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Transcriber's Office

Floor Debate
February 22, 2013

[LB3 LB13 LB47 LB94 LB172 LB211A LB225A LB345 LB359 LB363 LB403 LB408
LB434 LB483 LB493 LB510 LB586 LB616 LR65 LR66 LR67 LR68 LR69]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirtieth day of the One Hundred Third Legislature, First 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 thirtieth day of the One Hundred Third Legislature, First Session. Senators, please record your presence. 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.

SENATOR GLOOR: Any messages, reports, or announcements, Mr. Clerk?

CLERK: Mr. President, your Committee on Health and Human Services, chaired by Senator Campbell, reports LB359 to General File, LB13 to General File with amendments. The Natural Resources Committee chaired by Senator Carlson reports LB493 to General File with amendments. I have a communication from the Governor regarding gubernatorial appointees. Those will be referred to Reference for referral to standing committee for confirmation hearing. Hearing notices from the Natural Resources Committee, the General Affairs Committee, and those are signed by their respective Chairs. I have an amendment to be printed from Senator Schumacher to LB616. Lobby report required by statute will be inserted in the Journal, Mr. President. And the agency reports received on file are acknowledged on the Web site and available for member review. A couple of announcements: The Urban Affairs Committee will meet underneath the north balcony at 9:15; Urban Affairs at 9:15. Senator...10:15, I'm guessing, huh? 10:15, okay. 10:15 by the Urban Affairs Committee, north balcony. And the Education Committee will meet in Executive Session upon adjournment in Room 1023; Education Committee, 1023 upon adjournment. That's all that I have, Mr. President. (Legislative Journal pages 489-493.) [LB359 LB13 LB493 LB616]

SENATOR GLOOR: Thank you, Mr. Clerk. We will now proceed to confirmation reports.

CLERK: Mr. President, the first report this morning is offered by the Education

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

Floor Debate
February 22, 2013

Committee, chaired by Senator Sullivan. She reports on two appointments to the Board of Trustees of the Nebraska State Colleges. (Legislative Journal page 448.)

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Sullivan, you're recognized to open on the confirmation report for the Education Committee.

SENATOR SULLIVAN: Thank you, Mr. President and good morning, colleagues. As was indicated, we have two appointments to the Board of Trustees of the Nebraska State College. It's a total board of seven members, six appointed by the Governor. Two appointments: One is Mr. Robert Engles. He's a reappointment to the Board of Trustees having first been appointed to serve the remaining two years of the term of former trustee and former state senator, Floyd Vrtiska. Mr. Engles is from Auburn, Nebraska. If confirmed, his term on the Board of Trustees would extend until January 1, 2019. In addition to his service on the Board of Trustees, Mr. Engles has also served on the Board of Education of the Auburn Public Schools. He also is a former mayor of Auburn, having served in that capacity for eight years. The second appointment is John Chaney. Mr. Chaney is a new appointment to the Board of Trustees and, like Mr. Engles, he also hails from Auburn. Mr. Chaney's professional experience is in the banking industry and he currently serves as the CEO of Auburn State Bank. He holds a bachelor of science degree from the University of Nebraska, and is a past board member and treasurer of the Peru State College Foundation. I urge your support for the confirmation of these two appointments. Thank you.

SENATOR GLOOR: Thank you, Senator Sullivan. Members, you've heard the opening on the confirmation reports from the Education Committee. Are there senators wishing to be recognized? Seeing none. Senator Sullivan, you're recognized to close. Senator Sullivan waives. The question is the adoption of the report offered by the Education Committee. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 493.) 42 ayes, 0 nays, Mr. President, on the adoption of the Confirmation Report.

SENATOR GLOOR: The report is adopted.

CLERK: Mr. President, I have a second report from the Education Committee involving two appointments to the Nebraska Educational Telecommunications Commission. (Legislative Journal page 449.)

SENATOR GLOOR: Senator Sullivan, you're recognized to open on your report from the Education Committee.

SENATOR SULLIVAN: Thank you, Mr. President. By way of background...well, first of

Floor Debate
February 22, 2013

all, I think probably it...the Nebraska Educational Telecommunications Commission needs no background. I think during the hearings, it received glowing remarks from members of the Education Committee and the service that it provides statewide in topnotch educational programming. The commission itself consists of 11 members, including the commissioner of education, the president of the University of Nebraska, a representative each for the community colleges, state colleges, and private colleges, and 6 members of the public at large, 2 from each Congressional District. And today, I'm presenting to you two appointments. The first one is Clay Smith, who is a reappointment to the commission. If confirmed, his term on the commission would extend until January 12, 2017. Mr. Smith is from Lincoln. He's the co-owner and vice president of Speedway Motors, Inc. He holds a master's degree in industrial engineering and engineering management from Stanford University, as well as a bachelor of arts degree in economics from the same institution. His resume includes experience as a senior associate for an international consulting firm, a principal for an investment banking firm, and founder and director of a restaurant franchise. Mr. Smith is also an active member of the community serving on the board of directors for a number of organizations, including the Nebraska Humanities Council, the Museum of Nebraska Art, the Nebraska Young President's Association, and the Lincoln Chamber of Commerce. The second appointment that the Education Committee has advanced for your consideration is that of Mr. Curt Frye. Mr. Frye is a new appointment to the commission. If confirmed, his term on the commission would extend through January 12, 2017. Mr. Frye is the current president of Wayne State College. Prior to assuming that role, he served the college as vice president and dean of students. Mr. Frye also has experience in K-12 education working as a teacher in the Cody-Kilgore School District and later as a guidance counselor in Neligh and Wayne. He holds a bachelor's degree in education from Midland University and a master of science degree in education from Chadron State. I urge your support for the confirmation of these two appointments.

SENATOR GLOOR: Thank you, Senator Sullivan. Is there any discussion on the Education Committee report? Seeing none, Senator Sullivan, you're recognized to close. Senator Sullivan waives closing. The question is the adoption of the report from the Education Committee. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 493-494.) 44 ayes, 0 nays, Mr. President, on the adoption of the Education Committee confirmation report.

SENATOR GLOOR: The report is adopted. We continue with confirmation reports.

CLERK: Mr. President, the next report is offered by the Health and Human Services Committee chaired by Senator Campbell. She reports on two appointments to the Foster Care Advisory Committee. (Legislative Journal page 453.)

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

Floor Debate
February 22, 2013

SENATOR GLOOR: Senator Campbell, you're recognized to open on the Health and Human Services report.

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, members of the Legislature. The Health and Human Services Committee held confirmation hearings on Friday, February 8, on the Governor's appointments of Michelle Hynes and Sandra Kruback to the Foster Care Advisory Committee. Ms. Hynes is an attorney. She served on the Foster Care Review Board in South Sioux City for a great number of years and previously served on the board of directors for domestic violence and emergency services in the Panhandle of Nebraska. Ms. Hynes is a resident of Dakota City, Nebraska, and represents children as a guardian ad litem, as well as a delinquency proceedings commitment hearings, and interstate compact hearings on the juvenile court in Iowa. Ms. Kruback has been a local board member for 16 years in the North Platte area. She has such a commitment to service, particularly in her faith community. She has a passion for making a difference in the lives of children in the state, and she spoke at length about her experience as a local board member and we all felt on the committee that that experience would be so beneficial to the new Foster Care Review Committee. Both Ms. Hynes and Ms. Kruback bring valuable perspectives to the Foster Care Advisory Committee. The Health and Human Services Committee asks your favorable consideration of their appointments. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Campbell. Is there any discussion on the Health and Human Services Committee report? Seeing none, Senator Campbell, you're recognized to close. Senator Campbell waives. The question is the adoption of the report offered by the Health and Human Services Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 494-495.) 39 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR GLOOR: The report is adopted.

CLERK: Mr. President, the fourth report this morning is from Health and Human Services Committee and involves two appointments to the Board of Emergency Medical Services. (Legislative Journal page 453.)

SENATOR GLOOR: Senator Campbell, you're recognized to open on the report from Health and Human Services Committee.

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. The Health and Human Services Committee held confirmation hearings on Friday, February 8, for the appointment of John Bonta and Karen Bowlin to the Board of Emergency Medical Services. Dr. Bonta is currently a staff physician at the BryanLGH Health

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

Floor Debate
February 22, 2013

Center, medical center, emergency department. He is a primary point of contact providing direct and on-line medical support to paramedic units in the Lincoln and Lancaster area. His expertise and involvement in the provision of emergency medical services is remarkably extensive. Ms. Bowlin has been an EMT since 1986 and an EMT instructor since 1989. She is the EMS, CPR coordinator at Mid-Plains Community College in North Platte. Her duties are varied and encompassing ranging from taking care of the national registry for practical skills testing, to managing the department budget, to developing EMT and emergency medical responder curriculum. It was interesting for the committee to know that Ms. Bowlin serves on national committees on this area and has written national exams. The Health and Human Services Committee voted unanimously to forward Dr. Bonta and Ms. Bowlin's appointments to the Legislature for your favorable consideration. We think they will be exceptional resources on the Board of Emergency Medical Services. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Campbell. Is there a discussion on the report? Seeing none, Senator Campbell waives. The question is the adoption of the report from the Health and Human Services Committee. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 495.) 41 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR GLOOR: The report is adopted. Returning to the agenda, General File. Mr. Clerk.

CLERK: Mr. President, LB211A is a bill by Senator Adams. (Read title.) [LB211A]

SENATOR GLOOR: Senator Adams, you're recognized to open on LB211A. [LB211A]

SPEAKER ADAMS: Thank you, Mr. President. Members, if you will recall a little over a week ago, LB211A was up for General File debate, and in essence what the bill did was to diminish the statutory authority of the community college association. In addition in that bill, there was language which, in effect, works something like this: Currently, the Coordinating Commission for Postsecondary Education handles the compiling of the data necessary for administering the community college aid distribution formula, and then DAS is the distributor. When we were formulating the bill, it was brought to our attention that it would be simplified if we took DAS out of the picture. And not only had the Coordinating Commission of Postsecondary Education compiled the data, but then also do the distribution. And that's what LB211 does. The fiscal note that is here attached, we're trying to catch it up with the bill. The fiscal note has been prepared and it's the estimated cost to the Coordinating Commission for this additional service. Thank you, Mr. President. [LB211A]

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

Floor Debate
February 22, 2013

SENATOR GLOOR: Thank you, Senator Adams. Members, you've heard the opening on LB211A. We now move to discussion. Are there senators wishing to be recognized? Seeing none, Senator Adams waives closing. The question is the advancement of LB211A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB211A]

CLERK: 44 ayes, 0 nays, Mr. President, on the advancement of LB211A. [LB211A]

SENATOR GLOOR: The bill is advanced. Mr. Clerk. [LB211A]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Mr. Clerk, we'll move to Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, the first bill is LB408. [LB408]

CLERK: (Read LB408 on Final Reading.) [LB408]

SPEAKER ADAMS: Thank you, Mr. Clerk. Members, all provisions of law relative to procedure having been complied with, the question is, shall LB408 pass with the emergency clause attached? Those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB408]

CLERK: (Record vote read, Legislative Journal page 496.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB408]

SPEAKER ADAMS: LB408 passes with the emergency clause attached. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB408. Mr. Clerk, we'll proceed to General File. [LB408]

CLERK: Mr. President, LB434, a bill originally introduced by Senator Price. (Read title.) The bill was introduced on January 22 of this year, referred to the Government, Military and Veterans Affairs Committee. The bill was reported to General File. I have no committee amendments, but Senator Price has an amendment pending, Mr. President. [LB434]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Price, you're recognized to open on your bill. [LB434]

SENATOR PRICE: Thank you, Mr. President and members of the body. I apologize for my weak voice this morning, but, such as it is, we carry on. LB434 amends Section 81-829.41 of the Nebraska statutes to ensure that information obtained by emergency

Floor Debate
February 22, 2013

management agencies or other public agencies for the purpose of creating special or functional needs registry shall not be considered a public record under Section 84-712.01. Currently, the Nebraska Emergency Management Agency cooperates with other emergency management agencies and public agencies in the development of emergency management registries, which include persons with special or functional needs, and the families of such persons for the purposes of planning for assistance for such purposes and their families before, during, and after a disaster or other emergency. In the past, the Americans with Disabilities Act has always covered planning of special and functional needs citizens, but following Hurricane Katrina and the resulting post-Katrina Emergency Management Reform Act of 2005, there has been a regulatory focus by both the DOJ and FEMA on identification of and planning for special and functional needs persons. Special functional needs registries have become a popular and efficient way for local emergency management agencies to gather needed data to support effective and efficient planning. Local public health and emergency management have taken the lead in establishing these registries. Information like addresses, phone numbers, and e-mail, and Google Map is not protected information, and is causing many to decline to register for fear of becoming targeted due to the knowledge that a person with special or functional needs lives in a particular house or apartment, by vendor soliciting products using phone numbers and/or e-mails. Nuclear power plants, as part of their required planning, have for many years included postcards with their annual emergency planning information that individuals or families can complete to indicate special or functional needs. As the planning zones expand in size, this will generate more data and greater need for privacy. LB434 was heard before the Government, Military and Veterans Affairs Committee and was unanimously advanced to the full Legislature for debate. I ask for your support and the advancement of LB434. Thank you. [LB434]

SENATOR GLOOR: Thank you, Senator Price. Mr. Clerk, for an amendment. [LB434]

CLERK: Mr. President, Senator Price would move to amend with AM324. (Legislative Journal page 497.) [LB434]

SENATOR GLOOR: Senator Price, you're recognized to open on your amendment. [LB434]

SENATOR PRICE: Thank you, Mr. President. This amendment, as you can read on your computers, what it does is it puts in language to ensure that within this statute that participating in emergency management registry by persons with special needs and their families shall be voluntary. Here's what happened. You have Ft. Calhoun, and part of their regulatory guidance is to have a checklist where they allow people to register if they have special needs for the evacuation planning. That's a...nuke reg, 0654 if you want to have some light reading tonight or you can't sleep. Now within that planning regulation, they were told they need to do this, but it didn't specifically call out that the

Floor Debate
February 22, 2013

registry was a voluntary participation. And I believe that holds down some of the participation by people in this program. It doesn't do anything other than call it out specifically, so we know that if you want to participate, you can and your data will be kept private. It's not a earthshaking thing. We do this already. We already have people who register. And when you look at special needs and/or functional needs, there is some debate on whether those terms are the most adequate, but they're the terms we have, and it's self-identified. You, yourself, you have a family member, or you yourself, feel that you need extra assistance in case of emergency, you can go ahead and file to be on this list. There's no one being directed to do this, and so we thought it would be good measure to make sure that it wasn't left for someone to dig out of somewhere else in statute, that it was voluntary participation. Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Price. Members, you've heard the opening on LB434 and AM324. We now move to floor debate. Senator Coash, you're recognized. [LB434]

SENATOR COASH: Thank you, Mr. President, and thank you, colleagues. Early on in the session, Senator Chambers said, if you got something on your mind on a bill, you ought to get up and say it and share with the group and I think that was good advice. And I do want to take a moment to talk a little bit about my concerns with LB434. One of my concerns has been addressed through Senator Price's amendment. I do appreciate him bringing that. I do understand the intent of this bill. Senator Price laid that out for us, but here's my concerns, colleagues. I get nervous when we start having registries and putting people on them. I get nervous when we start saying, you have special needs, so we're going to put you on a list. From time to time, those lists turn into something that they weren't originally intended to turn into. And I think Senator Price started to address that a little bit when he talked about (a) this is voluntary under the amendment, but these lists do exist, and there is a purpose behind them. But sometimes these lists end up in the hands of people who do something different and that does bother me. So I'm just going to put that out there and I'm going to continue to listen to the discussion. But I do want to address a particular part in the green copy of the bill, and I wonder if Senator Avery would answer some questions. [LB434]

SENATOR GLOOR: Senator Avery, would you yield to questions from Senator Coash? [LB434]

SENATOR AVERY: I will. [LB434]

SENATOR COASH: Thank you, Senator Avery. I heard you say you would, so. Senator Avery, I want to point your attention to the last page of the bill where it talks about the definition...or where it talks about the registry will include persons with special needs and their families. I'm wondering if there was discussion in the committee about the definition of special needs because that's a pretty broad definition in my mind. Special

Floor Debate
February 22, 2013

needs is, kind of, in the eye of the beholder. And without some more clear words that describe what special needs are, I'm afraid that somebody is going to look at that, those two words, special needs, and interpret it how they want to, and I was wondering if that was a discussion in the committee and if you could expand on, how we did land on that term. [LB434]

SENATOR AVERY: Thank you, Senator Coash. That was, in fact, discussed in committee, and the feeling was that it ought to be self-identified, self-defined. If you are a person with a special need, you ought to know that, you do know that, and you ought to be able to say, I need to be on this list. And we thought if we tried to have formal definitions of the sort that you have to qualify for assistance, for example, that would be a bit too rigorous. And there might be people with special needs that might not qualify for special assistance under, say, DHHS, but they would know that they needed special needs in an emergency, or special help. [LB434]

SENATOR COASH: Okay. Thank you, Senator Avery. Here's a follow-up question to that. To get on this list, we...do you opt in and say to the emergency management folks, yes, I want to be on this list, or does the emergency management folks come to you and say, hey, we've got this list if you want to be on it, we'll put you on there, then if a disaster happens, we'll know your condition and how we can best help you. [LB434]

SENATOR GLOOR: One minute. [LB434]

SENATOR AVERY: Senator Price can probably answer that better, but it's my understanding that if a person feels they need that help, they can put themselves on the list. It ought to be that way, anyway. Certainly, if the emergency management authority sees a population out there that they think may not be aware of this service, and their ability to get on that list, they may assist in that, but it's primarily up to the individual. [LB434]

SENATOR COASH: Okay. Thank you, Senator Avery, and thank you, colleagues. I'm going to continue to listen to the debate and try to get the record a little bit more clear as we go through this on how this will actually play out, and I would thank you for your time. Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Coash and Senator Avery. (Doctor of the day introduced.) Continuing with the discussion, senators in the queue: Bolz, Price, Smith, Campbell, Ken Haar, Conrad, and Christensen. Senator Bolz, you are recognized. [LB434]

SENATOR BOLZ: Thank you, Mr. President. I, too, rise with a concern about the definition of special needs in this piece of legislation. I've heard from a constituent who is concerned that there may be unintended consequences with the use of this term and

Floor Debate
February 22, 2013

the lack of definition. Specifically, she's concerned that during a disaster having been defined as an individual of special needs, or being put on a special needs registry might unintentionally, or in the hurry of a crisis lead to the unintended consequence of an individual with special needs not having enough decision-making power over her...his or her own choices in that situation. Will Senator Price rise for a question? [LB434]

SENATOR GLOOR: Senator Price, would you yield? [LB434]

SENATOR PRICE: Yes. [LB434]

SENATOR BOLZ: Senator Price, my constituent has suggested that perhaps instead of creating a registry, a procedure could be put in place for individuals who in the wake of a disaster identify themselves as having a special need. And I was just curious if you or the committee had considered that approach? [LB434]

SENATOR PRICE: Thank you very much for the question, Senator Bolz. In this bill, in this iteration, it's all about preparation. It's not necessarily just the in process emergency. It's for people who live in areas...again, the genesis of it was the Nuclear Regulatory Commission's requirements. As things are ginning up, you know, when we had the floods or the fires, you can...it's applicable anywhere. This is an individual or family who knows what they have and they go voluntarily on to...and it allows for the planning. The requirement is, if you have a special needs for whatever...let's say you had your hip replaced. You live by yourself, you had your hip replaced, you want to be on the list in case something, because you're in an area prone to flooding. Then you go and you'd volunteer to get on the list and I'm thinking that you'd say, hey, this is what I need to ensure I get out in this amount of time. That's what the list is for and does. And we left it in the broad need...a broad definition and the federal government has done so because to try to define everything would be too encompassing. [LB434]

SENATOR BOLZ: And, Senator Price, are you aware of any procedures that are currently in place that would allow someone who had not gotten themselves on this registry to identify as such and get what they would need in a disaster? [LB434]

SENATOR PRICE: Yes. Currently, right now FEMA and NEMA, in concert with the Nuclear Regulatory Commission, do this for the people within the Ft. Calhoun area and across the state. Participation is low because of the data being public, but it already exists and they've been doing it for years and you get a card mailed to you, and it's your choice to fill it out and mail it back in or not. It's all voluntary. [LB434]

SENATOR BOLZ: Thank you, Senator Price and I, like Senator Coash, will listen carefully and hope that we can continue to make sure that the language is correct to meet the needs of our most vulnerable folks. Thank you. [LB434]

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

Floor Debate
February 22, 2013

SENATOR GLOOR: Thank you, Senator Bolz, and thank you, Senator Price. Senator Smith, you're recognized. [LB434]

SENATOR SMITH: Thank you, Mr. President and good morning, colleagues. Would Senator Price yield to a question? [LB434]

SENATOR GLOOR: Senator Price, would you yield? [LB434]

SENATOR PRICE: Absolutely. [LB434]

SENATOR SMITH: Senator Price, I have just a couple of concerns here and I was hoping to engage you in answering some of these questions I have. I do agree with Senator Bolz and Senator Coash's concerns of the definition of special needs, and particularly to whom authority will be given to make that final assignment. Who will make that final assignment of classification? [LB434]

SENATOR PRICE: Senator Smith, that is the individual. It's always...whatever that individual who is returning or responding to be on the list... [LB434]

SENATOR SMITH: Okay. [LB434]

SENATOR PRICE: ...that individual will determine what their functional need is. It could be any...it could be a language barrier. [LB434]

SENATOR SMITH: All right. [LB434]

SENATOR PRICE: It could be...it's not about what we typically would define as... [LB434]

SENATOR SMITH: Right. [LB434]

SENATOR PRICE: ...special needs or developmental needs, etcetera. [LB434]

SENATOR SMITH: So is the...it's the individual making the request. So what cross-agency enforcement will be given to this registry? And, specifically, let's say, you have a gas utility, a electric utility in the area, and they may have in their data files a priority of restoration. When power is out, who gets first priority in getting restored? And I would say probably also with communications companies. How does this registry coordinate with those individual company or agency files for priority? [LB434]

SENATOR PRICE: Thank you very much, Senator Smith. This is all borne out through NEMA, through Nebraska Emergency Management, and whatever that agency is, whatever their linkage is into NEMA, that would be how the...so this...that is how this is

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

Floor Debate
February 22, 2013

entered into and engaged at the local level through the local light. Omaha has their own disaster planning. Each local subdivision who has a disaster planning, a program, this is what a subpart in each entity plan. [LB434]

SENATOR SMITH: So, Senator Price, would that data file from...that identifies these special needs, would that be given to area utilities to mark their database somehow with those special needs? [LB434]

SENATOR PRICE: Unless that is a part of the emergency planning function, I would say no. [LB434]

SENATOR SMITH: All right. All right. Thank you, Senator Price. Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Smith and Senator Price. Senator Campbell, you're recognized. [LB434]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. I just want to add a little local experience to the issues we're talking about. And Senator Price came to speak with me when he introduced the bill and said, have you had experience with this type of a need in a community? As a member of the county board, we worked with the emergency management director, and in Lincoln we have one for Lincoln and Lancaster County. And the head of emergency management for a community, any community across the state, is going to have a very thick manual of protocols in terms of, this happens, then you do this, and this happens, then you do that. I was amazed at how extensive it was. And we had a situation when I first went on the county board and was serving as the chair where the chair and the mayor had to be brought in and we were facing a possible flood in Lincoln. And watching all of the agencies come together in one place and work cooperatively, including utilities, they were all governed by this book of protocols. In a major snowstorm that Lincoln had, and it was the year that then-Mayor Johanns had to cancel Halloween, but in that snowstorm we learned a lot. We had to move people to Pershing because we had electricity and lost power for almost a week in sections of Lincoln. We found that there were people in our community that we did not know would need help in special ways. And from that experience, more protocols were put into effect to try to deal with populations. But such a registry that Senator Price is talking about, I think is meant to be there to help people. If you need special assistance during a flood, a major power outage, the threat of a tornado, your emergency management director wants to be as prepared as possible. And I'm going to use this because it's somewhat humorous but it will give you an idea. When we had the snowstorm, we didn't even think about the fact that people did not want to be separated from their pets. And we had not planned for what happened when that person went to Pershing, what happened to their pets. And so changes were made. I do have to say that the language, whatever you feel might be

Floor Debate
February 22, 2013

more comfortable, I'm sure Senator Price would be open to that. This is meant to help citizens in a community who may be alone or may truly have a need in which the fire department or our medical EMTs or a sheriff should be at their home and helping them in the case of a major disaster that may be facing a community. I support wholeheartedly the concept of what Senator Price is trying to do here and, hopefully, we can get to the wording to give assurance. But it's meant to be prepared to help Mrs. Smith down the street, get out of her home, if she needs to, safely, and to a good location. So I hope that you will keep in mind the true intent of what Senator Price's bill would do because it will ultimately help citizens and help communities be better prepared. Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Campbell. The Chair recognizes Senator Ken Haar. [LB434]

SENATOR HAAR: Mr. President and members of the body, I wonder if Senator Price would answer some questions. [LB434]

SENATOR GLOOR: Senator Price, would you yield to questions from Senator Haar? [LB434]

SENATOR PRICE: Yes. [LB434]

SENATOR HAAR: Senator Price, as you probably know, I have a special interest in the very vulnerable people that live in trailer parks and I have some large trailer parks, mobile home parks in my district. Would this apply at all...or could it apply to those situations where there's a tornado warning and, you know, people would need...should be evacuated? [LB434]

SENATOR PRICE: Senator Haar, that's a very perplexing question you ask there. And I think I have some of the professional expertise to answer that because you're talking about a weather event where they're looking for...where minutes make a difference. So when we talk about a warning versus a watch, I would say that if an emergency planning function can plan for something and execute it within the time, then, yes. I think it's critical to understand that getting the resources there and doing that evacuation has to be done on an emergency that we know that's going to happen, and then in your example, tornadic activity is even trickier to forecast than snow. [LB434]

SENATOR HAAR: Yes, and I understand that. But, for example, last April there was a tornado sighted over the airport, it never came down, but that is, you know, within seconds, perhaps, of that...those four mobile home parks. So you think that there's a possibility...and then when I walked and talked to people, you know, not just what I consider everybody in those mobile home parks are vulnerable, but there were people who were disabled, who I would almost say were even more vulnerable because they

Floor Debate
February 22, 2013

had no cars, they couldn't get out of there. Would that be addressed at all? [LB434]

SENATOR PRICE: Senator Haar, I believe that if there is an individual who believes that they have a functional or special need that will require assistance from emergency responders, they could go ahead and join this registry so these agencies can make adequate planning steps to address those issues. [LB434]

SENATOR HAAR: And then, how do we...how would the word get out? Again, I'm just going to keep using those mobile home parks as the example. Considering that all of them are very vulnerable because...to a tornado because they're living in mobile homes, how would people be recruited to sign up to this? [LB434]

SENATOR PRICE: Senator, the process in place right now handled by counties and cities, they have numerous meetings, annual...like a...I can talk about what I know about. So for in the Ft. Calhoun area a responsibility for NEMA, there are annual letters sent out to all the residents and meetings and postings made to make them aware of the registry that they would currently have, and I would foresee the same type of thing going on within each political subdivision that has the authority to have the emergency management action and/or agency. [LB434]

SENATOR HAAR: Okay. So the person really to talk to is Doug Ahlberg who is the Lincoln/Lancaster County emergency manager. [LB434]

SENATOR PRICE: That office would have the responsibility for that subdivision, yes, sir. [LB434]

SENATOR HAAR: Okay. And then finally, you may have answered this already but... [LB434]

SENATOR GLOOR: One minute. [LB434]

SENATOR HAAR: ...in any of these situations, no matter where it is, you may have a vulnerable person who is an undocumented resident. Is there any possibility that this information could be used then with the immigration service? [LB434]

SENATOR PRICE: Senator Haar, I'll be straight and honest with you, I couldn't answer that question because that didn't rise up...when a person's in need, a person's in need, and they live there, and they choose to register. I think that's the other important part, is they have to make that choice to register, but I haven't, I haven't addressed that one and I would hesitate to qualify it. [LB434]

SENATOR HAAR: Okay. Well, thanks. I think it's a good bill, obviously, from the questions that I'm asking. I just am trying to apply it now to the mobile home parks and

Floor Debate
February 22, 2013

we'll be talking to you. Thank you. [LB434]

SENATOR GLOOR: Thank you, Senator Haar and Senator Price. Members remaining in the queue: Conrad, Christensen, Coash, Crawford, and Brasch. Senator Conrad, you're recognized. [LB434]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I was hoping that Senator Price might yield to some questions. [LB434]

SENATOR GLOOR: Senator Price, would you yield? [LB434]

SENATOR PRICE: Absolutely. [LB434]

SENATOR CONRAD: Thank you, Senator Price, and this is indeed an interesting piece of legislation and I take you and Senator Campbell's comments to heart that I think that there are good intentions contained therein, but I have a variety of concerns about the legislation as it stands. In looking at LB434 and AM324, I do not see any definition of family or families. Did you have a chance to think about that when proposing the bill or when working through the committee process about who this duty or affirmation would extend to? [LB434]

SENATOR PRICE: Thank you very much, Senator Conrad. When this bill...when I worked with the director of NEMA and folks, they have within their definitions these things defined so we just brought that over from what they did, but specifically, the answer is no. [LB434]

SENATOR CONRAD: Okay. And you've already noted that special needs is not defined because you envisioned a self-report, so to speak. Is that correct? [LB434]

SENATOR PRICE: Senator Conrad, yes, that is correct. And Senator Coash is putting out a flyer, a piece that came from the testimony where special needs was further defined as viewed by the people in NEMA. And you'll have that and I'm already talking with Senator Coash that we're going to work on it. [LB434]

SENATOR CONRAD: Okay. Senator Price, my question is, would you consider somebody to have special needs who, for example, had a diminished capacity? [LB434]

SENATOR PRICE: I would hesitate to say yes. [LB434]

SENATOR CONRAD: Okay. Then if somebody is already having some difficulty in functioning in everyday society, how on earth would they make a self-report to include themselves in this process? [LB434]

Floor Debate
February 22, 2013

SENATOR PRICE: That...I believe that is why they wanted to bring in the family part so... [LB434]

SENATOR CONRAD: Okay. [LB434]

SENATOR PRICE: ...if you have an individual, they would...I suspect through power of attorney be making those decisions. [LB434]

SENATOR CONRAD: That was my next question, Senator Price. There's very many vulnerable citizens that don't have the benefit of having family advocates to help them navigate through difficult situations, so I hope that in-between General and Select File you would look at the inclusion potentially of conservators or powers of attorney or people in that regard in classification, legal guardian, so to speak, so that they could be a part of the process as well. And then the final question, looking at the committee statement and then hearing the debate this morning, I see that you had a chance to visit with the emergency management folks and first responders and Senator Campbell, but what I'm concerned about is that there's no inclusion in the process thus far, from what I can tell, among people with special needs or advocates for special needs. And I'm wondering why you excluded them maybe from the preliminary considerations of this bill since it's meant to serve their interests. [LB434]

SENATOR PRICE: Thank you, Senator Conrad. There is no intent to isolate or exclude. We were being...the bill went through all the normal processes a bill would go through. In particular when NEMA brought the bill to me, this was about being bigger than the family of just those who we traditionally include in special needs. It involved everybody and there is no intent to isolate or rebuke. [LB434]

SENATOR CONRAD: Okay. Very good, Senator Price. I hope that you will take some time in-between General File and Select to maybe reach out to some of those groups that do have some expertise on these topics and gain their input as we can make this legislation work better for those that they serve and the vulnerable citizens that we all care deeply about. Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Conrad and Senator Price. Senator Christensen, you're recognized. [LB434]

SENATOR CHRISTENSEN: Thank you, Mr. President. I think this bill can really be handled either way, as a voluntary basis, or you can define it. Because if you think about this, it's not a program where they're going to get financial assistance, something this way, this is in case they need to be moved in case of an emergency. Wouldn't be that hard to define because you could define it as anybody that has a permanent disability or a temporary disability that requires assistance to leave the house in case of emergency or disaster. I can see this as being a very beneficial thing. Fire departments

Floor Debate
February 22, 2013

need to know if they're approaching a house if there's normally somebody that's disabled in there, somebody that needs the assistance as well as young kids. You know, that's always a concern of people is a firefighter approach, is there young kids that can't get out that we need to go after. You know, this type of program could be very beneficial to allow people to sign up on, whether it is that temporary for knee replacement, hip replacement, something that prevents them from being able to walk out, to go to seek assistance. So I'm not sure that defining it is absolutely necessary, but I think having people understand that the program is available and for emergency personnel to be able to utilize it whether it be for young people, disabled, or...you may be on a fire department and not know that somebody just had a hip replacement, but if they knew that by looking at the list, they know that they got to go looking for somebody. I can see this being very beneficial, and I just wanted to throw that out. If you want it defined, there's a way of looking at it. If you don't feel it needs defined, I think you can go on as it is. Thank you. [LB434]

SENATOR GLOOR: Thank you, Senator Christensen. Senators in the queue: Coash, Crawford, Brasch, and Avery and Krist. Senator Coash, you're recognized. [LB434]

SENATOR COASH: Thank you, Mr. President. Colleagues, I'm passing around a page, and you'll be having it here momentarily, that I got from the committee hearing on LB434 where NEMA, which I believe stands for Nebraska Emergency Management, defines special needs population in this way: Populations whose members have additional needs before, during, and after an incident in functional areas, including but not limited to maintaining independence, communication, transportation, supervision, and medical care. Individuals in need of additional response assistance may include those who have disabilities, who live in institutionalized settings, who are elderly, who are children, who are from diverse cultures, have limited English proficiency, or are non-English, or who are transportation disadvantaged. So that's a pretty wide definition here. This seems to fit the intent of LB434. So I've talked to Senator Price and I'll give him the remainder of my time and if he would like to address it, I will. But here's the challenge that I have with the term, special needs. Okay. You ask somebody who has a disability, who doesn't speak English, who doesn't have a car, who is old, are you special needs? They're not going to say, yes. Special needs is not a label that people aspire to have placed on them. So I think it's important that if we move forward with this that we're able to give those who would ask and be asked to be on this registry, voluntarily as provided in AM324, that we tell them what the legislation is trying to engender by saying, here's who we're talking about. We're asking if you might need extra help because you don't speak English, because you're old, you have a disability, you have communication problems, diverse culture. Okay. So those are all debatable reasons to be put on this registry but at least it does give more direction and this might be helpful for the debate. That's why I passed it out and I will turn the remainder of my time to Senator Price so he can address that. Thank you, Mr. President. [LB434]

Floor Debate
February 22, 2013

SENATOR GLOOR: Thank you, Senator Coash; 2 minutes, 14 seconds, Senator Price. [LB434]

SENATOR PRICE: Thank you, Mr. President. Thank you very much, Senator Coash. I would call attention to the debate to understand and reiterate, these registries that we're talking about, these are currently mandated by the federal government. We're told we have to have them. This is all part of that emergency...the Post-Katrina Emergency Management Reform Act for 2005. And what the intent of this legislation is, that while the federal government is mandating we have them, we want to keep the information therein private. We don't want it to be accessible to a salesperson, let's say, someone who says, hey, I think we have a registry, let's see what we can sell them in durable medical equipment, etcetera. So, you know, much like with our roads. The federal government tells us, make this change or you'll lose your funding, or something of that nature. Well, we don't have... [LB434]

SENATOR GLOOR: One minute. [LB434]

SENATOR PRICE: Thank you. We don't have a funding thing on it. We have this over us, we're told we're doing it, and we want it...this legislation is to make that information and keep it private. And I'm committed with Senator Coash and those that have been talking, we will talk between now and Select to resolve and define. But again, when we talk about special needs and the definition that it included that Senator Coash sent out, you can see, it's very, very broad because the last thing we want is for a levy to break, someone who has a need, it's not known, and they can't get there, and it does make a difference when you're prioritizing your assets. Where are you going to go? Who are you going to interact with first and foremost? Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Price. Senator Crawford, you're recognized. [LB434]

SENATOR CRAWFORD: Thank you, Mr. President. I would like to echo Senator Conrad's recommendation that there's an effort to reach out to individuals who are vulnerable, and the traditional definitions of special needs but also, you know, as Senator Coash has provided for us, a very helpful...it's very helpful to see that the FEMA definition of special needs is much broader than that, but it would be very helpful to hear feedback from groups who will be most affected by this to hear, you know, any of their concerns or make sure that they're very comfortable with the registry. It would be very helpful to have that as well. I was trying to make sure I understood the relationship between this registry and any other existing federal registries or FEMA registries. That's what I was a little bit confused about. I thought I heard you reference that one of the important reasons to have this state registry was that people were concerned about a federal registry being public information, and I may have misheard that. So I just wanted to ask you to clarify the relationship between this state registry

Floor Debate
February 22, 2013

and any existing federal registry or federal regulation, which I think you were starting to explain just a bit ago. So I would yield the remainder of my time to you to explain that, please. Thank you. [LB434]

SENATOR GLOOR: Three minutes, twenty seconds, Senator. [LB434]

SENATOR PRICE: Thank you very much, Senator Crawford. Again, it was not intentional to make it sound as if there's a federal registry being worked with. That's the limitation of a weak voice and reading quickly over what I have. Again, these registries are created out of a mandate from the federal government. We've been doing them since...I would say, 2005-06 time frame. The...again, using the Ft. Calhoun example, if you live...if you are a person with any type of functional or special needs, and I do not want to diminish the terms that we associate, and the definitions, the meanings we give to those words. But what I wanted to say is that in looking at it from a global or broader perspective, when you live in an area of Ft. Calhoun, and if you are a special needs individual in any sense of the word, whether it's a hip replacement surgery--I'm not stuck on that one, but it works--a knee replacement, or you have developmental disabilities, and if you have a conservatorship or some power of attorney, I would hope that those individuals who are charged with that duty understand if you live in the Ft. Calhoun area, and that everybody in that community gets these letters, these notices, that they are registering. If they're not, I would feel that there is probably some negligence going on. However, that's not the point here. The point here is this is a federally mandated requirement that the state have the...in their plan, in their action plan, the capability for identifying by self-identifying special needs and functional needs. Now, on the...we all know that a simple border doesn't stop bad things, like if it were something at Ft. Calhoun, there's Iowa. Iowa has to do the same things because they're in that proximity. And every state has to do the same thing. Every state has the registries. Omaha has registries because they have to. [LB434]

SENATOR GLOOR: One minute. [LB434]

SENATOR PRICE: Thank you. And what this, the intent of this bill isn't about creating a new registry, it isn't about enhancing a registry, it's about those on the registry, that information would no longer be subject to the...to public records request, especially if people wanted to sell like durable medical equipment. That's what we're trying to do here. It already happens and we want to protect the people who choose to be on it. And I think this debate, if anything, it does good to let people realize what we're actually asking for. As this debate goes out in public, they'll be able to understand it isn't, I've identified myself as a special needs person, I've identified that I have a special need in the event of an evacuation. Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Crawford and Senator Price. Senator Avery, you're recognized. [LB434]

Floor Debate
February 22, 2013

SENATOR AVERY: Thank you, Mr. President. I just would call your attention to the green copy of the bill and have you look at page 2 where it starts with Section 81-829.41, and it enumerates the responsibilities of the Nebraska Emergency Management Authority in a disaster, or some kind of natural emergency such as a civil defense emergency. And the...it's fairly specific as to what the agency is required to do. It is to provide relief and recovery assistance to individuals, political subdivisions of the state, state agencies, is to prepare and distribute appropriate catalogues of services available. It's to prepare and revise plans and to seek advice and assistance from other agencies of government, to coordinate, determine the requirements of the state in its political subdivisions for providing basic necessities such as food, clothing, and other...and children, the other things necessary to survive a disaster. We...what we're doing here with this bill is we're simply saying that you must now coordinate with other agencies. You must coordinate with other agencies, and that you must include in these registries because they already have some registries. They have the registry for different assistance agencies, for example, a registry of people with training and skills that can help in these situations. You must include in these registries vulnerable people. And the reason for that is pretty clear. If someone is on dialysis, for example, they're going to have to have electricity restored immediately. If you're on oxygen, you're going to need electricity, so the emergency management authority has to know who these people are. There's a key point about this bill, too, that has to be remembered. There's nothing in the law right now that allows for these registries to be confidential. And this law that we're now talking about, this bill, would require that these registries be exempted from public disclosure. That protects the people from criminals who might want to get access to these and prey on the vulnerable people. I think it's good. Can we improve it? We might be able to. Certainly, a lot of what we've been talking about here is already covered in law. And what we're trying to do with this bill is to require that the emergency management authority cooperate with other emergency agencies, of public assistance agencies in managing these registries, in managing the emergencies, and that information obtained by the agencies will not be considered a public record under current law. And this is, I think, something that we need to do. Certainly, the emergency management authority thought this was important enough. They came in and supported it. The Department of Health and Human Services supported it. In fact, we have a letter here from Joann Schaefer in which she wrote that registrars may have problems with mobility so they need assistance in relocating to a safe environment. Registrars might have...be on dialyses or require oxygen. Emergency managers in local health departments have been attempting to develop special needs registry so that... [LB434]

SENATOR GLOOR: One minute. [LB434]

SENATOR AVERY: ...care plans are in place prior to emergencies. Current law makes these registries public records and this bill is needed to remove that from the requirement. Thank you, Mr. President. [LB434]

Floor Debate
February 22, 2013

SENATOR GLOOR: Thank you, Senator Avery. The Chair recognizes Senator Krist.
[LB434]

SENATOR KRIST: Thank you, Mr. President. Good morning, colleagues, and good morning, Nebraska. I'm a father of a person with special needs and you're going to hear a bill come out of our committee probably with an emergency clause on it, as Senator Coash has put in calling people who have different disabilities, people of not a special needs person, but a person of some category. And it's a wonderful bill and it's long since needed, but it relates to this bill today because if you ask my daughter if she was a person of special needs, she would say, nope, I am who I am, and I'm proud of her. So, I don't think this is a good definition. I think between General and Select we need to more clearly analyze if we're doing something because the federal government wants us to do something, then let's do what the feds want us to do. And that handout that Senator Coash sent around, I would refer you to the second paragraph, I guess, second full paragraph on that page. FEMA is no longer using the term "special needs," preferring to use the term "functional needs." That's pretty clear to me. That means I'm on dialyses, as Senator Avery brought up, that means I'm...I've just had my hip replaced, as Senator Christensen brought up, that means that I need electricity for my iron lung, if there is such a thing still. That's a pretty serious need. Now, rewind because all of you are old enough to remember, I think, and if you're not, that's too bad, we had the fire department, we drove our bikes to the fire department, they put a license on our bicycles. And we went through a little class because they wanted us to be safe. We had neighborhoods that knew exactly...Ashford you remember that, don't say you didn't. (Laughter) But we had neighborhoods that identified people who were functionally challenged in some way or another because they were aging, because, because, because. We knew where those people were. Now, this is the federal government realistically saying, that doesn't happen in neighborhoods and in the case of an emergency, how do we identify those people who are functionally challenged and help them at any given time. I'm having a problem with the voluntary part of this because I think you have to be able to identify those houses or those neighbors within a neighborhood or within a city or within a political subdivision. So, I would invite us all to think about that definition in-between General and Select. I would invite us to think about this as in terms of, will they identify, will they self-identify? See, my background tells me that that's not going to happen. My background tells me that there are the elderly 94-year-old grandmother out there who still wants to drive her car, doesn't think she has any problems, and doesn't want to be singled out. I have a mother-in-law who is just in the category. Love her, but she needs a little extra help. I have a daughter who needs just a little extra help, for different reasons. I have a neighbor that needs a little extra help. So between General and Select, I think we have some work to do because if we're doing it because the feds are telling us to do it, let's comply with the federal rules and regulations. Let NEMA look like FEMA if that's what they're supposed to do. Thank you, Mr. President. [LB434]

Floor Debate
February 22, 2013

SENATOR GLOOR: Thank you, Senator Krist. Are there other senators wishing to be recognized? Seeing none, Senator Price, you're recognized to close on your amendment. Senator Chambers, you're recognized. [LB434]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I wanted all of the discussion to be completed before I asked this question and I'd like to ask Senator Price a question. [LB434]

SENATOR GLOOR: Senator Price, would you yield? [LB434]

SENATOR PRICE: Absolutely. [LB434]

SENATOR CHAMBERS: Senator Price, even though the language says, this information is not subject to disclosure under the...and then it gives a section for public records request, suppose it is disclosed? A person under this language could disclose it and what happens if the person who has it would disclose it? [LB434]

SENATOR PRICE: Senator Chambers, it's my understanding that there are already statutory guidance if someone...I'll use the word, misuses nonpublic information. So if you already have a private registry, a private...a database that's not subject to this section of the law, that there are other places in law that would deal with that. [LB434]

SENATOR CHAMBERS: Because this is an area that does concern people, and I think justifiably, let me give an example. In the law as it exists now with reference to cruelty to animals, there's a penalty established. In another portion of the law, in a different part of the statutes, is a provision that a person who has abused animals in such and such a way, may not have in his or her possession an animal for a certain period of time. A county attorney became aware of that, but he realized that other county attorneys and judges did not know because this provision was separated from the other provision about the abuse. So it would be better to put the two together so that it would be clear what is entailed in that set of circumstances. Because there is concern, what would be the problem if a penalty would be attached in this bill should disclosure occur? Would you object? I'm not going to try to do it right now. I want you to think about it and talk to the people you're working with. [LB434]

SENATOR PRICE: Thank you, Senator Chambers. A matter of fact, already in my second line notes. After talking with Senator Coash I realized that would be a topic that we should discuss about there. He had asked about, could there be a Class IV misdemeanor or some penalty, and I wisely said, I'd have to defer to people who understand that better than I. But, yes, we would engage that conversation. Because just like I wanted to make sure we knew this was a voluntary participation, and if we put it in the law, not doing like you said, not having to dig into somewhere else to find it, I'd

Floor Debate
February 22, 2013

be more than happy to. [LB434]

SENATOR CHAMBERS: And when...thank you, when I see a bill that is serious as this one is, and there are people asking very good questions, the discussion is substantive, it's not necessary for me to participate. So if somebody is trying to calculate whether or not I will speak on a bill, there will be no way to determine that because I have to be satisfied in my mind that there's no need for me to say anything, when if there are two sides, each side is represented, the issues will be properly framed and discussed. So I saw no need to try to add anything to the discussion. I'm not trying to blindside you, but I wanted to wait until that was out of the way first. That's all I would have. Thank you. [LB434]

SENATOR GLOOR: Thank you, Senator Chambers and Senator Price. Are there other senators wishing to be recognized? Seeing none, Senator Price, you're recognized to close on your amendment to LB434. [LB434]

SENATOR PRICE: Thank you very much, Mr. President and members of the body. I appreciate the dialogue and the assistance in fleshing this out. We will move forward and undertake the considerations proffered. They are good ideas, and we'll bring as many of you to the table who would like to come to the table to talk about this as we move forward. And with that, I would ask for your adoption of the amendment and the underlying bill. Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Price. Members, you've heard the closing on the amendment to LB434. The question is, shall that amendment be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB434]

CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of Senator Price's amendment. [LB434]

SENATOR GLOOR: The amendment is adopted. [LB434]

CLERK: I have nothing further on the bill, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Mr. Clerk. We now turn to discussion on LB434. Is there anyone wishing to be recognized? Seeing none, Senator...Senator Krist, you're recognized. [LB434]

SENATOR KRIST: I just would like to address one question to Senator Price for the record, please, if he will yield. [LB434]

SENATOR GLOOR: Senator Price, would you yield? [LB434]

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

Floor Debate
February 22, 2013

SENATOR PRICE: Absolutely. [LB434]

SENATOR KRIST: As I understand it, as we let this go forward between General and Select, you've committed to talking to Senator Coash and I'd love to talk to you about that definition. And let's clean it up so we can believe in what we're doing, if that's okay? [LB434]

SENATOR PRICE: Yes. [LB434]

SENATOR KRIST: Thank you very much. [LB434]

SENATOR GLOOR: Thank you, Senator Krist. Are there other senators wishing to be recognized? Seeing none, Senator Price, you're recognized to close on LB434. [LB434]

SENATOR PRICE: Thank you, Mr. President. I will be brief. Again, I will work with all the members who have spoken. I will reach out to you individually after today, and we will move forward and get around the table and make this as applicable and understandable and engaging for our population so we get done what we really want to do, and that is, to let our emergency managers plan for and be able to execute an emergency action plan that will engage and protect our citizens. Thank you, Mr. President. [LB434]

SENATOR GLOOR: Thank you, Senator Price. Members, the question is the advancement of LB434 to E&R Initial. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB434]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB434. [LB434]

SENATOR GLOOR: The bill advances. Mr. Clerk, items for the record. [LB434]

CLERK: I do have some. Thank you, Mr. President. New resolutions: Senator Seiler and Speaker Adams offer LR65, Mr. President. It's a resolution commemorating the service of former Senator Ardyce Bohlke. I also have LR66, LR67 and LR68 by Senator Hadley. Those will be laid over. And LR69 by Senator Hadley. All of those resolutions will be laid over. Your Committee on Judiciary chaired by Senator Ashford reports LB3 and LB345 to General File with committee amendments attached. I have a notice of cancellation of hearing. I have a request to withdraw a bill (re LB586). That will be laid over. The bill passed on Final Reading this morning was presented to the Governor at 10:35 a.m. (re LB408). New A bill. (Read LB225A by title for the first time.) That's all that I have, Mr. President. (Legislative Journal pages 497-502.) [LR65 LR66 LR67 LR68 LR69 LB3 LB345 LB586 LB408 LB225A]

SENATOR GLOOR: Thank you, Mr. Clerk. Continuing with General File. Mr. Clerk.

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Floor Debate
February 22, 2013

CLERK: LB510 is a bill by Senator Scheer. (Read title.) The bill was introduced on January 23, referred to the Government, Military and Veterans Affairs Committee, advanced to General File. I have no amendments to the bill, Mr. President. [LB510]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Scheer, you're recognized to open on your bill. [LB510]

SENATOR SCHEER: Thank you, Mr. President. This is a pretty straightforward change in statutes that was brought to me by the League of Municipalities and the Coordinating Council for Educational Service Units. Two sections, the first, the ESU Coordinating Council was inadvertently took out of the legislation when there's some changes made on that...when they put that system together, and the bill itself limits those meetings on either a video or a teleconference to one hour, and it has in a couple of instances ran the groups rather short in their time ability to get the work done that's coming before them, and so they've asked that it be extended to two hours. And it helps, especially in those areas where there's great travel mileage in-between the participants and those meetings. I would welcome any debate or questions. Thank you, Mr. President. [LB510]

SENATOR GLOOR: Thank you, Senator Scheer. Members, you've heard the opening on LB510. Are there senators wishing to be recognized? Seeing none, Senator Scheer, you're recognized to close. Senator Scheer waives. Members, the question is the advancement of LB510 to E&R Initial. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB510]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB510. [LB510]

SENATOR GLOOR: The bill advances. Continuing with General File. [LB510]

CLERK: LB363 by Senator Avery. (Read title.) The bill was introduced on January 18 of this year, referred to the Government, Military and Veterans Affairs Committee, reported back to General File. Mr. President, there are committee amendments. (AM166, Legislative Journal page 422.) [LB363]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Avery, you're recognized to open on LB363. [LB363]

SENATOR AVERY: Thank you, Mr. President. Last summer, my office began receiving a number of complaints about the amount that public entities are charging for public records. I would start by pointing out that public records are owned by the people. The public entities that manage and hold those records are custodians, not the owners. We are the owners, they are the custodians. And the custodians have been charging, legally, by the way, rather large amounts for those records. Citizens and members of

Floor Debate
February 22, 2013

the press report being charged hundreds, sometimes thousands, of dollars for copies of public records. In some cases, cities charge exorbitant fees for such things as accident reports, using accident reports for what appears to be fund-raising. Included into these fees are the actual costs of making the copies as well as staff time needed to fulfill the public records request, including any attorney time needed to review the record. The concern with these large fees is that they're making public records inaccessible to the ordinary citizen. And I will go farther and say, that they're making a mockery of our public records law. The current law does allow public entities to charge a fee which shall not exceed the actual cost of making the copies available, the actual cost. In 2000, a bill was passed into law that removed language prohibiting agencies from charging staff time for public records request. And this proved to be a...probably a mistake, but it was done under pressure from public entities who were, in many cases, quite honestly, facing unreasonable requests and sometimes even harassing requests. But in 2000, the law was passed that removed language prohibiting agencies from charging staff time for public records. Since that time, the Attorney General has interpreted the statute to allow agencies to charge for staff time when filling a public records request, including time for attorneys to review those records. After receiving these complaints, my office held a series of meetings to discuss this issue in more detail with interested parties. When I met with public entities that were fulfilling these public records requests, they reported what turned out to be true, concerns about the voluminous requests for information, such as requests for every single e-mail ever sent from the office. Obviously, an unreasonable request. These large public records requests often take staff away from their regular duties and in some cases, effectively shut down the daily work of these offices. The Attorney General told me that at one point when he was running for the Senate, he had 15 people in his office pinned down in trying to retrieve requested correspondence. When my office started drafting LB363, we met with several groups to try to balance the need of the public to have access to public records with the concern from the entities that large requests can be cumbersome for their office. We worked with the League of Nebraska Municipalities, we worked with the Nebraska Association of County Officials, we worked with the ACLU Nebraska, we worked with media of Nebraska, with the University of Nebraska, and with the Attorney General's Office. As you can see from the committee statement, there were no opponents to the bill. There were eight proponents of the bill and three people came in and testified in a neutral position. I would point out that those three had previously been in opposition but because of concessions we made in negotiations, they moved to neutral. LB363 clarifies that a public entity may charge a fee for making copies, but the fee cannot exceed the amount of the reasonably calculated actual added costs, which may include the cost of supplies such as paper, toner, and equipment. Let me repeat that. It clarifies that a public entity may charge a fee to retrieve the records, making copies, but cannot exceed the amount of the reasonably calculated actual added costs, actual added costs. The costs may also include additional payments for contractors to complete the requests including computer services. The actual added costs used to calculate the fee for records will not include any charge for the existing salary of officials or employees

Floor Debate
February 22, 2013

with respect to the first six hours of searching, identifying, and copying the records. So, an entity that is fulfilling a request has to use their staff in the course of their ordinary performance of their duties, the first six hours of which cannot be charged to the requester. After that, then these following procedures come into play. A special service charge reflecting labor costs may be included in the time required beyond the six hours. This provision was put in to deal with public entities concerned about large and unusual and cumbersome requests. If the request is going to take more than six hours to complete, staff time may be charged. The fee for records will not include any charge by the public entity to review the records seeking a legal basis to withhold the records from the public. The requester will have ten days to review the estimated cost of the request, and during that time can negotiate with the custodian to narrow the request to...to withdraw the...can...has ten days to negotiate with the custodian of records to narrow the request to something more affordable, or they can withdraw the request. If the requester does not respond in ten days, the public entity will not...is not required to fulfill the request. The bill also provides that if a public record is available on the public entity's Web site, the custodian does not need to provide a physical copy, but will provide the location of the record on the Web site, making it easy for the requester to find it. If the requester does not have access to a Web site, that is a computer, the custodian will provide copies. Finally, the Attorney General may review whether the fees estimated or charged by the custodian are actual added costs or whether they qualify as special service charges. I also want to mention the fiscal note on this bill. You will see two of them, one is a revised fiscal note. We worked with the State Historical Society that estimated they needed an additional two and a half FTEs to fulfill the extra public records requests that they believe they would receive if the bill passed. They were very, very cooperative with us. The Fiscal Office worked out a revised estimate and I think you see that. It is now down to \$78,000. At the public hearing on the bill, the director of the State Historical Society testified in a neutral position. He supports this public records law and... [LB363]

SENATOR GLOOR: One minute. [LB363]

SENATOR AVERY: ...felt that he could comply with it if we had a chance to negotiate a bit with the Fiscal Office. Now, I have some evidence here of some pretty scary stories about what has happened to requesters, and in subsequent debate this morning I'm going to talk to you about some of that. But in one case, there was an estimate from the Department of Health and Human Services that the request would cost \$126,340; \$126,340 to comply with a law already on the books to provide public records to the public. Remember, the public owns these records. The public entities are custodians. This is a good bill. We worked it out over many, many weeks of negotiations going back to late summer of last year. And I hope that you will give this serious consideration for advancement to Select File. Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. Members, you've heard the opening on

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

Floor Debate
February 22, 2013

LB363. We now move to discussion. Senator Murante, you're recognized. My apologies, as the Clerk stated previously, there are amendments from the Government, Military and Veterans Affairs. Senator Avery, as Chairman of that committee, you're recognized to open on the committee amendments. [LB363]

SENATOR AVERY: Thank you, Mr. President. This committee amendment is...represents a lot of the heavy work that my office did to get this bill before you. The committee amendment represents a compromise that was reached with the Attorney General on the bill. The committee amendment makes two clarifying changes in the original bill. First, the amendment provides that the actual added costs used as the basis for the calculation of the fee for records will not include any charge for staff to physically redact information for the first six hours. In other words, staff time to physically redact information from records will be allowed to be charged after the first six hours. The second change provides that the fee for records will not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records. The...much of the redaction that takes place in the review of the documents is to redact Social Security numbers and other identifying personal information. You don't have to have a legal degree to be able to do that. This is a narrowing of the original bill which prohibited the custodian or any officer, employee or contractor of the office to charge for reviewing the public records seeking a legal basis to withhold them. With the amendment, only services of attorneys are prohibited from being charged for this purpose, even after six hours of time. Again, there were no opponents to this bill at the public hearing. There were eight proponents, three testified neutral. The committee advanced the bill on a 7-0 vote with one member abstaining. So I'm happy to entertain any questions and discussion you would have of this amendment and the underlying bill. Thank you, Mr. President. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. Members, you've heard the opening on AM166 and the underlying bill, LB363. We move to floor discussion. The following senators are in the queue: Murante, Larson, Chambers, Sullivan, and Nelson. Senator Murante, you're...sorry, the Clerk has something for the record. Mr. Clerk. [LB363]

CLERK: Senator, I apologize to you twice. Mr. President, the Natural Resources Committee would meet under the south balcony immediately; Natural Resources, south balcony.

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Murante, thank you for your patience. [LB363]

SENATOR MURANTE: Thank you, Mr. President. Good morning, colleagues. Senator Avery, what I would like to do is ask some questions. I'll yield you the balance of my time to answer them, if that works for you. I voted for LB363 in the Government Committee. I still support it. Following our public hearing on the bill, we received a

Floor Debate
February 22, 2013

series of--as I'm sure all of us all did--a series of e-mails of concerns, particularly from smaller counties with respect to the six-hour provision in the bill, that the first six hours of work cannot be charged. So, Senator Avery, the two questions I have for you is, how did you land on the number six hours? Did you contemplate smaller counties who are now saying they might not have the capacity to deal with public records requests without being able to charge for it? So I'll yield the balance of my time to Senator Avery to answer those questions. Thank you. [LB363]

SENATOR AVERY: Thank you, Senator Murante. [LB363]

SENATOR GLOOR: Senator Avery, you have 4 minutes. [LB363]

SENATOR AVERY: Oh, sorry, Mr. Chair. I can tell you that I agreed eventually to six hours, very reluctantly. In fact, I didn't want any limit like that put on it, so I started out by saying, all right, I'll give you ten hours, or I think I did. And it went to eight hours and finally they got me down to six hours. This was a long, difficult, and painful negotiation because, frankly, a lot of these public entities didn't want any change in the law at all. And they were resisting. And in one part of the negotiations we said, come back with a proposal. They came back with a proposal that virtually would have gutted the existing law and it was retrogressive. So, I quit saying come back with a proposal. We started making proposals. But I would point out that the assessors had an opportunity to be a part of that negotiation from late summer all the way through fall, and into the start of the session, and they didn't raise an issue at all. The first I heard about any concern from the assessors was on Monday of this week. And I would point out that when I have talked to assessors I have asked them to read the bill carefully. If you have a Web site and you post these documents on the Web site, that is enough compliance right there. Refer the requester to the Web site. You don't have to go beyond that, unless they don't have access to a computer, then you have to work out a way to get them hard copies. [LB363]

SENATOR GLOOR: Thank you, Senator Avery. Senator Chambers, you're recognized. [LB363]

SENATOR CHAMBERS: Mr. President, again, there's a bill about which there may be some discussion. But by analogy, I'm going to use this expression. The power to tax is the power to destroy. When these entities which want to conceal public information are allowed to attach exorbitant fees, which I think ought to be criminal, I think they should be criminally sanctioned for it, but I won't try to do that. They are in the business of trying to manipulate the law, circumvent it so they don't have to carry out a duty reposed on them by the law. If they don't want to comply with the law, get out of that position. If these lazy employees don't want to do their work, fire them. And what I'm going to be watching is to determine how that six hours, the initial six before fees can be attached, is expended. Will it be somebody carrying out ordinary duties and functions of that

Floor Debate
February 22, 2013

office, but pretending that that time is spent in searching for this information? We need to start imposing sanctions and here's why. If you're dealing with people who are honest, ethical, and want guidance from the law, you don't need to attach a penalty. But when you have people who are venal, who are lazy, who are going to try to circumvent and defeat the law which is legitimately on the books, there needs to be a sanction, and you need to hold a club over their head. I look at how many things are done in these rules and regulations in the schools that will punish children more harshly than adults are punished under the law for the same thing, then they want to say, oops, I'm sorry, forgive me. I know of people who have been brought up on charges by HHS through the Attorney General's Office and these are ordinary people. And they'll say, well, my paperwork is not what it ought to be, I didn't keep this, I didn't keep that. They say, that's too bad, the law says that you violated the law. But when it comes to HHS, through incompetency, losing over a million dollars in federal money, all they have to do is say, oops, it was a clerical error and it's clear for them. These big shots and their well and highly paid employees can get out of any accountability and responsibility for their inappropriate or incompetent actions. But the citizens to whom we owe a duty, can have the book thrown at them or a hammer dropped on them when they can legitimately show that the rules and regulations under which they operate could have been stepped outside of, and the person is willing to try to do something about it, but they're to be made an example of. So they face prosecution. It is wrong. And those are the kind of things that I will bring up from time to time, but on this particular bill, I'm going to let the discussion proceed a pace for the next few minutes. But when we come back on it again, all bets are off. And so that the Speaker understands this, there's a guy who owed brother Johnson \$10,000 and brother Johnson was...he thought in his last throes, about to croak, so he raised up off his deathbed and said, when I die, my debt is paid. And the guy said, I didn't know old Johnson was like that. Johnson got a deep breath and he rose up again and he said, but if I survive, the debt stands. [LB363]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Sullivan, you're recognized. [LB363]

SENATOR SULLIVAN: Thank you, Mr. President. So I've listened to the conversation so far, it just occurs to me that here we are again with certain actions of a few potentially make it difficult for everyone. I know that in testimony on this bill that the Nebraska Association of County Officials testified, I think in favor of it. And I have heard from some county assessors, who as Senator Avery has said, perhaps, came late to the game. But still, in looking at this, and particularly looking at how it plays out in smaller counties in rural Nebraska...you know, first of all, I'm not opposed to access to public records. I'm not questioning that at all. What I'm concerned about is the process. In smaller counties where there are limited staff, you know, this can create an undue burden. Larger counties, quite frankly, have the resources and have the additional staff to do the work when it's called upon them. But when you've got a county office that has one individual, maybe two at the most, and you're asking them for six hours of work

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

Floor Debate
February 22, 2013

before they start charging, that's nearly a whole day of work. And depending upon the number of requests that come in, suddenly they've got a backlog that they may be having to work in the evening or on weekends to arrive at that, fulfill that request. I would like to ask Senator Avery a couple of questions, if I might. [LB363]

SENATOR GLOOR: Senator Avery, would you yield to questions from Senator Sullivan? [LB363]

SENATOR AVERY: I will. [LB363]

SENATOR SULLIVAN: Thank you, Senator Avery. I think you covered this a little bit earlier but again remind me, what was magical about the six hours? [LB363]

SENATOR AVERY: Well, it wasn't magical. In fact, it was very painful because I had started out, I believe, at ten or eight hours. In fact, we started out with no limits like that, but it was clear in negotiating with these public entities that they were going to have to have something that would restrict the amount of free staff time that could be devoted to retrieving these records. So we finally wound up at six. And now, I'm hearing that that's too much and it ought to be one hour. I guess if I gave...if I went to one hour, I'd hear next, 30 minutes. (Laughter) No, there's nothing magical about it. It was the result of compromise. You know, I gave up something to get something. [LB363]

SENATOR SULLIVAN: And in that final comment, did I hear you say that maybe you would be willing to give up a little bit more? (Laughter) [LB363]

SENATOR AVERY: No. The truth is that we went through a very, very long and complicated negotiation process. NACO was at the table from the beginning, and... [LB363]

SENATOR SULLIVAN: What's the rationale in excluding attorneys? [LB363]

SENATOR AVERY: Well, because attorney fees are very expensive. It's not like a clerk that can redact Social Security numbers. If you have an attorney working on these documents, they're going to charge you \$125 to \$250 an hour. And that gets to be a pretty heavy expense to a citizen requesting a public record. [LB363]

SENATOR SULLIVAN: When you mentioned that the request can be taken care of by posting this on a Web site, I don't know if that is something that is available in the smaller rural counties with limited staff. And again, I'm thinking the arrangements. Some of this requests for public information is already available in a physical situation where it's just a matter of the request... [LB363]

SENATOR GLOOR: One minute, Senators. [LB363]

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

Floor Debate
February 22, 2013

SENATOR SULLIVAN: ...walking into this room and sitting down and doing your homework, so to speak. [LB363]

SENATOR AVERY: That is correct. [LB363]

SENATOR SULLIVAN: Well, so then if the person can actually do that, why would we have to ask a public employee to do that for them? [LB363]

SENATOR AVERY: The law states very clearly that the public shall have free access to those records and if they want to stand there and...or go to a private room and pore through the records physically, they can still do that free, and you don't have to have a staff person assigned to it. [LB363]

SENATOR SULLIVAN: But what if they put in the request for the public employee to do that? Under this legislation, that would bypass the fact that they could do that on their own. [LB363]

SENATOR AVERY: No, the public entity would say, look, these records are available to you, you can look at them right now free. But if you want us to go in and compile these records for you in hard copy, then if it takes us more than six hours, we're going to have to start charging you for it. [LB363]

SENATOR SULLIVAN: But that's my... [LB363]

SENATOR GLOOR: Time, Senators. [LB363]

SENATOR SULLIVAN: Thank you. [LB363]

SENATOR GLOOR: Thank you, Senator Sullivan and Senator Avery. Mr. Clerk for a motion.

CLERK: Mr. President, some items if I may. First of all, your Committee on Judiciary chaired by Senator Ashford reports LB172 and LB403 to General File with amendments. I have a series of amendments from Senator Chambers to LB94. Name adds: Senator Dubas to LB483; Senator Coash to LB47. (Legislative Journal pages 503-504.) [LB172 LB403 LB94 LB483 LB47]

And I have a priority motion. Senator Watermeier would move to adjourn the body until Monday morning, February 25, at 10:00 a.m.

SENATOR GLOOR: Members, you've heard the motion to adjourn until Monday morning, February 25, at 10:00 a.m. Those in favor say aye. Those opposed say nay.

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

Floor Debate
February 22, 2013

We stand adjourned.