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Floor Debate  
November 16, 2011

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[LB1A LB1 LB4A LB4 LR24 LR25 LR26 LR27 LR28 LR29 LR37]

SENATOR GLOOR PRESIDING

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

SENATOR HARMS: (Prayer offered.)

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

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, your Committee on Enrollment and Review reports LB2 to Select File, and LB1 to Select File. I have an amendment to LB1 by Senator Schumacher to be printed. And a new resolution: Senator Flood offers LR24; Senator Brasch, LR25; Senator Larson, LR26 and LR27. All of those will be laid over at this time, Mr. President. That's all that I have. (Legislative Journal pages 87-90.) [LB2 LB1 LR24 LR25 LR26 LR27]

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

CLERK: Mr. President, LB4, a bill by Senator Langemeier. (Read title.) The bill was introduced on November 2, referred to the Natural Resources Committee, advanced to General File. It was discussed earlier this week. When the Legislature left the issue, Senator Langemeier had Natural Resources Committee amendments pending and there was an amendment by Senator Dubas to the committee amendments that was pending. (AM13, Legislative Journal page 68.) [LB4]

SENATOR GLOOR: Senator Langemeier, you are recognized to review LB4 for the body and lead us back into discussion. [LB4]

SENATOR LANGEMEIER: Mr. President and members of the body, I bring you back to

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AM13 offered by the Natural Resources Committee. It is the exemption for the current Keystone XL pipeline from LB4, and we'd ask for your adoption. [LB4]

SENATOR GLOOR: Mr. Clerk. [LB4]

CLERK: Mr. President, in that case, Senator Dubas, I have pending your AM14 as an amendment to the committee amendments. [LB4]

SENATOR GLOOR: Senator Dubas. [LB4]

SENATOR DUBAS: I'd like to pull that amendment, please. [LB4]

SENATOR GLOOR: So ordered. Withdrawn. [LB4]

CLERK: Mr. President, the next amendment to the committee amendments: Senator Fulton. [LB4]

SENATOR GLOOR: Senator Fulton, you're recognized. [LB4]

SENATOR FULTON: I would like to withdraw that amendment. [LB4]

SENATOR GLOOR: So ordered. Mr. Clerk. [LB4]

CLERK: Mr. President, I now have a series of amendments from Senator Lautenbaugh. [LB4]

SENATOR GLOOR: Senator Lautenbaugh, you are recognized. [LB4]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I would like to withdraw those amendments. [LB4]

SENATOR GLOOR: So ordered. [LB4]

CLERK: Senator, can I assume all of them? Senator Lautenbaugh? [LB4]

SENATOR LAUTENBAUGH: Yes, Mr. Clerk. [LB4]

CLERK: Thank you. Mr. President, I then...Senator Mello, next amendment is yours, Senator, but I have a note you want to withdraw as well. [LB4]

SENATOR MELLO: Yes, Mr. President, I'd like to withdraw my amendment. [LB4]

SENATOR GLOOR: So ordered. [LB4]

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CLERK: And, Mr. President, the next amendment I have is by Senator Flood, AM37. (Legislative Journal page 73.) [LB4]

SENATOR GLOOR: Senator Flood, you're recognized. [LB4]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. This is the amendment that I filed on Monday afternoon that we talked about as it relates to LB4. This amendment had a public hearing yesterday before the Natural Resources Committee, and it would strike and replace the committee amendment. Section 1 of AM37 makes certain legislative findings that you'll see there. Section 2 has definitions for a department, oil pipeline, and pipeline carrier. Section 3 of AM37 is the operative provision of the amendment. Section (1) provides express authorization for the DEQ to collaborate with any federal agency or agencies in a review under NEPA involving supplemental EIS statements for oil pipelines in Nebraska. It provides that in these circumstances the department shall enter into a memorandum of understanding with the federal agency or agencies that sets forth the responsibilities and schedules that will lead to an effective and timely review under NEPA involving an SEIS. Subsection (2) provides that it is the intent of the Legislature that the state fully fund the process of preparation, the supplemental EIS, and that no fees will be required of the applicant. And here, as I stated yesterday, it is my intent that the state fully fund the state process of preparing an SEIS. The state would pay for DEQ costs, including the cost of any vendors hired by the agency for their expertise in this area. Also this subsection clarifies that the department shall make every reasonable effort to ensure that each vendor has no conflict of interest to any pipeline carrier that applies for an oil pipeline permit. Section (3) waives the competitive bidding requirements in Section 73-301 to 73-306 or 73-501 to 73-509, and this was done in order to give DEQ the ability to perform such extensive undertakings in an expedited manner. Finally, subsection (4) provides that after the SEIS is prepared, the department submits it to the Governor, who then within 30 days shall indicate in writing to the federal agency or agencies involved in the review as to whether he or she approves of the routes reviewed in the SEIS. Sections 4-6 harmonize existing statutes. Section 7 adds the emergency clause. As it relates to AM37, I want to make one point that I think has been one of the issues related to this proposal, and that is, why would the state of Nebraska pay for a supplemental EIS? And when I thought about this, my thought was, you know, living close to the Sandhills and routinely running into folks from Holt County, one of the primary objections through this entire process has been the practice of assessing costs for hearings or gymnasium rentals for hearings or the actual FEIS back to the applicant; in this case, TransCanada. And I felt that you can remove a lot of that concern by citizens of this state by having the state pay for it, to ensure the citizens that this is a straightforward, fair process, and that report only belongs to the taxpayers of Nebraska. That was my interest. That was not something that was ever bartered with TransCanada about. I clearly said that I felt this was in the best interests of our state, and if it's important enough to do on behalf of our

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citizens, it's important enough to pay for, and that's why it's in the amendment that way. Thank you, Mr. President. [LB4]

SENATOR GLOOR Thank you, Senator Flood. Members, you have heard the opening on AM37. We now move to discussion. Senator Krist, you are recognized. [LB4]

SENATOR KRIST I stood here yesterday talking about the ability of the Speaker to write checks. And I've read thoroughly through what I think the intent and what the outcome will be of AM37 to AM13, AM13, and LB4, and I stand in total support of all of these items. I want to simply philosophically say that I think this is...it's an overused phrase: the Nebraska way. But it is the Nebraska way to do what needs to be done and to protect our environs and to protect our citizens, and it's the right thing to do. I think this is in total opposition with what many of you may have read in the Los Angeles Times yesterday as a statement that was made by Jane Kleeb. I think she came to us, many of us, under false pretense to say that she was trying to protect our sacred environs, our fragile Sandhills. And, in fact, what she has done...let me just read you the quote. "This is kind of their last Hail Mary to get their project approved. This is not them finally coming to their senses," Kleeb said of TransCanada's announcement. "On the federal level, we are still standing shoulder to shoulder with those who do not want to see this pipeline permit approved." You have spent your last political dime and your political influence in the state of Nebraska, at least where this senator is concerned, Ms. Kleeb. We will try to protect in the geopolitical sense this country from having to defend its rights for foreign oil and try to keep the pipelines flowing in North America to keep our interests here in the best way we can. So again please vote in support of AM37 to AM13 and LB4. Thank you. [LB4]

SENATOR GLOOR: Thank you, Senator Krist. The Chair recognizes Senator Sullivan. [LB4]

SENATOR SULLIVAN: Thank you, Mr. President. I stand in support of AM37. I do have a couple of questions though. And, first of all, I wonder if Speaker Flood would yield for a question. [LB4]

SENATOR GLOOR: Senator Flood, would you yield? [LB4]

SPEAKER FLOOD: Yes. [LB4]

SENATOR SULLIVAN: Thank you, Senator Flood. You've indicated that the state will pay for the state's portion of this supplemental EIS. I guess the only question--you kind of emphasized the state's portion. Is the federal government going to be involved at all in this supplemental EIS, or will they simply defer to Nebraska's work on the supplemental? [LB4]

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SPEAKER FLOOD: Well, I think most of that is worked out in an memorandum of understanding between the federal agencies and the state agency. But there will be a collaborative process. When the state of Montana decided to work on an alternate route called the Baker Alternative in southwestern lower Montana, they cooperatively worked with the federal government and conducted a supplemental EIS study. And I believe, done right, those two agencies and those two, the state and federal government, work hand in hand to complete the environmental review. So it would be a cooperative process. [LB4]

SENATOR SULLIVAN: Very good. Thank you. And also you...what about the...since we're now looking at a new route and easements, some easements, at least through the Sandhills, have been signed by landowners. What happens to those and what happens to the payments that have already been made to landowners? [LB4]

SPEAKER FLOOD: Well, now I don't speak for TransCanada. I did hear Mr. Alex Pourbaix in the Rotunda on Monday night say that that was part of the risk taken by the company when they entered into those easements, and that, you know, I got the impression they would not be paying the money back but that an easement still exists on the ground. I would think that those landowners would want to make contact with the company and arrive at a mutually agreeable solution if they want the easement removed. But I'm not in any position to represent what the company's position is on that. [LB4]

SENATOR SULLIVAN: Thank you, Senator Flood. I also have a couple of questions if Senator Langemeier would yield. [LB4]

SENATOR GLOOR: Senator Langemeier, would you yield? [LB4]

SENATOR LANGEMEIER: I will. [LB4]

SENATOR SULLIVAN: Thank you, Senator. I focus you on these questions because you've had more contact with utilities. We've got transmission lines that were...actually the process was started for them for some of these pumping stations. Do you have any idea of what happens to those easements, and particularly with the work that NPPD has already done on these projects, will they be reimbursed for those--that work? [LB4]

SENATOR LANGEMEIER: As we handle these type of projects in Nebraska, public power has a contract with TransCanada to build those infrastructures up to their needs, and that is payable by TransCanada. Now that the line is not going through, it would be my anticipated result would be TransCanada is still obligated to pay for the infrastructure that was specifically for their needs. Now if Nebraska Public Power upgraded a transmission line that has mutual benefit to them and their ratepayers and their customers, I don't think they'll have an ability to bill that whole amount back to

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TransCanada. They will have to...that will be part of their infrastructure cost. [LB4]

SENATOR SULLIVAN: And going forward I know that this perhaps is not a question you can answer but it's probably safe to say, is it that with this route being lengthened, there probably will be certainly a change in where this pumping station is located and also maybe even an additional one? [LB4]

SENATOR LANGEMEIER: Well, we'll have to see what the route looks like. As TransCanada has said, and I can't speak for them, but most of the pumping stations, if you look at the map, are about every 50 miles. So any time you add length that becomes an issue. [LB4]

SENATOR SULLIVAN: Thank you, both senators, for their answers to my questions. And as I said earlier, I stand in strong support of AM37. [LB4]

SENATOR GLOOR: Thank you, Senator Sullivan. The Chair recognizes Senator Conrad. [LB4]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I was hoping that Speaker Flood may be available to answer some questions in relation to his amendment. [LB4]

SENATOR GLOOR: Senator Flood, would you yield for a question from Senator Conrad? [LB4]

SPEAKER FLOOD: Yes. [LB4]

SENATOR CONRAD: Thank you, Senator Flood. I've received a variety of questions from my constituents, and I think we're all trying to digest some of the substantive nature of the proposal that is before us. And again, while I remain hopeful, I think that the record needs to reflect some of the reasoning behind how we arrived at some of these decisions. And, in particular, I want to talk about the costs associated with this proposal. And you touched upon it a bit in your opening in regards to the decision that the state pay for this process so that we could, I believe your objective is, have a free and clear process that is absent any sort of undue influence or a conflict of interest. But I was wondering really how you developed this model, because it seems unique to me under Nebraska law. [LB4]

SPEAKER FLOOD: Well, it is unique in that I think in most every other situation like this the costs associated with the supplemental EIS or any environmental review would be assessed to the applicant, and the applicant would pay those costs. And the reason I did this is I didn't want there to be any question among our citizens as to who this report belongs to and who the customer is. And living close to Holt County, I'll tell you, when

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they had the hearing up there, people were incensed that at the end of the day the bill for the rental of the gymnasium went to TransCanada, and folks didn't like the idea that the applicant was paying for those things. And I wanted a process that we could all be proud of and that could be free of any perceived conflicts or influence, and I thought this was the fastest way to do it. Nobody had this idea but me, but I was trying to design a process that would be as clean as possible and as free of undue influence or perceived undue influence as possible so that when the report is issued, we know that as the customers of the vendor we get the most reliable information. [LB4]

SENATOR CONRAD: Well, thank you for expanding on that reasoning and response, and I'm just thinking as we work through these different issues, there's a variety of existing models that work in Nebraska law which have never been challenged in terms of a potential conflict or an unfair process where the applicant or the licensee is, in fact, assessed for those costs. I'm thinking of rate cases maybe at the Public Service Commission, for example; or even a very common example, when litigants pay court costs in the judicial system. We have a variety of models that exist where fees are assessed against those who are seeking the decision--a barber's license or a nurse's license, for example. Those applicants are assessed those fees to work through the process. And so it seems a little inequitable to me that we're waiving those kind of existing models that have worked well and have worked free of any sort of conflict or undue influence for a large company, in particular, when we assess those exact kind of fees against our citizens when they're seeking a right or an applicant or a privilege. [LB4]

SPEAKER FLOOD: Would you like me to respond to that? [LB4]

SENATOR CONRAD: Yes, please. [LB4]

SPEAKER FLOOD: You know, in this situation I think it's important to put this issue in context. The Office of the Inspector General in the State Department is currently conducting an investigation related to the relationship between the lobbyists of TransCanada and the State Department,... [LB4]

SENATOR CONRAD: Yes. [LB4]

SPEAKER FLOOD: ...and then there's the question about the company that did the final environmental impact statement. And I just didn't want us...I make no representation about what happened, but I will say that I think our citizens are paying... [LB4]

SENATOR GLOOR: One minute. [LB4]

SPEAKER FLOOD: ...close attention and that's been part of the discussion, and I felt like if this was important enough to do, it was important enough to pay for, so that we

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ensure that we get the best possible environmental impact statement product that we can. And so I do think this is a special situation in these types of situations, and this should be treated differently. [LB4]

SENATOR CONRAD: Thank you, Senator. And I may hit my light again if it seems that we ran out of time. But I think it is an important discussion because there are a lot of concerns and questions swirling around the fiscal impact of this decision. And based on that last answer, it provokes additional concern in my mind that if we're providing a special process for this one instance, does that indeed not wander into the area of potentially special legislation, which I think we all want to avoid? And I'm happy to work with you and others as we move this process forward, but... [LB4]

SENATOR GLOOR: Time, Senator. [LB4]

SENATOR CONRAD: Thank you, Mr. President. [LB4]

SENATOR GLOOR: Thank you, Senator Conrad. The Chair recognizes Senator Schilz. [LB4]

SENATOR SCHILZ: Thank you, Mr. President, and good morning, members of the body. I have to be honest with you that I was wondering if we would ever come to a point where we could find something that I could support going forward. This issue has been like none other that I've ever dealt with in the fact that it's had so many twists and turns like a roller coaster--but here we are. I am in support of AM37 to AM13 on LB4. I think it bodes well for us going forward that this is a process that lines out how things should be, what we need to look at, and who has the responsibility and the authority to do it. To give the Department of Environmental Quality this task for this process makes sense. So we all have to remember what's at stake. Obviously there's jobs, tax revenue. Let's not forget Nebraska's integrity as we move forward with dealings with companies and people. Our integrity is hugely important. And, of course, there's Nebraska's environment that we all must protect and conserve and yet be able to utilize to make our economy work. Make no bones about it, this project is critical to the economy of Nebraska and critical to the economy of the United States, not to mention our national security. We need to move forward quickly to make sure that we expedite the process so that we and TransCanada and everybody that's going to rely on that business can get moving forward with their business. I hope we move forward today in voting to put AM37 into LB4 and move forward and find the solutions to this process. Thank you very much. [LB4]

SENATOR GLOOR: Thank you, Senator. Senator Avery, you are recognized. [LB4]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. I am in support of AM37. I believe it's absolutely necessary. What it does, it deals...the most

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conspicuous part of AM37--I've read it a couple times now--is the part where the state takes responsibility for the funding of the SEIS. As unpleasant as this might be, it is necessary. I think Speaker Flood is right that we need to have an SEIS process that is completely credible, free of the very appearance of conflicts of interest. In everything that we do in this body, we have to make sure that the way we do it is perceived by the public to be legitimate; that is to say, the way we do things has to be seen as right and proper. When the voters, when citizens believe that we are conducting our business in a manner that is right and proper, they will then believe in the product. They may not necessarily like the outcome. They may not necessarily like the laws we pass--certainly not all of them. But if they believe that the way we got there is right and proper--that is to say, legitimate--then they will accept that product. And I believe this: it falls into this category. Remember that the current federal environmental impact study was profoundly deficient and it was roundly criticized, and I criticized it frequently and even referred to it as being irreparably compromised by the fact that TransCanada played such a heavy role in selecting the company that would actually conduct the study. That was not considered right and proper, and because it was not considered right and proper, the outcome--that is, the product that was produced--was not accepted by a great many people. So I think that what we are proposing here in AM37 is a way to insulate our process from the criticisms that we might receive were we to do it in a manner that allowed TransCanada to pay for it. So this is not pleasant. I don't want to spend millions of dollars on this. But it is necessary expenditures and I think the Governor made this clear in his news conference yesterday that we are prepared to do this because it is the right thing to do. We need to make sure that the citizens of this state understand that what we are doing here is above reproach, it is completely transparent, and it is something we control and TransCanada does not have an opportunity to contaminate the process. It's legitimate and the result will be accepted by the voters. So I urge you to support AM37 as something we must do. Thank you. [LB4]

SENATOR GLOOR: Thank you, Senator Avery. Senator Flood, you are recognized.  
[LB4]

SPEAKER FLOOD: Thank you, Mr. President and members. I want to continue our discussion just a little bit on why the amendment has in there a provision that the state would fully fund the state's portion of the EIS. I think that our proximity or our location in the country logistically is going to make us a prime target for continued infrastructure projects. There's a reason we have major trucking companies located in Nebraska, because we can fan out to any part of the country and deliver products and goods and help in interstate commerce. For the same reason that we have large trucking companies located in Nebraska, we also have more interstate infrastructure for energy probably than a lot of other states. And I think this process that we're setting up here through AM37 has value not just in this situation but down the road. What if in seven years we have another situation where the FEIS is finalized and the citizens say they're not happy with it, and we've gone through our siting process? Or as part of the siting

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process, there's an interest to have a supplemental EIS done? I think this language will allow us the flexibility to do what we think is right, and a subsequent Legislature can tweak it if they want. But this is setting up a process that I think will assist Nebraska into the future, most notably with the situation we currently face with the supplemental EIS as it relates to the TransCanada Keystone XL pipeline through Nebraska. And, you know, when I was thinking about what the right course of action was from a policy standpoint, I could just hear the lack of enthusiasm and the concern from our citizens if the applicant in one of these situations would be required to pay or be assessed the cost to pay for a supplemental EIS. I don't know if, you know, in Omaha and Lincoln you might not hear as much about it, but when you live in rural parts of Nebraska and somebody finds out the check to the Atkinson High School came from TransCanada, they had some automatic concerns that had been voiced to the members of the Legislature, especially in rural areas. I want the best result and I want the most reliable information. I want a process that's run by Nebraskans, for Nebraskans, for our groundwater, our drinking water, our people. The fiscal note says this is a \$2 million endeavor as it relates to the upcoming issue with the SEIS on the Keystone XL. I filed that amendment to LB4A. You can see that on your gadget. I would hope that as part of this discussion you get a chance to look at that. And I would encourage you to adopt AM37 and ultimately move LB4. Thank you, Mr. President. [LB4 LB4A]

SENATOR GLOOR: Thank you, Senator Flood. Senators in the speaking queue: Harms, Fulton, Loudon, Wightman, and Ken Haar. Senator Harms, you're recognized. [LB4]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of LB4, AM13, and AM37. You know, as we got into this process and I began to watch it and I read as much as I could that was given to me, I looked at a lot of the legal opinions both for and both against. But what popped in my mind constantly as I began to track these things down was, who paid for the review? Who paid for the study? Who's involved behind the scenes to bring this thing forward? And I guess what always concerned me and bothered me was the fact that when I saw that the pipeline company was financing it, I automatically just put a block in my mind and said: I don't know if I can trust this information. They have a purpose. They're a company; they're interested in their bottom line. And I always had some question: Were they really interested in our aquifer and what Nebraska people feel? I believe they've shown that through this process recently, and I think what Senator Flood has done to me is an amazing accomplishment. He brought all the right people to the table, and it's clear that at least we have a focus for the first time in this kind of legislation and that's important to us. It's transparent. The taxpayers could at least see that. And, quite frankly, as a senator, I would want to own that study. I want to know that it's transparent. I want to know that that belongs to us and that all of us have the right reason to move this legislation forward, and whatever it costs us, it is worth it for us and the taxpayers. Because, quite honestly, when you walk out of this Chamber you can at least proudly say we've accomplished what we've set

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out to do. That would not have been possible when you look at the past legislation without these amendments. And so I would urge you to set aside whatever your issues might very well be. Have your discussions, but understand that the taxpayers want transparency, and we would make a tragic error if we don't own this study regardless of what it costs. Thank you, Mr. President. [LB4]

SENATOR GLOOR: Thank you, Senator Harms. The Chair recognizes Senator Fulton. [LB4]

SENATOR FULTON: Thank you, Mr. President and members of the body. I didn't know that Senator Harms was going to say that which he said, so I'm going to be echoing a little bit what he said. This is...there is some import here that the state take responsibility for this study, and that has to do I think with the way this has landed in Nebraska's lap. The way it's been handled, at least from the aspect of the State Department, with all due respect to the State Department, it did not pass the smell test. And I'm concerned that as more and more information comes to light and more and more eyes are set on what has transpired as to how the original EIS came to be, how it was funded, how it was conducted, etcetera, it will be important that Nebraska is speaking for Nebraska when we conduct this study. And so I do think it's appropriate that we pay for this study. Now the amount--when I heard the term, the number \$5 million at one point, there's just no way. We don't have to go back and reinvent the wheel. The Department of Environmental Quality does not have to go back and start studying the entomology of Nebraska and the topography and the geology. They don't have to go back and reinvent the wheel. The information that has been apprehended has been done so over the course of some years. What I questioned was the objectivity of a decision that came from that information, but the information itself is not corrupt. And so to think that we have to go and reinvent it, we're not going back to conduct an entire study. There can be information gleaned from those studies previous. It's just that it will be controlled by DEQ. The volition and judgment of Nebraskans will be driving the bus, if you will. So this fiscal note filed: \$2 million, much better. It should not exceed \$2 million. I have seen environmental studies conducted in a previous life which were much less than this. So \$2 million probably is even a little bit high. But it is an amount of money that I think we should be able to live with in order to allow Nebraska to take control over that which we had concern about in the first place, and that is our natural resources. So I thank Speaker Flood for pulling this off, and we have on our gadget now that amended fiscal note so Nebraskans can at least understand the "not to exceed" number, which is \$2 million. Thank you, Mr. President. [LB4]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Louden, you are recognized. [LB4]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I agree I think this is a step in the right direction and we're proceeding with something that really

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needs to be done. What I would like to ask, and I see Senator Flood isn't on the floor, but as I look on page 3 of this and it is the intent of the Legislature to fully fund the process of preparation and that sort of thing, impact statements, for an applicant. I guess my question is, and I would ask this if Senator Flood would yield for a question. [LB4]

SENATOR GLOOR: Senator Flood, would you yield? [LB4]

SPEAKER FLOOD: Yes. [LB4]

SENATOR LOUDEN: On the page 4, as I've just pointed out, will this also affect future pipelines? In other words, as we've seen in the media, there's already questions about if this pipeline wasn't going to go very soon that there would be competing pipelines put in. Will this same wording also work for future pipelines that if some other pipeline wants to put one across Nebraska, we would still go ahead and do our own environmental impact statement and pay for it ourselves? [LB4]

SPEAKER FLOOD: Well, you know, the short answer is yes. It's important to note that with my amendment here, AM37, this is a "may" authorize. It doesn't require the Department of Environmental Quality to get into a supplemental EIS process with every pipeline applicant. It does provide another opportunity for the state to engage on the federal process if this situation ever arises again or we see the benefit of preparing a supplemental EIS. So it can be used again and may be used again, but it will...it's not a mandatory. And it also says that it's only effective after the memorandum of understanding is executed between the federal agencies and the state. [LB4]

SENATOR LOUDEN: Okay. Thank you. Because that was my concern, because I feel that with the development that's going on up there in North Dakota and Montana...right now, we've always been talking about the tar sands in Alberta. But I think we'll probably see more oil coming out of actually in the United States than we have been, and there certainly is going to be some more pipelines built across Nebraska, whether it be across the western part or where they will come across. But I would envision that in the future that this oil will be moved by pipelines and it will probably come across Nebraska. Thank you, Mr. President. [LB4]

SENATOR GLOOR: Thank you, Senator Louden. Senator Wightman, you are recognized. [LB4]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. I rise in support of AM37 to AM13 and also to LB4 as it will be amended. With that said, I would want to say that I agree with what Senator Schilz said earlier, that this is important to Nebraska that this pipeline be built. It's important to the United States. It's important to providing for our own oil among...that we would be buying from friendlier nations that we

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may otherwise be buying from. So I do think it's extremely important. With that, if Senator Langemeier would yield, I have a few questions I might ask him. [LB4]

SENATOR GLOOR: Senator Langemeier, will you yield? [LB4]

SENATOR LANGEMEIER: I will. [LB4]

SENATOR WIGHTMAN: Senator Langemeier, I know off the mike I've talked to you with regard to this, and I think you have some familiarity with the contents of the easements that have been purchased. Is that correct? [LB4]

SENATOR LANGEMEIER: I do. [LB4]

SENATOR WIGHTMAN: Can you tell me what happens to the easement unless the owner and the TransCanada pipeline arrive at some agreement that the money is paid back? What would happen to it in your opinion, do you know? [LB4]

SENATOR LANGEMEIER: Well, first of all, there's two easements that go with each. And first, the first one was a temporary easement, and those were much wider. That was to allow the dirt to be laid over to the side and put the pipe in. And then the second easement is a permanent easement. So that temporary easement, if construction doesn't start, I believe it's five years, that temporary easement ceases to exist. The permanent easement actually where the pipeline is, in most cases I think it was 50 feet wide; that is a perpetual easement that will last forever, unless you can work out a deal with TransCanada to sell it back or buy it back from them. [LB4]

SENATOR WIGHTMAN: So that would depend upon some agreement that the grantor of the easement and TransCanada might work out, but otherwise it's permanent. [LB4]

SENATOR LANGEMEIER: Exactly. [LB4]

SENATOR WIGHTMAN: Now...and it's...is it specific to this particular pipeline that was going to be built? [LB4]

SENATOR LANGEMEIER: No. Those easements are specific to an oil pipeline, not particularly this one. [LB4]

SENATOR WIGHTMAN: And having said that, then would you believe this to be assignable to another company who might want to build a pipeline for...I assume it would have to be for oil transport. Is that correct? [LB4]

SENATOR LANGEMEIER: Yeah. An easement has a value and it is real property once you have an easement and you could market those to someone else that wanted to use

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it for the same purpose, if you could find somebody. [LB4]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. I just thought those issues should be at least discussed on the floor. Thank you, Mr. President. [LB4]

SENATOR GLOOR: Thank you, Senator Wightman. Senator Ken Haar, you are recognized. [LB4]

SENATOR HAAR: Mr. President, members of the body, I rise in support of AM37 to AM13. I've been a critic all along of what I consider a conflict of interest in the way the federal government produced its final environmental impact statement--its FEIS. It's legal, but I think it's wrong. And in this case, the federal government, the State Department, went to TransCanada to the pipeline they were going to study, and asked: Who should we hire as our independent consultant? Not illegal. In fact, it's done in many cases. But I think it's wrong. And the top person recommended to the State Department was a company by the name of Cardno ENTRIX. Well, they also did the environmental study for TransCanada. Again, nothing illegal, but I think it's wrong. And so I support AM37 to AM13 because in this process now with TransCanada they've said they're going to move the pipeline, and we're basically saying we trust what you're going to do. We're going to do the environmental study but we're going to trust what you do. So I think the whole issue of transparency and fairness has to be very crystal-clear to the people of the state of Nebraska. I think it's worth...I think it's worth the expenditure. And in terms of the conflict of interest, again it's got to be very clear that in this case there is an independent environmental analysis. It just can't be somebody recommended by the pipeline company to the people who are going to oversee the process. So again, I rise in support of AM37 to AM13 and also in support of LB4. Thank you very much. [LB4]

SENATOR GLOOR: Thank you, Senator Haar. Senator Council, you are recognized. [LB4]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise first in support of the underlying purpose of AM37, but I do have a couple of questions as AM37 relates to LB1 which will be before this body for consideration. And if Speaker Flood would yield to a couple of questions? [LB4 LB1]

SENATOR GLOOR: Senator Flood, would you yield? [LB4]

SPEAKER FLOOD: Yes, I will. [LB4]

SENATOR COUNCIL: Speaker Flood, under LB1, the process for approving a permit to construct an oil pipeline in Nebraska will rest with the Public Service Commission. Is that correct? [LB4 LB1]

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SPEAKER FLOOD: That is correct. [LB4]

SENATOR COUNCIL: Now in the AM37, on page 4 (sic--3), it indicates that after the supplemental environmental impact statement is prepared, the Department of Environmental Quality shall submit it to the Governor, who will then indicate to the federal agency whether the Governor approves or disapproves of any of the routes that are reviewed in the environmental impact statement. My concern is the potential for conflict between a Public Service Commission determination as to the acceptability of a route and the process that's set forth in AM37. How is that to be reconciled? [LB4]

SPEAKER FLOOD: Well, I appreciate that, Senator Council. There are two very different processes here. Let's talk about a pipeline in the future, let's say five years from now. It goes through the bill that Senator Dubas is working on, LB1, and let's say the PSC authorizes the route, okay? And then something happens where the citizens of this state or the federal government says we really need to take the alternate route, for whatever reason. Maybe the state of Kansas wants us to come in at a different place or the state of South Dakota wants us to come in a different place. The state then, on its own, could elect to do a supplemental EIS and pay for it under LB4, as amended by AM37, and then certify that back, but it would also have to go through the siting process. I think this here allows us the opportunity for another bite at the apple in terms of allowing the department to do its own supplemental EIS and then communicate to the federal government that we're okay with this in the supplemental EIS. I mean, the federal government, at the end of the day, they want to hear from the state, but they make the final decision in this situation that we have with Keystone XL and the example that I have talked about in five years. They make the final decision. So, you know, it's possible that you could have routing certification on a certain route and that there's a supplemental. It gives the Governor the chance to say, I agree with the supplemental, this new route is okay. But it would have to work in...and then they'd probably have to go through and get the PSC. It's kind of like zoning. You know, if I wanted to put a gas station at the edge of Norfolk and I'm in the...you know, I'm outside of the city limits of Norfolk, I'd have to go to the county to get permission unless the city of Norfolk would take jurisdiction. I'd have to go to the state to get permission. I'd have to go to several state agencies probably to make sure I could put gas pumps in and tanks. This is another line of defense for the citizens to make sure that their Governor weighs in on a supplemental environmental impact statement. And I don't see them in conflict. I think it makes sure the applicant has to deal with every regulatory step that we require and this is another step that's available. And it also makes it permissive. The DEQ may say, well, the PSC has already done this so we're not going to enter into a memorandum of understanding because the PSC is on this. [LB4 LB1]

SENATOR COUNCIL: Okay. And I think that needed to be pointed out. [LB4]

SENATOR GLOOR: One minute. [LB4]

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SENATOR COUNCIL: And I appreciate your response and clarification, Mr. Speaker, but I still believe that the potential exists for a conflict and for an applicant who goes through the PSC approval process as set forth in LB1, then being subjected to having to go through the supplemental EIS. And if the supplemental EIS then recommends a different route, then that applicant has to go back through the PSC approval process as set forth in LB1. And perhaps that may be where we need to address it, in LB1, to put some language in LB1 that relates to a situation where a supplemental environmental impact statement is involved so that we can mesh these two pieces of legislation. [LB4 LB1]

SENATOR GLOOR: Time, Senator. [LB4]

SENATOR COUNCIL: Thank you. [LB4]

SENATOR GLOOR: Thank you, Senator Council. Senator Howard, you are recognized. [LB4]

SENATOR HOWARD: Thank you, Mr. President. I rise to support Speaker Flood's work on this bill, and I'll have to tell you that many of my neighbors have stopped me to say it's just amazing the progress that's been made on this. They hadn't expected this. They didn't realize we'd be moving in this direction. And I think this is quite remarkable. It speaks well of the body and it certainly speaks well of our Speaker. But there is another matter that I feel compelled to address while we're here together. For me, it's a matter of importance in the same way as could be described as not walking away from the shower. Uta Halee is closing. This is going to leave...this is going to leave a huge void in the services for children across this state, and it's not only going to affect the children who are in Omaha, Sarpy County, Douglas County, but in western Nebraska, in areas of Nebraska where there are no facilities for girls to be able to reside in while their families work on the issues that have removed the child from their home. Uta Halee has been a reliable, high-quality residential treatment facility for adolescent girls with psychiatric or substance abuse problems for over 60 years. Uta Halee is the only residential girls facility in the state of Nebraska. Ninety employees are going to be laid off. The director of Uta Halee and board members feel that the Governor and the state of Nebraska has not worked with them to address the problems that have faced their facility. They went to Kerry Winterer in the fall. They asked for him to be involved to look at what their facility could do to continue providing services, and they didn't hear back from him. Now I worked in this field for over 34 years. I know how important resources are. When a child comes into care, you need to have a way to address the family's problems. It doesn't do any good to just simply say to the family: We're going to go in; we will meet with you maybe every three months and we'll talk about what's going on. The state allowed Uta Halee to close. This has been shortsighted and certainly not in the best interests of children and families served by the Department of Health and

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Human Services or, frankly, the taxpayers of Nebraska. Have no doubt about it, children will remain in the Youth Center, the detention center longer and at greater cost, and more children will be placed in facilities out of the state at a much greater cost. There will be no parental support for those children and they will be removed from their families for an indefinite period of time. The Department of Health and Human Services is creating a monopoly by placing all child welfare services with two private providers. We do not have an excess of providers or available beds for children needing services in this state. There has always been a shortage both of foster parents and in quality services. Once again, we're allowing a Nebraska provider to fail. Did we not see enough of that last year? In doing this, we are funding agencies that are spending over \$1.5 million, sending that directly to Olathe, Kansas, where their headquarters reside. We are Nebraskans. [LB4]

SENATOR GLOOR: One minute. [LB4]

SENATOR HOWARD: Thank you. We represent Nebraska. We're turning our backs and we're allowing a Nebraska childcare agency to fail. I'm becoming more and more convinced that the underlying agenda is to put the Nebraska providers out of business of providing childcare here in the state of Nebraska. Driving Nebraska businesses out of Nebraska will only result in greater cost and less care for Nebraska children. Thank you. [LB4]

SENATOR GLOOR: Thank you, Senator Howard. Seeing no members remaining in the queue, Senator Flood, you're recognized to close on your amendment to the committee amendments. [LB4]

SPEAKER FLOOD: Thank you, Mr. President and members. As we talked, this is the language that allows the Department of Environmental Quality to enter into an MOU with federal agencies to allow the state to conduct the supplemental environmental impact statement. I believe this is a step in the right direction and will benefit our state for years to come. I encourage your support. Thank you, Mr. President. [LB4]

SENATOR GLOOR: Thank you, Speaker Flood. Members, the question before us is, shall the amendment to the committee amendment to LB4 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB4]

CLERK: 44 ayes, 0 nays, Mr. President, on the adoption of Senator Flood's amendment to the committee amendments. [LB4]

SENATOR GLOOR: The amendment is adopted. [LB4]

CLERK: Mr. President, Senator Langemeier would move to amend the committee

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amendments with AM47. (Legislative Journal page 90.) [LB4]

SENATOR GLOOR: Senator Langemeier, you're recognized to open on your amendment to the committee amendments. [LB4]

SENATOR LANGEMEIER: Mr. President and members of the body, Speaker Flood and I have talked about this. This is the nice thing about the hearing process. On page 2, it talks about the construction and operation of this pipeline. We don't want to be involved in expenditures during operation, so AM47 strikes the words "or operated," so we're clear we're talking about construction. Thank you. [LB4]

SENATOR GLOOR: Thank you, Senator Langemeier. Members, you've heard the opening on AM47. Are there members wishing to be recognized? Seeing none, Senator Langemeier, you're recognized to close. Senator Langemeier waives. Members, the question is, shall the amendment to the committee amendments to LB4 be adopted? All in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB4]

CLERK: 45 ayes, 0 nays, Mr. President, on adoption of Senator Langemeier's amendment to the committee amendments. [LB4]

SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB4]

CLERK: I have nothing further on the committee amendments, Mr. President. [LB4]

SENATOR GLOOR: We return to discussion on the committee amendment. Are there members wishing to be recognized? Seeing none, Senator Langemeier, you are recognized to close on the committee amendment. [LB4]

SENATOR LANGEMEIER: Mr. President and members of the body, we appreciate the discussion we've had today on AM37 which now is the committee amendment which becomes the bill. We would ask for your adoption of the committee amendment and LB4 as amended. Thank you. [LB4]

SENATOR GLOOR: Members, the question is, shall the committee amendments to LB4 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB4]

CLERK: 44 ayes, 0 nays, Mr. President, on adoption of the committee amendments. [LB4]

SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB4]

CLERK: Senator Langemeier, I have FA1, Senator. It was drafted to the bill. Withdraw?

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Thank you. [LB4]

SENATOR GLOOR: So ordered. [LB4]

CLERK: I have nothing further to the bill, Mr. President. [LB4]

SENATOR GLOOR: Members, we continue with discussion on the advancement of LB4 to E&R Initial. There are no members wishing to be recognized. Senator Langemeier, you are recognized to close on the advancement of LB4. [LB4]

SENATOR LANGEMEIER: Mr. President and members of the body, I appreciate the discussion we've had on LB4 and would ask for your advancement of LB4 to Select File. Thank you. [LB4]

SENATOR GLOOR: Thank you, Senator Langemeier. The question before us, members, is the advancement of LB4 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB4]

CLERK: 45 ayes, 0 nays, Mr. President, on the advancement of LB4. [LB4]

SENATOR GLOOR: The bill advances. The Chair recognizes Speaker Flood. [LB4]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. I know there's a continuing discussion going on about revisions to LB1, Senator Dubas' bill, between General and Select. It's my understanding that Senator Dubas has an amendment. We'll try and get that filed so that everybody can see it. If not, certainly copies will go to state senators so that we can prepare for tomorrow. I wanted to give you kind of a brief outline of what it looks like as we continue our special session. Tomorrow, we're going to take up LB1. That's the Major Oil Pipeline Siting Act from Senator Dubas. That debate will start at 9:00 a.m. and we'll work through it tomorrow. On Friday, we'll take up LB4 on Select File and we'll take up, assuming LB1 moves tomorrow, we'll take up LB1 on Select File. Monday will be a layover day. We have to check in and we have some resolutions to take care of that are substantive in nature: one relating to post offices. And then on Tuesday we'll come in on our final day at 9:00 in the morning, right now, tentatively, and we will hopefully have bills to pass on Final Reading. We'll stay in session to allow the Governor to consider those bills, and then act appropriately after we get them back. So that's kind of what it looks like. I'm hoping for a Tuesday adjournment and we will head back home and get ready for turkey with our families. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Mr. Speaker. Continuing with General File, LB4A. Mr. Clerk. [LB4A]

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CLERK: Mr. President, on LB4A, it was a bill by Senator Langemeier. (Read title.) The bill was introduced on November 14. I do have an amendment to the bill. [LB4A]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Langemeier, you're recognized to open on LB4A. Mr. Speaker. I would recognize Senator Flood. [LB4A]

SPEAKER FLOOD: Senator Langemeier is working with Senator Dubas right now, so we'll go ahead and waive his opening and I'll do that on his behalf, and I will open on the amendment if that's possible. [LB4A]

SENATOR GLOOR: Mr. Clerk. [LB4A]

CLERK: Mr. President, Senator Flood would move to amend LB4A with AM44. (Legislative Journal page 91.) [LB4A]

SENATOR GLOOR: Senator Flood, you're recognized to open on your amendment. [LB4A]

SPEAKER FLOOD: Good morning, Mr. President and members. AM44 would strike and replace LB4A. As I mentioned during my testimony regarding LB4, the intent is for the state to fund the DEQ costs of preparing an SEIS. It is my understanding that DEQ will use, as it relates to the Keystone XL pipeline, existing personnel to meet their staffing requirements for LB4 as amended. They estimate that approximately \$400,000 of the \$2 million would be used by the agency for personnel, operating, and travel costs. Agency costs would largely be related to outreach expenses such as holding public hearings, maintaining documents, and providing a mechanism for interested members of the public to review documents. The remaining \$1.6 million would be used for contractual costs such as in hiring environmental engineers, scientists, and other professionals to do ground and soil sampling, topographic mapping, and related duties. With that, I would like to again thank the members of the Natural Resources Committee and all of you for consideration of AM37. [LB4A LB4]

SENATOR GLOOR: Thank you, Senator Flood. You have heard the opening on AM44. Are there members who wish to be recognized? Seeing none, Senator Flood, you are recognized to close on AM44. He waives. Members, the question is, shall the amendment to LB4A be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB4A]

CLERK: 44 ayes, 0 nays, Mr. President, on adoption of Senator Flood's amendment. [LB4A]

SENATOR GLOOR: The amendment is adopted. [LB4A]

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CLERK: I have nothing further on the bill, Mr. President. [LB4A]

SENATOR GLOOR: Discussion continues on the advancement of LB4A to E&R Initial. Senator Krist, you are recognized. [LB4A]

SENATOR KRIST: I stand today during this particular five-minute section to talk just a little bit about what's happening in this state with regards to how we take care of essential services to our citizens and the total destruction of the infrastructure that we have in this state. I thank my good friend from District 9, Senator Howard, for giving us a preview of Uta Halee. This is not unique, colleagues. It is happening all over the state. I have spent the entire summer with the committee that I'm involved with. My Chairperson Senator Campbell has given great leadership to this effort. It will be a huge part, a huge part of the next session when we come back together. I would ask you all to educate yourself about what this state has done riding on the backs of the nonprofits and destroying the services across this state. It is that bad. I am not being dramatic. It is that bad. I'd like to offer the rest of my time to Senator Cook should she want it. [LB4A]

SENATOR GLOOR: Three minutes, 47 seconds, Senator Cook. [LB4A]

SENATOR COOK: Thank you, Mr. President, and thank you, Senator Krist. I appreciate your courtesy this morning in hearing this out, because this is such a timely manner and it relates so strongly to the state as a whole, the direction of our child welfare system; and in my opinion, the direction is not the right one. I have an example of a situation in my district, Legislative District 13, Uta Halee Girls Village. It has been doing business in this area for six decades, and now because of changes in Washington and the response of the agency here in the state of Nebraska, these children will not have a place to be served in a gender-specific way in our state. And as Senator Krist mentioned, he has certainly worked very hard, along with other members of the Health and Human Services Committee, over the interim on LR37. And what we've uncovered is somewhat horrifying. Someone who in my experience, professional experience and my political experience, thought they had kind of their arms around all of the issues related to Health and Human Services and child welfare to be at this point to recognize that millions of dollars go to pay for empty beds while children cannot be admitted to programs or cannot get services without giving up their official parenthood, giving...ceding their right as a parent to the state. And here we are, the state, with no commitment it seems to serving people who cannot serve themselves, and in very desperate and impossible situations. Certainly no family wants to give their child over to the state so that they can have services. And we've talked about it before. We're going to talk about it more. We've got a hearing coming up on December 5. We'll continue the conversation. I imagine there will be people showing up to talk about this issue in particular as it relates to LR37. But I appreciate your doing a little bit of research in the meantime, and just as Senator Langemeier invited us all to be a part of the Natural Resources Committee earlier this week, I invite you and ask you and kind of implore

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you to become a part of the Health and Human Services Committee. It is one of the few functions of government that I think we can agree these children don't have any place to go at a certain point, so I believe we can all agree that these children are our responsibility... [LB4A LR37]

SENATOR GLOOR: One minute. [LB4A]

SENATOR COOK: ...and we need to do better. Thank you very much, Mr. President. [LB4A]

SENATOR GLOOR: Thank you, Senator Cook and Senator Krist. There are no members wishing to be recognized. Noting Senator Langemeier is still unavailable, Senator Flood, would you like to close on the advancement of LB4A? [LB4A]

SPEAKER FLOOD: Thank you, Mr. President and members. This is the A bill that accompanies the changes with AM37 on the underlying substantive bill. I'd ask for your adoption. [LB4A]

SENATOR GLOOR: Thank you, Senator Flood. The question is the advancement of LB4A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB4A]

CLERK: 44 ayes, 0 nays, Mr. President, on the advancement of LB4A. [LB4A]

SENATOR GLOOR: The bill advances. Members, we will stand at ease for a few minutes. [LB4A]

EASE

SENATOR GLOOR: Good morning again, members. Mr. Clerk.

CLERK: Mr. President, I have amendments to be printed by Senator Dubas to LB1 and a motion from Senator Dubas with respect to LB1A. New resolutions: LR28 by Senator Council and others expressing the Legislature's sincere appreciation to Lela Shanks for her dedication and service to the people of Nebraska; LR29 by Senator Lambert congratulating the Papillion-La Vista South Titans. (Legislative Journal pages 91-93.) [LB1 LB1A LR28 LR29]

Mr. President, a priority motion. Senator McGill would move to adjourn the body until Thursday morning, November 17, at 9:00 a.m.

SENATOR GLOOR: Members, you've heard the motion to adjourn until 9:00 a.m., Thursday. Those in favor say aye. Those opposed, nay. We are adjourned. (Gavel)