

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

Floor Debate  
November 18, 2011

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[LB1 LB2 LB4A LB4 LR8]

SPEAKER FLOOD PRESIDING

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

SENATOR FISCHER: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator Fischer. I call to order the thirteenth day of the One Hundred Second Legislature, First Special Session. Senators, please record your presence.

SENATOR SULLIVAN PRESIDING

SENATOR SULLIVAN: Mr. Clerk, please record.

CLERK: I have a quorum present, Madam President.

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

CLERK: I have no corrections, Madam President.

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

CLERK: I have but one item and that is a couple of reports that have been received in the Clerk's Office: a report from Environmental Quality, and from the Department of Agriculture. Both reports will be on file and available for individual member review. That's all that I have, Madam President. (Legislative Journal page 101.)

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

CLERK: Madam President, LB4 on Select File. Senator Larson, I do have Enrollment and Review amendments pending. (ER1, Legislative Journal page 95.) [LB4]

SENATOR SULLIVAN: Senator Larson. [LB4]

SENATOR LARSON: Madam President, I move that the E&R amendments to LB4 be adopted. [LB4]

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SENATOR SULLIVAN: You've heard the motion. All in favor say aye. Opposed? They are adopted. [LB4]

CLERK: Senator Flood would move to amend with AM53. (Legislative Journal pages 98-99.) [LB4]

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

SPEAKER FLOOD: Good morning, Madam President, members. As we discussed on General File, LB4 waives the provisions of existing government procurement statutes regarding competitive bidding for the DEQ SEIS process. One statute was unintentionally omitted. And this amendment cleans it up with a reference to Chapter 81, the Consultant's Competitive Negotiation Act. Again, the reasoning behind the waiver of the government procurement statutes is to give DEQ the capability to perform such extensive and important undertakings in an expedited manner. This is clearly just a technical amendment and I'd ask for your adoption. [LB4]

SENATOR SULLIVAN: Is there any discussion on the amendment? Senator Haar, you're recognized. Senator Haar waives. Seeing no senators wishing to speak, Senator Flood, you're recognized to close on your amendment. Senator Flood waives. The question is, shall the amendment to LB4 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB4]

CLERK: 34 ayes, 0 nays, Madam President, on adoption of Senator Flood's amendment. [LB4]

SENATOR SULLIVAN: The amendment is adopted. [LB4]

CLERK: I have nothing further on the bill, Senator Larson. [LB4]

SENATOR SULLIVAN: Senator Larson for a motion. Excuse me. Senator Larson, you're recognized. [LB4]

SENATOR LARSON: Madam President, I move that LB4 be advanced to E&R for engrossing. [LB4]

SENATOR SULLIVAN: It is a debatable motion. Senator Haar, you're recognized. [LB4]

SENATOR HAAR: Thank you, Madam President, members of the body. I have a couple questions for Senator Flood, if he'd be willing, available. [LB4]

SENATOR SULLIVAN: Senator Flood, will you yield? [LB4]

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SPEAKER FLOOD: Certainly. [LB4]

SENATOR HAAR: Senator Flood, since there's no legal contract with TransCanada to assure they'll move the pipeline out of the Sandhills or a description of what that move means, how are you, the Speaker, or our state going to enforce the agreement between TransCanada and the state of Nebraska to move the pipeline out of the Sandhills? [LB4]

SPEAKER FLOOD: Well, thank you, Senator Haar. First of all, I want to clarify something. There's never been a written agreement. We're in the wrong branch of government to execute written agreements. But, as you know, TransCanada stood up before the state of Nebraska, through members of the media, and did voluntarily acknowledge that they agreed to move the route of the Keystone XL out of the Sandhills. Let me outline the process of NEPA and the SEIS. That process is going to involve, obviously, the applicant. If we're talking about this next project coming up, the applicant would be TransCanada. The DEQ is the agency that's going to oversee that process of the supplemental EIS in cooperation with the federal government. And Section 4 of subsection (3), I should say subsection (4) of Section 3 clearly gives the Governor of this state the ability to authorize or consent to or agree to any route that is sent to the State Department in this situation. I have to believe that, given the discussion that we've had in the state of Nebraska, and certainly given the Governor's prior comments about wanting the route moved out of the Sandhills, that that will be accomplished. But there is no written agreement. Clearly, I think the citizens of this state have heard firsthand from representatives of TransCanada, as relates to this next project, that it will be out of the Sandhills. And I believe that with the Governor having the authority in Section 3, subsection (4), that we're on the right path. [LB4]

SENATOR HAAR: Okay, thank you. Another question is, who's defining what the Sandhills are, Speaker Flood? [LB4]

SPEAKER FLOOD: Well, I know that Senator Lathrop, among others, has sat down with some members of groups that have been major drivers in this process, such as the Sierra Club and Bold Nebraska. And a map was provided to Senator Lathrop and it was consistent with the map that was being viewed by Bold Nebraska and the Sierra Club. Ultimately, there are maps out there that show the Sandhills. And I was present at a meeting where I saw a discussion of what the Sandhills are, and the two maps seemed to be consistent. Obviously, there's a number...more scientific maps that will be reviewed. But I had a level of comfort, after seeing the map that TransCanada was looking at and the map that some senators were looking at and it seemed very consistent. [LB4]

SENATOR HAAR: Okay. And then finally, who's going to determine the state level EIS environmental impact state process? Specifically, are we studying routes that

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TransCanada gives us? Is Nebraska coming up with preferred routes and studying those? Who at DEQ is going to be the lead on the projects? And when will the public know that the process is going to entail and when are they allowed to give public comments? [LB4]

SPEAKER FLOOD: Well, the DEQ will be in charge of the state level SEIS process. The goal will be collaboration, and that will be spelled out in detail in a memorandum of understanding, which are done routinely. The federal government has provided some guidance. There's the "Citizen's Guide to the NEPA: Having Your Voice Heard," that's available. And I can make this available to you, Senator Haar. There's this guidance from the Council on Environmental Quality, it's called "Collaboration in NEPA: A Handbook for NEPA Practitioners." And then there's the Appendix A to that handbook for NEPA practitioners, "Strategies for Preventing Conflicts." This I think is a collaborative process. Obviously, the clear intent of what I think TransCanada wants to do is to avoid the Sandhills. [LB4]

SENATOR SULLIVAN: One minute. [LB4]

SPEAKER FLOOD: DEQ has not determined who would be the project lead. Obviously, they haven't sat down with the federal government. But I want to assure you that the federal government through the NEPA process will be working collaboratively with, in this situation, the DEQ. In its 100-page handbook for NEPA practitioners, entitled "Collaboration in NEPA," there is an example of an MOU. The MOU will spell out the key steps in the SEIS preparation process. And the objective is to ensure adequate information gathering, full and careful agency and public review, and objective SEIS participation, adherence to a defined schedule, and an appropriate role for the applicant. So, obviously, this is a process that's managed and undertaken by the DEQ. There is a role for the applicant through the process. But ultimately this will be owned by our state government in cooperation with the federal government. And I will make these three documents available to you so that you can review and see how these processes happen routinely. [LB4]

SENATOR HAAR: Okay. Well, thank you very much. Those are questions that are coming... [LB4]

SENATOR SULLIVAN: Time, Senator. [LB4]

SENATOR HAAR: Okay. [LB4]

SENATOR SULLIVAN: Chair now recognizes Senator Utter. [LB4]

SENATOR UTTER: Thank you very much, Madam President. And good morning, colleagues. I just want to rise this morning and indicate my support for the amended

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version of LB4 and also LB1. I want to publicly thank Senator Dubas and Senator Langemeier and also the Natural Resources Committee and Speaker Flood for the hard work that they've put in, getting this to this place. I am unable to be in the body on Tuesday on Final Reading. And I just want to indicate to all of you that I will...had I been able to be here, would have voted "aye" on both the amended versions of LB1 and LB4. Thank you, Madam President. [LB4 LB1]

SENATOR SULLIVAN: Thank you, Senator Utter. The Chair now recognizes Senator Haar. [LB4]

SENATOR HAAR: Madam President, members of the body, I just wanted to finish thanking Senator Flood for those answers. And those are the kind of questions that are coming in. And I think it's important to get that out to the public. So thank you very much. [LB4]

SENATOR SULLIVAN: Thank you, Senator Haar. You've heard the motion. The question is, shall LB4 be advanced for E&R Engrossing? All those in favor say aye. All those opposed say nay. LB4 is advanced. Mr. Clerk, we will proceed to Select File, LB4A. [LB4 LB4A]

CLERK: Madam President, LB4A. Senator Larson, I have no amendments to the bill. [LB4A]

SENATOR SULLIVAN: Senator Larson. [LB4A]

SENATOR LARSON: Madam President, I move that LB4A be advanced to E&R for engrossing. [LB4A]

SENATOR SULLIVAN: The question is the adoption of the E&R...amendments, no. The question is the advancement of LB4A to E&R for engrossing. All those in favor say aye. All those opposed say nay. LB4A is advanced. I now recognize the Speaker for an announcement. [LB4A]

SPEAKER FLOOD: Thank you, Madam President. Good morning, everyone. We're going to stand at ease. It's going to take up to two hours for Bill Drafters to prepare LB4 and LB4A to be placed on Final Reading. The reason we're doing that is Monday will be our constitutionally required layover day for all of our bills. Everything will be back in two hours. And we will be able to adjourn for the day and then come back in on Monday at 9:00 a.m., oh, I'm sorry, Monday at 1:30 p.m. and we'll take up some resolutions that we have before us. And those resolutions will address...one of them is post offices, and there will be some other matters, confirmation reports. And then on Tuesday we will be on Final Reading at 9:00 a.m. So we'll stay in session for two hours, standing at ease. We'll come back Monday at 1:30 and then Tuesday at 9:00 a.m. Thank you, Madam

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President.

SENATOR SULLIVAN: The body will stand at ease.

EASE

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: The Legislature will return to session. Mr. Clerk, items for the record.

CLERK: Mr. President, I have name adds: Senator Haar would like to add his name is LB4; and Senator Sullivan to LR8. And in addition, Mr. President, your Committee on Enrollment and Review reports they have examined and reviewed LB1 and find it correctly engrossed, LB2, LB4, and LB4A, all of those bills reported correctly engrossed. (Legislative Journal page 102.) [LB4 LR8 LB1 LB2 LB4A]

And, Mr. President, I have a priority motion. Senator Council would move to adjourn the body until Monday morning, November 21, at...Monday afternoon, excuse me, November 21 at 1:30 p.m.

SENATOR LANGEMEIER: Members of the body, you have heard the motion to adjourn until Monday morning (sic) at 1:30 p.m. All those in favor say aye. All those opposed say nay. The ayes have it, we stand adjourned.