happens if there's a run on the bank, meaning what happens if everyone decides after seven years they don't like it and they take all their money out of the accounts? [LB970]

SENATOR SCHUMACHER: In that seventh year, the people will get credit for what they

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

Floor Debate
March 29, 2012

paid into the system. So it's no more a shortage than...I mean, the state will have had the use of that money for that entire period of time. And to a certain extent I brought this today to make us think about what life might be like seven years from now if we're short on money. [LB970]

SENATOR HARR: When we're short on money. [LB970]

SENATOR SCHUMACHER: When we're short on money. [LB970]

SENATOR HARR: We're always short on money. All right. Well, I appreciate your time. I guess those are all the questions. Ladies and gentlemen, this is a truly...I don't know if I would use the word radical. That might be an overstatement. But it is a novel idea. It's something outside the box which is again probably where Senator Schumacher presides (laughter). But that doesn't mean it's a bad idea. I hope we get a chance to investigate this a little further and maybe we can be the lighthouse state and be revolutionary, not for robbing other states but for showing states how to better use tax refunds. Thank you. Appreciate it. [LB970]

SENATOR COASH: Thank you, Senator Harr and Senator Schumacher. Senator Conrad, you are recognized. [LB970]

SENATOR CONRAD: Thank you, Mr. President. Again, good afternoon, colleagues. I'm just going to continue in terms of the glaring lack of a compelling narrative that exists on either fiscal policy or public policy in terms of who benefits from LB970. So let's just break this down so it's as clear as possible for the record, which I know didn't have maybe this much clarity on General File debate. So where did LB970 start from? Well, of course, it started in the Governor's State of the State address, January 12, 2012. And quoting from the reasons the Governor put forward, page 5 of 6 for LB970, "According to the Tax Foundation rankings," which my words, not his, is a Washington-based think tank, "in 2006 Nebraska was one of the top ten highest tax states in America. Nebraska was 45 out of 50 states. Today we are 29th. Since 2006, Nebraska has made greater and more significant improvement in our tax climate than 48 other states." That's something that is real and is substantive. But the Governor goes on to say, "That's good news, but we can do better than 29th." Okay. So proponents brought forward that the need to improve our ranking by the Tax Foundation as a compelling policy argument to pass LB970. That was stated again and again on General File. But then Senator Cornett, who is carrying the legislation, stated very, very clearly on March 20, "under LB970 proposed an overall tax package that did improve our rankings. We addressed issues such as the corporate income tax which is higher than our individual highest rate, which we are downgraded for. We introduced the inheritance...repeal of the inheritance tax, which we are downgraded for, but I understand exactly the position our counties are in and we supported removing that from the original bill. We had a bill introduced in committee by myself for AMT. We did not include that. That would have improved our

Floor Debate
March 29, 2012

rankings." So we decided to go "back to the basics of what we wanted to accomplish. The one side of it was improving our rankings and making us more competitive, and the other was middle and lower class income tax relief. We made a conscious decision to provide that relief. We walked away from the concept of improving our rankings in the Tax Foundation at this time." Okay, so the first reason the Governor gave for this tax cut was that we had to improve our rankings. The Revenue Committee Chair says we walked away from that concept. So there's one policy argument that has been discounted by proponents. The second issue that the Governor mentions in terms of why we need to have LB970 was because of an...I guess it would be fair to characterize as an equity issue. Again quoting from the State of the State address when he talks about, "If your adjusted gross income is more than \$54,000, you are taxed at the same marginal rate as Warren Buffett. That is unfair to middle-class families." Okay, that's something interesting that we can think about, that we can talk about a little bit more. But then let's hear what proponents had to say on General File about that issue. This is some commentary that Senator Nordquist brought forward when he stated on March 20, 2012, that Nebraskans were...okay, I'm sorry, here we go. The way it's structured "we're not lowering the top tax bracket. Once you cross that \$58,000 threshold as a married couple, you're" actually getting "the same tax cut as Warren Buffett." So okay, the Governor's second pressing policy reason for enacting this tax cut after improving our Tax Foundation ranking which has already been discounted was to have some sort of equity to remove the similar treatment that middle-class families get in terms of how they're compared to our most wealthy--somebody like Warren Buffett. [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: Thank you, Mr. President. Okay, so that's also been discounted. So those are the two compelling policy reasons that we've heard that we have to pass LB970 right now. We have to have these tax cuts right now. And proponents have already thrown those two policy arguments aside, let alone provided any sort of indication or road map for this state and Nebraska citizens about how we're going to pay for this and what the impacts are going to be to other critical state obligations. I heard Senator Cornett say on General File: Well, this is a down payment on tax relief. Folks, this represents 4 percent this year in terms of the overall price tag. Can you get a house with a 4 percent down payment? Sure can't in north Lincoln. Thank you, Mr. President. [LB970]

SENATOR COASH: Thank you, Senator Conrad. Senator Sullivan, you're recognized. [LB970]

SENATOR SULLIVAN: Thank you, Mr. President, and this is in specific reference to the amendment that we're looking at right now, and I agree with Senator Cornett, there's logistically some problems with it in that we don't...hadn't had a public hearing on it. But that's not to diminish this idea by any stretch of the imagination. This is a creative idea

Floor Debate
March 29, 2012

and I have talked to Senator Schumacher numerous times about the fact that he believes and I concur that we've got a lot of creative minds in this body that for whatever reason perhaps go underutilized. I'm not criticizing the structure we have in this Legislature. I think we have a really good system with the committee framework and our Unicameral. But sometimes it doesn't lend for thinking outside the box. Certainly we have the avenue of an interim study, but I'm looking for ways that we can collectively, 49 senators, come together and bounce these ideas off of one another. So I would remind you of the structure we have in place with the Legislative Planning Committee and the subcommittee that we formed there called Nebraska's Emerging Future. Senator Schumacher and I both serve on that subcommittee and on the Legislative Planning Committee, and I think that this perhaps is one avenue where we can creatively discuss some of these ideas and maybe then following up. The legislative retreat that is held before each session begins or each biennium is a jumping off spot as well. But ideas like these should not be overlooked nor should they be diminished. Because if we are to address some of these difficult issues that we have looking for revenue and how we're going to provide the kinds of services that we so desperately need in this state, we are going to have to get creative and we're going to need to look at ideas such as these. Thank you. [LB970]

SENATOR COASH: Thank you, Senator Sullivan. (Visitors introduced.) Senator Conrad, you are recognized. [LB970]

SENATOR CONRAD: Thank you, Mr. President. So to get back to this ill-advised and unaffordable tax cut and its inevitable consequences on education, human services, public safety, natural resources, economic development, and other critical state obligations, we've already discounted two of the proponents' arguments in terms of why we must enact LB970: to improve our rankings with the Tax Foundation and to provide some equity so that middle-income Nebraskans aren't treated the same way as Warren Buffett. Okay, that LB970 doesn't improve our tax rankings and it actually treats middle-income Nebraskans the exact same way as Warren Buffett. So then proponents say, well, we're going to provide a down payment on tax relief, which is really just a very risky financial proposition for how this is structured. If this is sound policy, we should pay for it today and we should start planning for the consequences today. We shouldn't put off down the road, like a bad balloon mortgage payment, the real costs that are going to come to roost. Senator Cornett noted on General File that as amended this legislation "specifically targets middle-income Nebraskans, providing them with a measured amount of tax relief while still offering modest tax relief to all Nebraskans." Well, unfortunately, colleagues, that's not true. If you're a vulnerable Nebraskan making less than \$20,000 a year, you're left out. You're left out of this plan. All Nebraskans don't benefit from this plan. So let's be very, very, very clear. This doesn't help all Nebraskans and this doesn't help low-income working Nebraskans. This doesn't help those that are having the most difficulty making ends meet in an uncertain economy. So let's go on to look at some more ideas or policy reasons that proponents put forward. They said:

Floor Debate
March 29, 2012

because we need to make Nebraskans a priority. Well, as I noted on General File, we're taking care of about 20 percent of the needs of the developmental disability waiting list in the existing budget, and we're saying to 80 percent of the families who have a member with developmental disabilities, who are awaiting state services, we don't have enough money; we can't take care of your family. We can't meet our legal obligations to provide services for Nebraskans with developmental disabilities because we don't have enough money. But we have enough money for a tax cut? We didn't have enough money to fund our obligations to help troubled youth at YRTC that Senator Ashford put forward during the budget debate. I think the price tag was listed \$2 million to make needed improvements to that infrastructure. And we said: Sorry, Senator Ashford, sorry, troubled youth, we don't have the money. But then we have the money to offer a tax cut now and perpetually into the future that does nothing for the Nebraskans who need it most? Does nothing to improve our competitiveness ranking as stated by proponents; does nothing to stop the inequities in terms of tax treatment for middle-income Nebraskans and how they're treated compared to Nebraska's most wealthy? What are we getting? Bad fiscal policy, bad public policy, and unknown consequences for the future. So let's talk a little bit more about the assumptions in terms of how this impacts not only an ever-growing deficit... [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: ...ballooning to over \$550 million in the next biennium once LB970 is passed. The last time I checked, and I heard people say, treat government more like your household budget. Well, you don't cut revenue. You don't keep digging a hole in terms of your financial obligations when you can't pay your bills today. But if members are willing to thrown caution to the wind and fiscal policy to the wind and provide tax cuts at all costs, so be it. But let's make sure the record is clear. So then many of us brought forward concerns about how are we going to take care of Nebraska's critical obligation to provide for a quality public education for all Nebraska students which, in case we forget, our constitution reminds us is our number one obligation in Nebraska. So there was a lot of dialogue on General File about how these tax cuts, because we've got to pay for them some way, Senators. [LB970]

SENATOR COASH: Time, Senator. [LB970]

SENATOR CONRAD: Thank you. [LB970]

SENATOR COASH: Thank you, Senator Conrad. Senator Karpisek, you are recognized. [LB970]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I really hit my light to give Senator Conrad my time. But as I listen, I think about what we talk about in here and many of the bills. And the question comes up: Well, do we have money for

Floor Debate
March 29, 2012

that? Huh, well, I don't know that we're going to have money for some of the things that we do. And I think it begs the question: How much are we trying to give back, and what we give back will it really matter or will it just create a ripple effect and it will go back to the cities and the school districts, imposing more property taxes? We just had a fight last night over occupation taxes. Why are they trying to do occupation taxes? Probably because we cut their state aid. So what has the citizen really seen out of that? I'll go back to my first year that I was here, and we had the biggest tax rebate of all time, and all I ever heard from anyone was, thanks a lot; if that's all you can do, keep it. That was 8 percent. That was I think \$400 million. I'd be glad to get 8 percent off on all my bills. But that wasn't good enough. I don't know how many people also said if that's all, it's going to be: Keep it and do something with it. So now we are here again. We're talking about a much smaller rebate. But we can all go home and say that we gave a tax rebate that will amount to--what did we say? Maybe...it won't even be \$5 a month. Well, \$5 a month is better than nothing, I will give you that, but what is it going to cost us in the long run? How much are we going to have to pay when we don't fund some of the things that we're supposed to be funding? And how much is it going to cost us in property taxes because the schools aren't getting as much as they were promised to get? How many of those schools are going to go off of state aid and have to be out there on their own, and what are they going to do? They're going to raise their property taxes. So congratulations. We'll do a good job. We'll cut taxes here and push the buck off on someone else. I don't think that's how that saying went. I think it was, "The buck stops here." But it doesn't feel like that on this. I am very happy that we didn't go with the original plan and go as far as we were, because that was really undoable. I think in the next two years we're going to have some very difficult times and we're going to wish that we had some of that money back. We always talked about \$500 million in our rainy-day fund. This won't leave it. So if we end up back here in another special session because the economy isn't doing what we were hoping that it would, we'll blame the federal government and cut programs--not cut tax breaks but cut programs--to people who depend on them. And then what? What happens to the person that saved all their life and loses all their money... [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR KARPISEK: ...because somebody stole it? My grandparents lost money in the Commonwealth fiasco. And believe it or not, my grandpa just died last year. What happens if that wipes them out? They saved all their time...all their lives. They can't pay because they lived too long. They end up in a nursing home. They get on Medicaid. It costs a lot of money--nothing that they did wrong, but the funds aren't there to help them now. I don't think that's the way that we want to be seen. Thank you, Mr. President. [LB970]

SENATOR COASH: Thank you, Senator Karpisek. Speaker Flood for an announcement. [LB970]

Floor Debate
March 29, 2012

SPEAKER FLOOD: Thank you, Mr. President, and good afternoon, members. A couple of notes here. I do envision working into the night tonight. A meal will be provided. We have a lot of work to do. We didn't make as much progress yesterday as we had hoped, and so that will necessitate us working tonight into the evening. Earlier in the week I had hoped for a 6:00, 6:30 adjournment, but we're at least a couple hours beyond that based on what we need to get accomplished. A reminder that we do start tomorrow morning at 8:00 a.m. And one other issue that I want to bring to your attention as a Legislature is that we potentially will be scheduling the 60th day five days after the 59th day to ensure that the Legislature has an opportunity to react to any potential vetoes on any bills passed by the Legislature. This will push that last day into the next week, potentially. It's hard to predict. It's impossible to predict at this point. It's always our preference to be able to reach an agreement. But given the number of bills we're going to be sending over to the executive branch, I think it's unreasonable to think that we'll be completing our 60th day as scheduled at this time, and that will be moved five or more days beyond the 59th day. I don't know when that will be. I don't know how it will work. I don't think any of us will know that until we get to the final week of session as it relates to scheduling of the 60th day. But I want to put that on your radar as we proceed. Thank you.

SENATOR COASH: Thank you, Speaker Flood. Returning to discussion of AM2620, those senators wishing to speak: Senators McGill, Schumacher, and Karpisek. Senator McGill, you're recognized. [LB970]

SENATOR MCGILL: Thank you, Mr. President and members of the body. First, I'd like to thank Senator Schumacher for bringing to us a creative idea. But in general, I just...I missed the first round of debate on this bill and just want to rise in opposition to LB970. I was here during the time where we did vote for the largest tax cut in Nebraska history, and nevertheless, during my reelection campaign I had phone calls and mailings going out saying that I voted for tax increases. So for those out there who think that because you're voting for every tax cut, it doesn't mean you're going to avoid that...you think you'll avoid getting accused of raising taxes or keeping taxes as they are. Well, if somebody wants to come after you, they say whatever they want to say about you. And so I would hope that you would look at the budget. Look at even where we are right now with the A bills that we have. And it's hard right now to look and say which of our A bills that we currently have before aren't worth getting past the final lap here in the Legislature and onto the Governor's desk, and in some cases overridden. Which of those doesn't deserve to go on, to move on? And yet we stand here talking about a minuscule tax cut plan. People in my district aren't talking about this. They have been, ironically, talking about truancy and other issues that more directly impact them, but they don't talk about the \$2 to \$3 to \$4 a month they're going to get from this plan. And even if we did some sort of tax cut plan, I think we should rearrange the brackets and create a new bracket in between 3 and 4 so that we really do have a middle-class

Floor Debate
March 29, 2012

bracket. That would be my idea. But I still wouldn't say that that's smart this year. We have too many priorities right here before us, and none of them, honestly, costs a ridiculous amount of money. Many of our bills are well under a million dollars, and then there are some that are bigger, like ACCESSNebraska which is critical to the elderly and disabled in our communities. Is it worth them having an extra \$2 in their pocket or being able to get a live person on the phone to help them get the services that they deserve? And with that, I yield the rest of my time to Senator Conrad. [LB970]

SENATOR COASH: Senator Conrad, 2 minutes 30 seconds. [LB970]

SENATOR CONRAD: Thank you, Mr. President, and thank you, Senator McGill. Colleagues, to continue on a fair discussion about impacts with this unaffordable, ill-advised tax cut that incorporates Washington-style budgeting and drives our projected deficit higher and higher to the tune of almost half a billion dollars. There was a lot of discussion on General File about the impacts to education funding, which again is our only priority in terms of what our constitution says for funding. And Senator Adams talked about some of his comfort level or discomfort, I guess, when this was at the committee level. And I guess that has since been satisfied, but I did pass around some projections about what this tax bill would do to TEEOSA. And TEEOSA, of course, is our main state aid to education program. And if you look at these projections, which again are utilizing nonpartisan numbers from the Legislative Fiscal Office and have been compiled by the OpenSky Institute, under any of the scenarios put forward 3 percent growth or 5 percent growth, which is what Senator Cornett and Senator Adams suggested would be appropriate for growth in education funding over the next biennium, still puts education funding at a historic low. Is that acceptable? [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: I contend that it is not. But let's dig a little bit deeper into what those impacts for education funding are exactly going to be, because it's a huge assumption. I asked Senator Cornett very specifically during General File: Tell me the scenarios that we're looked at in your committee to make this work for how we're going to pay for it. Because if they exist, that would relieve a lot of the questions and concerns that still remain with this legislation and the significant price tag it carries. I have yet to see those projections and I'm not saying that to be a smart aleck. I'm asking honestly, where are those assumption and projections? Because as I see it, holding TEEOSA to 3 to 5 percent growth in the next biennium, which is a historic low, is a historic low for this Legislature. And Nebraskans... [LB970]

SENATOR COASH: Time, Senator. [LB970]

SENATOR CONRAD: Thank you, Mr. President. [LB970]

Floor Debate
March 29, 2012

SENATOR COASH: Thank you, Senator Conrad. (Visitors introduced.) Returning to discussion on AM2620, Senator Schumacher, you are recognized. [LB970]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. I really didn't file this amendment in order to extend the discussion on LB970. I realize that we're running out of time and there's many important issues. I did file it in order to try to come to grips with the financial situation that we see. First, let me briefly describe again a rather simple concept here. You put more money into the system than you owe the system. You draw what amounts to an inflation-protected T-bill rate of interest, and at some point in the future you get to apply that to your future taxes. Simple as that. It's not a debt of the state. It is an advance payment of your tax, so to speak. It's only with recourse against your tax. You're just kind of paying yourself, but we are mobilizing capital. This is a time that is very perplexing. We live in a very dangerous global economic situation with exceedingly high degrees of uncertainty as to how our economic future is going to pan out. We have a tax budget mess in Washington that is beyond belief, and in the opinion of many experts, beyond control and that will have some disastrous consequences. We have an aging population. We need money for educating our students so that their SAT and ACT scores give us some hope of competition with some of the cultures around the world who indeed are focusing intensely on education. At the same time we face those challenges here, the private sector is sitting on an enormous amount of corporate cash on the sidelines. Savings accounts for people who have saved are no longer being rewarded with interest. Zero percent. Money not in motion, not building a future. A long, dark, lost decade of 2 or 3. Farmers are sitting on more cash than they know what to do with, driving the price of land up to \$12,000 an acre, up 20 percent from just a year ago. And much of that money exits the state through the hands of out-of-state heirs. Huge amount of wealth. Huge amount of need. We need to figure out ways to put those two things together. And we sit here talking on a tax bill which amounts to really nothing. More political hype than reality. So I am thankful for the people who have commented on AM2620. I hope that throughout next year and my remaining time in this body we can begin some creative ways to bring the finances of government and the finances of the private sector together to build a public/private world, because of probably the delineation in many ways between public and private is no longer applicable, but a teamed-up world and a better place to live. And with that, Mr. Chairman, I withdraw AM2620. [LB970]

SENATOR COASH: AM2620 is withdrawn. We return to discussion on LB970. Senator Karpisek, you are recognized. [LB970]

SENATOR KARPISEK: Thank you, Mr. President. I'd like to yield my time to Senator Conrad. [LB970]

SENATOR COASH: Senator Conrad, 5 minutes. [LB970]

Floor Debate
March 29, 2012

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Karpisek. Colleagues, to continue on the dialogue in terms of impacts to TEEOSA. I'm not naive. I know where this discussion is heading and I know where the vote count is heading. But I have a sincere belief that Nebraskans have a right to know some of the impacts that are going to come from this decision by the body. And I see Senator Adams is present, and as a member of the Revenue Committee and also Chair of the Education Committee--believe me, no small tasks--I am hoping that he would yield to some questions, please. [LB970]

SENATOR COASH: Senator Adams, would you yield? [LB970]

SENATOR ADAMS: Yes, I will. [LB970]

SENATOR CONRAD: Thank you, Senator Adams. I know that we had a lot of discussion on General File about potential impacts to TEEOSA and what our out years look like in terms of our projected deficit. And under current law I think it's fair to say that TEEOSA is projected to grow about 20 percent in the next biennium. Is that correct? [LB970]

SENATOR ADAMS: A little over 20 percent. Yes. [LB970]

SENATOR CONRAD: A little over 20 percent. Thank you. And we had a lot of discussion about whether or not that growth would actually come to fruition and how that would impact the out year deficit. But I want to talk about some of the assumptions within that 22 percent, because the way I understand it, about two-thirds of that growth is due to the expiration of last year's LB235. Is that right? [LB970 LB235]

SENATOR ADAMS: Certainly much of it. [LB970]

SENATOR CONRAD: Okay. [LB970]

SENATOR ADAMS: Whether it's two-thirds. But much of it is the expiration of the elements in LB235. Yes. [LB970 LB235]

SENATOR CONRAD: Okay. And just to make the record clear, what is LB235 and what does the impact of its expiration have in terms of our state finances and education funding? [LB970 LB235]

SENATOR ADAMS: Well, for the record, I think everyone understands that what LB235 did was to...I'll talk about the two key components. It elevated the local effort rate, which in effect said to the local school districts, we're going to hold you responsible for more of your own tax base... [LB970 LB235]

Floor Debate
March 29, 2012

SENATOR CONRAD: Right. [LB970]

SENATOR ADAMS: ...in the formula calculation thus taking the state off the hook; and we also reduced the cost-growth factor. And in so doing, of course, that reduced the state's obligation for TEEOSA funding. [LB970]

SENATOR CONRAD: Thank you. That's a very succinct explanation for what I know is a very complicated issue. But I want to talk about that because when we look at this deficit and we look at the expiration of LB235, I want to be able to have a coherent answer from somebody about what that's going to mean for local effort rates for schools. And once that expiration is gone, are we...is there a plan in place to say we're not going to allow that to expire? We're going to ask our local governments to do more in terms of their local effort and put more pressure on their property tax base? I don't know if those questions have been asked or answered. I'd hope so. But I didn't find any answers to those in the record from General File debate. So if you'd like to visit a little bit more about that, Senator, I'd appreciate it. [LB970 LB235]

SENATOR ADAMS: Well, I think, Senator, it's obvious to all of us that we will have to develop a TEEOSA plan again for the next biennium, and frankly, I suspect that regardless of our revenue picture, good, bad, or indifferent, we're at the drawing board with TEEOSA during every interim trying to make things fit. And we will certainly be back at it this year. And if I had my way and I was the only one that had a say-so as to what happens with the formula, the first thing we will do is to make adjustments in the local effort rate to try to bring it down from the \$1.395 that we're at now. [LB970]

SENATOR CONRAD: Okay. So if our hope is to be able to take some of that pressure off our partners at the local level and pressure off of property taxes and bring that local match rate down but still limit growth in TEEOSA to 3 to 5 percent in the next biennium, I don't understand how that's going to match up in terms of the ever-growing needs that our schools have. [LB970]

SENATOR ADAMS: Well, you're asking in terms of...I'm going to make an assumption. If I'm incorrect, you stop me. [LB970]

SENATOR CONRAD: Please. No, please. [LB970]

SENATOR ADAMS: But what I hear you saying is that how can we do this and get back to levels where TEEOSA was at prerecession? [LB970]

SENATOR CONRAD: Yes. [LB970]

SENATOR ADAMS: We can't. [LB970]

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Floor Debate
March 29, 2012

SENATOR CONRAD: Okay. So that's... [LB970]

SENATOR ADAMS: In one single leap we can't do it. [LB970]

SENATOR CONRAD: Okay. Would your hope be, because do you feel it's important for Nebraska and Nebraska schools that we can at some point move back to a prerecession aid towards our schools, towards our public schools? [LB970]

SENATOR ADAMS: I think that whatever the number is... [LB970]

SENATOR COASH: Time, Senator. You are now on your own time. [LB970]

SENATOR CONRAD: Okay. Thank you, Senator...or thank you, Mr. President. And Senator Adams, please continue. [LB970]

SENATOR ADAMS: Timewise, are you okay? I didn't hear the president. [LB970]

SENATOR CONRAD: I think so. I've got three more now (laugh). [LB970]

SENATOR ADAMS: Well, the one thing we must do, we've got to start building some budget growth back into our K-12 environment. The schools have been good partners in helping us get through this, and we've got to have some budget growth back there. [LB970]

SENATOR CONRAD: Okay. And do you think 3 to 5 percent is enough, because that's what the Revenue Committee is anticipating is allowable under LB970? It's the only way to make it work to pay for it. [LB970]

SENATOR ADAMS: I have a 5 percent number in my head. I...you know, whether it works below that, I don't know; how much above that, I don't know. But to me, my personal benchmark without ever putting anything to it yet is we'd start at that 5 percent mark. [LB970]

SENATOR CONRAD: Okay. Thank you, Senator Adams. I appreciate that and I'm not trying to be argumentative, colleagues, but I think that we have to have a fair and honest discussion about the potential consequences that this...what's going to happen to other critical programs when we pay for this tax cut? It's going to have real and significant negative impacts on other critical state obligations. Under any scenario, your...we're going to be doing less for education in the future than we've done in the past. And I think we can all agree that that should be and must be our number one priority. So if we're throwing education and kids to the wayside to make room for tax cuts at any cost, let's just be clear. Let's just be clear. Let's also talk a little bit more about some issues that weren't in the record on General File that I think are important

Floor Debate
March 29, 2012

for people to know, if they haven't had a chance to follow media reports about how this legislation came forward, for example. It was put forward by some proponents that LB970 in its current form represented some grand compromise. Let's be clear, there is no grand compromise in terms of policy and there's absolutely no compromise in terms of the still unaffordable fiscal impacts. Yes, it's been cut down from the Governor's original proposal by one...you know, to the tune of about 25 or 30 percent of what he originally put forward. But that's still 25 or 30 percent unaffordable, and I haven't heard anybody stand up and say otherwise. So the Governor started with his plan that would help us improve our Tax Foundation rankings and address some equity issues, and the Revenue Committee threw those aside, so those don't exist anymore. Early on, Appropriations Committee Chairman Lavon Heidemann, on January 25, when the Governor's folks came in at the committee level, said: Gosh, we should wait a year; it would be wiser to wait a year to get a better idea of revenue forecasts before determining what the state can do for tax relief, said Chairman Lavon Heidemann during the committee hearing on the budget-related issues. That hasn't changed. We don't have a new or better forecast before us that somehow makes this affordable today. But the Governor and his proponents continued down this pathway without providing any sort of clear, specific impacts that this legislation will have. They just simply say, well, if you hold growth to 3 percent then everything is fine. Well, that doesn't match historical averages. So that's not an accurate solution to these pressing public policy issues. So then we heard later in the early part of February, the Governor went to... [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: ...an interest group--thank you, Mr. President--and went to the Nebraska Chamber of Commerce. I'm quoting from the Lincoln Journal Star article, February 4 said: Lawmakers shouldn't bother to send me any legislation to sign until they've passed their tax cut package. Many of us felt like that was a threat. How quickly that threat disappeared. Then Nebraskans who care deeply about other state obligations and who represent the sometimes, many times disenfranchised, the poor, the elderly, the children, the disabled, came forward, held a press conference and said we're concerned about the potential negative impacts of how we're going to pay for this tax cut. And what did the Governor...what did our Governor have to say in response? They're nothing but a bunch of liberal special interests. He's entitled to his opinion. I respect that. But you know what? Nebraska seniors, Nebraska kids... [LB970]

SENATOR COASH: Time, Senator. [LB970]

SENATOR CONRAD: Thank you, Mr. President. [LB970]

SENATOR COASH: Thank you, Senator Conrad. Senator Schumacher, you're recognized. [LB970]

Floor Debate
March 29, 2012

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. I'm just going to rise once on LB970. Members, we've got a responsibility to the future. We know some things are going to happen. We know there's going to be federal program cuts and the burden now picked up by the feds is going to get shifted here. We know that we're going to face in one way or another inflation as the monetary authorities are not going to be able to hold things at 0 percent forever. And every day we defer expenses, kick the can down the road, don't keep things up on our roads, our bridges, and our other infrastructure, means we're going to pay that much more in just a few years, and maybe a closer period of time than that. We know that there's a big Interstate 80 problem west of Kearney with the bed getting broken up, and we're going to have to dig the whole thing up and start from scratch, and that's going to be a big bill. Normally, a prudent people knowing a big bill is on the horizon begin to build reserves in preparation for the big bill rather than just gamble somehow that manna is going to fall from heaven. We know we need to invest in education and we can only do that by good teachers and programs which inspire the kids to want to learn for a world that will be theirs and for which the future holds bright promise. We know we have an aging population with a really high percentage of the baby-boomers not having saved much and at very low reserves of their own. And we know that we're not going to be able to morally or practically say no to them over the next 30 years. We know that we have more money spent on medical care and one of the not-so-hot medical systems in the world, and that with or without Obamacare our medical costs are going to continue to go up. To say otherwise is not being prudent. Folks, you know, you take a dollar a week and you dissipate it over...\$50 million over the population, and you don't end up with much. Maybe it's not even recognized. We know that that \$50 million may complete a stretch of four-lane highway, may provide for better schools. In an organized fashion delivered by prudent government, it is able to do something that as productive capital it could never do in the hands of a momentary flash of consumption. We know those dollar bills are not going to be saved or put in a piggy bank. They'll hardly be recognized or experienced. Right now, prudent people build reserves knowing that they have massive challenges ahead of them. They do not dissipate those reserves on some hope and a prayer that unrealistically high economic returns will be achieved just because. I'm going to vote against LB970 because I want a strong state. I want to be able to hopefully build a strength so we can give meaningful tax cuts down the road,... [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR SCHUMACHER: ...but first, have the kind of things that we all value and that can only be organized through a government mechanism, at the same time keeping an eye open for some interesting ways to bring the private sector into play in a union for the future, globally competitive and financially sound. Thank you. [LB970]

SENATOR COASH: Thank you, Senator Schumacher. Senator Conrad, you're recognized. [LB970]

Floor Debate
March 29, 2012

SENATOR CONRAD: Is this my third time, Mr. President? [LB970]

SENATOR COASH: Second time. [LB970]

SENATOR CONRAD: Okay. Thank you very much. Sorry, colleagues, I've got one more. Nonetheless, colleagues, let's continue down the path in terms of providing a little bit of clarity in terms of how the sausage is made or what deals were struck and what arms were twisted to provide tax cuts at any cost. So in mid-February, groups representing the disabled, elderly, and kids came forward and said, we're worried about these tax cuts because we can't afford them and they're going to impact vulnerable populations in Nebraska. The Governor's response was very clear. I'm quoting from a World-Herald story on Wednesday, February 15, "These liberal special interest groups support higher taxes on middle-class Nebraskans, Heineman said in a statement." I don't think it's constructive to call the elderly, the disabled, or children a special interest group or any name for that matter. They are our friends, they are our neighbors, and they are those vulnerable Nebraskans that don't have a lot of powerful lobbyists or carry a lot of weight in this body or in the political arena. And it's our job as the people's branch, as the people's voice, to stand up for them, not to call them names, not to discount their sincere policy questions and concerns. But, nonetheless, that's the Governor's prerogative and he chose to continue down that path to provide unaffordable, ill-advised, Washington-style budgeting and tax cuts at any cost. So to make room for his tax cuts then, during this same period in January and February and early March, originally the Governor said he was against all the infrastructure programs that the university put forward and called them a special interest. Okay, now our flagship institutions in terms of higher education are also a special interest under the Governor's calculations. But then don't worry, colleagues, because 13 days later he flip-flopped and changed his mind in that regard. So then how did we get to where we are today? Compromise. Quote, unquote, compromise was offered to pare down the original plan to about 25 or 30 percent of the original cost. But I contend 25 or 30 percent of a bad deal is still a bad deal for our kids, for our future, for the elderly, for the disabled, for responsible budgeting, and sound policy. So the Revenue Committee decided to take the inheritance tax piece out of the tax package because, as the Governor put it in the Lincoln Journal Star on March 7, "The counties have cried wolf, and the Legislature is buying into that." So now the counties are also the bad guy in terms of this dialogue and this, I think, less-than-compelling narrative. Then we get to the budget debate in early March, and there's no question that the budget left very little room, if any, for these unaffordable, ill-advised, tax cuts until we started to see the budget tinkered with by proponents of this legislation. And they utilized one-time budgetary gimmicks to make room for this down payment--quote, unquote, down payment--on tax relief which only represents 4 percent of the overall cost without any mind for how we're going to pay for the other 96 percent. And what do they do? They brought forward some deals. And I'm, again, not naive to how political animals... [LB970]

Floor Debate
March 29, 2012

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: ...react in the political arena. But \$10 million in one-time funding as grabbed from the Cash Reserve, which we should be keeping strong for a rainy day and our future obligations, and given to schools to help take care of much-needed special education needs. Okay. And that was stated in the paper by those who brokered the deal that it was a trade-off for the tax plan. So we're using special education dollars as a trade-off for the tax plan. How sad. Then we're going to grab money from Medicaid to pay for the tax cut and then we're going to grab other critical areas to pay for the tax cut. And times are good and we're making these cuts now. What the heck is going to happen into the future when the deficit grows deeper and larger every day? And so a compromise was forged, and the compromise... [LB970]

SENATOR COASH: Time, Senator. [LB970]

SENATOR CONRAD: Thank you, Mr. President. [LB970]

SENATOR COASH: Senator Conrad, you're recognized. This is your third time. [LB970]

SENATOR CONRAD: Thank you, Mr. President. A compromise was forged which is neither grand nor sound. It was political. No one has brought forward any projections or information to say, gosh, Senator Conrad, you're wrong, your projections are wrong; fiscal projections are wrong; the numbers that you're utilizing from the OpenSky Institute are wrong. I am waiting to hear that dialogue, because if they are wrong I'd like to know that and Nebraskans have a right to know that. But we can't just bury our head in the sand and say, don't worry about it, we'll take care of it. That's not responsible. That's not responsible. And sometimes when you have to govern, it's difficult to be responsible and to tell folks, I'd love to give you a tax cut, a meaningful tax cut with real reform, but we can't afford it because we aren't paying our bills today. Nebraskans can accept that. They can understand that and they have a right to be included in that sound dialogue. So the tax plan is pared down to 25 or 30 percent of where it started out after the university, counties, the elderly, children, the disabled, those with developmental disabilities have been called to task as special interests by the Governor and proponents of this legislation because they dare ask questions or raise concerns. Well, I stand with those Nebraskans who continue to have questions and raise concerns, and ask you, why don't you? And if it's because your plan is you think we can take care of it, let me hear your plan. Because the local effort rate we want to make sure to push that down and help schools out who helped us during hard times in the near future. But we're going to restrain state aid to education at the same time to unprecedented record lows? It doesn't add up. It doesn't add up. So where are we today? We're at a place where our budget said we've got enough to care for 20 percent of the needs of the developmental disability waiting list. We've done enough to restore half of the cuts we

Floor Debate
March 29, 2012

made to Medicaid provider rates. We've restored about a million dollars to a \$4 million deficit that exists in affordable housing. And going forward, we're projecting actions that are going to have education at historic lows in terms of our funding support that are anticipating what for higher education? What for natural resources? What for economic development? Will everything be flat? What assumptions are in terms of the state employees' new contracts that have to be negotiated? And what impacts do healthcare and benefits and salaries have in that regard? We can't make those assumptions today. And somebody clearly made those assumptions if they're at 2 percent like the Governor contends. That doesn't match with history and it's not a good pathway forward because it's unrealistic. And we can argue and have sincere policy disagreements about the policy that exists in LB970, but we have to have at least some agreement that the numbers we get from Legislative Fiscal Office, which is nonpartisan, are real, and we have to use them. We don't have to use them just when it's convenient or just when we're running for reelection... [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: ...and we want to send out a snappy mailer. We have to use them when it's time to govern and to plan for today and tomorrow, which is difficult and takes work and takes saying no to things that are politically popular and takes saying no to a Governor who considers the elderly special interests, who consider children special interests, who consider the disabled special interests. I say no, Governor Heineman, they are not special interests. They are our friends, they are our neighbors, they are Nebraskans, and they deserve better. [LB970]

SENATOR COASH: Thank you, Senator Conrad. Senator Krist, you are recognized. [LB970]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, Nebraska and colleagues. I apologize for being away from the mike during this debate. I was otherwise detained. I said on the mike during General and I had an extensive conversation with the Speaker with regards to priorities and compromise and the correct amount of money in the correct fund to fund the things that were important to us: LB985, juvenile justice system pilot program; LB820, foster care; LB821, Nebraska Children's Commission and the Department of Children's Services; LB1160, system reports for DHHS; LB901, the DD waiting list; LB1072, the claims bill trying to restore essential services in outstate Nebraska. I live in Omaha, by the way. I care about kids in all parts of the state. The services in outstate Nebraska are in sad shape and we need to restore those services. LB825, ACCESSNebraska, so somebody who is living, breathing, and has a heartbeat will answer the elderly when they have problems when they call. That's the price tag that I have from the Governor in order to vote for this package as it exists. I am willing to bracket this or ask for a bracket motion to be put on it until we see on Monday all of the things that need to come back to us and all of those priorities in place. I am told by the

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

Floor Debate
March 29, 2012

Appropriations Committee that there is plenty of money to go around at this point. Senator Conrad and I differ just a bit on our viewpoint but I think our priorities are exactly right-on in terms of the kids and those who cannot advocate for themselves or provide for themselves in the state of Nebraska. There is nothing I would like to see more than every pot being filled with the requirements, but we all know that's impossible. Everybody is going to get a little bit of what they want in this pie, but they're not going to get the whipped cream and they may not even get the top crust. We need to have the resolve to move forward and we need to make sure that those critical programs that I mentioned, those bills that I mentioned, are funded correctly before we approve the budget as a whole. And I'll reserve the rest of my...or, I'm sorry, I would ask Senator Conrad if she would like the rest of my time. [LB970 LB985 LB820 LB821 LB1160 LB901 LB1072 LB825]

SENATOR COASH: Senator Conrad, 1 minute 50 seconds. [LB970]

SENATOR CONRAD: Thank you, Senator Krist, I would like the rest of your time. And colleagues, I want to talk a little bit about where we are today and how concerned I am about our future, because people keep saying don't worry, we've got it; times are good; we have to give money back to the taxpayers. Well, times aren't so good, because we're still not taking care of our obligations in terms of education today. And let me give you just a few examples. Here's one from The Columbus Telegram, dated Tuesday, March 20. It's got a headline that says, "CPS looks to cover \$1.8 million aid cut." Three percent tax hike. \$1 million from the reserve. Cuts proposed. That's what's happening to our schools... [LB970]

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: ...because we're not taking care of our obligations today. Thank you, Mr. President. Let's look at another example. Wednesday, March 21, from the Crawford Clipper, where it talks about the history of state aid and the changes in terms of where they are today and what that's going to mean for property taxes and impacts. And it's not positive. Let's look at the Gothenburg Times from March 14 (sic) of this year. Here's the headline, "School looks at program cuts again" this year. Here's the subheadline, "Uncertain state aid forces board to RIF consideration." That means laying off teachers. That's what our schools are doing this year because of our actions. So times are good now. We should pay our bills. We should take care of education. We shouldn't provide ill-advised, unaffordable tax cuts at all costs. [LB970]

SENATOR COASH: Time, Senator. [LB970]

SENATOR CONRAD: Thank you, Mr. President. [LB970]

SENATOR COASH: Senator Howard, you are recognized. [LB970]

Floor Debate
March 29, 2012

SENATOR HOWARD: Thank you, Mr. President and members of the body. I want to thank Senator Krist for his list of important bills and also add my priority bill to that, LB993, carried by Senator Ashford to ensure that children who have suffered hideous--hideous--abuse, are referred to the county attorney for the appropriate legal justification. And I'm sure you all have bills that you feel should be on that list too. I'm going to yield the rest of my time to Senator Conrad. [LB970 LB993]

SENATOR COASH: Senator Conrad, 4 minutes 25 seconds. [LB970]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator Howard. Let's continue to dig into what's happening in terms of what's been reported in the Gothenburg Times. And quoting from the article, "With the Legislature still in session and the state budget not yet finalized, superintendent Bill Porter told school board members Monday night they should be prepared for similar cuts approved last year." Later in the article, "Porter said he only wanted to give the board advance notice in case reduction in force"--laying off teachers--"is necessary next month." Let's look at some other reports for how our local school districts are dealing with the amount of state aid they have now which has yet to return to prerecession levels and cannot return to prerecession levels under any projection I've seen for the future. This is from the Plattsmouth Journal, dated March 15, 2012. Here's the headline: Plattsmouth board of education listens to district budget proposals. Potential cuts of \$508,016, and that school board is struggling to figure out how they're going to deal with that. Let's look at the Norfolk Daily News, what's happening with Dodge-Howells. Here's the headline from March 14: Dodge-Howells school looks to reduce teachers; cutting six positions will save our district about \$300,000. That's what's happening right now, what's going to happen into the future. Let's look across our great state to Chadron. Chadron, Nebraska, The Chadron Record reported March 21, 2012 (sic), "Compounding the district's financial problems"--and I'm quoting directly from the article--"are drastic reductions in state aid since 2005, when the district received over \$1 million in aid. For the current...year, the district received...\$161,000." That represents a cut in state aid from \$1 million to \$161,000 in a very short time period. Those are just a few examples. They're not cherry-picked to provide the worst-case scenarios. All of our schools are struggling with these decisions that we've continued to push down on them. They've been good partners during the economic downturn in raising their local rates of effort to help fund and educate our children. And we say we want to repay that debt of gratitude next biennium. So we're going to pick up more of the tab? It doesn't calculate under any scenario. I'm not asking facetiously. I'm asking seriously, how can we help to pick up more of the tab when our projections to pay for this tax cut are going to hold state aid to the historic lows? It's not fuzzy math. It's an honest question and I look forward to anybody who has an answer in that regard, because Nebraskans have a right to know. You know who's going to pick up the tab when the roosters come home to roost, the chickens come home to roost, whatever? [LB970]

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

Floor Debate
March 29, 2012

SENATOR COASH: One minute. [LB970]

SENATOR CONRAD: It's the Nebraska property taxpayer. And what the heck does that do to our rankings with the precious Tax Foundation? Because we get hit pretty hard when you take into account those issues. And then how do we clean up that mess? And the Governor says he's going for more tax cuts and more tax cuts and more tax cuts. When will you finally say no? If you don't today, how will you into the future? And why do you want to come back here if you won't do the right work and the hard work today? Thank you, Mr. President. [LB970]

SENATOR COASH: Thank you, Senator Conrad. Senator Larson, you are recognized. [LB970]

SENATOR LARSON: Question. [LB970]

SENATOR COASH: Senator Larson that is not necessary. There are no other lights on. [LB970]

SENATOR LARSON: Mr. President, I move... [LB970]

SENATOR COASH: Senator Larson for a motion. [LB970]

SENATOR LARSON: Mr. President, I move that LB970 be advanced to E&R for engrossing. [LB970]

SENATOR COASH: Senator Conrad. [LB970]

SENATOR CONRAD: I ask for a call of the house and a record vote. [LB970]

SENATOR COASH: There's been a request for a call of the house. The question before the body is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB970]

ASSISTANT CLERK: 26 ayes, 0 nays to go under call, Mr. President. [LB970]

SENATOR COASH: The house is under call. All senators please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Avery, McGill, Council, please return to the Chamber and record your presence. Senator Conrad, did you request a roll call record vote? [LB970]

SENATOR CONRAD: Yes, please. [LB970]

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

Floor Debate
March 29, 2012

SENATOR COASH: Senator Avery, please check in. All members are present or otherwise accounted for. Mr. Clerk, there has been a request for a roll call vote recorded. Please read the roll. [LB970]

CLERK: (Record vote read, Legislative Journal pages 1221-1222.) 36 ayes, 7 nays on the advancement. [LB970]

SENATOR COASH: LB970 does advance. Raise the call. Items for the record, Mr. Clerk. [LB970]

CLERK: I do, Mr. President, I have some items. Enrollment and Review reports they've examined and reviewed LB751, LB751A, LB834, LB842, LB870, LB907, LB916, LB933, LB950, LB950A, LB963, and LB983, those all reported correctly engrossed. New A bill (Read LB825A by title for the first time.) Senator Langemeier offers LR612. That will be laid over. And Senator Hansen offers LR613. That also will be laid over. That's all that I have, Mr. President. (Legislative Journal pages 1222-1224.) [LB751 LB751A LB834 LB842 LB870 LB907 LB916 LB933 LB950 LB950A LB963 LB983 LB825A LR612 LR613]

SENATOR COASH: Thank you, Mr. Clerk. We now go to the next item on the agenda, LR358CA. [LR358CA]

CLERK: Mr. President, LR358CA, no E&Rs. Senator Carlson would move to amend the bill with AM2264. (Legislative Journal page 755.) [LR358CA]

SENATOR COASH: Senator Carlson, you're recognized to open on AM2264. [LR358CA]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. AM2264 to LR358CA is in response to questions brought up during the General File debate on the resolution. By way of a quick review, LR358CA would extend term limits from two four-year terms to three four-year terms. The bill was simply drafted by changing the word "two" to the word "three." The rest of the language was left from previous draftings. AM2264 strikes (2) of Section 1 of the bill. That section referred to legislative service prior to January 1, 2001. Since 11 years have passed, that language is no longer necessary. I made a commitment to Senator Council to amend this section in response to her questions. My office has had conversations with the Revisor's Office as well as legal counsel for the Executive Board and all agreed that while the language as drafted is not wrong, it's also acceptable to remove it. And so I would ask for your support of AM2264. [LR358CA]

SENATOR COASH: Thank you, Senator Carlson. Members, you've heard the opening to AM2264. The floor is now open for discussion. Senator Conrad, you're recognized.

Floor Debate
March 29, 2012

[LR358CA]

SENATOR CONRAD: Thank you, Mr. President. I'm not going to speak to the amendment, but in regards to the underlying proposal, this couldn't come at a better time. You want to ask the citizens of Nebraska to give you more time in the Legislature, really? Really? (Laugh) The number one priority of the Governor and many of the...in this body in terms of the tax cut bill that was just up, LB970, you try and cut off debate after an hour and a half. We're the only deliberative body in the state, and you think an hour and a half is enough for your number one priority? Why do you need to come back for another term? You're only going to debate your number one priority for an hour and a half. You could certainly get that done in eight years I would think. And I had yet to hear anybody, any proponent, get up on Select File and say, gosh, your numbers are wrong, Senator Conrad, or these are the assumptions that we're making to protect education and human services into the future and today. It's not in the record. The only lights that came on were to provide some critique of Senator Schumacher's amendment which he withdrew. The underlying legislation goes through with no policy argument in support. And you think you need another term in the Legislature? Why? I'll let Senator Carlson answer that question. Thank you, members. [LR358CA LB970]

SENATOR COASH: Thank you, Senator Conrad. Senator Council, you're recognized. [LR358CA]

SENATOR COUNCIL: Thank you, Mr. President. I rise to thank Senator Carlson for recognizing that the amendment that I introduced to this bill on General File was indeed a serious amendment. It wasn't designed as a filibuster move. It was designed to point out a flaw in the bill, and I respectfully disagree with the Executive Board if they thought it was okay to leave in this bill a reference to a period of time that had absolutely no bearing on the bill itself. Because under LR358CA, you're provided with the potential for 12 years of service. So if you started your service before the 2001, you would have already been out of the Legislature under the current term limits legislation, and a new period of time would have begun. So it was a serious amendment and that provision needed to be stricken. And I suggested that even though I remain opposed to LR358CA, not because I'm opposed to 12 years of service. I am opposed to term limits. Term limits in effect prevent voters from selecting the representative of their choice, which, if you've ever had occasion to read the Voting Rights Act of 1965, there's one of the principles that that Voting Rights Act and the provisions are designed to protect--the right to pick a representative of your choosing. Term limits removes that opportunity by removing from the ballot people who have served this arbitrary number of years and clearly it's an arbitrary number of years because now eight is not enough. Some think 12 is enough. Why doesn't 16 work? Why doesn't 20, 24? What arbitrary number should we decide on? Well, we shouldn't be picking arbitrary numbers. We should leave it to the voters, the voters that we claim to respect; the voters that we claim to represent; the voters we claim to trust in making key financial decisions because we want to put

Floor Debate
March 29, 2012

occupation taxes to a vote of the people. We want to put sales tax increases to a vote of the people, but we don't trust them to pick a representative, and we want to limit their ability to do so. This bill should not be advanced, only because we made a mistake in the first instance. The bill that should be advanced is a bill to repeal term limits. And it's interesting, when this bill was introduced I received this document in the mail, it was a pledge that I would support term limits. Well, first of all I don't sign pledges. But that's certainly a pledge I would never sign. I hear people justifying the addition of four years. Well, if that's a justification for four more years, why is it not a justification for repeal? Because if we want seasoned, informed,... [LR358CA]

SENATOR COASH: One minute. [LR358CA]

SENATOR COUNCIL: ...engaged representatives in this body, then why don't we allow them to serve as long as their constituents wish them to represent them? Like I said, I'm conflicted. I don't want to support this bill because it's a tacit support of term limits. I would prefer repeal. Thank you. [LR358CA]

SENATOR COASH: Thank you, Senator Council. Senator Bloomfield, you are recognized. [LR358CA]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good afternoon, colleagues. I agree somewhat with Senator Council. I don't believe LR358CA should be advanced either but for a different reason. We did take this to the voters. The voters said eight years was long enough. Let's let the voters' vote stand. Eight years is long enough. Please vote red on AM2264 and again on LR358CA. Thank you. [LR358CA]

SENATOR COASH: Thank you, Senator Bloomfield. Are there other members wishing to speak? Seeing none, Senator Carlson, you're recognized to close on AM2264. [LR358CA]

SENATOR CARLSON: Thank you, Mr. President. I will close. I'd like to have a call of the house and I'd complete my closing while the people are being called back so I do ask for a call of the house. [LR358CA]

SENATOR COASH: There has been a request for a call of the house. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LR358CA]

CLERK: 26 ayes, 0 nays, Mr. President, to place the house under call. [LR358CA]

SENATOR COASH: The house is under call. Members, please return to the Chamber and record your presence. All unexcused personnel please leave the floor. The house is under call. Senator Carlson, would you like to continue with your close? [LR358CA]

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

Floor Debate
March 29, 2012

SENATOR CARLSON: Thank you, Mr. President. Decisions by us on term limits and on a salary increase are difficult considerations. These issues bring opposition from several directions. Now those that disturb me most are when they come from out of state, an outside group, not a Nebraska group. An example is U.S. Term Limits from Virginia. What bothers me most about groups like U.S. Term Limits is that they're careless with the truth. They've taken out radio ads to intimidate those of you up for election. They've publicly stated that those of us who voted for LR358CA on General File, and even those who didn't vote, want to do away with term limits. That is a lie. LR358CA is about supporting and saving term limits, not doing away with them. U.S. Term Limits, you're an outside group. You can't bully or intimidate me and I hope no other member of this Legislature. Nebraska with its Unicameral is unique. U.S. Term Limits either doesn't understand that or they just don't care. They've attempted to intimidate some of us to back off and not pursue LR358CA. But we recognize we are to make tough decisions, not convenient decisions, not easy decisions, not politically correct decisions, not selfish decisions, but decisions that we think are best for the people in Nebraska. Members of the Legislature, a red vote or a no vote on this bill is a message to our voters that they can't make the correct choice on this issue at the ballot box. But, members, your green vote may not indicate your support for LR358CA. But it does show your confidence in the voters of Nebraska to make the right decision. Our consideration is whether or not the voters in Nebraska are capable of making the right choice on extending term limits to three four-year terms. I believe they are most capable of this choice. I would ask you to vote green on AM2264 and LR358CA. Mr. President, I would ask for a machine vote on AM2264 and a roll call vote in regular order on LR358CA. Thank you. [LR358CA]

SENATOR COASH: Thank you, Senator Carlson. Senator Fulton, please return to the Chamber. The house is under call. Members, you've heard the closing to AM2264. There has been a request for a machine vote on AM2264. All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LR358CA]

CLERK: 29 ayes, 3 nays, Mr. President, on adoption of Senator Carlson's amendment. [LR358CA]

SENATOR COASH: AM2264 is adopted. [LR358CA]

CLERK: I have nothing further on the bill, Mr. President. [LR358CA]

SENATOR COASH: Senator Larson for a motion. [LR358CA]

SENATOR LARSON: Mr. President, I move that LR358CA be advanced to E&R for engrossing. [LR358CA]

SENATOR COASH: Thank you, Senator Larson. There has been a request for a roll call

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

Floor Debate
March 29, 2012

vote on the advancement of LR358CA. Seeing no lights, Senator Sullivan. There's been a request for a roll call vote. Mr. Clerk, please read the roll. [LR358CA]

CLERK: (Roll call vote taken, Legislative Journal page 1225.) 25 ayes, 14 nays on the advancement, Mr. President. [LR358CA]

SENATOR COASH: LR358CA does advance. I raise the call. Next item, Mr. Clerk. [LR358CA]

CLERK: Mr. President, LB959. No E&Rs. The first amendment I have to the bill, Senator Smith, I have AM2345, but I have a note you wish to withdraw that, Senator. [LB959]

SENATOR SMITH: And replace it with AM2685. [LB959]

CLERK: Withdraw and substitute, well, it's the next amendment, Senator, so we'll... [LB959]

SENATOR COASH: So withdrawn. [LB959]

CLERK: AM2685 is next, Senator, so that's the amendment now. AM2685, Senator Smith. (Legislative Journal page 1225.) [LB959]

SENATOR COASH: Senator Smith, you are recognized to open on AM2685. [LB959]

SENATOR SMITH: Thank you, Mr. President, and good afternoon, colleagues. AM2685 is an amendment to clarify but not change the intent nor the benefits of LB959 as amended by committee amendment. First, this amendment clarifies that the written performance evaluation or review of the employee must have been provided to the employee during the course of their employment. The other clarification, colleagues, is that the consent form will be valid for no longer than six months, which would easily cover the entire hiring process for the employee. There was concern that the removed term could suggest a shorter time during which the consent form would be valid, for example, only during the time applications are being accepted and not necessarily including the time during which the interview or the selection takes place. Both Senator Lathrop and Senator Janssen agree with this amendment, and I ask your support of AM2685. Thank you. [LB959]

SENATOR COASH: Thank you, Senator Smith. Members, you've heard the opening to AM2685. Members wishing to speak: Senator Janssen, you're recognized. [LB959]

SENATOR JANSSEN: Thank you, Mr. President, and members. And I'm just standing up to echo Senator Smith that Senator Lathrop and I and Senator Harr, as well as the

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Floor Debate
March 29, 2012

entire Business and Labor Committee put in some hours working on this bill. We came to a consensus over a lot of work and an agreement, and I've agreed to this on General File, but it was late one night when we went through with this so I asked him to withdraw it and put it on Select and he has done so. I appreciate him doing that and encourage your support for this amendment and eventual passage of LB959 with AM2685 on it. Thank you. [LB959]

SENATOR COASH: Thank you, Senator Janssen. Are there other members wishing to speak? Seeing none, Senator Smith, you're recognized to close on AM2685. Senator Smith waives closing. The question before the body is, shall AM2685 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB959]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Smith's amendment. [LB959]

SENATOR COASH: AM2685 is adopted. [LB959]

CLERK: Senator Avery would move to amend with AM2624. (Legislative Journal page 1226.) [LB959]

SENATOR COASH: Senator Avery, you're recognized to open on AM2624. [LB959]

SENATOR AVERY: Thank you, Mr. President. This amendment is actually filed against AM2010, but I am told that this will be corrected. But if you refer to AM2010 on page 1, line 17, all I'm doing is in that part of the bill where "Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another employee" this is information that can be revealed. All I'm asking is that the word "documented" precede that so it would read "Documented threats of violence, harassing acts," etcetera. This I believe is a modest improvement in the bill. It provides employees with a measure of protection from arbitrary, capricious, false, or deliberately harmful information being provided by an employer, hearsay, unfounded charges, and other such actions would not be allowed. By documented, I mean here the threats, the acts must be based on evidence of proof. Some examples, of course, would be formal entries into the personnel file, formal employer sanctions with a written record, civil or criminal convictions, things of that sort. This I believe would provide employees with a little bit more assurance that they will not be subjected to unfounded and harmful information being revealed without their ability to answer these charges adequately. I do note that the committee amendment does provide the employer with immunity from civil liability and presumed to be acting in good faith. And if that is not...if the employee believes that is not the case, it's on the employee's shoulders to provide the preponderance of evidence that the information is false. I think this might release some of the anxiety that's been expressed to me by some of my constituents by adding the simple word

Floor Debate
March 29, 2012

"documented" at the beginning of that sentence. Thank you, Mr. President. [LB959]

SENATOR COASH: Thank you, Senator Avery. Members, you've heard the opening to AM2624. Members wishing to speak: Senators Lathrop and Janssen. Senator Lathrop, you're recognized. [LB959]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I want to...I'm opposed to AM2624 and I want to tell you why. When we have dealt with this subject matter in the Business and Labor Committee for...it comes up literally every year. And the difficulty with the subject, LB959, is that it is very, very difficult to bring employees and employers together and get them to agree on a fair treatment of the subject. Employers want to be able to communicate and get information, and the employees want to know that this will not be used as a way to exact some punishment for somebody who has left a business. Or that someone who may have a personal grudge against an employee for whatever reason, maybe for no reason at all or a reason as silly as they left my employment. So what we did with LB959 is...and we did put a good deal of time in on this, the committee did, Senator Janssen did, and Senator Smith in particular, is that we struck a balance and we brought this to the floor. Senator Avery has every right in the world to offer this amendment. I'm not suggesting he doesn't. But we brought this to the floor with the understanding that there would be no amendments unless we sat down and agreed that it would not upset the balance that we struck when we brought this to the floor. And as a consequence, I don't have a judgment about whether this is helpful or not helpful. I will tell you though that my concern is, is if we let an amendment on like this, then it's going to become a bill that gets out of balance. I do believe that the subject matter is or the safeguard is found in two places. One is the amendment that Senator Smith just moved required that if someone is going to provide a job evaluation it has to be one that was presented to the employee. Presumably if the employee was threatening somebody it would be on the job evaluation. The second thing is an employer isn't free under this bill to say whatever they want, and the immunity doesn't give them carte blanche to be careless or reckless with the truth. In fact, that's not the case. You can overcome the presumption and the immunity disappears on a showing of essentially bad faith. And so if an employer is going to say that this employee during my employ was threatening people and it's not true, they're going to get sued. And this bill is not going to stop that from happening. So I believe the safeguard is already present in the bill. I think Senator Smith's amendment strengthened that. And while I'm not critical of the effort, I am concerned that it will upset the balance that we struck and sort of the agreement I had between those who employ and those who work. And I think that's necessary to maintain that balance in order for LB959 to move and enjoy the support that it has to this point in time. And so I'd ask you to vote red on AM2624. Thank you. [LB959]

SENATOR COASH: Thank you, Senator Lathrop. Senator Janssen, you're recognized. [LB959]

Floor Debate
March 29, 2012

SENATOR JANSSEN: Thank you, Mr. President, members. And I failed on the last time up at the mike to thank Senator Coash for prioritizing this bill, a bill that has come before the Business and Labor Committee a great many times. And I was happy that we could work out an agreement this year perhaps maybe to keep it from coming back in further years. I don't know why, but we worked hard on that. We came to an agreement on that. I agree with Senator Lathrop in my opposition to AM2624, again, not using all of his words. I'm not critical of it. It just came to me probably 20 minutes ago. I've had no previous discussions with Senator Avery about this today or any day on this bill, for that matter. And for the reasons laid out by Senator Lathrop and that reason alone and the reason I just found out about this, I'm going to ask you and I'm going to oppose AM2624 and then I'll ask for a green on LB959. Thank you very much, Mr. President. [LB959]

SENATOR COASH: Thank you, Senator Janssen. Senator Avery, you're recognized. [LB959]

SENATOR AVERY: Thank you, Mr. President. I wonder if Senator Lathrop will yield to a question. [LB959]

SENATOR COASH: Senator Lathrop, will you yield? [LB959]

SENATOR LATHROP: Yes, I'd be happy to. [LB959]

SENATOR AVERY: Would you care to elaborate on what you mean by upsets the balance? How exactly does this upset the balance? [LB959]

SENATOR LATHROP: Well, here's my concern. When LB959 came up, it would have been, without some kind of an understanding, a target for amendments from both sides. We could have had those who are concerned about employers, for example, trying to make this...well, I'll give you an example. If somebody changed the standard from a preponderance to clear and convincing, that would upset the balance in this bill. If we simply gave employers blanket immunity and provided not just a presumption but an immunity, those are the things that might have happened from the business community. And I think if you went out and talked to folks who represent the business community or people inside here who advocate for the business community, they would say, I'd like to see LB959 stronger. I can tell you that I've heard from employees who would say or employee groups who would say, we don't want anything to do with this. And that is really the balance that we tried to strike. And when we talked to them before this came out on the floor, we said: Look, we'll move it the way it is. We have struck the balance in what I think is a fair treatment of the subject matter, Senator Avery, not too strong on the employer side, not too strong on the employee side, but a way which I think is logical and thoughtful. And I am very concerned about that balance being upset by an amendment. [LB959]

Floor Debate
March 29, 2012

SENATOR AVERY: All right. Thank you. Let me ask you one more question. How then...where are the safeguards for the employee who may be subject to hearsay, malicious intent on the part of an employer? Now this is... [LB959]

SENATOR LATHROP: Well, okay, then I'll answer that because I think you're using almost the terms that are right in the bill and that is that the bill provides an immunity, Senator, for the statements...first of all, the employee has to consent so you send a consent over to your former employer, right? You don't want them to talk to your former employer, don't give your prospective employer a consent and they never have a conversation outside of what the law is right now. Second thing is if that employer says something, they are presumed under the bill to have...it's presumed to have been said in good faith, and that can be overcome by a preponderance by showing that it was a malicious statement. And then there is no immunity, the presumption disappears, and the employer is responsible. And that is what is such...so unique in my judgment about the solution that we've crafted in LB959. [LB959]

SENATOR AVERY: Well, it seems to me that the employee is at a disadvantage because if you require the employee to show by a preponderance of evidence that the information that's being provided is false, that's difficult to do. Maybe what you're asking here is that the employee go out and hire a lawyer to represent him in this matter. [LB959]

SENATOR LATHROP: No. But the employee might be there in any case. A preponderance of evidence is the greater weight of the evidence. Again, and we've had this discussion on the floor before, there is the criminal version beyond a reasonable doubt, there is clear and convincing, and there is preponderance. And the preponderance, as we often say to a jury, is that amount of evidence that tips the scale. And... [LB959]

SENATOR AVERY: That's the lowest threshold of proof. [LB959]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB959]

SENATOR LATHROP: It is the civil standard for the burden of proof. [LB959]

SENATOR AVERY: Mr. President, was that time? [LB959]

SENATOR GLOOR: One minute, sir. [LB959]

SENATOR AVERY: One minute. Well, all right, thank you, Senator Lathrop. I really am

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

Floor Debate
March 29, 2012

concerned that this bill does not provide adequate protection for the employee against malicious behavior by an employer. I was not aware that we were bound by an agreement because nobody told me about an agreement. And I don't think that it's appropriate nor possible for two or three members to bind this body to an agreement. And I see...maybe I misunderstood what you meant by that, but an agreement might have been reached among the three of you, but it did not include me and my seatmate, Tom Hansen. I don't believe he was involved. [LB959]

SENATOR GLOOR: Time, Senator. [LB959]

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

SENATOR GLOOR: Thank you, Senator Avery. Senator Cornett, you are recognized. Senator Cornett waives. Senator Smith, you are recognized. [LB959]

SENATOR SMITH: Thank you, Mr. President. And while I really honestly do appreciate what Senator Avery is attempting to do with bringing forward AM2624, I am, too, going to have to oppose AM2624. And let me explain my reasoning for this. First of all, I didn't get a chance to do this on General File, and I do want to thank Senator Janssen for bringing forward this bill. I think it's really important for employers, particularly, you know, small employers to be able to make certain that they are...that they know the quality of the employees that are applying for the jobs that they have open. But also it's very, very important for the employee to have some assurance that they are not going to be misrepresented by a former employer. And while I'd like to believe that all employers and businesses are honest and aboveboard, I know sometimes bad feelings occur when an employee leaves. And so it was therefore that I had brought forward the amendment to the committee amendment and just wanted to strengthen the protection for the employee. And that was represented in that performance review or evaluation. We did not want to have that evaluation be put into an employee's file after the employee leaves and the employee has no idea what was said about them by that former employer. And so we wanted to beef up the protection for the employee and strike the balance that Senator Lathrop was talking about. And I do believe that what Senator Avery is intending to be present in this bill is reflected in this amendment that we are beefing up the protection for the employee and we are seeking to strike that balance. And I do thank Senator Lathrop for...and the committee members for working together and coming up with that balance. I think it's a win-win situation for the employee and the employer. Thank you, Mr. President. [LB959]

SENATOR GLOOR: Thank you, Senator Smith. The Chair recognizes Senator Council. [LB959]

SENATOR COUNCIL: Thank you, Mr. President. I rise in strong support of AM2624 and I appreciate Senator Avery for pointing this out. And I'm troubled by the fact that those

Floor Debate
March 29, 2012

who have risen to speak in opposition readily advanced the last amendment and just on the basis of Senator Smith's statement. The reason he offered that was to protect an employee from an employer putting something in their personnel file that they weren't aware of. How can you distinguish that from what Senator Avery is trying to accomplish and that is someone being accused of making threats of violence or harassing people and never having had it presented to them? If these threats are such that a former employer feels compelled to tell a prospective employer, why isn't it documented in their file? If it rises to the level of something that a former employer believes a prospective employer ought to know, why doesn't it rise to the level of placing it in that individual's personnel file, something that that employee has access to, just like Senator Smith just provided that they'd have access to any evaluation that the former employer could provide? Colleagues, there's no difference between what Senator Avery is asking for and what this body just approved with Senator Smith's amendment. And that is to be sure that we're not relying on hearsay and what an employer may put into a person's personnel file after they left. If you don't support AM2624, then I question how you could have supported the prior amendment because the point is, as I just heard Senator Smith, it's unfair to that employee to have the former employer provide an evaluation that he or she had never been provided with. But it's okay for the former employer to represent that that employee made threats or harassed other employees and doubtful whether or not that employee had ever been presented with those threats or allegations of harassment. If it warrants being conveyed to a prospective employer, it warrants being documented in a personnel file. I urge this body to support AM2624. [LB959]

SENATOR GLOOR: Thank you, Senator Council. Senator Lathrop, you are recognized. [LB959]

SENATOR LATHROP: Thank you, Mr. President. Let me be clear about one thing. I am not critical that Senator Avery brought this. I think it is on topic. It is...yeah, I'm not critical of Senator Avery bringing this. He had every right to. If I'd have known that he was going to bring it, I might have run the traps to make sure it wouldn't upset the balance. Here's my concern about just process, from a process point of view. This gets adopted and then what's stopping somebody from the business community handing an amendment to someone inside here and now we are going to the very foundation of LB959 because there are people behind the glass that would like to see this more one-sided. Okay? They want to...they'd like to see it more one-sided. The employees would like to see it more one-sided the other way. And so we struck a balance. And, listen, I didn't come out here and tell everybody, all 49 people that we got a balance here, there's a deal, don't touch it. I'm not suggesting that. But I am concerned what will happen if this gets adopted if I'm going to see another amendment. Does it make sense? Maybe it does. And to my friend, Senator Council, I will say this and to Senator Avery also, my friend. If someone acts in bad faith, this provides no protection. Okay? And if someone is...if someone does this, it's in all likelihood going to be in an evaluation that they've seen. So it's probably already taken care of in a documented performance

Floor Debate
March 29, 2012

evaluation that will be provided under this bill. Senator Council, I appreciate your concerns, I really do. My only concern is that this is one of those things where both sides wanted something else and we said, how about this? And they said, okay, with the understanding that it doesn't change. And Senator Smith had an idea and there was another one, a clarification, both of which were in his amendment, and I ran around and talked to all the people concerned to make sure that this doesn't upset the balance. Honestly, if I'd have known Senator Avery wanted this, I would have run the traps and I didn't know it until I walked out here to vote on the last thing. That's what it's about. And I am concerned about this. This is a lot of work and it is a lot of people trusting in the committee, and it's a lot of people trusting me, Senator Janssen, Senator Smith, and the Business and Labor Committee. And that's why I'm standing in opposition, not because I think it's a bad idea. But what's going to stop somebody else from the other side thinking that this isn't a bad idea either and it's an improvement? And I'll tell you that we had somebody that was e-mailing more ideas this afternoon from what I would call the employer side of things, and we said no. It's going to upset the balance. And so that's the only thing. I'm not going to say that Senator Avery's idea is a bad one, just concerned that it will upset the balance that we struck when we put LB959 together in the first instance. Thank you. [LB959]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Council, you're recognized. [LB959]

SENATOR COUNCIL: Thank you again, Mr. President. Thank you, Senator Lathrop, for the explanation. And I have to respectfully disagree with the rationale for not advancing AM2624. I appreciate the work that went into crafting this. I appreciate the representations made, but that does not mean that I abdicate my responsibility as a member of this body to advance good legislation. And when I look at the language and it talks about bad faith, I will submit to you that if a former employer reports to a prospective employer that he or she received an allegation of a threat from another employee and passed that on to a prospective employer, that former employer is not going to be found to have acted in bad faith. But that prospective employee has been placed in a position by consenting to what they believe to be information, just as you said, Senator Lathrop, you said, hey, if a person is concerned about what an employer...former employer may say about them, don't sign the consent. Well, you and I know that that probably means don't withdraw yourself from consideration for employment. But that aside, I signed a consent because nobody has ever said anything to me about receiving a threat or an allegation of harassment. So, yeah, I sign it and my employer conveys in good faith the fact that a coworker of mine made an allegation that I harassed them. Well, is that arguably acting in bad faith if that occurred and they didn't do anything about it? It didn't rise to a level of noting it in one's personnel file. That's problematic because by the mere fact that we're saying the employee has to consent, you're right, Senator Lathrop. I'm not going to consent to have somebody check with a former employer where I know, you know, there's three reports of harassment in my

Floor Debate
March 29, 2012

personnel file, and my last performance evaluation was less than adequate. No, I'm not going to sign it. But if I have absolutely no knowledge of someone making threats, allegations that I threatened them, harassed them and I consent, and that former employer, acting in good faith, conveys that to my prospective employer, I'm placed at a disadvantage. And I appreciate the people behind the glass and the balance. And I've no disrespect to the work that's being done here. But it's not my job to please them. My job is to advance good legislation. And if we improve the legislation by addressing the issue, a legitimate issue that Senator Smith raised, this is an equally legitimate issue and AM2624 should be advanced. [LB959]

SENATOR GLOOR: Thank you, Senator Council. Senator Lathrop, you're recognized and this is your third time, Senator. [LB959]

SENATOR LATHROP: Yeah, thank you, Mr. President. And, Senator Council, my good friend, Senator Council, I would submit a couple of things to you. One is that if you were involved in the process you might have struck a different balance. You might have put this in and then let something else in that didn't make it in that the employers wanted. And so I appreciate your concern. Here's the other thing and the way this will work, a couple of thoughts. One is that if you, the employee, have to sign a consent the one thing you can do is to say to your prospective employer, I'll sign this consent but you're probably going to hear from the guy you're going to talk to A, B, C, and D. And I want to tell you my side of A, B, C, and D before that happens. Okay? Then when you get it, you're not going to be surprised and you're already going to know what my explanation for it is. That's part of the balance and why I think LB959 is a balanced approach. The other thing I would say is that the law doesn't stop a prospective employer right now from giving a referral. Let me say that again. The law doesn't stop a former employer from speaking to a prospective employer right now. They feel like the prospect of being sued is chilling the free flow of information, but it doesn't stop them. So right now if we don't pass LB959 everything that Senator Council said could still happen. And that employee who doesn't know that it's happening still won't know and nothing will change. So what we've done is we've taken care of part of the problem. We've taken care of the problem and set it out. And we've provided relief for the employers if the employee consents and the employee takes the first step in this process. That's the balance we struck. And could someone else have put this together and struck a different balance and had a little bit more for the employee and a little bit more for the employer, maybe a little bit less for the employer and a little bit less for the employee? I suspect so. But my concern is just for maintaining the balance and honestly, and this is not a knock on Senator Avery because he had no reason to suspect this or expect this I should say, if I'd have known about it yesterday or even this morning, I might have run the traps and everybody would have said, yeah, great addition. But my fear is that it will begin the process of each side trying to make improvements and destroy the balance that we've struck. Thank you. [LB959]

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

Floor Debate
March 29, 2012

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Council, you are recognized and this is now your third time, Senator. [LB959]

SENATOR COUNCIL: Thank you very much, Mr. President. Again, Senator Lathrop, I am not critical of the process. I'm not critical of the considerations in crafting the language. What I am critical of, though, is that this is a glaring problem with advancing LB959. And just using the example you gave, I am prospective applicant for employment. My prospective new employee asks me to sign a consent. I look at it and I go, oh, wow. Hey, when you submit this to my former employer, you're going to hear that, you know, I threw a wrench at Joe on the assembly line one day but, you know, let me explain that. This is what happened. The problem is, is I don't know and I didn't throw a wrench and I don't know that Joe claims I threw a wrench. Nobody has ever talked to me about a claim from Joe that I threw a wrench. My signing this consent without holding the former employer to the standard if you're going to talk about threats, if you're going to talk about harassment, and those are very important things and I respect and appreciate the need for prospective employers to know about that kind of conduct. But a mere allegation of that kind of conduct by a coworker or a supervisor if it didn't rise to the level of being documented in my personnel file, why should my former employer be able to tell my prospective employer that? And I submit again they would not be found to have been acting in bad faith because all they would say in court was, here's Joe. Joe told me that Brenda threw a wrench and I told Brenda's prospective employer that Joe told me that. They're not going to be found in bad faith. But me, who signed the consent, knowing that I've never been called into the office about threatening anybody, I've never been called into the office about harassing anybody, in fact, I've never threatened or harassed anybody, I don't have any problem signing this consent. What I submit to you is that what is sought to be accomplished by AM2624 is the very same thing that was accomplished by Senator Smith's amendment. And I appreciate Senator Smith may have gotten it to you in advance, and that's why there was no objection to it. But Senator Avery's amendment makes this a better bill for the same reasons that Senator Smith's and I don't believe it upsets the balance so much that it places advancement of this legislation at risk. So again I would urge favorable consideration of AM2624 with the understanding that if you believe that fairness ought to be a part of the equation here, that's a little balancing, that AM2624 should be adopted to LB959. And I guess I'll state on the record if it is not... [LB959]

SENATOR GLOOR: One minute. [LB959]

SENATOR COUNCIL: ...I would suggest to Senators Lathrop and Janssen that they speak to the people that negotiated this deal because it could come back from Final Reading for a motion...on a motion for a specific amendment. Thank you. [LB959]

SENATOR GLOOR: Thank you, Senator Council. There are no senators remaining in the queue. Senator Avery, you're recognized to close on your amendment to LB959.

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

Floor Debate
March 29, 2012

[LB959]

SENATOR AVERY: Thank you, Mr. President. When I drafted this amendment, I was responding to some pretty serious complaints from constituents who felt that they were not adequately protected. And I still think so. I don't see this as an onerous amendment, and it certainly is not a hostile amendment. I appreciate the work that went into this by the parties involved. But I would hope that we in this body vote on matters that come before us based upon their merits. And I ask you not to judge this amendment on whether it is part of a deal or whether it was part of a process. Judge it on whether you think it improves the bill. Do not be influenced by the fact that this wasn't vetted by a few other members first. We should not ever be presented with a take it or leave it proposal, and this is beginning to look like that. I would have been happy to have run this by the introducer and by the committee if I had thought that it would upset the balance. And I'm still unconvinced about how it upsets the balance. It might upset an agreement but does it upset the balance by providing some language that would say to employers, if you're going to put information about threats and harassment in a letter involving this employee, you're going to have to have it documented. It cannot be hearsay. It cannot be false. So I would ask you to look at this as a way of improving the bill and adding a little protection, a measure of protection for the employee. And I would ask you to think carefully about where the balance is upset. Outside the process? That's not a part of the process that I knew about. Does it violate any of our rules and procedures? No. Does it violate a confidence? No. I didn't give my word. Nobody asked me for my word. So is there an understanding here? Not with me. This is, or it should be, a commonsense amendment to simply change one part of the bill adding one word that says, if you're going to put in someone's...in your reference letter or if you're going to provide information to a prospective employer, it must be true. That's all. So I ask you to vote green on this and if you do, I will support the bill, and be happy to do so. Thank you. [LB959]

SENATOR GLOOR: Thank you, Senator Avery. Members, the question is, shall the amendment to LB959 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Avery, for what reason do you rise? [LB959]

SENATOR AVERY: I would like to have a call of the house. [LB959]

SENATOR GLOOR: Members, there has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB959]

CLERK: 31 ayes, 0 nays to place the house under call. [LB959]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and

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

Floor Debate
March 29, 2012

record your presence. All unauthorized personnel leave the floor. The house is under call. Senators Sullivan, Krist, and Hansen, please return to the Chamber and record your presence. Senator Sullivan, please return to the Chamber. Senator Avery, how would you like to proceed? [LB959]

SENATOR AVERY: Roll call vote, please. [LB959]

SENATOR GLOOR: Roll call vote, regular order. Mr. Clerk, please call the roll. [LB959]

CLERK: (Roll call vote taken, Legislative Journal page 1226.) 7 ayes, 23 nays, Mr. President, on the amendment. [LB959]

SENATOR GLOOR: The amendment fails. Mr. Clerk. [LB959]

CLERK: I have nothing further on the bill, Mr. President. [LB959]

SENATOR GLOOR: Senator Larson. [LB959]

SENATOR LARSON: Mr. President, I move that LB959 be advanced to E&R for engrossing. [LB959]

SENATOR GLOOR: Members, you've heard the motion. All in favor say... [LB959]

SENATOR COUNCIL: Mr. President. [LB959]

SENATOR GLOOR: Senator Council, for what reason do you rise? [LB959]

SENATOR COUNCIL: I request a machine vote. [LB959]

SENATOR GLOOR: Members, you've heard the request for a machine vote. All those in favor of the advancement of LB959 to E&R for engrossment, please vote aye; those opposed, please vote nay. Have all voted who care to? Record, Mr. Clerk. [LB959]

CLERK: 33 ayes, 3 nays, Mr. President, on the advancement of LB959. [LB959]

SENATOR GLOOR: LB959 advances. Raise the call. Mr. Clerk. [LB959]

CLERK: May I read some items, Mr. President? [LB959]

SENATOR GLOOR: Please. [LB959]

CLERK: Thank you. Senator Cook would like to introduce LB1063A. (Read by title for the first time.) Enrollment and Review reports LB711; LB799; LB824; LB845; LB858;

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

Floor Debate
March 29, 2012

LB867; LB962; LB1079; LB1079A; LB1097. Those all reported correctly engrossed. That's all that I have, Mr. President. (Legislative Journal page 1227.) [LB1063A LB711 LB799 LB824 LB845 LB858 LB867 LB962 LB1079 LB1079A LB1097]

SENATOR GLOOR: Thank you, Mr. Clerk. We now continue with Select File, LB1114. [LB1114]

CLERK: LB1114, I do have Enrollment and Review amendments. (ER221, Legislative Journal page 1037.) [LB1114]

SENATOR GLOOR: Senator Larson. [LB1114]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB1114 be adopted. [LB1114]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB1114. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB1114]

CLERK: I have nothing further on the bill, Mr. President. [LB1114]

SENATOR GLOOR: Senator Larson. [LB1114]

SENATOR LARSON: Mr. President, I move that LB1114 be advanced to E&R for engrossing. [LB1114]

SENATOR GLOOR: Members, you've heard the motion. All in favor say aye. All opposed say nay. LB1114 is advanced. Mr. Clerk. [LB1114]

CLERK: LB1053, I have E&R amendments, Mr. President. (ER227, Legislative Journal page 1054.) [LB1053]

SENATOR GLOOR: Senator Larson. [LB1053]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB1053 be adopted. [LB1053]

SENATOR GLOOR: Thank you, Senator Larson. Members, the question is the adoption of the E&R amendments to LB1053. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB1053]

CLERK: Senator Loudon, I have AM2589 with a note you wish to withdraw that particular amendment. [LB1053]

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

Floor Debate
March 29, 2012

SENATOR LOUDEN: Yes, correct, and replace it with AM2689. [LB1053]

CLERK: Mr. President, Senator Louden would move to amend with AM2689.
(Legislative Journal page 1228.) [LB1053]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Louden, you're recognized to open on your amendment. [LB1053]

SENATOR LOUDEN: Thank you, Mr. President and members. The amendment, AM2689 to LB1053, the tourism bill to create the Nebraska Tourism Commission is mostly work that we've done with the Revisors and the first part of the amendment, it's in Section 10, and it lays out how the commissioners will be appointed to this commission. Also that they be appointed by the Governor with a majority of the members of the Legislature approval. And it goes on with the usual recipe on how the commissions come from different parts of the industry around the state of Nebraska naming one from the Game and Parks such as, and one from a travel association, and on through there for the entire number of commissions. Also in the amendment is, in Section 29 and that changed the operative date to July 1, 2012. And this came about after we talked to the Revisors and they said ordinarily the operative date on LB1053 would go into effect 90 days after the session ended which would be somewhere around the 13th of July. And they said if you could set that up so that it would become operative on July 1, it would save them a whole lot of bookwork by changing at the fiscal year. And so that's what we went ahead and done and this is something as you work with the people that have to do the work and when they have a suggestion, I'm a firm believer in probably following what they have to suggest, if there's especially a way to save a lot of time and a lot of work. So by doing that, changing that operative date ten days we have to put the emergency clause on to it and that's what Section 31 does is put an emergency clause on it so that it would take effect when passed and then, of course, the operative date still has a July 1, 2012. And then in the next part of the amendment there was some corrections on the wording in there instead of having effective date, they wanted to insert and change that to operative date on a couple of different pages, I think, on page 6 and on page 7. And that's mostly what the amendment does. It was mostly what I would call corrective surgery on this to line the bill up better and set it up so that it would be smooth operation to get it into statutes. Thank you, Mr. President. [LB1053]

SENATOR GLOOR: Thank you, Senator Louden. There are members wishing to be heard. Senator Schilz, you are recognized. [LB1053]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Real simply, AM2689, I concur with that. I agree with it. I support it fully. It brings into harmony a bill, LB684 that was passed last year and puts those groups or those areas, matches those

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

Floor Debate
March 29, 2012

up, and so I would appreciate everyone's support on the amendment and LB1053. Thank you very much. [LB1053]

SENATOR GLOOR: Thank you, Senator Schilz. Senator Janssen, you're recognized. [LB1053]

SENATOR JANSSEN: Thank you, Mr. President and members. I, too, rise in support of AM2689 and LB1053 and I do so...I did not vote for this in committee. I was a no vote and I was waiting for a study to be completed. The study has not been completed but the more I've looked into this, I think it's a good idea and I'm supportive of LB1053 at this time. Thank you. [LB1053]

SENATOR GLOOR: Thank you, Senator Janssen. The Chair recognizes Senator Harms. [LB1053]

SENATOR HARMS: Thank you, Mr. President. I rise in support of AM2689 and the underlying bill, LB1053. I think this gives us some hope and an opportunity maybe to get our tourism focused in the right direction and, hopefully, we'll see an increase in people coming to visit this great state. There's so many beautiful things to see that we have not had a chance to really advertise and let the country know and so I support this. And I hope that you'll support the amendment as well as the bill. Thank you, Mr. President. [LB1053]

SENATOR GLOOR: Thank you, Senator Harms. The Chair recognizes Senator Avery. [LB1053]

SENATOR AVERY: Thank you, Mr. President. I just got a look at this amendment and I would remind everybody that this was not vetted by the committee, was not part of our deal. And that with my quick look at it, it strikes me that it might be challengeable on constitutional grounds. And I'm not prepared to make that case at this moment because I just got a look at it. But I think the important thing is that this was not vetted in the public hearing, and that it was not a part of the bill that the committee reported out. I think this is very likely to happen in real life anyway that the current employees in the department will probably wind up in similar positions in this new commission, but I don't know that we ought to be putting it in the statute. With that, I intend to vote against this and I would urge you to do the same. Thank you. [LB1053]

SENATOR GLOOR: Thank you, Senator Avery. Are there other senators wishing to be recognized? Seeing none, Senator Louden, you're recognized to close on AM2689. [LB1053]

SENATOR LOUDEN: Thank you, Mr. President. As Senator Avery was looking at this, this is the recipe for usually setting up the commissions and I think you'll notice in some

Floor Debate
March 29, 2012

of the statutes, in the bill it already describes how the commission is set up in statutes over there. They weren't calling it the Tourism Commission in there, but it was another commission that's already in that part of the statutes for, I think, where there is the DED Commission. Anyway, there's a recipe in there already on how some of these commissioners would be appointed or set up. Now, I don't see why it would be unconstitutional because this is what they feel that by doing this now by setting it up in statute, having it ready to go July 1, then we will be able to hit the ground running with the Tourism Commission on July 1, and a few days after that, that's about the time when our LB684, our study comes due, so this is the reason it's been set up that way to set up, and probably have something that would be ready to go rather than having to come in someplace and set up a commission afterwards. So I would ask your vote for AM2689 and also the underlying bill. Thank you, Mr. President. [LB1053]

SENATOR GLOOR: Thank you, Senator Louden. Members, you've heard the closing on the amendment. The question is, shall the amendment to LB1053 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Louden, for what purpose do you rise? [LB1053]

SENATOR LOUDEN: I would ask for a call of the house. [LB1053]

SENATOR GLOOR: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1053]

CLERK: 18 ayes, 0 nays to place the house under call. [LB1053]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Pirsch, Council, Brasch, please return to the Chamber and record your presence. Senator Pirsch and Senator Council, please return to the Chamber and record your presence. Senator Avery, would you return to your seat please. We are under call. [LB1053]

SENATOR LOUDEN: Call-in votes, Mr. President. [LB1053]

SENATOR GLOOR: Thank you, Senator Louden. We will take call-in votes. Mr. Clerk. [LB1053]

CLERK: Senator McGill voting yes. Senator Larson voting yes. Senator Smith voting yes. Senator Ken Haar voting yes. Senator Adams voting yes. Senator Hadley voting yes. Senator Cook voting yes. Senator Price voting yes. Senator Lathrop voting yes. [LB1053]

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

Floor Debate
March 29, 2012

SENATOR GLOOR: Record, Mr. Clerk. [LB1053]

CLERK: 25 ayes, 1 nay. [LB1053]

SENATOR GLOOR: The amendment is adopted. [LB1053]

CLERK: I have nothing further on the bill. [LB1053]

SENATOR GLOOR: Senator Larson. [LB1053]

SENATOR LARSON: Mr. President, I move that LB1053 be advanced to E&R for engrossing. [LB1053]

SENATOR GLOOR: Members, you've heard the motion. All in favor say aye. All opposed say nay. LB1053 is advanced. Raise the call. Mr. Clerk, we continue on Select File. [LB1053]

CLERK: LB1080, I have E&R amendments, Senator. (ER222, Legislative Journal page 1055.) [LB1080]

SENATOR GLOOR: Senator Larson. [LB1080]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB1080 be adopted. [LB1080]

SENATOR GLOOR: Members, you've heard the motion. The question is the adoption of the E&R amendments to LB1080. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB1080]

CLERK: Senator Cornett would move to amend AM2634. (Legislative Journal page 1167.) [LB1080]

SENATOR GLOOR: Senator Cornett, you're recognized to open on your amendment. [LB1080]

SENATOR CORNETT: Thank you, Mr. President and members of the body. On General File we adopted an amendment that included an emergency clause. This amendment removes the emergency clause and returns it to an enacting date of January 1, 2013. We are doing this for fiscal reasons. By putting the emergency clause in, it increased the fiscal note and we feel it is more responsible to forgo that until the original enacting date of January 1. Thank you. [LB1080]

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

Floor Debate
March 29, 2012

SENATOR GLOOR: Members, you've heard the opening on the amendment to LB1080. Are there senators who wish to be recognized? Seeing none, Senator Cornett, you're recognized to close on your amendment. Senator Cornett waives. Members, the question is, shall the amendment to LB1080 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? [LB1080]

SENATOR CORNETT: I request a call of the house. [LB1080]

SENATOR GLOOR: Members, there has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1080]

CLERK: 19 ayes, 1 nay. [LB1080]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Cornett, all members are accounted for. How would you like to proceed? [LB1080]

SENATOR CORNETT: Call-in votes, please. [LB1080]

SENATOR GLOOR: Mr. Clerk. [LB1080]

CLERK: Senator Larson voting yes. Senator Fischer voting yes. Senator Ken Haar voting yes. Senator McCoy voting yes. [LB1080]

SENATOR GLOOR: Record, Mr. Clerk. [LB1080]

CLERK: 25 ayes, 0 nays on the amendment. [LB1080]

SENATOR GLOOR: The amendment is adopted. [LB1080]

CLERK: I have nothing further on the bill, Mr. President. [LB1080]

SENATOR GLOOR: Senator Larson. [LB1080]

SENATOR LARSON: Mr. President, I move that LB1080 be advanced to E&R for engrossing. [LB1080]

SENATOR GLOOR: You've heard the motion. All those in favor say aye. All those opposed say nay. LB1080 is advanced. Mr. Clerk, we continue with Select File. Raise the call. [LB1080]

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

Floor Debate
March 29, 2012

CLERK: LB1128, E&R amendments, first of all, Senator. (ER225, Legislative Journal page 1055.) [LB1128]

SENATOR GLOOR: Senator Larson. [LB1128]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB1128 be adopted. [LB1128]

SENATOR GLOOR: The question is, shall the amendments to LB1128 be adopted? Those in favor say aye. Those opposed say nay. The amendments are adopted. [LB1128]

CLERK: Senator Schumacher would move to amend with AM2686. (Legislative Journal pages 1229-1230.) [LB1128]

SENATOR GLOOR: Senator Schumacher, you're recognized to open on your amendment to LB1128. [LB1128]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. This is a clean up and clarification amendment to the green copy which was advanced from General File. The amendments in several places make changes to the word "taxpayer." It's changed to "person or entity" because the community development company that organizes the investments under the act may not itself be a Nebraska taxpayer in all cases. There are also a deletion of Sections 18 and 19. These deletions clarify that all investments must be made in the state of Nebraska. If the community development organization makes an investment outside of Nebraska all of the state credits are recaptured. This amendment protects the economic impact for the state and eliminates administrative burden of tracking the investments. The change at page 5, line 22, makes it clear that the credits are vested and subject to the rules of the program, and the amendment also makes it clear that the credits are...clarifies the list of various taxes that the credit may be taken against. And finally, the amendment with respect to the insertion of (3), Section 20, sets forth violations of the act that can cause a recapture of the credits. This amendment adds failure to invest at least 85 percent of the funds in Nebraska businesses as a trigger for the recapture of tax credit. This conforms to the Federal New Markets Tax Credit Law and other similar state laws. The second part of the new (3) clarifies that the community development entity has a year to reinvest the funds if the Nebraska business repays the investment by the CDE. Those constitute amendments that the legal gurus found that bring the Nebraska New Markets Act in conformity with other Nebraska statutes and basically update the green copy. The substance of the law remains unchanged from General File. Thank you, Mr. President. [LB1128]

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

Floor Debate
March 29, 2012

SENATOR GLOOR: Thank you, Senator Schumacher. Members, you've heard the opening on AM2686. Are there senators who wish to be recognized? Seeing none, Senator Schumacher, you're recognized to close on your amendment. Senator Schumacher waives. Members, the question is, shall the amendment to LB1128 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1128]

CLERK: 26 ayes, 0 nays on adoption of Senator Schumacher's amendment. [LB1128]

SENATOR GLOOR: The amendment is adopted. [LB1128]

CLERK: I have nothing further on the bill, Mr. President. [LB1128]

SENATOR GLOOR: Senator Larson. [LB1128]

SENATOR LARSON: Mr. President, I move that LB1128 be advanced to E&R for engrossing. [LB1128]

SENATOR GLOOR: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. LB1128 is advanced. Mr. Clerk. [LB1128]

CLERK: Mr. President, LB750. E&R amendments, first of all, Senator. (ER223, Legislative Journal page 1055.) [LB750]

SENATOR GLOOR: Senator Larson. [LB750]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB750 be adopted. [LB750]

SENATOR GLOOR: The question is the adoption of E&R amendments to LB750. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB750]

CLERK: Senator Cornett would move to amend with AM2628. (Legislative Journal page 1168.) [LB750]

SENATOR GLOOR: Senator Cornett, you're recognized to open on your amendment. [LB750]

SENATOR CORNETT: Thank you, Mr. President and members of the body. As most of you will remember, this is the bill that deals with the first acre of land in regards to a farm homesite. I mentioned on General File that we were still working on a...tweaking the language and that we would have a technical amendment. AM2628 is a technical

Floor Debate
March 29, 2012

change that fixes an unintended internal contradiction in AM2573 relating to the mention of a rural residential site in the definitions of farm homesite and farm site. AM2628 strikes the phrase "or rural residential site" in the definition of farm homesite. AM2628 also strikes the new language that was added to the definition of farm site by AM2573 which defined farm site to include an uninhabitable or unimproved rural residential site. With adoption of AM2628, the definition of farm site under current law will remain unchanged. Those two changes eliminate the internal contradiction present in AM2573. Significantly, AM2628 reflects collaboration between NACO, the Nebraska Farm Bureau, the Nebraska property tax administrator, and Senator Lambert who prioritized this bill. This is a bill that will bring clarifying language for our assessors when it comes to assessing the first acre on a farm site. With that, I urge you to adopt AM2628 as the technical correction I mentioned we were going to need on General File, and I urge the body to support the underlying bill. Thank you. [LB750]

SENATOR GLOOR: Thank you, Senator Cornett. Members, you've heard the opening on the amendment to LB750. Are there senators wishing to be recognized? Seeing none, Senator Cornett, you're recognized to close on your amendment. Senator Cornett waives. The question before the body is, shall the amendment to LB750 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB750]

CLERK: 27 ayes, 0 nays on the adoption of Senator Cornett's amendment. [LB750]

SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB750]

CLERK: I have nothing further on the bill, Mr. President. [LB750]

SENATOR GLOOR: Senator Larson. [LB750]

SENATOR LARSON: Mr. President, I move that LB750 be advanced to E&R for engrossing. [LB750]

SENATOR GLOOR: Members, you've heard the motion. All in favor say aye. All those opposed say nay. LB750 is advanced. Mr. Clerk, we continue Select File, committee priority bills. [LB750]

CLERK: Mr. President, LB1145, I have Enrollment and Review amendments, first of all. (ER228, Legislative Journal page 1085.) [LB1145]

SENATOR GLOOR: Senator Larson. [LB1145]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB1145 be adopted. [LB1145]

Floor Debate
March 29, 2012

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB1145. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB1145]

CLERK: Senator McGill would move to amend with AM2616. (Legislative Journal page 1230-1231.) [LB1145]

SENATOR GLOOR: Senator McGill, you're recognized to open on your amendments to LB1145. [LB1145]

SENATOR MCGILL: Mr. President and members of the body, AM2616 adds language that clarifies the intent of the mandatory training provision of the human trafficking bill. As you may recall, LB1145 provides that law enforcement officers, prosecutors, and other professionals receive training on the subject of human trafficking. And just this week I was up in Douglas County visiting with the prosecutor and it really became clear to me how even attorneys and judges need real training on not only human trafficking issues, but even on how to...proper repercussions for prostitutes and even domestic violence victims. There's a lot of opportunity here for training across the board. This amendment specifies that the state would provide the training and that the task force established through LB1145 would coordinate with the various agencies regarding implementation of this training. The amendment reads that the task force established will coordinate with various agencies regarding implementation of the training but does not require that the state must provide this training. This provides necessary flexibility as these agencies develop a training plan. And with that, I urge your adoption. Thank you. [LB1145]

SENATOR GLOOR: Thank you, Senator McGill. Members, you've heard the opening on AM2616. We now move to floor discussion. Senator Hadley, you are recognized. [LB1145]

SENATOR HADLEY: Mr. President and members of the body, I have visited with Senator McGill about this. I'm not up to talk about the amendment or the bill, but I would like to talk about something that she did put in and that is the travel costs that are in. This may not seem like a big item when you live in Lincoln or Omaha, but I think it is a big item. And I think it is something that we should be thinking about every time we set up a commission or a committee that is statewide. If you look at the fiscal note, it is estimated that a person from Scottsbluff would...the cost for a person from Scottsbluff would be \$667 to attend a meeting in Lincoln. That would be the mileage and overnight stay and meals. We cannot expect our citizens to be members of boards and commissions unless we're going to reimburse them for basically their out-of-pocket costs. I think it's important that we do this. I commend Senator McGill for having this in the bill. And I will say this, that I will make sure that any further commissions will have that in the bill if I have something to say about it. I did talk with Senator Nordquist about

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

Floor Debate
March 29, 2012

his gas commission and it is up tomorrow on consent and we just could not get a reliable number out of the energy department. They just haven't dealt with this, so we can't do it on that one. But in the future, I would suggest that anybody that sets up a commission that's going to be statewide, travel costs should be included as part of that. Thank you, Mr. President. [LB1145]

SENATOR GLOOR: Thank you, Senator Hadley. Are there other senators wishing to be recognized? Seeing none, Senator McGill waives closing. The question before the body is, shall the amendment to LB1145 be adopted? All those in favor vote aye; all those opposed vote nay. Senator McGill, for what purpose do you rise? [LB1145]

SENATOR MCGILL: I may need to request...I do not need to request. Thank you. (Laugh) [LB1145]

SENATOR GLOOR: Record, Mr. Clerk. [LB1145]

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator McGill's amendment. [LB1145]

SENATOR GLOOR: The amendment is adopted. [LB1145]

CLERK: I have nothing further on the bill, Mr. President. [LB1145]

SENATOR GLOOR: Senator Larson. [LB1145]

SENATOR LARSON: Mr. President, I move that LB1145 be advanced to E&R for engrossing. [LB1145]

SENATOR GLOOR: You have heard the motion. All those in favor say aye. All those opposed say nay. LB1145 is advanced. Continuing with Select File. [LB1145]

CLERK: LB1145A, Mr. President. Senator, I have no amendments to the bill. [LB1145A]

SENATOR GLOOR: Senator Larson. [LB1145A]

SENATOR LARSON: Mr. President, I move that LB1145A be advanced to E&R for engrossing. [LB1145A]

SENATOR GLOOR: Members, you have heard the motion. All those in favor say aye. All those opposed say nay. LB1145A is advanced. Mr. Clerk. [LB1145A]

CLERK: LB715, Senator, I have Enrollment and Review amendments, first of all. (ER230, Legislative Journal page 1088.) [LB715]

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

Floor Debate
March 29, 2012

SENATOR GLOOR: Senator Larson. [LB715]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB715 be adopted. [LB715]

SENATOR GLOOR: The question is the adoption of the E&R amendments for LB715. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB715]

CLERK: I have nothing further on the bill, Senator. [LB715]

SENATOR GLOOR: Senator Larson. [LB715]

SENATOR LARSON: Mr. President, I move that LB715 be advanced to E&R for engrossing. [LB715]

SENATOR GLOOR: Members, you have heard the motion. All those in favor say aye. All those opposed say nay. LB715 is advanced. Mr. Clerk. [LB715]

CLERK: LB905, Senator, I have Enrollment and Review amendments. (ER232, Legislative Journal page 1091.) [LB905]

SENATOR GLOOR: Senator Larson. [LB905]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB905 be adopted. [LB905]

SENATOR GLOOR: Members, the question is, shall the E&R amendments to LB905 be advanced, be approved? Those in favor say aye. Those opposed say nay. The amendments are adopted. [LB905]

CLERK: I have nothing further on LB905, Senator. [LB905]

SENATOR GLOOR: Senator Larson for a motion. [LB905]

SENATOR LARSON: Mr. President, I move that LB905 be advanced to E&R for engrossing. [LB905]

SENATOR GLOOR: You've heard the motion. Those in favor say aye. Those opposed say nay. LB905 is advanced. Mr. Clerk. [LB905]

CLERK: LB905A, Senator, I have no amendments to the bill. [LB905A]

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

Floor Debate
March 29, 2012

SENATOR GLOOR: Senator Larson. [LB905A]

SENATOR LARSON: Mr. President, I move that LB905A be advanced to E&R for engrossing. [LB905A]

SENATOR GLOOR: Members, you have heard the motion. Those in favor say aye. Those opposed say nay. LB905A is advanced. Mr. Clerk. [LB905A]

CLERK: LB1057, Senator, there are Enrollment and Review amendments. (ER233, Legislative Journal page 1094.) [LB1057]

SENATOR GLOOR: Senator Larson. [LB1057]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB1057 be adopted. [LB1057]

SENATOR GLOOR: Members, the question is the adoption of the E&R amendments to LB1057. Those in favor say aye. Those opposed say nay. The amendments are adopted. [LB1057]

CLERK: Senator Larson would move to amend with AM2294. (Legislative Journal page 1122.) [LB1057]

SENATOR GLOOR: Senator Larson, you're recognized to open on your amendment. [LB1057]

SENATOR LARSON: Thank you, Mr. President. LB1057 is the corn checkoff bill increasing it from a quarter cent to a half cent. Call it what you want--an investment, a fee, or a tax. In essence, it is a tax. This amendment adds in a provision that will allow for a refund procedure in our corn checkoff. This will allow for a producer to request a refund of one-quarter cent per bushel of the checkoff paid. The request must be made within 90 days of the sale of the corn and the board has 90 days to send out the refund. Our checkoff is currently the lowest of all states at only one quarter of a cent, and we do not allow a refund by request of the producer. Many other states, including our neighboring states, allow the refund procedure. If we propose to double our checkoff amount to a half a cent, which is more in line with what producers in other states pay, then we should also allow for a refund option for our producers when we create this new tax. States that have a refund see a small percentage actually refunded. South Dakota and Kansas each had about 8 to 12 percent of last year's receipts refunded. While many others like Minnesota, Illinois, Missouri, and North Dakota only saw about two-and-a-half percent of their yearly receipts refunded to producers. Iowa generally refunds four-and-a-half to 7 percent of its checkoff collected each year. Wisconsin has

Floor Debate
March 29, 2012

less than 1 percent of its receipts funded each year. However, even if it is a small amount, it is important to give producers the option to participate in the checkoff increase or the tax increase. The amendment here would allow for the refund only back to the current checkoff amount of one-quarter cent. So farmers will still be paying one-quarter cent even if they have requested a refund. I feel this is fair to our farmers to give them a choice in the checkoff increase. In other states, producers get to vote on proposed increases but in Nebraska, the Legislature has the control over the producers. I would like to add this in to give some of that control back to the producers. Let them decide if they want to tax themselves, if they want to create this own investment for themselves. It's not up to us, the 49 of us, to decide that this is a good tax increase on our corn producers. If they feel it is good, if they feel it is a worthy investment, they should have that choice. I know many of us in this body have taken stances against the tax increases or if you want to call this a fee or an investment or whatever else, but on its face I think we can all see it as, in essence, a tax increase. And producers should at least have the option to decide if they want to participate or not because right now it's an unelected corn checkoff board that are coming to us for more funds because other states have more funds. Give the producers a say. Thank you, Mr. President. [LB1057]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Larson. Members, you've heard the opening on AM2294. Senator Bloomfield, you're the first to be recognized. [LB1057]

SENATOR BLOOMFIELD: Thank you, Mr. President. I rise in opposition to AM2294. LB97, as it stands, was the compromise. LB2294 was verbally at that time, though, not an amendment presented and shot down in committee. This is an attempt to do something that did not come out of committee and I don't believe it should pass here. My experience with refundable checkoffs is the big producers will file for the checkoff. They get a decent size check back. The little guy by the time he files for the checkoff, the small amount he gets back, doesn't pay for the effort. This is not a good amendment. It needs to be defeated and LB1057 needs to move forward. Thank you. [LB1057]

SPEAKER FLOOD: Thank you, Senator Bloomfield. Senator Carlson, you're recognized. [LB1057]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I rise in opposition to AM2294. The corn checkoff has remained the same for 24 years and at a quarter cent per bushel, it is the lowest of the corn producing states. Taking it to a half cent a bushel is still among the lowest of the corn producing states. The money that's raised through the corn checkoff is used for research, for marketing, for promotion, for education. One of the important areas for use of this money in future years will be to promote animal agriculture and livestock production in Nebraska. And we know as

Floor Debate
March 29, 2012

outside groups come into the state and oppose what we're doing, it will be very important for groups like the Corn Growers to be able to help with that endeavor and educate our public on where their food comes from and the value of agriculture in Nebraska. I'm not necessarily opposed to the idea of a refund. We had two bills that could have been submitted this session. And the Corn Growers in one of the bills had a refund option, had several other aspects into that bill. They decided not to put that bill forth but simply asked for the increase in checkoff. I have submitted an interim study and part of that interim study will be to look at refund options and other things in regard to checkoffs and elected boards rather than appointed boards, look at all the aspects of what goes into a checkoff program and I think it is a fitting interim study. The idea of a refund option is not a small item and there's a lot involved in it. It has not had a hearing. I think that's a big enough change that involves and deserves a separate hearing and so this would be one of the things that would be discussed in the interim study. But I would ask you to vote against AM2294. Thank you. [LB1057]

SPEAKER FLOOD: Senator Larson, you're recognized. [LB1057]

SENATOR LARSON: Thank you, Mr. President. To address concerns that both Senator Carlson and Senator Bloomfield brought up, my amendment takes it to a half cent just as the corn producers want. That's fine. Right now they have a budget of about \$3.5 million. If you look at the other states around us...or and a half cent, moving into a half cent would move it to about \$7 million. If you look at the 12 states, or the states around us, I think there's 12 other states that have a refund option. And as I detailed in my opening, they have anywhere between an 85 percent to 99 percent participation rate in their refund options, those that aren't asking for a refund. I think you can safely, safely say that Nebraska will probably have at least a 90 percent, even if you want to say 85, the corn board is still going to have a budget of anywhere between \$6.5 million and \$6.75 million to spend. So the corn board is going to get their money. It comes down to what type of public policy that this body wants to enact. Enact a public policy that corn producers don't get any say in which they...in this tax increase. You know, they can't vote the corn board members out. They can vote us out for increasing their corn taxes but they can't vote those that are asking for this. You know, they don't get a choice whether or not to pay a half cent or a quarter cent. My amendment gives them that choice, gives them a say in the tax increase. And if they believe it's worthy, then they can pay it. Senator Bloomfield talks about how only big producers are going to request this and his worry. Well, I passed out something from the Nebraska Dry Bean Commission and I'm not sure how many of you are familiar with the Nebraska Dry Bean Commission. I wasn't overly familiar until this year. My part of the district doesn't have a lot of dry beans, but Nebraska already has precedent of a refund option and a checkoff, and that is the Nebraska Dry Bean Commission. And if you look at the refund percent of refund of revenue. From the beginning, from its conception in fiscal year '87, '88, it's a fiscal year 10-11, it looks like, now, the very beginning the most, the highest percent of refund revenue for the Dry Bean Commission was .11 percent, and now it's .02 percent.

Floor Debate
March 29, 2012

I think going from other states, and we already have one example in the state of Nebraska in the Dry Bean Commission, it's obviously not the biggest producers in the Dry Bean Commission that are requesting refunds and it's obviously, judging by the other states and their participation rates, that I...that we've done studies on, and I'll talk later on the mike about, it's not the biggest producers. It seems from my staff and myself talking to corn checkoffs across the state it's the same actors, it's the same people that disagree with the commission...or disagree with their state's checkoffs. That has, from what we can tell and from what we've asked the questions, has nothing to do with the size of your farm is, it's just the disagreement with the policies of the checkoff. If you agree with them, then you support the checkoff; if you don't, then you ask for the refund option and that's the whole point of this. Do we want to have a straight up tax increase on these corn growers without them having a say? Pure and simple. And I applaud... [LB1057]

SPEAKER FLOOD: One minute. [LB1057]

SENATOR LARSON: ...Senator Carlson for introducing the interim study...introducing the interim study to possibly bring...take the corn board out of state government and allow them to decide their own checkoff and possibly have a refund option. I think that's a great idea. But if we're going to do that, why are we going to increase their taxes this year before we take them out of state government? Is that a type of policy that we want to set? Are we going to let them sell it to us as an investment? Well, why don't we take you guys out of state government and you guys can decide for yourselves instead of us raising your taxes. I think that's something that is huge. And we talk about, you know, tax increases here, tax increases there, tax shifts. The Governor's tax plan is a tax shift on to the counties. Well, if we're not careful, you know, this is a higher tax on the farmers. And if you have a flat, you know, half cent like it is here, corn is good right now. [LB1057]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Larson. The Chair is concerned about a quorum being present to conduct business. At this time, the Chair would request that members check in. Just an advisory, this is a quorum call to ensure that there's a quorum to allow us to do business. This is not a vote on any matter pending before the Legislature as in AM2294 or LB1057. This is a quorum call. The following members not showing as excused, we would ask you to please return to the Chamber: Senators Sullivan, Gloor, Cornett, Wightman, Loudon, Nelson, Schilz, Ashford, Council. Members just arriving, this is a members quorum call. The Chair finds that pursuant to the rules, especially Rule 1, Section 10, that a quorum is present. Due to the number of senators checked out, no excused absences will be allowed the balance of the evening. We'll continue with discussion on AM2294. Senator Bloomfield, you're recognized. I should also note that as we proceed, it is my attempt to resolve LB731 and go home for the night. Thank you. Senator Bloomfield. [LB1057]

Floor Debate
March 29, 2012

SENATOR BLOOMFIELD: Thank you, Mr. President. Would Senator Larson yield to a couple of questions, please? [LB1057]

SPEAKER FLOOD: Senator Larson, will you answer a question from Senator Bloomfield? [LB1057]

SENATOR LARSON: I'd be happy to. [LB1057]

SENATOR BLOOMFIELD: Thank you. Have you looked at all into what it would cost to set up this refund mechanism? [LB1057]

SENATOR LARSON: Yes. As we looked into funding this and I look at...the corn board said it was going to take an additional staff member to do a refund option. And yet, then I look at the corn board's proposed budget under the ability when they go to a half cent and they're hiring an additional staff member anyway, when they moved to \$7 million. We also did a quick talk with how long it would take to possibly run each one of these applications. And we did a...I think they said there was 26,000 corn growers in the state of Nebraska roughly and we figured a 10 percent...not even 10 percent of the farmers, but we figured 10 percent of the farmers requesting a refund is roughly about 2,600 applications at 15 minutes an application. When you break that over working days across the year, you're looking at about 2 1/2 hours a day of manpower that it will take to process these refunds. Yet the corn board said they would need an entirely new staff person to do this function. And since they're hiring a new staff person in their business plan, I think it would fit well that this could fall right in line with their future plans. [LB1057]

SENATOR BLOOMFIELD: Thank you. Have you taken into consideration the creation of the forms and everything necessary to file these? [LB1057]

SENATOR LARSON: Again, we're increasing the corn checkoff \$3.5 million. I think that if we're thinking about increasing it \$3.5 million on the backs of corn growers in the state of Nebraska without giving them a say, we should at least give them the option to refund the taxes that they are paid because they have no alternative. We're doing it and they can't even vote out the corn board members that have it. So it's not like we're putting a refund on just the \$3.5 million they have now, they're getting \$3.5 additional million in revenue. In terms of creating the forms, I'd say they could probably afford it just as they are affording an entirely new staff person. [LB1057]

SENATOR BLOOMFIELD: Whether they can afford it or not isn't the total question. I think we're adding expenses. We're adding this increased refund to them that we don't need to add, particularly with an interim study coming up. It doesn't seem prudent to me that we create a whole new expensive system when we're going to study something over the summer and come back with a better answer next year. Thank you. [LB1057]

Floor Debate
March 29, 2012

SPEAKER FLOOD: Thank you, Senator Bloomfield. Senator Larson, this is your third time. [LB1057]

SENATOR LARSON: My opening counts as my first time? [LB1057]

SPEAKER FLOOD: It does. [LB1057]

SENATOR LARSON: All right. Responding to Senator Bloomfield's increasing expenses, I think it really goes back into my whole point. Not only are...you're increasing the expenses on the corn growers across the state of Nebraska. If you want to really use that argument, you know, that's \$3.5 million less that our local corn farmers will have to spend in our local communities because it will be going to the corn board. Pure and simple. This is a new tax. And I was going to talk about prices. This is a tax in the essence, corn is great right now. It's a little over \$6 a bushel. Half cent is the lower proportionate rate at \$6 a bushel than it would be at \$3 a bushel. And we don't know where corn is going to go. At \$2 a bushel, that half cent is a greater proportional rate of that person's income, pure and simple. So essentially as corn goes down, as the price weakens and that's going to be taking money out of your farmer's pockets, their taxes are going to get higher with this bill. Give them an option to refund that. But the corn board doesn't want to give them that option. And Senator Bloomfield mentions a study that's going to do done, so yeah, why should we raise the tax right before we do the study? Why don't we do the study and let the corn board decide and let the producers themselves decide whether or not they want to have this tax added on to them instead of the Legislature deciding for every corn producer across the state? We also...I...Senator Bloomfield also mentioned the idea of...not to hammer home only the biggest producers are going to do this. And I mentioned, it's kind of the same actors over and over again and it's always 10 to 11 percent and let me check here. South Dakota and Kansas, 8 to 12 percent are receipts. Minnesota, Illinois, Missouri, North Dakota, only about 2.5 percent of the yearly receipts. Iowa, 4.5 to 7 percent of yearly receipts. The corn board is going to have their money with this option. Even with the refund option, they're going to have an extra \$3 million, \$2.5 million in a bad year, probably. The taxes are going up on it. And my bill allows it to go to a half cent. It just says, if a corn producer wants a say in their taxes, they can have that. I agree...I stated earlier, I agree with Senator Carlson. Let's do the study, but why should we raise the taxes on the corn producers before we do the study? Let them decide for themselves. If they want to do it, go ahead. But the 49 of us deciding for 2,600 producers that don't have a say in this, I don't think that's right. If you want to vote for the tax increase, because that's what it is, go ahead. But I'd appreciate your support on AM2294 because it gives each individual producer the right to decide if they want to invest in this fund. If they don't, they can take it out. They can move forward and they can put it back in their own local rural--and most corn producers are rural--back into their own local rural economies instead of giving it to the corn board. And I think the corn board does good

Floor Debate
March 29, 2012

things. Don't get me wrong. And I don't have a...with the refund option, I don't have a problem going to a half cent. [LB1057]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB1057]

SENATOR LARSON: I hope we can pass Senator Carlson's...or we can do the interim study and move forward on Senator Carlson's interim study next session so those people do have a say in the corn checkoff, but I'm not sure that that's going to happen. I think it's something that we have to take a long, hard look at, let the local producers decide if they want to pay in instead of just giving it to the corn board because they say they need it, because every other state around them is bigger than they are and we feel inadequate to what other states can do. So thank you, Mr. President and I'd appreciate everybody's support on AM2294. [LB1057]

SENATOR GLOOR: Thank you, Senator Larson. Senator Carlson, you're recognized. [LB1057]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'll repeat what I said earlier. I am very much opposed to AM2294. It has been 24 years since there's been a checkoff increase. Nebraska is at the lowest level at one-quarter cent per bushel. This takes them to a half cent per bushel. We have voted forward a checkoff increase for the wheat growers. We need to do the same thing for the corn growers. And I've already stated that we do have an interim study to look at some of the concerns that Senator Larson has. We will do that, but this is not a small item. This is not an easy procedure. This takes time and planning and certainly the corn growers should be included, the corn board should be included in a change like this. So it's entirely appropriate to give them their checkoff increase, in my view, put them in a better position to take care of research, marketing, and promotion. And we will visit this in the interim study. In the meantime, I ask for you to vote red on AM2294 and then advance the bill. Thank you. [LB1057]

SENATOR GLOOR: Thank you, Senator Carlson. Senator Schumacher, you are recognized. [LB1057]

SENATOR SCHUMACHER: Thank you, Mr. President. If Senator Larson would like my time I'd yield it to him. [LB1057]

SENATOR GLOOR: Senator Larson, would you yield? [LB1057]

SENATOR LARSON: Can I have his time? [LB1057]

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

Floor Debate
March 29, 2012

SENATOR SCHUMACHER: I just giving my time to Senator Larson for response.
[LB1057]

SENATOR GLOOR: 4 minutes 50 seconds. [LB1057]

SENATOR LARSON: Thank you, Senator Schumacher. I guess I can't ask Senator Carlson questions or else I would have a few questions for him. I don't think that's allowed in parliamentary procedure since I'm on Senator Schumacher's time. I can?
[LB1057]

SENATOR GLOOR: Senator Schumacher, would you yield to questions from Senator Larson? [LB1057]

SENATOR LARSON: No, can I ask Senator Carlson questions? [LB1057]

SENATOR GLOOR: Senator Carlson, would yield to questions from Senator Larson?
[LB1057]

SENATOR CARLSON: Yes, I would. [LB1057]

SENATOR LARSON: Senator Carlson, I think you state out very well that there hasn't been an increase in 24 years and I support...you know, my amendment does take it to a half cent just as LB1057 does. In...my question is, do you feel that the 26,000 corn producers in the state of Nebraska should have a say in whether or not they have to pay this tax/fee/investment? [LB1057]

SENATOR CARLSON: I think that many have had a say and it's probably not in the way you would prefer with an elected board, but the existing board has talked to members in all the districts and they make their recommendation based on the information they get in discussing it this way. And so, yes, there's been some representation. We can argue about what is the best type of representation and it's probably an elected board and that's certainly a consideration for the future. [LB1057]

SENATOR LARSON: Do you think that giving each individual producer a say in whether or not they directly invest in the corn checkoff is a good or a bad thing? [LB1057]

SENATOR CARLSON: I wouldn't look at it as a bad thing. I think that would be okay.
[LB1057]

SENATOR LARSON: Would you say that some corn board members...or some corn growers across the state disagree with the checkoff? [LB1057]

SENATOR CARLSON: Certainly there would be some that disagree with it because

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

Floor Debate
March 29, 2012

most...a lot of people that had a choice wouldn't pay it. But even I've experienced some of them that don't necessarily like it. They understand what it's for and so they accept it. I don't think that they look at it as something they really look forward to paying but they're willing to do it. [LB1057]

SENATOR LARSON: Thank you, Senator Carlson. I guess that was a very good answer but I'll go back to the second question I asked is that people should have a say in whether or not they pay these. And that's what this amendment does. It gives every corn producer in the state of Nebraska a say, not the nine or ten corn board members. I'm sorry, I'm blanking on how many there are. Senator Carlson could probably fill that in for us. Not just nine people that talk to their neighbors. It gives every corn producer in the state of Nebraska a say. Other states do it. They have anywhere between 85 and 99 percent participation rates. You can count on that. We're adding \$3.5 million to the corn board's budget with LB1057 as is. My amendment put it probably right around \$6.5 million. We'd have about \$500,000 refunded back to producers. It gives each one a say. [LB1057]

SENATOR GLOOR: One minute. [LB1057]

SENATOR LARSON: Gives each one the ability to participate or not participate in the program and if they want to raise their own taxes, let them. I don't think that this body should mandate it. And we're good at spending, you know, other people's money and I'm sure the corn board will be very good at spending the corn growers' money. And I'm not saying it won't go to good things. I think we do need to, you know, invest in animal ag and research for distiller grains and things of that nature and this will go to that. And that's why my amendment still has the increase. It just says, let each producer decide. If you don't want to pay it, don't pay it. If you do, do, move on. Thank you, Mr. President. [LB1057]

SENATOR GLOOR: Senator Larson, there are no senators remaining in the queue. You're welcome to close on your amendment to LB1057. [LB1057]

SENATOR LARSON: Thank you, Mr. President. I guess I have another five minutes. What is good public policy? Is it giving people an option to decide who represents them? I'd consider that a good democracy. Corn board isn't that. Is it...you know, we have a...the corn board decides they need more money, they come to the Legislature to add this tax on. We'll probably end up doing it. My amendment still adds the tax on, still moves it up to half a cent. Call me a hypocrite. Fighting against tax increase and yet my amendment still adds on to half cent. Difference is my amendment allows them to refund it back, so it stays at the same level. You know, back to the democracy part, the corn board is nothing of the such yet they have the ability to spend the corn producers' money. They have the ability to...you know, we give them that ability. We raise the taxes. I hope that Senator Carlson is true to his word, and I think he will be true to his

Floor Debate
March 29, 2012

word because Senator Carlson is like that, that we'll study this and we'll get a good bill next year to take them out of state government. I think that's one thing that really needs to happen. Make the corn board elected, members directly elected, make them responsible to their constituents. It's huge. That's what this country was based off of and when you have taxing authority and something, well, taxing fee, investment authority, however you want to classify it, such as the corn board does to spend other people's money, this should be a directly elected body just like we are. It's not. We can look at LB1057, see the positives, but I think we can look at AM2294 and see the positives there too. Do I think we should wait on LB1057 altogether and wait until the end of next year when they can raise the taxes on themselves and the Legislature doesn't have to do it? Yes. But AM2294, again, gives them the option. Thank you, Mr. President.
[LB1057]

SENATOR GLOOR: Thank you, Senator Larson. The question is, shall the amendment to LB1057 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1057]

CLERK: 4 ayes, 26 nays on the amendment, Mr. President. [LB1057]

SENATOR GLOOR: The amendment fails. [LB1057]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB1057]

SENATOR GLOOR: Senator Larson for a motion. [LB1057]

SENATOR LARSON: Can I talk on the bill? No? Mr. President, I move that LB1057 be advanced to E&R for engrossing. [LB1057]

SENATOR GLOOR: Senator Larson, you are recognized. [LB1057]

SENATOR LARSON: I'll be short. I won't take all 15 minutes on LB1057. I think I had my piece with AM2294. I appreciate those votes that were there. Now LB1057 is a straight tax increase. Pure and simple. Doesn't give the producers any right to refund. Takes money out of rural Nebraska, if you want to say that. Adds a job in Lincoln inside the corn board in the administrative offices. Three and a half million out of O'Neill, three and a half million out of Albion, Valentine, any place that grows corn. It's going to be less money in your local communities. Pure and simple. Corn producers across the state will have absolutely no ability to fight this, express their displeasure, vote out those that asked for it. The Governor just gets to reappoint them, nothing to do with the people. So like I said, LB1057, straight tax increase. I'd request a call of the house, roll call vote, regular order. [LB1057]

SENATOR GLOOR: Senator Larson. [LB1057]

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

Floor Debate
March 29, 2012

SENATOR LARSON: Is anybody else in the queue? Is anybody else in the queue? No. Yeah, call of the house, roll call. [LB1057]

SENATOR GLOOR: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1057]

CLERK: 22 ayes, 1 nay, Mr. President, to place the house under call. [LB1057]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Heidemann, Janssen, Lathrop, Nelson, and Carlson, please return to the Chamber and record your presence. Senator Avery, please return to the Chamber and record your presence. Mr. Clerk, roll call vote, regular order. [LB1057]

CLERK: (Roll call vote taken, Legislative Journal pages 1231-1232.) 31 ayes, 2 nays on the advancement of the bill. [LB1057]

SENATOR GLOOR: LB1057 is advanced. Mr. Clerk, raise the call. We continue with Select File, LB1057A. [LB1057 LB1057A]

CLERK: I have no amendments to LB1057A, Senator. [LB1057A]

SENATOR GLOOR: Senator Larson. [LB1057A]

SENATOR LARSON: Mr. President, I move that LB1057A be advanced to E&R for engrossing. [LB1057A]

SENATOR GLOOR: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. LB1057A is advanced. Continuing with Select File, LB670. [LB1057A LB670]

CLERK: Mr. President, first of all, with respect to LB670, Senator, I have E&R amendments. (ER137, Legislative Journal page 1676.) [LB670]

SENATOR GLOOR: Senator Larson for a motion. [LB670]

SENATOR LARSON: Mr. Speaker, I move the E&R amendments to LB670 be adopted. [LB670]

SENATOR GLOOR: The question is the adoption of the E&R amendments to LB670. All

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

Floor Debate
March 29, 2012

those in favor say aye. All those opposed say nay. The amendments are adopted.
[LB670]

CLERK: Mr. President, Senator Schilz would offer AM2496. Pursuant to the offering of that amendment, Senator Council would move to suspend Rule 7, Section 3(d) to permit the consideration of AM2496. [LB670]

SENATOR GLOOR: Senator Council, you're recognized to open on your motion to suspend rules. [LB670]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. Colleagues, as you may recall, Senator Schilz introduced legislation to add the compounds and materials that are currently used to create bath salts which have narcotic effects to be added to the Uniform Controlled Substance Act. That piece of legislation was considered by the Judiciary Committee and was unanimously advanced to General File. The bill, however, was not prioritized and as a result, Senator Schilz initially sought to have the bill amended onto a bill that Senator Cornett had prioritized, and it was a bill that dealt with adding criminal offenses in the area of child abuse and neglect. I objected to that amendment as not being germane and as being arguably a violation of our state constitutional provision against bills addressing more than one subject. In response to that, Senator Schilz sought and Speaker Flood agreed to allow Senator Schilz to amend the bath salts bill into a bill that Senator Flood had introduced and had been advanced to General File and was not being moved. And the amendment, AM2496, actually replaces LB670 in its entirety. And because it replaces it in its entirety, there is no issue as to germaneness and there really is no issue as to the bill covering more than one subject in violation of our constitution. And for that reason, colleagues, I would urge you to vote to suspend the germaneness rule. [LB670]

SENATOR GLOOR: Members, you've heard the opening on the motion to suspend the germaneness rule. We move to floor discussion. Senator Schilz, you're recognized.
[LB670]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. I don't want to take a whole lot of time here. I think Senator Council summed it up exactly right. I want to thank her for helping me out on this bill here, and I also want to thank her for maintaining the integrity of the process that the Legislature goes through in the first round with this bill trying to amend it on to LB799. I would also like to thank Speaker Flood for also finding another opportunity for this bill. And with that, I would hope for your support. And I know we're pretty slim here tonight as far as numbers go and we do need to remember that this takes three-fifths of the members votes to get it to go. So I would hope that everyone would support this so that we can get this very important bill moving and on to being passed. Thank you very much. [LB670 LB799]

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

Floor Debate
March 29, 2012

SENATOR GLOOR: Thank you, Senator Schilz. Are there other senators who wish to be recognized? Seeing none, Senator Council, you're recognized to close on your motion to suspend the germaneness rule. [LB670]

SENATOR COUNCIL: Thank you, Mr. President. I will use my closing simply to again request a favorable vote on the motion to suspend. I would ask for a call of the house and a roll call vote. [LB670]

SENATOR GLOOR: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB670]

CLERK: 26 ayes, 0 nays to place the house under call. [LB670]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Cornett, Heidemann, Karpisek, Nelson. Senators Nelson and Larson. Mr. Clerk, the question before the body is the adoption of the motion to suspend the germaneness rule. Roll call vote, please. [LB670]

CLERK: (Roll call vote taken, Legislative Journal pages 1232-1233.) 37 ayes, 0 nays on the motion to suspend the germaneness rule. [LB670]

SENATOR GLOOR: The motion is adopted. Mr. Clerk. [LB670]

CLERK: Senator Schilz would move to amend with AM2496. (Legislative Journal page 981.) [LB670]

SENATOR GLOOR: Senator Schilz, you're recognized to open on AM2496. Raise the call. [LB670]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. And I know we've...it's getting to be, once again, a long day. Just a couple of housekeeping deals. Would like to thank the AG's Office for all their help, a number of senators around the floor, Senator Pirsch, Senator Mello, and anyone else that's signing on to the bill. And, obviously, once again, Speaker Flood and Senator Council, Senator Ashford for the committee work and everything there. AM2496 amends LB670 by replacing the content of that bill with what was previously LB814, a ban on the drug commonly referred to as bath salts. LB814 was unanimously advanced out of the Judiciary Committee and it's currently on General File. This would amend the Uniform Controlled Substance Act to include the classes of synthetic materials used to make the drugs, marketed and sold as bath salts. Under AM2496 the penalty for possessing bath salts is a Class IV felony,

Floor Debate
March 29, 2012

and the penalty for manufacturing or trafficking bath salts is a Class III felony. According to the DEA, the drug causes people to lose motor control, have extreme paranoia, and erratic, violent behavior. More importantly, or more specifically, side effects include agitation, hallucinations, paranoia, heart palpitations, suicidal and homicidal thoughts. If you're asking, you know, why the prevalence of this is, in 2010 there were 303 calls to the Poison Control Center in relation to bath salts. By last year, 2011, there were 6,072 calls. They're sold under generic sounding names such as Red Dove, Blue Wave, Vanilla Sky, and Molly's Plant Food, and are widely available over the Internet and in some cases in novelty stores and at street-level dealing. They're a very powerful stimulant whose sole purpose is to give the user a temporary high without the apparent risk of experience withdrawal or addictive symptoms. Unfortunately, due to the way they're marketed and their low price, the majority of the users tend to be children and young adults. In 2010, the DEA recognized the threat of bath salts and in response, they issued a temporary ban on bath salts listing them on Schedule 1 of the Controlled Substance Act. The DEA announcement doesn't change the need for the bill. While the DEA is banning three specific chemicals, we want to be proactive and do as we did with the K2 law that Senator McCoy got passed, I think it was last year. And we want to ban various formulations and compounds used to make these dangerous drugs. And with that, I would ask for everyone's support on AM2496 and LB670. Thank you. [LB670 LB814]

SENATOR GLOOR: Thank you, Senator Schilz. Members, you've heard the opening on AM2496. Are there senators wishing to be recognized? Seeing none, Senator Schilz, you're recognized to close on AM2496. Senator Schilz waives. The question is, shall the amendment to LB670 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB670]

CLERK: 33 ayes, 0 nays on adoption of Senator Schilz's amendment. [LB670]

SENATOR GLOOR: The amendment is adopted. [LB670]

CLERK: I have nothing further on the bill, Mr. President. [LB670]

SENATOR GLOOR: Senator Larson for a motion. [LB670]

SENATOR LARSON: Mr. Speaker, I move that LB670 be advanced to E&R for engrossing. [LB670]

SENATOR GLOOR: Members, you've heard the motion. All those in favor say aye. All those opposed say nay. LB670 is advanced. Mr. Clerk, we now move to General File, Speaker priority bills. [LB670]

CLERK: Mr. President, LB1155 is a bill by Senator Lathrop. (Read title.) Introduced on

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

Floor Debate
March 29, 2012

January 19 of this year, referred to the Transportation and Telecommunications Committee, advanced to General File. I have no amendments to the bill. [LB1155]

SENATOR GLOOR: Senator Lathrop, you're recognized to open on LB1155. [LB1155]

SENATOR LATHROP: Thank you, Mr. President and colleagues, good evening. Prior to this legislative session my local police chief, that is Ralston police chief, talked to me about problems that he had experienced regarding people who continually operate motor vehicles despite the operator's license being revoked or impounded. He asked me to consider introducing legislation to enhance the penalty for these repeat offenders and that's what LB1155 does. As a result of that request, I've introduced LB1155 to amend statute 60-4,108 in order to change penalties for these repeat offenders. Currently the statute provides that a first offense driving under suspension, a person is guilty of a Class II misdemeanor. In these cases the court also orders the person not to operate a motor vehicle for one year. For subsequent offenses, the person is guilty of a Class II misdemeanor, but the court orders them not to operate a motor vehicle for two years instead of one. LB1155 would make this the case for only second and third offenses. The bill would create a new penalty for fourth and subsequent offenses by making it a Class I misdemeanor instead of a Class II. In these cases the person would still not be able to operate a motor vehicle for two years. The bill would also allow a motor vehicle to be impounded when its operator is arrested, and they are found to have had a fourth or subsequent offense. Currently this is allowed for a number of statutes relating to driving under the influence. At the hearing the bill was supported by Ralston Police Chief, Ron Murtaugh, and the Omaha city prosecutor, Marty Conboy. It received no opposition at the hearing and was advanced by the Transportation Committee to General File without a dissenting vote. I believe LB1155 provides prosecutors with an additional tool to handle these chronic repeat offenders. And while it does not solve every problem associated with these offenders, I believe it is a step in the right direction, and I would appreciate your support of LB1155. Thank you. [LB1155]

SENATOR GLOOR: Thank you, Senator Lathrop. Members, you've heard the opening on LB1155. We now move to floor discussion. Are there senators wishing to be recognized? Seeing none, Senator Lathrop, you're recognized to close. Senator Lathrop waives. The question is the advancement of LB1155 to E&R Initial. All those in favor vote aye. All those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1155]

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB1155. [LB1155]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB1155]

CLERK: Mr. President, LB1091. It's a bill by Senator Fischer. (Read title.) Introduced on January 18, referred to the Transportation Committee, advanced to General File. I have

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

Floor Debate
March 29, 2012

no committee amendments. I do have another amendment to the bill, however, Mr. President. [LB1091]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Fischer, you're recognized to open on LB1091. [LB1091]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB1091 is a bill that develops a new method for collecting certain surcharges from prepaid wireless customers. The prepaid wireless industry is a growing wireless business model. The Cellular Telephone Industry Association estimates the model is accounting for 21 percent of the overall wireless market today. The Transportation and Telecommunications Committee dealt with the collection of the enhanced wireless 911 fee for prepaid accounts in 2007. At that time, all states were just beginning to deal with the collection of fees from a model where there is usually no face-to-face or billing interaction between the service provider and the customer. The committee felt it best to leave it up to the Public Service Commission to determine a method for collecting a telecommunications surcharge which was reflected in the passage of LB661 by the body. Currently under commission rules, prepaid wireless carriers have two options for the remittance of an E911 surcharge. Number one, the carrier can use a predetermined formula to calculate the monthly surcharge due, and then unilaterally remit the surcharge or, two, the carrier can collect the surcharge from each customer's active prepaid account on a monthly basis. In most of the cases where there's no direct contact between the wireless carrier and the customer, these methods are either impossible to accomplish or require the carrier to absorb the cost for a surcharge that the customer is responsible for as the end user of the 911 system. Approximately 80 percent of prepaid wireless services are sold through traditional retail outlets such as Walmart, Best Buy, and Target, while 11 percent are sold via on-line retailers, and 9 percent are sold through wireless carrier retail stores. Since the Legislature addressed this issue in 2007, the clear trend throughout the states has been to adopt this point-of-sale collection method with 17 states and the District of Columbia enacting legislation since 2009. Under this method, customers who purchase prepaid wireless service will have the surcharges added to their purchase and will pay it to the seller at point-of-sale just as they pay sales and use taxes. There are several benefits to this method of collection including transparency to the customer. LB1091 adopts the point of sale collection method for prepaid wireless service for two surcharges, the enhanced wireless 911 fee, and the telecommunications relay system fee. The Department of Revenue shall determine the percentage to be added to the customer's bill based on statutory formula. Beginning January 1, 2013, the seller of prepaid wireless service will be required to collect the surcharge from the customer and remit the fee to be credited to the Enhanced Wireless 911 Fund and the Telecommunications Relay Systems Fund in their respective proportions. The collection and remittance will be in the same manner as the sales tax to reduce any burden on the seller. In addition, the seller will be allowed to keep a 3 percent collection fee from the surcharge. I believe LB1091 provides a

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

Floor Debate
March 29, 2012

simple and effective avenue for collecting these surcharges from a growing business model, and is the best solution to make sure the state receives the required surcharge from all wireless users. Thank you, Mr. President. [LB1091]

SENATOR GLOOR: Thank you, Senator Fischer. Mr. Clerk for an amendment. [LB1091]

CLERK: Mr. President, Senator Krist would move to amend with AM2559. (Legislative Journal page 1007.) [LB1091]

SENATOR GLOOR: Senator Krist, you're recognized to open on your amendment to LB1091. [LB1091]

SENATOR KRIST: Thank you, Mr. President. Good evening, Nebraska and colleagues. This amendment actually started out as LB833, and my intention tonight is to withdraw the amendment in the interest of time. I will reserve the right to bring it back on Select should we speed up. But, colleagues, I think we're at a point where we all very much need to realize that time on the mike, as well as going forward, should be concise and exacting. Otherwise, I fear that many of us may not see bills that are very important to us that are on the schedule down the line. So with that, Mr. Clerk, I'd like to withdraw. [LB1091 LB833]

SENATOR GLOOR: Objection? So ordered. [LB1091]

CLERK: I have nothing further on the bill, Mr. President. [LB1091]

SENATOR GLOOR: We move to discussion. Senator Schumacher, you're recognized. [LB1091]

SENATOR SCHUMACHER: Thank you, Mr. Chairman and members of the body. I couldn't let a phone bill go past without a little comment, and I'll make it as concise as possible and I'll even forego questioning Senator Fischer with regard to some of the details. But the assessed essence of this, there's these two funds. One's the E911, and the other one is the relay service. And just a few years ago, one telephone in a household paid and took care of everything. Now, households got three, four, five telephones but we didn't reduce the rate. The revenue from these taxes just kept going up. Where there was one, there now is many all paying taxes. And these little gizmos are the ones you pick up at the store, not your cell phone that you buy and then have a service on, and right now somebody is paying the tax. And that tax is "absorbed" by the carrier. Now this particular bill supposedly makes it transparent because it will now be paid for at the point of purchase by the customer. But you know what? Bet you the rate charged the customer for the cell service doesn't go down; the customer just pays the bill, and the differential ends up going to the phone company. When you trace through

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

Floor Debate
March 29, 2012

where the money that is collected really goes after it churns through the Public Service Commission and the cities and everything, a great bulk of this vast new money goes back to the phone companies as one of those hidden charges. So today, if this were going to be fair, we'd force a reduction in what is paid on those prepaid phones to offset what is now going to be passed on to the customer instead of letting a windfall for the middleman. But that's not in the legislation. Never is when you write your own legislation and you're a phone company. So, folks, today we're passing a tax increase and we're making customers who never had to pay the tax under the old scheme, pay the tax, and pay the same telephone rate. In fact, the telephone rate may go up anyway. This is another one of those things where we're going to need to look at it and its cousin, the Universal Service Fund, and decide where the money is going, where these hidden charges end up, and why the customer and the consumer always gets stuck for the bill. Thank you, Mr. President. [LB1091]

SENATOR GLOOR: Thank you, Senator Schumacher. Are there other senators wishing to be recognized? Seeing none, Senator Fischer, you're recognized to close on the advancement of LB1091. [LB1091]

SENATOR FISCHER: Thank you, Mr. President and members. First of all, I would like to thank Senator Krist for pulling his amendment. That amendment was a bill that was heard by the Transportation and Telecommunications Committee and advanced to the floor. And I believe it is a subject matter that deserves further discussion as Senator Krist said on the mike. And so I would encourage him to reintroduce that bill next year so that discussion can take place. So thank you, Senator Krist. I would ask for you to advance this bill. It's a subject that we've been working on since I became Chairman of the committee. Prepaid wireless cards were first brought to the committee in 2007, that I recall. There was really no model at the time to do it. There was a lot of confusion over it. A number of states have adopted this model. It seems to work well. NCSL has now adopted a resolution encouraging states to move ahead with this model in the collection for the end service, the end user who is the customer pays the fee. We worked with the restaurant association and the retailers in working on this bill. They are neutral now where they were opposed before. So I believe now is the time to advance it. Thank you, Mr. President. [LB1091]

SENATOR GLOOR: Thank you, Senator Fischer. The question is the advancement of LB1091 to E&R Initial. All those in favor vote aye. All those opposed vote nay. Have all voted who care to? Senator Fischer, for what purpose do you rise? [LB1091]

SENATOR FISCHER: Mr. President, I apologize, but I have to call the house, please, request that. [LB1091]

SENATOR GLOOR: Members, there's been a motion...a request to call the house. The question is, shall the house go under call? All those in favor vote aye; all those opposed

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

Floor Debate
March 29, 2012

vote nay. The house is under call. Senators...record, Mr. Clerk. [LB1091]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB1091]

SENATOR GLOOR: Thank you, Mr. Clerk. The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Janssen, Lathrop, Harms, Schilz, and Lautenbaugh, please return to the Chamber and record your presence. Senator Fischer. [LB1091]

SENATOR FISCHER: Mr. President, we can go ahead and I would take call-ins, please. [LB1091]

SENATOR GLOOR: Mr. Clerk. [LB1091]

CLERK: Senator Lautenbaugh voting yes. Senator Heidemann...Senator Heidemann, you had voted yes, Senator. (Laughter) Senator Dubas voting yes. Senator Harms voting yes. Senator Flood voting yes. [LB1091]

SENATOR GLOOR: Record, Mr. Clerk. [LB1091]

CLERK: 25 ayes, 1 nay on the advancement of LB1091. [LB1091]

SENATOR GLOOR: The bill advances. Continuing with General File, Mr. Clerk. Raise the call. [LB1091]

CLERK: LB1091A by Senator Fischer, it appropriates funds to implement the provisions of LB1091. [LB1091A]

SENATOR GLOOR: Senator Fischer, you're recognized to open on LB1091A. [LB1091A]

SENATOR FISCHER: Thank you, Mr. President and members. If you look at the fiscal note on the bill you will see that there's about a \$40,000 cost that does come from the General Fund. These are for the programming fees, the start-up fees, that will be repaid in the succeeding years by the fees that come in and will be credited to that fund. [LB1091A]

SENATOR GLOOR: Thank you, Senator Fischer. Are there senators wishing to be recognized? Seeing none, Senator Fischer you're recognized to close. Senator Fischer waives. Members, the question is the advancement of LB1091A to E&R Initial. All those in favor vote aye. All those opposed vote nay. Record, Mr. Clerk. [LB1091A]

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

Floor Debate
March 29, 2012

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB1091A. [LB1091A]

SENATOR GLOOR: The bill advances. General File, LB1158. [LB1091A LB1158]

CLERK: LB1158, a bill by Senator Krist. (Read title.) Introduced on January 19, referred to the Health and Human Services Committee, advanced to General File. I do have amendments, Mr. President. (AM1936, Legislative Journal page 600.) [LB1158]

SENATOR GLOOR: Senator Krist, you're recognized to open on LB1158. [LB1158]

SENATOR KRIST: Since the beginning of the session...thank you, Mr. President, since the beginning of the session, I've been talking about putting management and financial accountability back in place where it needs to be put back in place. This is one of the areas. LB1158 is introduced in support of the Department of Health and Human Services' intention to move to a managed care system to deliver behavioral health systems, which would mean contract procedures. Intended to ensure that the behavioral health system, much of which is funded through Medicaid in Nebraska, is not negatively impacted during this critical transition by the lack of sound contracting methods, preparation, and planning that the child welfare system had suffered in recent years. At-risk managed care contracts can both manage costs and improve clinical care most effectively if developed from the beginning under a framework that gives the contractor the ability to make a fair profit, balanced by incentives and protection to ensure that the consumers, both children and adults and their families, are treated fairly. The numbers speak for themselves within the contract. The caps are set so that there's an allowable profit to be made. There's a margin in there where they can adjust that cap within safe limits. It is well managed, and contractually I had a lot of help putting this together. And I believe it is the right thing to do. It came out of committee clean and most importantly, the director of Medicaid came in, in a neutral capacity because she's already doing most of this and intended on doing most of it. But, again, oversight for the Legislature is an important factor, and I believe that this is worthy of a green vote and I would ask for it. Thank you. [LB1158]

SENATOR GLOOR: Thank you, Senator Krist. As the Clerk stated, there are committee amendments. Senator Campbell, as Chairman of the Health and Human Services Committee, you're recognized to open on the committee amendments. [LB1158]

SENATOR CAMPBELL: Thank you, Mr. President, and good evening, colleagues. LB1158 outlines the requirements of managed care contract in the Nebraska Behavioral Health Services Act. The committee amendment cross-references the requirements outlined in the act by placing them also in the Medicaid statutes, therefore, requiring the department when contracting for managed care plans to include the Nebraska Behavioral Health Services Act requirements for behavioral health managed care

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

Floor Debate
March 29, 2012

contracts. Thank you, Mr. President. [LB1158]

SENATOR GLOOR: Thank you, Senator Campbell. Mr. Clerk, for some announcements. Apologize for the confusion. Members, you've heard the opening on LB1158 and the Health and Human Services Committee amendment. Are there senators who wish to be recognized? Seeing none, Senator Campbell, you're recognized to close on the committee amendments. Senator Campbell waives. The question is, shall the committee amendments to LB1158 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1158]

CLERK: 29 ayes, 0 nays on adoption of committee amendments. [LB1158]

SENATOR GLOOR: The amendments are adopted. Mr. Clerk. [LB1158]

CLERK: Mr. President, thank you. Senator Krist, I have AM1909 and AM2418. I have notes you wish to withdraw both those, Senator. [LB1158]

SENATOR GLOOR: So ordered. [LB1158]

CLERK: Senator Krist, I now have, Senator, AM2521. (Legislative Journal page 999.) [LB1158]

SENATOR GLOOR: Senator Krist, you're recognized to open on AM2521. [LB1158]

SENATOR KRIST: One second. This actually becomes the bill. It has the seven changes that are in the bill itself. We changed some percentages. It's a clear, rational safeguards for spending on administrative above 7 percent with a hard cap administrative spending of 10 percent. Restrictions on profits of the contractor at a maximum 3 percent annually, fairly balanced by a comparable cap on losses. A requirement that in excess profits and all savings be reinvested into the behavioral health systems services. Reinvest funds shall target at least 1.5 percent of the contractor amounts annually. And then five, contracts shall provide a minimum medical loss ratio of 85 percent. And six, contracts shall include additional performance incentives of at least 1.5 percent. And seven, a portion of the contractor payments shall be contingent on performance metrics with minimum associated penalties of .25 percent. I would tell you at this point that all of these numbers are to ensure a change to ensure fair and open competition so we have the best quality companies coming to the state providing services. And with that, I would ask you for a green vote on AM2521. [LB1158]

SENATOR GLOOR: Thank you, Senator Krist. Mr. Clerk, we have an amendment to the amendment. [LB1158]

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

Floor Debate
March 29, 2012

CLERK: I do, Mr. President. First, Senator Hadley would move to amend Senator Krist's amendment with AM2551. (Legislative Journal page 1002.) [LB1158]

SENATOR GLOOR: Senator Hadley, you're recognized to open. [LB1158]

SENATOR HADLEY: Mr. President and members of the body, I think it's important to understand that the children's behavioral health services contract is undertaken by the DHHS Division of Medicaid and Long-Term Care and not the Division of Children and Family Services, which constructed and awarded the lead agency contracts. The Medicaid Division presently has two large managed care contracts in force for medical surgical services in the Omaha and southeast Nebraska areas as well as other smaller and less comprehensive contracts for specialized consultation and services. All contracts entered into by this division have been led in full accord with the Nebraska procurement standards. I asked the director of the Medicaid Division a series of questions and I was informed by a letter that the division intends to include in the children's behavioral health MCO contract each of the features present in LB1158. I am comfortable with the Legislature enacting the bill if the provision providing for a 1.5 percent of the total contract amount to be taken off the top of the contract and reinvested in children's behavioral health services. You certainly agree the children's behavioral health system could use the additional money. But note that the contract, even without the 1.5 percent off the top, provides for unearned contract incentives and excess profits as well as monies from any performance penalties imposed on a contractor to be reinvested in the children's behavioral health system. The presence of the 1.5 percent would amount to \$1 million to \$2 million would simply have to be added to the total cost of the contract by the successful bidder, and as such would constitute kind of a back door additional appropriation to the children's behavioral health system, which would, in fact, bypass our normal appropriation process and come to them from the Medicaid Division instead of the behavioral health division where it can receive legislative oversight and be appropriately expended in accordance with our statewide mental health plans and programs. Accordingly, I have no doubt that the Medicaid Division can handle this program. I do stand in support of LB1158, and I will give it my full support with the adoption of the amendment that I have proposed to simply eliminate the 1.5 percent taken off the top for reinvestment in the children's behavioral health system. Thank you, Mr. President. [LB1158]

SENATOR GLOOR: Thank you, Senator Hadley. Members, you've heard the opening on AM2521 and the amendment to AM2521, AM2551. We now move to floor debate. Are there senators wishing to be recognized? Seeing none, Senator Hadley, you're recognized to close on your amendment. Senator Hadley waives. The question is, shall the amendment to AM2521 be adopted? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1158]

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

Floor Debate
March 29, 2012

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of Senator Hadley's amendment to Senator Krist's amendment. [LB1158]

SENATOR GLOOR: The amendment is adopted. [LB1158]

CLERK: Senator Bloomfield would move to amend Senator Krist's amendment with AM2590. (Legislative Journal page 1054.) [LB1158]

SENATOR GLOOR: Senator Bloomfield, you're recognized to open on your amendment. [LB1158]

SENATOR BLOOMFIELD: Thank you, Mr. President. Good evening, colleagues. AM2590 is a simple amendment to better define the word "stakeholders." The intent of this amendment is to make sure that consumers and their family members and the office of consumer affairs within the division are included when behavioral health service plan is developed. It was not the intent of the sponsor of the original bill to exclude the consumer, the family, or the office of consumer affairs. The amendment just clarifies that they may be included. The wording in the amendment was provided to me by the Nebraska Advocacy Services, Inc., and I would ask for your support of the amendment. Thank you. [LB1158]

SENATOR GLOOR: Thank you, Senator Bloomfield. We now move to floor debate. Senator Krist, you're recognized. [LB1158]

SENATOR KRIST: Please vote green on this amendment. It was an oversight on my part and we need to keep the stakeholders involved. It is their voices that we are trying to protect. Thank you. [LB1158]

SENATOR GLOOR: Thank you, Senator Krist. Seeing no senators remaining in the queue, Senator Bloomfield, you're recognized to close. Senator Bloomfield waives. Members, the question is, shall AM2590 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1158]

CLERK: 34 ayes, 0 nays on adoption of Senator Bloomfield's amendment to Senator Krist's amendment. [LB1158]

SENATOR GLOOR: The amendment is adopted. [LB1158]

CLERK: I have nothing further pending to Senator Krist's AM2521. [LB1158]

SENATOR GLOOR: Are there members wishing to be recognized? Seeing none, Senator Krist, you're recognized to close on your amendment to LB1158. Senator Krist waives. Members, the question is, shall the amendment to LB1158 be adopted? Those

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

Floor Debate
March 29, 2012

in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB1158]

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Krist's amendment. [LB1158]

SENATOR GLOOR: The amendment is adopted. [LB1158]

CLERK: I have nothing further on the bill, Mr. President. [LB1158]

SENATOR GLOOR: Seeing no senators in the queue, Senator Krist, you're recognized to close on the advancement of LB1158. [LB1158]

SENATOR KRIST: Thanks for all your help in pushing this one forward. It leans us back in the saddle to be accountable for people in the state in the managed care program. The contracts will be well written, and I believe that this is a great bill. Thank you. [LB1158]

SENATOR GLOOR: Thank you, Senator Krist. Members, the question is the advancement of LB1158 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1158]

CLERK: 34 ayes, 0 nays on the advancement of LB1158. [LB1158]

SENATOR GLOOR: LB1158 advances. Senator Flood for a Speaker's announcement. [LB1158]

SPEAKER FLOOD: Thank you, Mr. President and members, good evening. We're at that point in the session where tomorrow's agenda, I'm going to start removing bills that are Speaker priorities because I'm not altogether certain we're going to be able to get to them. We are on the glide path toward adjournment and we have more work to do than we have in the last couple of years. So tomorrow, I'm going to start removing divisions of Speaker priority bills so that we focus on getting the senator and the committee priority bills done. In that same vein, we can't spend eight hours or six hours or five hours or four hours even on a General File bill as a Speaker priority. I'm going to set aside 90 minutes for LB731, starting now. If we haven't resolved this bill by the end of 90 minutes, I can't justify putting it back on the agenda. And that's going to be the lay of the land for the rest of these Speaker priority bills. We have to focus our time on the senator and the committee priority bills. Those are the ones that you have identified and the committee's have identified. If you have a Speaker priority bill, now is the time to start walking around and finding out where people are at. I'll let you know ahead of time how much time we can allot to it, but we're going to start skipping over some of these and in some cases, we're not going to reschedule. That's the impact of where we're at. I had hoped earlier this week we would be out of here by six. There's nothing wrong with

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

Floor Debate
March 29, 2012

the fact that we're still here. The fact that we're still here means we've had substantive debate that members have felt has been important on bills to this time. We're going to go 90 minutes on this or whether it moves, whichever is first. And after this, we're going to come back tomorrow at 8:00 a.m. and we're going to start with Final Reading. We've got 45 minutes to an hour of Final Reading. We've got 57 bills on consent calendar to take up on Select File. And Senator Dubas' bill on ACCESSNebraska is going to be up after that. That's a bill that's going to take some time, but it is a senator priority bill that we have to focus on at this point. So I just want to let you know, kind of the lay of the land. We're into time rationing at this point in the session to do our work efficiently and effectively. And I will be happy to work with you, but if you do have a Speaker priority bill that you're concerned about in terms of how much debate it's going to take, let's have that conversation before it gets scheduled, and you're not going to see as many scheduled on tomorrow's agenda. Thank you, Mr. President.

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Speaker Flood. Next item, Mr. Clerk.

CLERK: (Amendment to be printed to LB928, Legislative Journal pages 1234-1237.)
[LB928]

LB731, Senator Mello. (Read title.) Introduced on January 4 of this year, referred to the Revenue Committee, advanced to General File. There are Revenue Committee amendments, Mr. President. (AM2151, Legislative Journal page 638.) [LB731]

SENATOR COASH: Thank you, Mr. Clerk. Senator Mello, you are recognized to open on LB731. [LB731]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. LB731 is the product of more than two years of work between my office and the Nebraska State Recycling Association in looking for innovative ways to increase recycling in the state of Nebraska. Currently the state operates three separate cash funds whose statutory purposes include the promotion of recycling. LB731 would utilize 10 percent of two of these funds, the Nebraska Litter Reduction and Recycling Fund and the Waste Reduction and Recycling Incentive Fund to provide tax credits for increased recycling or composting. Under the bill, a taxpayer could apply for tax credits if they can demonstrate a reduction in their waste, recycling, or composting to the Department of Environmental Quality. Applicants can demonstrate waste reduction by either showing an increase in their recycling or composting or by demonstrating waste reduction based on the amount of waste disposed during the year prior to applying for the tax credit. The amount of the credit would be based on the statewide average tipping fee, which means that the tax credit is directly tied to the cost of disposing of that same waste in a landfill. Unlike the current grant funding process, LB731 contains built-in mechanisms to ensure

Floor Debate
March 29, 2012

that the credits are accomplishing the intended goals prior to receiving the credit. Under the bill, an applicant would first apply to the Department of Environmental Quality for tax credits providing a base-year tonnage information, after which the Department of Environmental Quality would certify a tentative tax credit amount. If the applicant failed to meet the amount of waste reduction certified in the application, the no tax credit would be received. Applications received by DEQ could only be approved up to the total dollar amount available that tax year, which based off projections in the fiscal note, would roughly be \$500,000. As in current practice with both the Litter Reduction and Recycling Act and the Waste Reduction and Recycling Act, LB731 provides for DEQ's administrative expenses to be paid through cash funds and also provides language allowing DEQ to accept grants, contributions, and other funds to support the program. For example, this would allow DEQ to apply for a grant through the Nebraska Environmental Trust if the new incentive program was to be successful. The bill also allows the Department of Revenue to use cash funds to pay for the necessary one-time expenditures to update their income tax tracking systems, which ensures that all the costs of the pilot project would be cash funded and would not require the use of General Funds unlike other tax credit bills. In addition to the Nebraska State Recycling Association, LB731 has the support of the Greater Omaha Chamber of Commerce, and both organizations recognize that the bill is an innovative market-based approach to incentivize in recycling in our state. LB731 also represents an efficient use of two cash funds than the existing grant application process and has a significant potential to create private sector jobs. The report issued last year by the Tellus Institute found that if national recycling and composting rates were increased to 75 percent by the year 2030, there would be more than 1.5 million new jobs created in the recycling industry alone. In addition to recycling jobs, LB731 would help fuel the availability of recycled materials for manufacturing, making our state an attractive option for manufacturers who utilize recycled goods as part of their business model. At the bill's public hearing before the Revenue Committee, one such business testified about the difficulty of obtaining recycled glass they use to make paving materials, and the numerous benefits of creating incentives for businesses which increase the recycling outputs. Since the bill was advanced to the floor, a number of you have been contacted by Keep Nebraska Beautiful and their local affiliates in communities throughout Nebraska. I've introduced an amendment designed to address their concerns and will discuss those changes more in detail following the introduction of the committee amendment. I want to thank the Revenue Committee for advancing LB731, as well as Speaker Flood for making the bill a Speaker priority. And I'd urge the body to adopt LB731. [LB731]

SENATOR COASH: Thank you, Senator Mello. As the Clerk has stated, there is a Revenue Committee amendment. Senator Cornett, as Chair of the committee, you are recognized to open on AM2151. [LB731]

SENATOR CORNETT: Thank you, Mr. President. The Revenue Committee amendment, AM2151 to LB731 is a white copy amendment of the bill that makes three

Floor Debate
March 29, 2012

substantive changes to the introduced version of LB731 and also makes a number of nonsubstantive coordinating changes throughout the bill. The three substantive changes made by AM2151 include, one, ensuring that the remanufacturing income tax credit authorized by the bill are not transferable credits. Two, ensuring that the nonprofit and governmental entities cannot earn the remanufacturing income tax credits authorized by the bill, and establishing a three-year sunset period for the recovery resource income tax credit, tax years 2013 to 2015, authorized in Section 3 of AM2151. I urge you to adopt AM2151 to LB731. I do want to address the fiscal note. When I spoke with the commissioner and when...Tax Commissioner and when Senator Mello spoke with the Tax Commissioner, they talk about the fiscal note for establishing the groundwork for this. The commissioner stated that they do that for a number of bills, but when they have to redo forms they redo them all at one time so the fiscal note would be significantly less and I think Senator Mello can go into greater deal on that conversation. But I would urge the body to support the amendment. It does rewrite the bill and the most important part is, this makes it a nontransferable credit. Thank you. [LB731]

SENATOR COASH: Thank you, Senator Cornett. Mr. Clerk, you have another amendment. [LB731]

CLERK: Mr. President, Senator Mello, I have a note, Senator, on AM2404, you wish to withdraw that. [LB731]

SENATOR COASH: So withdrawn. [LB731]

CLERK: Mr. President, Senator Mello would move to amend the committee amendments with AM2534. (Legislative Journal page 1004.) [LB731]

SENATOR COASH: Senator Mello, you're recognized to open on AM2534. [LB731]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. As Senator Cornett just mentioned, LB731, as originally introduced, provided for a transferable tax credit which was removed by the committee. With the change in the committee amendment, organizations which have historically received grants from the Nebraska Litter Reduction and Recycling Fund and the Waste Reduction and Recycling Incentive Fund have expressed concerns that they would receive reduced funding under LB731. While none of these organizations appeared over the last years before the Revenue Committee to testify against the bill, my office, nevertheless, went to the greatest of lengths to try to address all of their concerns. AM2534 is the product of extensive discussions between my office, Keep Nebraska Beautiful, some of their local affiliates. The amendment also attempts to address the concerns that were expressed in a letter from the city of Lincoln, which was also not received until after the bill was advanced by the Revenue Committee to General File. Members should have received a brief summary of the changes between the committee amendment and AM2534. First,

Floor Debate
March 29, 2012

the amendment addresses the concern that a few large businesses would utilize the full amount of the tax credits under LB731 in three ways. The first, by capping the maximum tax credit that a single taxpayer could receive under the bill at \$25,000 a year. Two, by clarifying that the waste reduction used to qualify for the tax credits must be generated by the taxpayer. And third, by creating definitions for municipal solid waste, and construction and demolition waste, clarifying that only municipal solid waste would be eligible for tax credits. The amendment also prohibits businesses from "double-dipping" by providing that the taxpayer who applies for the tax credit under LB731 would be ineligible to also receive grant funds under the Litter Reduction and Recycling Act or the Waste Reduction and Recycling Incentive Act in the year for which the tax credit application is approved. AM2534 also makes a series of changes to minimize the impact of the bill on the current recipients under the existing grant programs. As I stated in my opening, LB731 provides that tax credits are applied for prospectively and are only awarded after the taxpayer demonstrates the actual waste reduction that their application was based upon. With the amendment, applications which demonstrate a partnership...a public-private partnership between a taxpayer and a nonprofit organization or local government, would be given priority in the application. Additionally the amendment provides requirements on the transfer of funds from the two grant programs to the Recovery Resource Income Tax Credit Fund. The 10 percent of funds transferred from the Nebraska Litter Reduction and Recycling Fund would come from the recycling grants portion of the fund and not the public education or litter clean-up portions, while the 10 percent of funds transferred from the Waste Reduction and Recycling Incentive Fund would be taken proportionately from the various fees which are credited to that fund. Finally, the amendment addresses the concern that the initial start-up costs for both DEQ and Department of Revenue could further drain the existing grant funds. By clarifying that the funding for the administration of LB731 would come from the 10 percent of each fund that was transferred to the Recovery Resource Income Tax Credit Fund and not from the existing funds on top of the 10 percent. While many of the e-mails that we have received from the Keep Nebraska Beautiful and their affiliates give the impression that they are the primary recipients of the current grant process, the actual numbers from DEQ show that is not the case. While they've received roughly 46 percent of the funds from the Litter Reduction and Recycling Fund over the past six grant cycles, these organizations have never received more than 1 percent of the tire grants under the Waste Reduction and Recycling Incentive Fund, and have only received slightly more than 10 percent of the waste grants under the same fund, once in the past six years. Of the grants they receive out of the litter fund, the vast majority come in the form of public education and litter clean-up fund grants, which would not be reduced with the adoption of AM2534. Colleagues, at the end of the day these funds don't belong to any one organization or entity that applies for the grants. The Legislature can choose to utilize these funds for other purposes and has even used these funds to shore up previous budget shortfall crisis like we did in the 2009 Special Session. LB731 would utilize these existing recycling dollars designated to promote recycling and use them to promote recycling in an innovative market-based approach. I would urge the

Floor Debate
March 29, 2012

body to adopt AM2534, the committee amendment, AM2151, and the underlying bill. In conversations with a few colleagues, it has come to my attention there is some concern even though we address it in my amendment in regards to some of the grant dollars that come from this 10 percent funds being utilized for administrative purposes. I draw the attention of the body to just two bills out of the numerous tax credit bills that we have debated, or will debate, that does something very similar under LB731. Last year the Legislature passed LB387, a bill I cosponsored, introduced by Senator Hadley, which instead of using Cash Funds to pay for administrative costs to administer the tax credit in the programs, utilized General Funds to the tune of \$330,000 over the course of three years. We have another bill in front of us today on the agenda, LB872, a bill that I also cosponsored dealing with market-based source tax reform, also introduced by Senator Hadley. That has a fiscal note of over \$650,000 in General Funds for administrative purposes. No doubt there will be people on the floor who will exclaim a concern about utilizing Cash Funds that are utilized for grants now to pay for administrative costs for this pilot grant...or this pilot tax credit project. That argument, colleagues, holds the same with any other tax credit bill we would do, with the exception we're discussing General Funds. Those General Funds for other tax credit bills can be used for child welfare reform, can be utilized for TEEOSA, can be utilized for road infrastructure, a variety of other A bills that we have discussed, not just this session, last session, but future sessions. This comes from a Cash Fund, both come from Cash Funds which have no General Fund impact. And at the underlying concept of the bill, they hit at the same concept of what these funds are intended to do--to promote recycling. This is simply a different way of looking at it, making it perform based similar to our Nebraska Advantage Act where a business or a public-private partnership cannot get these funds until after they meet their application. Unlike right now, the grant application which an organization, business, or city comes in, fills out an application, gets the funds, and then ultimately tries to accomplish what they said they were going to accomplish, sometimes not meeting the goals they state out in their grant application. By all means, colleagues, I hope we don't go 90 minutes on this bill. I know in talking with many of you over the last couple weeks with some of these e-mails we've received, my office has gone to the greatest of lengths of meeting every suggested change by Keep Nebraska Beautiful and their affiliates. Actually we met every one of their changes except two...or actually, I should say one. Don't use these Cash Funds or increase the business fee so that there's more money in the fee for them to be able to apply for funding. On the contrary, I provided a handout to the body that shows exactly how much this one entity and their affiliates actually do receive. And the way we've crafted the bill, and my amendment, limits any of the funds that would be taken from the current funds that Keep Nebraska Beautiful and their affiliates actually get. We also stopped any concerns of double-dipping, so to speak, so business could not apply for a grant through DEQ and apply for an income tax credit. Colleagues, I urge the body to adopt AM2534, the committee amendment, and the underlying bill. I'd be happy to take any questions as we move on over the next 90 minutes. Thank you, Mr. President. [LB731 LB872 LB387]

Floor Debate
March 29, 2012

SENATOR COASH: Thank you, Senator Mello. Members, you've heard the opening to LB731, the committee amendment, and the amendment to the committee amendment. The floor is now open for discussion. Senator Hadley, you are recognized. [LB731]

SENATOR HADLEY: Mr. President and members of the body, since my name was mentioned a couple of times, I will stand up on this bill. I have some concerns about this bill. You noticed I voted no when it came out of committee. I was very satisfied with the program we have now that is a grant program where people apply, grants are awarded, competitive basis. But let me give you some of the reasons for my concern. The first, as Senator Mello said, the administrative costs will be taken out of the funds, the 10 percent that is being given for these tax credits. If my math is right, there will be \$1,587,000 over three years taken out of the grant program and put into a tax credit program. From the fiscal note, DEQ says to establish the program it will be \$103,000. The operating costs are approximately \$50,000 a year for a three-year program, \$150,000. The Revenue Department says it has a one-term...time cost of \$91,000 or a total of \$344,000 that will no longer--let me emphasize that--will no longer be used to...for recycling programs. That will be taken out of the recycling system, \$344,000. The administrative costs for this program will be 22 percent of the tax credits. That seems to me to be a pretty high amount that you're taking out of it. The second concern I have is that the tax credits cannot go to government or nonprofit organizations. That, I believe, was the amendment by the Revenue Committee, so that means any nonprofit or governmental organization cannot avail themselves of these tax credits. And we don't want them to. We do not want to get into a situation where we're giving tax credits, transferable tax credits, to nonprofit or governmental agencies. Let me give you a couple of examples. The city of Kearney runs its own recycling program. They would not be...this is 1.5 million over the next three years that they would not be available to them to apply for. Regent 5 runs a recycling program, nonprofit, governmental agency. They would not be available...these funds would not be available. I think this is a program designed to help certain for-profit companies get tax credits. Folks, I think that's exactly what it is. I think these companies have the ability now to apply for these grants, but this makes it easier because you cut out the competition, you cut out the not-for-profits, and you cut out the governmental agencies. And you carve out 10 percent of the funds and say, okay, for-profit companies, go for it. You got 10 percent that's yours. I don't think that's right, folks. I think we have a program that's working. I think we should leave the program as is. Let it continue to work. I appreciate the time that Senator Mello has put into this, but I think it is not a good bill. I would argue for a red vote on this particular bill. Thank you, Mr. President. [LB731]

SENATOR COASH: Thank you, Senator Hadley. Senator Fischer, you're recognized. [LB731]

SENATOR FISCHER: Thank you, Mr. President and members of the body. If you look at the committee statement you will see that I supported the bill and voted it out of

Floor Debate
March 29, 2012

committee. Senator Mello knows that I have quite a few reservations on the bill, but I gave it the benefit of the doubt, but I am now standing in opposition. I'm concerned that we're taking funds from an already existing fund that so many groups, cities, are able to access. Senator Hadley did an excellent job in laying before us the costs of this new program that we're creating, the administrative costs. Those are funds that are lost for the Keep Alliance Beautiful group that I've heard from or the Lexington group that has sent me an e-mail. When I served on the Natural Resources Committee we saw some bills like this in the past to be able to use funds from...or use revenue from existing funds for a new purpose. Sometimes that's good but sometimes it's not. I believe we have good programs that are in our communities now. They're beneficial for those communities and they should continue to be recipients of this money and not see over \$300,000 of it spent on administrative costs. I was contacted by a number of the local affiliates of Keep Nebraska Beautiful, and by Keep Nebraska Beautiful itself. I was told that they began to work with Senator Mello on an amendment but the compromise fell through, and they felt that the bill and the amendments that are up here now create serious problems for their organization. They believe that the loss of the Litter Reduction and Recycling Grant Fund and the Water Reduction and Recycling Incentive Grant Fund will be detrimental to their organization. And I'd like you to remember that the Keep Nebraska Beautiful Fund has 21 affiliates throughout the state. They're also opposed to the fact that businesses will be able to apply for these credits. However, nonprofits, schools, and all government agencies are ineligible for those credits. That's a problem. We will also see that the grant funds are diminished by 10 percent, and they want to know how that's going to be made up for them. You know, some of these groups and some of these cities don't receive very much in the funding. But this is a case where an existing fund has been targeted so that I believe we can get around using General Fund money for a new program. If this program is so great and beneficial, then maybe we should step back and looking at establishing funding for it on its own instead of taking it from an existing fund that is already doing great work all across the state by funding a number of organizations. [LB731]

SENATOR COASH: One minute. [LB731]

SENATOR FISCHER: If I could ask Senator Mello a question, please. [LB731]

SENATOR COASH: Senator Mello, will you yield? [LB731]

SENATOR MELLO: Absolutely. [LB731]

SENATOR FISCHER: Thank you, Senator Mello. Have you had a chance to look over that new fiscal note with your amendment? [LB731]

SENATOR MELLO: There is no new fiscal note, Senator Fischer, on any amendment until ultimately the committee amendment gets adopted. So we won't see a new fiscal

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Floor Debate
March 29, 2012

note, essentially, until Select File if LB731 moves to Select File. [LB731]

SENATOR FISCHER: The fiscal note that Senator Hadley referred to, have you had a chance to look over that fiscal note? [LB731]

SENATOR MELLO: Oh, the existing fiscal note that was provided to the Revenue Committee, yes. [LB731]

SENATOR FISCHER: Do you agree with the fiscal note that was presented and Senator Hadley's explanation of it? [LB731]

SENATOR MELLO: Well, as Senator Cornett mentioned, and I can explain further on my own time, I've talked to the Department of Revenue and because of the way the Department of Revenue does tax credit bills or tax...any kind of tax bills, they have to give a fiscal note based on each individual bill and having to do computer mainframe programming... [LB731]

SENATOR COASH: Time, Senators. [LB731]

SENATOR FISCHER: Thank you, Mr. President. [LB731]

SENATOR COASH: Thank you, Senator Fischer and Senator Mello. Senator Heidemann, you're recognized. [LB731]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I do have some concerns with LB731. I think we have a program that has been working and I fear pulling funds out of this might actually hurt what we see is going on now. I was wondering if Senator Mello would answer...could answer a few questions. [LB731]

SENATOR COASH: Senator Mello, will you yield? [LB731]

SENATOR MELLO: I'd love to. [LB731]

SENATOR HEIDEMANN: How is this going to help? I mean, is this going to keep trash out of a landfill, or...? [LB731]

SENATOR MELLO: Well, Senator Heidemann, in my opening both on my...on the original bill and my amendment to the committee amendment, it's a different approach. Right now, we take grant applications. The Department of Environmental Quality looks at those grant applications, picks grant applications, gives out money to the entity, and hopefully they do what they say they're going to do, provide feedback, and hopefully they accomplish their goals they want. What we're doing with this is we're creating a performance-based tax credit where a company, and/or under my amendment, to

Floor Debate
March 29, 2012

correct a few facts or misinformation that was just presented on the mike, a business who partners with a nonprofit entity or a city comes in a public-private partnership applies for the tax credit saying that they're going to reduce a certain amount of municipal waste. They then come back after that application is accepted by DEQ a year later, and provide data and information to DEQ to show them they met the amount of waste that was reduced in the municipal landfill according to their application. If they do not meet that application, similar to a Nebraska Advantage application, they do not receive the tax credit. Unlike a grant program where they get the money up-front, this changes it so they get the money after, and only after, they accomplish the intended goal. [LB731]

SENATOR HEIDEMANN: Is this going to divert 1 percent, 2 percent of everything that's going to landfills now? I mean, has this been studied and looked at or...? [LB731]

SENATOR MELLO: Once again, Senator Heidemann, if you look at the introductory...or I should say the bill introduction or the byline or the one-liner, it's a pilot project. Once again, this is a different way of trying to do business in Nebraska, of trying a market-based approach to recycling, not simply providing grants to nonprofit or public entities to establish programs or buy materials or buy, kind of, any kind of infrastructure. It's a different approach which incentivizes businesses to primarily partner with nonprofit entities and municipalities to reduce waste. [LB731]

SENATOR HEIDEMANN: This is going to pull \$500,000 out of these other funds to do this. Are we for sure what we're going to accomplish with this \$500,000? [LB731]

SENATOR MELLO: At this point, Senator Heidemann, it's a pilot project. The intended goal is to provide a tax credit to businesses to encourage them to reduce their waste and establish their recycling...essentially increase recycling within their business of what's currently being disposed of in municipal landfills. Knowing that this bill was not created for any one company or any kind of company, so to speak, simply any business or taxpayer in the state qualifies for it, that simply what's going to be left up to the Nebraska State Recycling Association and other entities that want to promote this income tax credit to the over what, 25,000, 30,000 businesses across Nebraska, encouraging them to apply for a tax credit, to encourage them to recycle more. [LB731]

SENATOR HEIDEMANN: So, we're pulling \$500,000 out of these existing funds. Senator Hadley touched on it, and I just want to ask you, how much is going to be used for the administration fee? [LB731]

SENATOR MELLO: Well, once again, Senator Heidemann, this is based on the Department of Environmental Quality's estimates of how they utilize the funds for the grant program. The question is, when they ultimately implement the income tax credit program in comparison to the grant program, that number could change, that number

Floor Debate
March 29, 2012

could increase. As I described earlier, the Revenue Committee fiscal note, ultimately the Revenue Department fiscal note, will be changed dramatically, lowered dramatically because it gets lumped in if this is passed with a variety of other tax credit bills... [LB731]

SENATOR COASH: One minute. [LB731]

SENATOR MELLO: ...tax exemptions or tax incentive bills, they all get changed together. But as for the administration of the program, it's funded the same way the grant program is funded, which every year the Department of Environmental Quality takes funds out of these two cash funds to implement the grant program the same way we're doing it with the income tax program. [LB731]

SENATOR HEIDEMANN: If the amendment passes and gets attached to the bill, for some reason there's numbers floating around here that administration would be starting at \$150,000, \$200,000 a year and \$100,000 ongoing. Would you disagree with that? [LB731]

SENATOR MELLO: I would disagree with that. I think the fiscal note, my interpretation was the Department of Environmental Quality needed roughly \$103,000 for research, and to be able to establish the program. And they need to hire a half-time or half-time employee to administer the program, which I believe it's roughly \$50,000 a year according to the fiscal note, which means that would be equivalent of \$250,000 over a three-year period. [LB731]

SENATOR HEIDEMANN: Senator Hadley mentioned it was over 20 percent. Just administration... [LB731]

SENATOR COASH: Time, Senators. Thank you, Senator Heidemann and Senator Mello. Senator Mello, you are recognized. [LB731]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I can appreciate senators concerns of receiving multiple e-mails from Keep Nebraska Beautiful and their affiliates. No doubt are well-intentioned organizations. As I described before, I spent numerous meetings working with them on AM2534, as myself as a member who participates in the Omaha Keep Beautiful program by cleaning up Hitchcock Park in south Omaha. The underlying issue, though, is we adopted every single measure that Keep Nebraska Beautiful brought to us with the exception of two. One, they wanted us to increase fees on all businesses in Nebraska to double their fees, which I said I would not do, and the second ultimately sticking point to them was they wanted us not to use any of these cash funds even though they acknowledge, as the data I provided the body, shows they do not receive a majority of the funds from both of these cash funds. So their underlying opposition to the bill even after we took all

Floor Debate
March 29, 2012

of their amendments, took all of their suggestions, and I would actually change, I would actually say we did achieve a compromise, but at the end of the day their compromise changed at the very end of wanting to raise tax essentially on businesses, which I would not do, we accomplished everything they wanted in AM2534. Senator Hadley mentioned that nonprofit organizations and cities cannot apply for this tax credit. He's right because that was the agreement that came from the Revenue Committee because we chose not to make this a transferable tax credit. But we did incorporate AM2534 that businesses who apply and partner with a nonprofit entity or apply with the city, so keep Kearney beautiful or the city of Kearney could partner no doubt with a business in Kearney, they would be...they would give priority status in applying for this tax credit. Which at the end of the day, I think Senator Hadley and Fischer both remember from the committee hearing, I emphasized the public-private partnerships was the primary focus of this bill to try to emphasize what the good things that are happening in the public nonprofit sector, and in governmental sector, to try and incorporate that more into the business sector. Because we know jobs can be created in the private sector by increasing recycling that comes from the recycling industry. Senator Fischer, Senator Hadley, and Senator Heidemann all have raised concerns about the administration costs. I just described to Senator Heidemann what would be the fiscal note, \$100,000 for the creation of this tax credit. And right now, \$50,000 for a half-time employee. The fiscal note was devised essentially, colleagues, the same way the grant programs currently have been devised and operate in DEQ. I would draw attention, though, to the body that if you open up your Cash Funds book that's provided to us by the Legislative Fiscal Office at the beginning of this legislative session, the Waste Reduction Cash Fund had an existing balance of \$2.7 million that didn't incorporate the amount of money that they currently will bring in this year and expend it. The Litter Reduction Fund actually, their existing balance was \$369,000 without bringing in the Cash Funds that they bring in and give out every year. Both Cash Funds have a balance beyond what they give out in grants. So if the problem and concern was that groups are not going to get the grants they're going to get, then the issue doesn't rest with this bill. The issue rests with the Appropriations Committee giving DEQ more authority to spend Cash Funds, which unfortunately, we've already passed the budget. So that can't be done this year, but it can be done next year. Colleagues, this is a pilot project. As I mentioned before, we have multiple tax credit tax incentive bills the Revenue Committee has kicked out which uses this same model. And instead of using Cash Funds, it uses General Funds. Those General Funds can be used for pretty much everything, whether I said before, child welfare, public education, higher education... [LB731]

SENATOR COASH: One minute. [LB731]

SENATOR MELLO: ...infrastructure, building construction, roads. You name the General Fund obligation we can find and the funds can be used for that, but instead we use it for the implementation and administration of tax credits. No doubt to do this it will take some administration dollars. We've discussed this with DEQ because DEQ came in

Floor Debate
March 29, 2012

opposition last year to the bill, and this year they did not come in opposition to the bill. They didn't come in at all because we worked with them over the interim on this issue trying to find a market-based approach to encourage recycling in our private sector. Colleagues, we all agree that there are good things happening with public nonprofits and governmental entities when it comes to recycling. The focus of this bill is to provide a pilot project to incentivize the private sector, to incentivize their recycling efforts, to reduce our municipal land waste...reduce waste from our municipal landfills, and ideally to create private sector jobs because of that. And we... [LB731]

SENATOR COASH: Time, Senator. [LB731]

SENATOR MELLO: Thank you, Mr. President. [LB731]

SENATOR COASH: Thank you, Senator Mello. (Visitors introduced.) We return to discussion. Those wishing to speak: Senators Hadley, Loudon, Fischer, and Wightman. Senator Hadley, you're recognized. [LB731]

SENATOR HADLEY: Mr. President and members of the body, I want to clear up a couple of things. The reason the Revenue Committee made it so that nonprofit and governmental agencies could not get refundable tax credits is very important to this discussion. A refundable tax credit is a tax credit that can be transferred to somebody else. In essence, if you can't use the tax credit, it's a transferable tax credit. A transferable tax credit can be transferred to other people. What you don't want are governmental agencies and nonprofit agencies getting tax credits that they can transfer to other people. Take a second and look at the Advantage Acts. How many tax credits are out there with the Advantage Acts that could be transferred if they were transferable to other companies? Secondly, I have not heard anything that the program we now have is not working. And if I was a number of these cities and nonprofit agencies, I guess I would be taken a little aback to the idea that we have to have for-profit companies get a break to get into the business. I think that nonprofit and governmental agencies have been doing an excellent job in Nebraska in recycling. I can use the city of Kearney as an example that have won many awards on their recycling program. Also I'm trying to figure out the partnership. What is the advantage to the governmental agency or the nonprofit agency to partner with a private agency when the private agency gets the tax credits? If I'm a for-profit private agency, a private company, this is great. I can get into the business and compete against governmental agencies and not-for-profit agencies, and the state of Nebraska is going to give me a tax credit to compete against them. I would read to you, any recovered resource income tax credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under Section 521 of the Internal Code of 1986, as amended, a limited cooperative association, or an estate or trust, may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities. I just

Floor Debate
March 29, 2012

think we're setting...I have not seen the need for this. I think we have a program that is now working. I think for-profit companies can get into the business. There's no barriers to entry that I know of, but we do have very successful governmental and not-for-profit organizations doing this. And the idea of siphoning off 10 percent of the funds available to them to go to a for-profit organization in the form of tax credits is something that I don't think this body wants to go down. Thank you, Mr. President. [LB731]

SENATOR COASH: Thank you, Senator Hadley. Senator Louden, you're recognized. [LB731]

SENATOR LOUDEN: Thank you, Mr. President and members. As you may have noticed on the committee statement, I voted against this bill in committee and I wasn't really going to get into the discussion here this evening because I voted no and most everybody knew where I stood on it, I guess. As my years on the Natural Resources Committee, we did a lot of work on these different funds. And my concern with the bill was that we have a huge list of communities that use different ways of using this Waste Recycling. In fact, I introduced legislation for construction, deconstruction for old buildings in these small towns. That all comes out of these. And when you have these grants, I think there was the Department of DEQ, \$1,140,000 in grants for waste reduction projects. And that kept Kimball and Wahoo and them that did some of the waste reduction with, more or less, material that was around the town, or wood biomass and deconstruction. And then you had grants that goes into the business fees. And then that's a whole list. There must be 25 or 30 or more. Creighton University purchased a brush chipper. They got \$24,000. G7 Innovations in Omaha got \$61,000 for waste collection events in ten communities around Nebraska. And it goes on and on. Keep Kimball Beautiful, and in Kimball they got \$16,000 for cost for a recycling center, public education, increased material accepted. Lincoln's Children Zoo, \$1,400 to increase recycling for staff and volunteers at the zoo. And we have all of these people nowadays and you go on to, in the disposal fees, the city of Kearney for the purchase of equipment to be used for compost. City of Omaha, city of Ravenna, you can go on through all of them and that's what these public areas get their money to do this with. And usually it isn't always fully funded grant money. A lot of it's at 50 percent. Then when you got into the tire recycling deal where they use this crumb rubber, and most of that was schools and they used it for playgrounds and some tracks and that sort of thing. I think Ceresco got 25 percent reimbursement of playground mats, \$12,000. That was 25 percent of it. So the other 75 percent they evidently paid it themselves. Aurora Public Schools, 25 percent reimbursement of athletic running track. And it goes on and I think here even to the Department of Roads, I think they put in about 17 miles of highway on 183 in Rock County, and got about \$228...or \$30,000 of money to do that. So the money is used all over and when I look at the bill, I'm wondering where are we going to get that money out of there and when we get that money out of there, who is going to be a loser? I know Senator Mello has assured me that there's money left over, but I can't believe that there's money left over from what I worked with these people when they asked for their

Floor Debate
March 29, 2012

grants and they usually are awarded a certain percentage. [LB731]

SENATOR COASH: One minute. [LB731]

SENATOR LOUDEN: In my understanding is that that percentage is usually divided up among the grants and that's how it's figured out. There usually isn't that much money left over every year. And then when we come up with this bill and they were going to use 10 percent of it for administration, now I'm wondering, gee-whiz, we already have people that are doing this and volunteering, and now why should we start in a project that's going to have to have a cost of administration? That was part of the reason I voted against the bill in committee. It's probably a good idea, but at the present time I don't see...it hasn't been clearly stated to me that how this was going to be paid for without taking money from somebody else and I've worked several years on these things. I think when Senator Preister was here, he and I went around and around on this tire stuff because he always wanted to get rid of that tire recycling deal... [LB731]

SENATOR COASH: Time, Senator. [LB731]

SENATOR LOUDEN: ...because he didn't there was any tires left. Thank you, Mr. President. [LB731]

SENATOR COASH: Thank you, Senator Louden. Senator Wightman, you're recognized. [LB731]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Lexington was mentioned earlier as one of the groups that had written. I think it was Senator Fischer. That is true. They've also written me, the Keep Lexington Beautiful group. They are very concerned over the use of these funds for private individuals or companies. They think that they will be in direct competition for these funds with the various Keep America Beautiful affiliates. They are performing a tremendous function out in our area. They, as Senator Hadley indicated about the Kearney group, have received awards. But they just believe that it is going to pretty much annihilate this fund. In addition to that, you know, to put them on a footing with the credits that are proposed also in LB731, they are very much opposed to it. So I do urge your vote in opposition to AM2534 and AM2151 and also to the underlying bill, LB731. Thank you, Mr. President. [LB731]

SENATOR COASH: Thank you, Senator Wightman. Senator Mello, you're recognized. [LB731]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, to once again try to refute, I guess, objections, whether they're opinions or facts, we'll debate those. One, a nonprofit entity or a city would want to partner with a business, Senator Hadley, because that's what we tell them we want them to do. Whether it's your tax

Floor Debate
March 29, 2012

credit bill or your tax incentive bill or whether or not, we discussed last night, occupation taxes, we ultimately want to see public-private partnerships. And for a nonprofit entity such as Keep Nebraska Beautiful to sit down, let's say, in Lexington and discuss a tax credit that would be available to a business if they recycled more, that would be a partnership and a relationship that gets created between that Keep Lexington Beautiful and that business. Now as someone who's worked in fund-raising for nonprofits and I sit on numerous nonprofit boards, I know that nonprofits like to establish a relationship with for-profit companies because ultimately they can apply for grants that company may give or they may be able to raise money from that entity. So to establish a symbiotic relationship between a for-profit company and a nonprofit entity by trying to encourage them to not only apply for a tax credit but at the end of the day reduce the amount of waste they're putting in the landfill, which reduces all of the property taxes that all of us are paying to our cities to cover the costs of landfills, I see that as a win-win-win. So hopefully that answers or addresses Senator Hadley's concern of why would cities or nonprofits even want to do this, because I would argue that they're already doing it now. The city of Kearney no doubt, through the recycling program that they have, they're partnering with businesses, trying to encourage businesses to reduce the waste that they're putting in the local landfill. Why? Because it costs the city more money to do that. And ultimately, if there's a way to incentivize more businesses to do it by having them apply for a \$1,000, a \$5,000, whatever the tax credit is, up to \$25,000, that's the same kind of incentive approach that I've heard other colleagues on this floor, not just Senator Hadley. I don't want to pick on him because he does a lot of tax credit or tax incentive bills, but I've heard senators talk about doing tax credits or tax incentives to incentivize multiple kinds of behavior, sometimes to the detriment of municipalities. So it's ironic that those who oppose this are standing up saying how terrible it is for those entities who are applying for this money, but we do this all the time but we just utilize General Fund dollars, colleagues. To Senator Loudon's point, I tried to...me and him discussed briefly and that's why I created this handout specifically because Senator Loudon brought this issue up to me. He doesn't...he didn't see how organizations wouldn't be affected by this. I guess if we don't want to see competition in grant programs that is provided by the state, I would buy that premise. But I can't see any of us in this body going back to our communities saying, we don't want to see a competitive grant process when it comes to DEQ and recycling grants. We want to see that money go exclusively only to a handful of organizations, a handful of cities because that's the way we like it. We don't want to see competition. We don't want to see innovation. We don't want to see new ideas brought forward by whether it's the city of Plattsmouth or whether it's Keep Alliance Beautiful. We don't want to see new ideas. If they're getting money now, they're the only ones who can get money. Colleagues, I've heard that argument, the complete opposite, from many of you on other bills. So I think to answer Senator Loudon's question, businesses who apply for grants now won't be able to apply for grants and a tax credit. They can apply for one or the other. Ideally, more businesses will apply for this tax credit than they're applying for grants because the only businesses that are applying for grants now are recycling companies, recycling

Floor Debate
March 29, 2012

companies who are applying for grants to get new machinery. Now, granted, they support this tax credit even though they are the ones who are applying for the grants because they see the benefit of getting more Nebraska businesses to engage in recycling. [LB731]

SENATOR COASH: One minute. [LB731]

SENATOR MELLO: Colleagues, to answer that question, that is who is taking the hit, quote, unquote. I've tried to explain this to Keep Nebraska Beautiful and their affiliates that I don't see why they should be treated any different than anyone else who applies for a grant. If their program is good, if they're accomplishing goals that they say they're going to accomplish, they can apply for a grant next year or when their grant cycle runs out and show the results they produced. But to hear Senator Fischer and Senator Loudon, Hadley describe that we shouldn't be instituting more competition in the marketplace, it's a bit befuddling to say the least because, as someone who participates in a Keep Omaha Beautiful program, they actually want to see more competition, no doubt like everyone else does. And that's fine. But they still want to see the same goal that we want to see in LB731 which they want to see more recycling, less litter, and they want to ultimately see taxpayers save more money in the landfills. [LB731]

SENATOR COASH: Time, Senator. [LB731]

SENATOR MELLO: Thank you, Mr. President. [LB731]

SENATOR COASH: Thank you, Senator Mello. Senator Campbell, you're recognized. [LB731]

SENATOR CAMPBELL: Thank you, Mr. President and colleagues. Would Senator Mello entertain a few questions? [LB731]

SENATOR COASH: Senator Mello, will you yield? [LB731]

SENATOR MELLO: Yes. [LB731]

SENATOR CAMPBELL: Senator Mello, I spoke to you off the mike and said I would particularly appreciate one more time explaining why the administration fee of \$100,000 a year is so high. [LB731]

SENATOR MELLO: Senator Campbell, once again, I think if everyone reads the fiscal note, the Department of Environmental Quality is a code agency, code agency that reports directly to the Governor, ultimately does not report directly to the Legislature. I, for myself, do not have the authority or power to dictate to DEQ of how much it would cost for them to create a new tax credit program even though it's a pilot program for a

Floor Debate
March 29, 2012

three-year period, of how much it would cost for them to do this. Simply, it's left up to the Department of Environmental Quality to give ballpark figures of what they think it costs them to do this. Our Legislative Fiscal Office verifies, checks, challenges sometimes. This was the number that DEQ threw out and LFO ultimately agreed with. [LB731]

SENATOR CAMPBELL: Who presently administers the program? [LB731]

SENATOR MELLO: Well, the tax credit program under LB731 is ultimately a new...it's a new concept. There is no existing income tax credit for recycling in the state. So DEQ has staff that oversees the grant programs, which those staff are financed and funded the same way the staff person would be financed and funded out of LB731, by the cash funds that are part of the Waste Reduction Fund as well as the Litter Reduction Fund. [LB731]

SENATOR CAMPBELL: And so at this point the current grant recipients...am I understanding you correctly, saying that some of them fear they would lose dollars through this new pilot? [LB731]

SENATOR MELLO: Ultimately, Senator Campbell, I've had this conversation multiple times with a few of these organizations. Ultimately, this program creates more competition and at the end of the day there's no other way to describe it, that this creates more competition within the utilization of cash funds. Nonprofit entities and even the city of Lincoln, though who said they'd come in neutral if we adopt AM2534, have described that they are fearful that they are going to lose potential to get grant funds they're getting now or it makes it more competitive for them to get grant funds in the future, competing against other entities when there may be, and I remind people, there may be less funds available based on how much funding comes in each year to these cash funds. [LB731]

SENATOR CAMPBELL: Thank you, Senator Mello. I appreciate the questions. And thank you, Mr. President. [LB731]

SENATOR COASH: Thank you, Senator Campbell. Senator Mello, seeing no other lights on, you are...Senator Mello. [LB731]

SENATOR MELLO: Mr. President, actually I had my light on. I'd actually like to use my third time, if possible still. [LB731]

SENATOR COASH: You've used your third time, Senator Mello. [LB731]

SENATOR MELLO: All right. Thank you. [LB731]

SENATOR COASH: So now you may close. [LB731]

Floor Debate
March 29, 2012

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Hopefully, through I think it was the last 40 minutes or so, maybe 50, I've been able to hopefully describe some of the challenges that we've overcome with AM2534 that was brought up by Keep Nebraska Beautiful and their affiliates. Unfortunately, I have a strange feeling that Senator Hadley, Senator Heidemann, Senator Fischer, others who have expressed concern about not wanting to see any grant funds used for administration, that's something I can't solve. Ultimately, that rests in the Department of Environmental Quality. I'm not the Governor. None of us are the Governor. He, Dave Heineman, is the Governor and he's the one ultimately who could help change that, as well as the director, Mike Linder, could change that. But ultimately what we have in front of us is the fiscal note that was provided to us by DEQ, verified by our Legislative Fiscal Office in regards to the administration of LB731. As Senator Cornett and myself mentioned, the Department of Revenue's fiscal note would change dramatically under this bill because other tax credits and tax incentive bills are currently in front of us that no doubt will pass, thus, being able to lump LB731 with other bills to lower the mainframe operation costs in the Department of Revenue with the CIO. I guess the main argument, so to speak, I've heard from the opponents tonight is that they feel that they don't want to see competition with Keep Nebraska Beautiful. And while there's been some arguments thrown out that why would...why do we want to only allow businesses to apply for tax credits, and ultimately we made changes to the bill, the committee did, to ensure that there wasn't transferable tax credits. I agreed to that committee amendment. I agree that we shouldn't do transferable tax credits after discussing this with Senator Cornett, the Revenue Committee staff, amongst other senators. Senator Schumacher helped us draft the committee amendment to make sure we tried to accomplish what the original intent of the bill still was. But I can't change senators' opinions or minds if they don't want to see competition within state-funded grant programs. I don't...it looks like I'm having a tough time changing senators' minds in regards to wanting to create a market-based approach to recycling. If we want to continue to provide grant-funded, government-funded-only recycling efforts, that's a policy discussion I guess we'll continue to have. But hearing conversations from multiple senators on this floor involving multiple bills over the last four years I've been here, I find it hard to swallow that people would be opposed to creating a market-based approach to encourage businesses in our state to partner with municipalities and/or nonprofits to incentivize them to recycle and, ultimately, not only help provide that business to save money, hopefully creating jobs in the process for them or creating jobs in the recycling industry as the Nebraska State Recycling Association has concurred, but it also saves taxpayers money as well--the same reason that we give grant funds out to nonprofit organizations and cities. This tax credit accomplishes the same goal that these other entities want to do--want to see less waste go into our municipal landfills. AM2534 accomplishes everything Keep Nebraska Beautiful wanted with the exception of two things. They wanted to raise taxes on businesses or they wanted us to use General Fund dollars. I did not want to do either one because, once again, there are other General Fund issues

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

Floor Debate
March 29, 2012

at stake and we're looking to do a short-term pilot project, something to measure whether or not this is an innovative way to incentivize businesses to do something that, frankly, they're not doing enough of in Nebraska, which is why you see a letter from the Omaha Chamber of Commerce. This is a tax credit that can go to a business to encourage a business to do something that saves taxpayers money... [LB731]

SENATOR COASH: One minute. [LB731]

SENATOR MELLO: ...but also creates jobs. I don't want to list all of the other pieces of legislation we have out there that has something very similar, colleagues--creates jobs, save taxpayer money. Colleagues, I'd urge you to adopt AM2534 in the sense that this is a compromise. It is the best compromise that was created because it was everything the opponents who oppose this bill gave us with the exception at the last minute of them wanting to increase taxes, which I know I didn't want to do and I know this body doesn't want to do when it comes to the waste reduction and litter reduction fee. I urge the body to adopt AM2534. Mr. President, I'd like a call of the house and a roll call vote in regular order. Thank you. [LB731]

SENATOR COASH: Thank you, Senator Mello. There has been a request for a call of the house. The question before the body is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB731]

CLERK: 31 ayes, 1 nay to place the house under call, Mr. President. [LB731]

SENATOR COASH: The house is under call. Colleagues, please record your presence. All unexcused senators please return to the floor and record your presence. The house is under call. Senator Wightman, check in. Senator Bloomfield, please check in. Senator Lautenbaugh, please return to the Chamber. The house is under call. Mr. Clerk, there has been a request for a roll call vote. Please read the roll. [LB731]

CLERK: (Roll call vote taken, Legislative Journal page 1238.) 13 ayes, 16 nays, Mr. President, on the amendment. [LB731]

SENATOR COASH: AM2534 is not adopted. Raise the call. We will stand at ease. Mr. Clerk. [LB731]

CLERK: Mr. President, Senator Mello would ask for unanimous consent to bracket LB731 until April 12 of 2012. [LB731]

SENATOR COASH: Without objection, so ordered. Items, Mr. Clerk? [LB731]

CLERK: Yes, Mr. President, I do. I have an amendment to be printed, Senator Bloomfield to LB1049. Name adds: Senator Larson and Schilz to LB806; Senator Price

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

Floor Debate
March 29, 2012

to LB670; Senator Schilz to LB670; Senator Haar to LB731. (Legislative Journal pages 1238-1239.) [LB1049 LB806 LB670 LB731]

And I have a priority motion, Mr. President. Senator Flood would move to adjourn the body until Friday, March 30, at 8:00 a.m.

SENATOR COASH: Members, you've heard the motion to adjourn until tomorrow at 8:00 a.m. All those in favor say aye. Those opposed say nay. We are adjourned.