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Floor Debate  
February 28, 2013

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[LB68 LB94 LB133 LB166 LB225 LB225A LB242 LB259 LB262 LB273 LB340 LB363  
LB363A LB386 LB408 LB499 LB612 LB620]

SENATOR COASH PRESIDING

SENATOR COASH: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-fourth day of the One Hundred Third Legislature, First Session. Our chaplain for today is Senator Scheer. Please rise.

SENATOR SCHEER: (Prayer offered.)

SENATOR COASH: Thank you, Senator Scheer. I call to order the thirty-fourth day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

ASSISTANT CLERK: There's a quorum present, Mr. President.

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

ASSISTANT CLERK: Mr. President, I do. A communication from the Governor. (Read re LB408.) In addition to that, the Committee on Transportation and Telecommunications report LB386 to General File. (Legislative Journal pages 549-550.) [LB408 LB386]

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

ASSISTANT CLERK: Mr. President, the first confirmation report is offered by the Government, Military and Veterans Affairs Committee. It relates to Wayne Boyd to the State Personnel Board. It's found in the Journal on page 507.

SENATOR COASH: Senator Avery, you are recognized to open on the confirmation report.

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. The Government, Military and Veterans Affairs Committee is pleased to bring to you, with our recommendation for approval, the nomination of Wayne Boyd as a new member of the State Personnel Board. Mr. Boyd is from South Sioux City, Nebraska. He is a graduate of the University of South Dakota School of Law, magna cum laude. He has been a member of many civic organizations in and around South Sioux City. He is currently practicing law in that city, and we heard this nomination on February 14 of this year and we voted 8-0 to confirm for a term beginning in September of 2012 and ending in August of 2017. I urge your approval of this nomination. Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Avery. You've heard the opening to the

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Government, Military and Veterans Affairs confirmation report. Senator Bloomfield, you're recognized.

SENATOR BLOOMFIELD: Thank you, Mr. President. Good morning, colleagues. I have known Wayne Boyd for 30 years or better. He is an upstanding citizen in northeast Nebraska. He's done great work in and around South Sioux and Norfolk areas. I highly recommend him for this position. He'll do a great job for the state of Nebraska. Thank you.

SENATOR COASH: Thank you, Senator Bloomfield. Seeing no other members wishing to speak, Senator Avery, you're recognized to close on the report. Senator Avery waives closing. The question is the adoption of the report offered by the Government, Military and Veterans Affairs Committee. All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 550.) 26 ayes, 0 nays on the adoption of the report, Mr. President.

SENATOR COASH: The report is adopted. The next report, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the next report is from the Education Committee. It is for Frank Harwood to the Technical Advisory Committee for Statewide Assessment. (Legislative Journal page 551.)

SENATOR COASH: Thank you, Mr. Clerk. Senator Scheer, as Vice Chair of the Education Committee, you're recognized to open on the confirmation report.

SENATOR SCHEER: Thank you, Mr. President. The Education Committee encourages the confirmation of the appointment of Mr. Frank Harwood to the Technical Advisory Committee on the Statewide Assessment. If confirmed, Mr. Harwood's term on the committee would be extended to July 18, 2013. Mr. Harwood is from Bellevue and serves as a superintendent of Bellevue Public Schools. He's in his twentieth year as an educator and eleventh as administrator. Prior to assuming his position in Bellevue, he worked six years as an administrator in the Lawrence Public Schools in Lawrence, Kansas. And we have a background, the Technical Advisory Committee is charged with advising the Governor, the State Board of Education, and the State Department of Education on the development of the statewide assessment instruments and the statewide assessment plan required pursuant to the Quality Education Accountability Act. The committee consists of three nationally recognized experts in educational assessment and measurement, one administrator from a school in Nebraska, and one teacher from the school in Nebraska. Members are appointed to a three-year terms. I will stop here and urge you to support the confirmation of Mr. Harwood.

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SENATOR COASH: Thank you, Senator Scheer. Senator Kolowski, you're recognized.

SENATOR KOLOWSKI: Thank you, Mr. President. I strongly recommend this...moving forward, as far as Mr. Harwood. He's been an outstanding addition to the superintendents in the metropolitan Omaha area, and a fantastic find for the whole city of Omaha as far as our educational environment is concerned. I strongly recommend this and hope we'll be able to move on it. Thank you very much.

SENATOR COASH: Thank you, Senator Kolowski. Senator Crawford, you're recognized.

SENATOR CRAWFORD: Thank you, Mr. President. I also stand in support of Dr. Frank Harwood for this position. We've been very pleased to have him come into Bellevue Public Schools and provide educational leadership there, and I look forward to the way that he will also provide educational leadership for the state in this area. Thank you.

SENATOR COASH: Thank you, Senator Crawford. Seeing no other members wishing to speak, Senator Scheer you're recognized to close on the confirmation report. Senator Scheer waives closing. The question is the adoption of the report offered by the Education Committee. All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 551.) 35 ayes, 0 nays on the adoption of the report, Mr. President.

SENATOR COASH: The report is adopted. Next report. Next confirmation report, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the Education Committee would report favorably on Deborah Frison to the Coordinating Commission for Postsecondary Education. (Legislative Journal page 513.)

SENATOR COASH: Senator Scheer, you're recognized to open on the report.

SENATOR SCHEER: Thank you, Mr. President. The Education Committee encourages your confirmation of the appointment of Dr. Deborah Frison to the Coordinating Commission for Postsecondary Education. Dr. Frison is a new appointee to the commission. If confirmed, her term would be extended to January 1, 2018. Dr. Frison is from Omaha. She is the principal of Burke High School. She has extensive experience as a building administrator within the Omaha Public Schools, having previously served as the principal of King Science and Technology Magnet Center and the Morton Middle School, and as assistant principal of the King Science Center and Central High School. Dr. Frison began her career at OPS as a music teacher, a position she held for 17

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years. She earned her doctorate and master's degree in educational administration from the University of Nebraska, as well as the bachelor's degree in music from Nebraska Wesleyan University. In the way of background, the Coordinating Commission for Postsecondary Education is a constitutional entity charged with the coordination of Nebraska's higher education system. The commission consists of 11 members, one from each of the state's six Supreme Court justice districts, with the other five appointed by the state at large. Members are appointed for terms of six years. I will stop and ask for your support for the confirmation of Dr. Deborah Frison.

SENATOR COASH: Thank you, Senator Scheer. Members, you've heard the opening to the Education confirmation report. Are there members wishing to speak? Seeing none, Senator Scheer, you're recognized to close on the report. Senator Scheer waives closing. The question is the adoption of the report offered by the Education Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal pages 551-552.) 34 ayes, 0 nays on the adoption of the report, Mr. President.

SENATOR COASH: The Education report is adopted. Next confirmation report, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the next report from the Education Committee is for James Vokal to the Board of Educational Lands and Funds. (Legislative Journal page 513.)

SENATOR COASH: Senator Scheer, you're recognized to open on the report.

SENATOR SCHEER: Thank you, Mr. President. The Education Committee encourages the confirmation of the appointment of James Vokal, Jr., to the Board of Educational Lands and Funds. Mr. Vokal is a new appointee to the board and, if approved, his term would extend to October 1, 2017. Mr. Vokal is from Omaha. He has nearly 20 years' experience in the banking industry, currently serving as vice president of the commercial banking for Mutual of Omaha Bank, and previously as vice president of sales and leasing for the Coldwell Banker Commercial World Group. Mr. Vokal currently serves on the board of the Metropolitan Entertainment and Convention Authority and is a previous member of the Omaha City Council. He holds a bachelor of science degree in business administration from the Creighton University. In the way of background, the Board of Educational Lands and Funds is the constitutional entity charged with managing the state's educational trust plans. The board consists of five members, one from each of the state's congressional districts as they existed on January 1, 1961, and a fifth member at large. Statute requires at least one member of the board be competent in the field of investments. Members are appointed to serve a term of five years on the board. According to the board's most recent biennial report, approximately 1.3 million

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acres of land were being held in trust as of June 30, 2010, with the value of that acreage estimated at \$677 million. Revenue generated from the leasing of these acres is used to support K-12 public education in schools. The total revenue attributed to all school trust land sources topped \$35 million for the first time in 2009 and '10. I will stop and urge your support for the confirmation of Mr. Vokal to the Board of Educational Lands and Funds.

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

ASSISTANT CLERK: (Record vote, Legislative Journal page 552.) 33 ayes, 0 nays on the adoption of the report.

SENATOR COASH: The report is adopted. Next report, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the next report from the Natural Resources Committee is Stephen Lichter to the Nebraska Power Review Board. (Legislative Journal page 513.)

SENATOR COASH: Senator Carlson, you're recognized to open on the report.

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. This appointment of Stephen Lichter is a reappointment to the five-member Power Review Board. Mr. Lichter is from Waterloo. He is both a mechanical engineer and a professional engineer, very active in his community. He is employed by an Omaha engineering firm, and he, really, represents what's called the layperson interest on the Power Review Board. After the hearing, there were six members present and six positive votes to confirm Mr. Lichter, and I would ask for your support on the appointment of Stephen Lichter to the Power Review Board.

SENATOR COASH: Thank you, Senator Carlson. Members, you've heard the opening on the Natural Resources confirmation report. Senator Pirsch, you're recognized.

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I just rise in support of the confirmation of Mr. Lichter to the board. I happen to have the pleasure of knowing Mr. Lichter for a long time, and he's a man of great character and I think he will make a good contribution to the board. Thank you.

SENATOR COASH: Thank you, Senator Pirsch. Any other further discussion on this report? Seeing none, Senator Carlson, you're recognized to close. Senator Carlson waives closing. The question is the adoption of the report offered by the Natural

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Resources Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal pages 552-553.) 31 ayes, 0 nays on the adoption of the report, Mr. President.

SENATOR COASH: The report is adopted. Next report, Mr. Clerk.

ASSISTANT CLERK: Mr. President, Natural Resources report favorably on Tim Wistrom to the Nebraska Oil and Gas Conservation Commission. (Legislative Journal page 513.)

SENATOR COASH: Senator Carlson, you're recognized to open on the report.

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Tim Wistrom appeared by telephone in front of the committee because of the weather, for his hearing, and it is to the Nebraska Oil and Gas Conservation Commission, which is a three-member commission. Mr. Wistrom is from the Kimball area. He owns an oil and gas business. He also owns a farm and ranch and is active in those as well. This is a new appointee and he's looked at to represent the operators' interest on the commission. After the hearing, we had a committee vote with the six people that were present, and the vote was five "for," and one "no" vote. I would ask for your support in the appointment of Tim Wistrom.

SENATOR COASH: Thank you, Senator Carlson. Senator Ken Haar, you are recognized.

SENATOR HAAR: Mr. President, members of the body, we don't do this too often, to rise up and speak against an appointment. I was the one "no" vote, and I would like to take a little time to explain that. It was kind of an unusual appointment discussion because we did talk to Tim on the telephone because of the weather. Asking a few questions, we found out, first of all, that he was recruited by the director, Mr. Sydow, who I have some real problems with. We'll talk about that in a hearing this afternoon. Mr. Sydow was the person who appeared across the state on TransCanada's ad saying oil and water don't mix. And, again, we'll ask more questions about that this afternoon. However, we also...then I asked Mr. Wistrom whether he thought it was appropriate that the director of the Nebraska Oil and Gas Conservation Commission should go statewide on television for an oil company, TransCanada, and, as we know, those ads appeared again and again in the newspapers, on radio; and Mr. Wistrom said, fine, that's great. Then we talked a little bit about regulation. So here we had the director of the Nebraska Oil and Gas Conservation Commission promoting...promoting the industry, and then with Mr. Wistrom we talked about the other function of the commission, and that's regulation. And he did say they're starting to tackle regulations on fracking, and we'll

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see that this afternoon because Senator Wallman has a bill on fracking. So he's in favor of promoting the industry, at the same time regulating the industry. And then his references, and, again, I don't know Mr. Wistrom, and all I have to go from are the documents that were submitted and the brief conversation we had. Mr. Wistrom's references were two: Bruce Evertson and Phil Kriz, and both of these people are in the oil industry. Bruce Evertson is the chief executive officer and president of Evertson Companies, which is an oil producing company along with other energy services, as well as I can find out from the Internet; and that's fine. I'm glad that we have such a person living in Nebraska. But my point is, this is a commission that's supposed to regulate the oil and gas industry in Nebraska, yet Mr. Wistrom's reference is the owner and CEO of an oil company. His second reference is Phil Kriz. Phil Kriz lives in Denver and he's an engineering manager for the same oil company. So I raise the same question, how can you regulate an industry and also promote it? Then there was a follow-up question from one of the members saying...asking about promoting the oil company...or the oil industry, gas and oil industry in Nebraska, and Mr. Wistrom said, yes, that's one of our functions. So, again, I would ask the question, I don't know Mr. Wistrom, but...

SENATOR COASH: One minute.

SENATOR HAAR: ...I think we need to ask the question, how can the commission...how can the commission promote an industry and also regulate that industry at the same time for...and, you know, every commission is for the, really, the benefit of the people of Nebraska. So gas and oil need to be promoted, they need to be regulated, but how can the same commission be doing both of those, and Mr. Wistrom agreed that both of those were functions of that commission. So with that, I will vote no on this appointment, and, again, this afternoon, we're going to have a hearing from Senator Wallman on fracking and I will explore that same question at the hearing. Thank you very much.

SENATOR COASH: Thank you, Senator Haar. Senator Schilz, you're recognized.

SENATOR SCHILZ: Thank you, Mr. President and members of the body, good morning. Mr. Wistrom lives in my district. I don't know him personally, but I can tell you this. The Oil and Gas Conservation Commission has been located in Sidney, Nebraska, which is also in my district, and, truthfully, once you get east of basically Sidney, Big Springs, in there, you don't find a whole lot of oil. So there's a one small pocket in the state where that happens and that basically is in the Panhandle, and those folks have worked at this. Mr. Wistrom has worked in the industry for a very long time. He understands the industry. He knows how things should be done out there. As for the promotion of it, we have to understand that in the state of Nebraska there's a bottleneck. We could produce more oil if we could move more oil out of the state. Projects like the Keystone XL Pipeline gives us the opportunity to free up capacity on other pipelines that are around the state, which gives the opportunity to our oil producers in western Nebraska to be

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able to do that. So should promotion be there or not? I guess that can be debated. Are there opportunities out there that we're missing out because we don't have the capacity? I say the answer is yes, and I say in that instance we need to promote Nebraska because rural Nebraska is losing population every year, it seems like, and we're having a tough time maintaining that. I don't want to take any tools off the table. So I am going to enthusiastically vote for the appointment of Mr. Wistrom and I invite the rest to do the same. Thank you very much.

SENATOR COASH: Thank you, Senator Schilz. Senator Carlson, you are recognized.

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Senator Haar has certainly done some homework on this confirmation, and I don't begrudge him a bit for doing that. I think that's what we're supposed to do. And he can correct me if I'm wrong; however, in the committee discussion his negative vote was somewhat based on the answers that Mr. Wistrom gave in the hearing, but it was also because of his, I'm going to say, dislike for Bill Sydow, the executive director of the Oil and Gas Commission, and I disagree with a vote that's based on that kind of thinking. And, so many of the times I appreciate how Senator Haar conducts himself and how he comes to conclusions on things, I just don't agree with this one. But in wanting to do homework after the hearing was over and the voting was taken, then he looked into these references, and that's perfectly okay to do that. I also have had a conversation with one of the references, and it's an individual from Kimball that is in the oil and gas business, and he couldn't say enough good things about Tim Wistrom. He talked about his integrity, he talked about what a good, hard worker he is. He said that he has ranching and farming interests and so he understands when there are conflicts and disagreements that come up with landowners, he understands why, and he can address that. This individual said that Mr. Wistrom is intelligent, he's honest; and he said, the best way I can describe him is he's a five-star guy, and I can't say anything bad about him. And so I appreciated that information as well. Now, I don't understand...I really think that it's too bad on a three-member commission that you wouldn't try to be choosing people that are positive on the business of oil and gas. I think it's understandable that that member would support the XL Pipeline. I think it's natural to want someone on the commission who supports the oil and gas industry, and I think it just wouldn't be normal to try and find somebody who is against or negative to the oil and gas industry. And from what I can glean, certainly Tim Wistrom would have a positive impact on this commission, and I would ask for your support in his appointment. Thank you.

SENATOR COASH: Thank you, Senator Carlson. Senator Chambers, you are recognized.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature. I would like to ask Senator Haar a question or two.



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SENATOR COASH: Senator Ken Haar?

SENATOR CHAMBERS: Yes.

SENATOR COASH: Senator Haar, will you yield?

SENATOR HAAR: Yes.

SENATOR CHAMBERS: Senator Haar, which person was doing this promoting on television of that pipeline? Was it the director or this person?

SENATOR HAAR: It was the director.

SENATOR CHAMBERS: And how would that tie in with this person?

SENATOR HAAR: I think one of my functions to being in these hearings is to sort of follow my gut instincts. And my...a red flag was waved, first of all, when Mr. Wistrom said that he was recruited by the director. Then I followed up with a question because I think that's what we're supposed to do when we see a red flag, we're supposed to follow that. I asked him, did he feel it was appropriate for Mr. Sydow to do his...all the advertising for TransCanada, and he said yes, it is. So my objection is whether Mr. Wistrom understands the appropriateness of that kind of public official appearing on television again and again, television and newspapers, representing the state, in a way, and giving half-truths.

SENATOR CHAMBERS: Okay. Now, this Mister...is his name pronounced Seegile, Seegull, or just what, because I've never heard of him before.

SENATOR HAAR: No, it's Sydow, Sydow.

SENATOR CHAMBERS: See...with a "d"?

SENATOR HAAR: Yes. S-y-d-o-w.

SENATOR CHAMBERS: Okay, Sydow. When Mr. Sydow was promoting this pipeline, were these commercial-type promotion spots that were seen, when they were on television?

SENATOR HAAR: Yes. Yes.

SENATOR CHAMBERS: Was he identified as the director of this commission, or whatever his title is?

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SENATOR HAAR: Yes, he was. Yes.

SENATOR CHAMBERS: Do you know whether he was paid to do that by the pipeline company?

SENATOR HAAR: I don't. I have to assume...I did assume that he wasn't paid.

SENATOR CHAMBERS: That he was not?

SENATOR HAAR: That's my assumption.

SENATOR CHAMBERS: Okay. Thank you. Members of the Legislature, when it comes to some things, you can say that I'm a purist or a puritan. When you have these commissions and there's too chummy a relationship with the regulator and the regulatee, then it doesn't pass the smell test. I'm going to ask Senator Carlson a question or two.

SENATOR COASH: Senator Carlson, will you yield?

SENATOR CARLSON: Yes, I would.

SENATOR CHAMBERS: Senator Carlson, do you know this man personally?

SENATOR CARLSON: Are you referring to Mr. Sydow or Mr. Wistrom?

SENATOR CHAMBERS: Is it Sydow or Sydile?

SENATOR CARLSON: I think it's Sydow.

SENATOR CHAMBERS: All right, Sydow, with a long "o." Do you know him personally?

SENATOR CARLSON: I know him, I have spoken with him, I've heard him in testimony at hearings. I wouldn't say that I know him well.

SENATOR CHAMBERS: And you don't know this Wistrom person at all, is that true?

SENATOR CARLSON: No, my only acquaintance with him was in the telephone hearing that we had, and then indirectly with the person...one of the people that gave him a reference.

SENATOR CHAMBERS: So you're going basically on what other people said about him, and they all said he was the greatest person that they had ever seen and gave him

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a five-star rating, more or less.

SENATOR CARLSON: I also went by his responses to the questions on the telephone, but, of course, we couldn't see him and he wasn't there in person.

SENATOR CHAMBERS: So you wouldn't know him if he walked into this Chamber?

SENATOR CARLSON: I would not.

SENATOR CHAMBERS: Suppose I were to turn around and tell you, Senator Carlson, it can now be made plain, I am Wistrom.

SENATOR COASH: One minute.

SENATOR CHAMBERS: You didn't know that you were talking to me...

SENATOR CARLSON: Okay.

SENATOR CHAMBERS: ...during that hearing, you didn't know that?

SENATOR CARLSON: Oh, I didn't know I was talking to you...

SENATOR CHAMBERS: I'm Wistrom.

SENATOR CARLSON: ...but you just cemented my vote.

SENATOR CHAMBERS: (Laugh) Thank you. Did you say "time," Mr. President? Oh. I don't think that we can always go by what a person's friends will say about that person. I'm sure if Jesse James were being discussed in court and he said, or his lawyer said, the first person I'd like to bring as a character witness for Jesse James is his brother, Frank James. So what is Frank going to say? So people might say, uh-huh, his brother will speak for him. Then the other person would say, well, Cain and Abel were brothers, but Cain killed Abel, so you can't say, necessarily, that Frank even likes Jesse; then they wink and nod. But I've got four other reputable men of the county who are going to speak on behalf of Jesse James, and they're known...

SENATOR COASH: Time, Senator. Senator Ken Haar, you're recognized.

SENATOR HAAR: Mr. President and members of the body, Senator Chambers, here's one of the newspaper ads right here that Mr. Sydow appeared in, and it says at the bottom that he received no consideration, but TransCanada is all over the bottom. Now, my good friend Tom Carlson and I have had a number of discussions on this, and I told him, I said, the red flag, the gut reaction, that came up when I hear who recommended

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this person was to ask more questions. And I think that's what our purpose on the committees are, otherwise we have appointments that come before us and we just say, gee, do you know what you're doing, thanks for serving, and things like this. I think it's my job, if I have a gut reaction about something, to follow that line of questioning, and that's what I did in this case. I certainly wouldn't want anyone appointed to the Nebraska Oil and Gas Conservation Commission who is opposed to oil and gas, but they're regulating that industry. They're regulating that, and regulation means, yeah, you do sort of approach it with a questioning mind. Regulation implies the need to provide rules and regulations. I think that's difficult to do, to regulate when you're also cheerleading for an industry. And that's the problem I have. Again, I don't know Mr. Wistrom, I have not met him. I'm sure he's a fine person. All I'm saying is that, in my understanding, this commission can't be cheerleading and regulating at the same time; and from the questions that were asked of Mr. Wistrom, he thought they should be cheerleading and they should be regulating. That's my problem with this appointment. It's nothing personal, and that's not our job on these appointments to make friends. It's not our appointment (sic) just to smile. It's our job to follow our gut reactions and ask those questions that we think are necessary to see that these appointments serve the people of Nebraska. Again, it's not personal. I'm doing my job, and if I weren't standing up here, I would not be doing my job. I would encourage you not to vote...to vote no on this appointee because I don't believe he understands that you can't...you can't cheerlead and regulate the oil industry at the same time. Thank you.

SENATOR COASH: Thank you, Senator Haar. (Visitors introduced.) Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you, Mr. President. Picking up where I left off, Jesse James's lawyer, after he could see that there was some doubt about the validity of Frank James's, his brother's, recommendation and commendations directed toward Jesse, said, I have four reputable men of the county who are going to speak of Mr. Jesse James, and they're known collectively as the Dalton brothers. Now, they are very good fellows. They respect their momma, they respect their daddy. They are innovative when it comes to business activity. They, in fact, believe in a free-range, free-market philosophy when it comes to economics, and they also believe in somewhat of a Darwinian theory, that the strong survive. The intelligent people rise to the top in the same way that cream does in milk. So I would like these four fellows to say what they think of Jesse. Oh, and they sing too. And since I cannot sing four parts at the same time, I will not sing individual parts and hope that you can combine them in your mind, but that was when barbershop singing was created. And these four fellows stood up, and the name of the song was "He's So Fine." And I'll let the title of the song give you a notion of what the lyrics would have been. Now, I'm not comparing Mr. Sydow or "Sidoo" with Jesse James. And I'm not comparing anybody with the Dalton brothers. Since I don't know Mr. Sydow or "Sidoo" or Mr. Wistrom, and I didn't know Jesse James, Frank James, or the Dalton brothers, I might be unfair to one side or the other if

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I make the comparison. And since I don't know either side's components personally, I don't know which side would be insulted by the comparison, so I will not draw a connection between the two. I see a very large advertisement in front of me, and at the bottom it says, "TransCanada," and I see a very happy-looking gentleman and his name is Bill, and he spells his last name, S-y-d-o-w, director, Nebraska Oil and Gas Conservation Commission, geological and petroleum engineer, hometown Rushville, Nebraska, and I've never seen a man this happy in my life unless he was doing something desperately wicked and he thought he had gotten away with it. I'm just telling you what it reminds me of. But to see somebody like this praising TransCanada and in an ad like this and I'd be told that his job is to regulate the industry of which TransCanada would be a part, I'd say, that couldn't be. You all hear all the time about the corrupt, too close, and chummy relationship between lobbyists in Washington, D.C., and the industries they represent and the members of Congress. You hear it all the time. And when it's in Washington, it's wicked. But when you have the head of a commission which is to regulate an industry grinning like a Cheshire cat on behalf of TransCanada in a project they have, which is not universally desirable in this state based on various people's opinion, then I'm very skeptical. And if he went out and recruited somebody, birds of a feather flock together and they drink at the same water hole.

SENATOR COASH: One minute.

SENATOR CHAMBERS: I would assume that Mr. Wistrom and Mr. Sydow or "Sydoo" see things the same way. And I don't like that overly chummy relationship. And I'm going to follow Senator Haar's lead. We need one more now so we can have the Three Musketeers. But as I look around the Chamber, I doubt that that will occur. In legislative bodies, there's too much of a tendency to go along to get along. And when a Governor submits a name for confirmation, it's almost an accomplished fact, that person is going to routinely be confirmed. As Senator Ken Haar correctly pointed out, rarely will somebody stand on the floor and object to the confirmation...

SENATOR COASH: Time, Senator.

SENATOR CHAMBERS: ...of a Governor's appointee. Many years ago...

SENATOR COASH: Time, Senator.

SENATOR CHAMBERS: Thank you.

SENATOR COASH: Thank you, Senator Chambers. Senator Ken Haar, you are recognized.

SENATOR HAAR: Mr. President and members of the body, again, I would just like to

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reiterate, I think that too often in this body, especially with appointments, they just run through and we say yes, yes, yes, and have no idea what's going on. Speaking for myself, I must say, in this case, again, my gut reaction, based on what the director of the commission did, was to question the person who he recruited for that commission. And the person, I don't know him at all. This is not personal, this is about the qualification to serve the people of Nebraska. And he agreed that the ad was totally appropriate, in other words, cheerleading for the oil industry is appropriate, but then we also need to regulate. And I see...I see a conflict of interest when you're trying to cheerlead for an industry and regulate them at the same time. Now, you don't have to be negative to the industry, that's not what we ask of our regulators. We ask of our regulators to be straight up, to ask the questions, and to regulate, to put forth rules. And when your only references are two people from oil, and you say that your director should be there supporting TransCanada, then...I'm not saying Tim Wistrom is a bad person, I don't know him. I'm saying I don't think that's a person I would want to represent me on the commission, on the Nebraska Oil and Gas Conservation Commission. And with that, I believe I've said my piece. I appreciate your listening, because I think the appointment to commissions and boards and committees is very important. Thank you.

SENATOR COASH: Thank you, Senator Haar. Senator Dubas, you're recognized.

SENATOR DUBAS: Thank you, Mr. President. Good morning, colleagues. You know, I was able to ask questions of Mr. Wistrom on the phone, and while I understand where Senator Haar is coming from, I didn't have quite that same gut reaction to it. I'm...we've had confirmation hearings of other members of that board, and I'm going to make an assumption here, but that assumption would be that they probably have those same lines of thinking as far as their industry goes. And we know that when we appoint people to these boards and these commissions, we need people that have that expertise because they need to understand what they're dealing with. So it's kind of a fine line, where do you...where do your personal feelings stop and your...hopefully, your more objective reasoning comes into play when you're serving as that commissioner or that board member. When I was working on the legislation dealing with the pipeline, Mr. Sydow was very, very, very helpful to me. Always was willing to answer my questions, taught me a lot about the oil and gas industry in Nebraska. I knew I could go to him and felt like he was giving me information that was based on facts and that was accurate. You know, and my legislation was to try to find an agency that would be able to represent the state of Nebraska as well as its citizens as it was evaluating the types of projects that appear to be coming through our state, in an objective fashion, because so many citizens were coming forward and saying, we don't know what to believe, we don't know what the truth is; where do we go for objective, relatively unbiased information? And, hopefully, through the special session we were able to put that in place. But fortunately, or unfortunately, depending on how you look at it, perception is reality, most of the time. And so when someone who is the head of a commission comes out very

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pointedly in support of something, that perception is, you've lost that objectivity. That person has now really stated their personal feelings, and even though they may not have received compensation, they are looked at as that leader of that commission, of that board, whatever it is. And so, again, that fine line between what are your personal feelings and what do you do as...in a leadership position? We all walk that line probably every day in here as we're working on legislation. So, you know, that participation in those ads across the state, I believe, jeopardize that objectivity, and so when we're turning to these people, looking for accurate information, there's probably a segment of the population that is now not quite so certain that the information they're getting is as objective or unbiased as it possibly can be. Nothing is ever 100 percent pure along that line. But, you know, I will support the nomination, as I said, because I didn't feel anything really earth-shattering that came from the questions that were asked, although I do understand where Senator Haar is coming from with his concerns. And I think it points out to us that when we have these opportunities to ask questions during these confirmation hearings, that we really do need to follow through and see if there is anything that raises a red flag. And maybe try to determine if that person or persons are able to walk that fine line as much as they're able to make those decisions. Again, those people are supposed to be representing not only that industry, whatever it is that they're serving on, but the citizens of Nebraska as well. And so just making that determination about, you know, will you be able to walk that line, will you be able to separate possibly strong personal feelings...

SENATOR COASH: One minute.

SENATOR DUBAS: ...from what you need to do to present that information. So just a little background history on where things have come from in the past, what we're dealing with here. I don't think Mr. Wistrom is going to do anything different than any of the other commission members, but I think this is an important discussion for us to have as we continue to hold confirmation hearings and look at people that we are trusting to represent those particular issues. Thank you.

SENATOR COASH: Thank you, Senator Dubas. Senator Johnson, you are recognized.

SENATOR JOHNSON: Thank you, Mr. Speaker. I was not part of this body in most of the discussion, or all of the discussion, regarding to the pipeline and to the commission and their responsibilities; and I guess I rise in...just some comment, part of it because, not knowing all the information, I'm not sure of all the responsibilities of the commission, but it does appear that there might be a perceived conflict, at least, of having people that are pro marketing on this issue also making the regulations. Do we need to look at the challenge that they have or the commission that they have and separate that a little bit? Do we need to look at being able to have both sides of an issue represented on that commission? If that's the case, we've got three members, so are we going to have two of them pro and one of them opposed? How are we going to accomplish that? I've also

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heard that because this gentleman, Mr. Wistrom, was recommended by the commissioner is a conflict, and I totally understand that too. I'm going to support the nomination, but I think maybe we need to look a little bit more into the commission itself, and looking at the separation, maybe, of the marketing and the regulation side of it. I would yield the rest of my time to Senator Haar, if he wants to respond to that. Thank you.

SENATOR COASH: Senator Ken Haar, you have 3 minutes 25 seconds.

SENATOR HAAR: Thank you very much, and I just got the message I've used my three times, so thank you very much, Senator Johnson. I think you're bringing up absolutely the right point that we need to act, that we need to address. Should we have a commission with the dual roles of regulating and promoting? And, again, during the fracking hearing this afternoon, I will go into more detail on this, but we have lots of commissions that promote. We have the Soybean Board and on and on and on. Their job is to promote. They don't regulate at the same time. We have a lot of other boards and commissions that do regulate. This is one of those few commissions that's given the charge of promoting and regulating, and I think the question that Senator Johnson brings up is a very valid one. Do we need to look at this commission and decide which of those functions do we want this commission to serve, separate those functions out? And one of the problems I had with thinking about Mr. Wistrom is, how will he walk that fine line? You know, and if we get to meet and talk for 15-20 minutes over coffee, maybe we'd resolve that, but I think we're putting anybody in a tough position when we ask them to promote and to regulate, and that's what we're asking of this person. I believe that the responses he gave don't lead me to...I didn't feel comfortable that he could walk that fine line. Never met him. It's not personal, but I think it's something we need to talk about. Thank you very much, Senator Johnson, for your time.

SENATOR COASH: Thank you, Senators Johnson and Ken Haar. Senator Nelson, you're recognized.

SENATOR NELSON: Thank you, Mr. President, colleagues, members of the body. I'm not a member of the committee that is talking about this. I do want to address one of the principals that seems to be involved here, and that's Mr. Bill Sydow. I don't know him personally, but as a member of the Appropriations Committee, I know that he's come before us, traveled a great distance from western Nebraska, and is very...has been very open and honest and honorable every time he's appeared before us and gone to great lengths to explain what he does and what the commission does. They operate the commission on a dime. He doesn't make...he's a dedicated public servant. I just want to stand here and say that whether he's smiling on an ad or something like that, he is an honorable person, very dedicated to the industry, and, yes, he's an unabashed promoter of the oil and gas industry. He's the executive director. He's not a member of this commission. And I see nothing wrong...and let me say this. The commission doesn't



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control pipelines. They only control or regulate producers here in the state of Nebraska. So if he's an advocate of the oil industry, I don't see anything wrong with him appearing without pay on ads in an educational display or disposition on his part. And I remember those ads, and I found nothing wrong with him being on TV and explaining, because to the best of my knowledge in what he said as he comes before us at the Appropriations Committee and what he does and the small amount that they spend in connection with...or in opposition to the amount that they do, I've always been very impressed with him. He's truthful and honest, and I think he's being brought into this unfairly, because he's gone out and tried to find a good, knowledgeable member that can serve on the commission. I don't know...let's talk about the insurance industry. We have an insurance commissioner here. They have to regulate. Does that not mean that they cannot promote and go ahead and, with the insurance industry, working for its benefit and being behind the insurance industry, as long as the industry itself adheres to the rules and the regulations in the statutes that we have? I think it's very unfair to Mr. Wistrom, just on the basis of gut reactions and allegations of chumminess and things of that sort, to deny him this position on the commission if he's otherwise qualified, has worked in the oil industry, and is willing to adhere to the provisions of the statutes that are there as far as what the commission is supposed to do. And I heartily will endorse what the committee says here, and I appreciate the comments of Senator Dubas as far as what she said about Mr. Bill Sydow. Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Nelson. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I'm surprised at Senator Nelson, not so much so at Senator Dubas. Senator Nelson is a trained lawyer, a practicing lawyer. He knows what impartiality in a judge means. A judge cannot have the appearance of being involved in any way with the cases that come before him or her. For him to draw a comparison between the commissioner of the Insurance Department with this individual is preposterous. Senator Nelson would be one of the first ones to jump up if the insurance commissioner got on television and promoted Blue Cross Blue Shield. We're not talking about a man in an advertisement promoting the industry. He's promoting a specific company in the company's paid advertisement. Now, surely, Senator Nelson knows that, but he probably didn't think about it. People on this floor are accustomed to letting people get away with too much. When a person knows something, I expect him or her to speak on the basis of that knowledge. He said Mr. Sydow should not be drawn into this discussion. Well, because of his conduct, he put himself into it. And it behooves us to have that willingness to share with the other members of this body information that member may obtain during hearings which the rest of us won't have because we're not there. I applaud Senator Haar for what he brought to us. And if anybody else sees a situation like this, I would appreciate their expressing their views to us. And when these people take these positions, they're not immune to criticism. They should expect it. I'd like to ask Senator Nelson a question.

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SENATOR COASH: Senator Nelson, will you yield?

SENATOR NELSON: Yes, I will.

SENATOR NELSON: Senator Nelson, Mr. Sydow is a volunteer, isn't he? Or is he?

SENATOR NELSON: He's not a volunteer. He's the executive director of the commission.

SENATOR CHAMBERS: Is he paid?

SENATOR NELSON: Yes.

SENATOR CHAMBERS: Who pays him?

SENATOR NELSON: The state of Nebraska.

SENATOR CHAMBERS: So taxpayers pay this man's salary.

SENATOR NELSON: That's correct.

SENATOR CHAMBERS: And we're paying the salary of a man who does advertisements for TransCanada, aren't we?

SENATOR NELSON: In every one of those advertisements I saw he disavowed any connection. He (inaudible).

SENATOR CHAMBERS: That's not what I'm asking you, Senator Nelson, you'll eat up my time. He is appearing in an advertisement for TransCanada, isn't he?

SENATOR NELSON: That's right.

SENATOR CHAMBERS: And the taxpayers are paying this man who is doing advertisements for TransCanada, aren't we?

SENATOR NELSON: I'm, I'm...let me back up a little bit. I'm not sure that he was advocating TransCanada. He was talking in terms of what was good for the oil industry in the state of Nebraska.

SENATOR CHAMBERS: If the insurance company...if the insurance commissioner appeared in an ad for Blue Cross Blue Shield, Blue Cross Blue Shield paid for the ad, you're intelligent enough and you're experienced enough to know that the connection is

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that he's speaking for Blue Cross Blue Shield. Isn't that true?

SENATOR NELSON: That was a...not a good illustration on my part, I'll grant you that.

SENATOR CHAMBERS: Thank you, Senator Nelson. I mean, yes, members of the Legislature, I'm going to run out of time. But this deserves discussion because of the issue involved and the principle involved. And if there is anybody on this floor who thinks that a serious principle is here and it ought to be discussed, give me some time. But if you don't want the issue discussed any further, don't. I believe this is my third time. Is that right, Mr. President? Thank you. How much time do I have left?

SENATOR COASH: One minute.

SENATOR CHAMBERS: That gives me about as much time as it would take Porky Pig to say, that's all folks.

SENATOR COASH: Thank you, Senator Chambers. Senator Schilz, you're recognized.

SENATOR SCHILZ: Thank you, Mr. President, members of the body. I want to read the "Oil and gas conservation; purpose," 57-901. "It is hereby declared to be in the public interest to foster, to encourage and to promote the development, production and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste." Okay. So if we talk about the ability of the executive director of this commission "to promote," it's in there. "To foster," it's in there. "To encourage," it's in there. And let's ask, who put that there? It's the Legislature of the state of Nebraska. So let's take a step back and let's not blame Director Sydow for him following the intent of what the laws were that we set out or that other Legislatures set out. If that's a discussion we need to have, then that's a discussion we need to have on a separate day. This discussion today is whether or not Mr. Tim Wistrom is qualified to be the Governor's appointee. During the hearing there was no opposition. During the hearing he came out with a 5-1 vote, and the last time I checked, the Governor has his opportunity to appoint these people on these boards. If we want to change how these people are supposed to conduct themselves, then let's have that discussion on the appropriate date, in the appropriate fashion, and let's have a committee hearing and bring it forward. Thank you very much. And once again, I would hope that you would support Mr. Wistrom and not get caught up in all this ancillary stuff. Thank you very much.

SENATOR COASH: Thank you, Senator Schilz. Senator Brasch, you're recognized.

SENATOR BRASCH: Thank you, Mr. President, and good morning, colleagues. I do stand in support of the confirmation of Tim Wistrom. I was...I am on the committee. I heard his testimony. He answered honestly. There's three commissioners there also.

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They were not asked that same question. The pipeline, many people had different views. It's democracy. It's America. We have our freedoms to believe as we choose. A newspaper ad, radio, we have freedom of speech. The ethics for Mr. Sydow, "Sydoo," however Mr. Chambers, Senator Chambers, pronounces it, I believe that's also, in our country, one of our rights. But his answers were honest. We listened. He's willing to serve. He...and I have his application here in my hand. We had that information to review. I do stand in support of it, and I would like to see if Senator Haar would yield to a question.

SENATOR COASH: Senator Haar, will you yield?

SENATOR HAAR: Yes.

SENATOR BRASCH: Senator Haar, when you asked this question, would we be standing here debating this today if he had answered the other way, what you would have wanted to hear?

SENATOR HAAR: Okay. Tell me what I wanted to hear.

SENATOR BRASCH: Well, you're saying that that ad is wrong. That it is...was there a prosecution following this ad? Was there, you know, what was the fallout from what you're holding and showing in your hand? Was it against the law what he did? Is there...is it a court action? Is there something that...my question, is that ad, is, is it illegal?

SENATOR HAAR: The ad is not illegal. And for me, what it did, and I think it's appropriate, in my mind, in my gut, it brought up other questions. And I think that's my role on committee and in this Legislature.

SENATOR BRASCH: It is, and thank you, Senator Haar. As you know, I worked with senators in reviewing the pipeline, and my position was not to have it go over our precious Sandhills. Senator Haar, is that correct?

SENATOR HAAR: Would you, please, repeat that?

SENATOR BRASCH: I was one of the senators that supported moving the pipeline off of the Sandhills. I'm not against pipelines but just not on the Sandhills, correct?

SENATOR HAAR: Well, I know that when all was said and done, I think we had 48 green lights, and certainly yours was one of them.

SENATOR BRASCH: When we...before the special session, Senator Haar, you and I had conversations, correct? I came to your office and we talked about concerns over

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the pipeline.

SENATOR HAAR: That's correct, and we attended...

SENATOR BRASCH: ...and it was the Sandhills.

SENATOR HAAR: Yes, yes.

SENATOR BRASCH: And it was based on our constituents, but I also have constituents who were in favor of the pipeline, as I imagine you did as well?

SENATOR HAAR: That's correct, both sides.

SENATOR BRASCH: And so I believe that Mr. Wistrom's honest answer on his view that he saw no harm, where many others saw no harm, in this full-page advertisement testimonial that is not against the law, was his right to believe that. And so...

SENATOR COASH: One minute.

SENATOR BRASCH: ...and the reason I stand is, we don't find a lot of individuals willing to take the time to volunteer; oil energy, wind, solar, it's a part of our future and we need to be watchful of all forms of energy; and his willingness to serve on the Oil and Gas Commission is right in line with, you know, his beliefs here and I would support and continue to support his confirmation. Thank you, colleagues.

SENATOR COASH: Thank you, Senator Brasch. Senator Conrad, you are recognized.

SENATOR CONRAD: Thank you, Mr. President. I'm going to yield my time to Senator Haar for additional commentary.

SENATOR COASH: Senator Haar, you've been yielded 4...

SENATOR HAAR: Thank you very much, Senator Conrad. I believe there's quite a difference between something being illegal and something being unethical. So was the ad illegal, no. Was it unethical? My personal opinion, it was. But that, you know, I was not here to discuss, really, Bill Sydow. That's...it was the answer to questions that raised my gut reaction, that raised the red flag in my mind to go on and ask further questions. And so if I have somebody being seen appointed to the board, then I have to ask those questions. I would like to, by the way, because I've printed out the whole law, the whole section of law on the commission, and I appreciate my friend Senator Schilz for bringing up the section he did. I would like to talk about Section 57-905, the "Commission; powers and duties." And this is full of words like, "The commission shall have authority to require: (a) Identification of ownership of oil or gas wells, producing leases," and so

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on. There's a section (b), (c), (d), (e), (f), (g), and so on. This is all about the ability to regulate the industry. Now, one of the problems I have, by the way, with the law is, it says they "shall have authority." I think we should require that they regulate the industry. But Section 57-905...and I won't read it all here now, but it's just full of "shall have authority...shall have authority," and one of these is to talk about the pollution of fresh water supplies by oil, gas, or salt water. "The commission shall have authority in order to prevent waste," to regulate that wells be separated. There's all kinds of authority. So here again, we have a commission that is supposed...and I agree. I was going to bring that section up as well, that Senator Schilz brought up. The commission, by law, is told to cheerlead for the gas and oil industry in Nebraska. It's also told, in 57-905, to regulate that industry. And so, in my mind, the questions I was trying to ask of this appointment was, do you understand that fine line, do you think it's okay to cheerlead and then to have to regulate? That's my problem. Cheerleading and regulating an industry at the same time. We need cheerleaders, for sure, but we need regulators to protect the people of Nebraska and the environment of this state. Thank you.

SENATOR COASH: Thank you, Senator Haar. Senator Schumacher, you're recognized.

SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the body. I found particularly interesting and very persuasive Senator Schilz's quotation of the statutes which set forth our intent, even though it wasn't this particular body's intent, necessarily, but the intent of the Legislature of this state with regard to this matter; and I find it right now, in my mind, very hard to say that this man did anything improper or wrong in what he did. But I have still a bit of an open mind, and I kind of like Porky Pig, so I'll yield the rest of my time so that Senator Chambers can complete his thought.

SENATOR COASH: Senator Chambers, you've been yielded 4 minutes 20 seconds.

SENATOR CHAMBERS: Thank you, Senator Schumacher. The reason I pronounce his name that way, that's the way he pronounces it. Members of the Legislature, if Senator Schilz is still here...Senator Schilz, if you would yield, I would like to ask you a question or two.

SENATOR COASH: Senator Schilz, will you yield?

SENATOR SCHILZ: I will sure try, yes.

SENATOR CHAMBERS: Senator Schilz, since you didn't read your statute until I had no time to speak, I would like you to read again for me what you read so that I can digest it and maybe comment.

SENATOR SCHILZ: Absolutely. Absolutely. Thank you, Senator Chambers. It is

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here...this is 57-901. "Oil and gas conservation; purpose. It is hereby declared to be in the public interest to foster, to encourage and to promote the development, production and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste." And that's what I read first. But to further go on, if you will indulge me, it says, "to permit each and every oil and gas pool in Nebraska to be produced up to its maximum efficient rate of production, subject to the prohibition of waste." And so as you put those two together, you can see that Mr. Sydow was actually, potentially, doing his job as he could see it.

SENATOR CHAMBERS: Senator Schilz, what you read is in what's called an intent section of the law, is that true?

SENATOR SCHILZ: I would guess that is. That's what it sounds like, yes.

SENATOR CHAMBERS: Intent and findings, is that what you were reading?

SENATOR SCHILZ: Yes.

SENATOR CHAMBERS: That is no part of the law. Are you aware of that?

SENATOR SCHILZ: I understand, but it does...

SENATOR CHAMBERS: It has no legal effect, does it?

SENATOR SCHILZ: No, it does not.

SENATOR CHAMBERS: Show me where you read that it said that commission should promote a specific company.

SENATOR SCHILZ: Well, it did not, and I think that that's the case. I can tell you this, that, you know, the oil and gas...

SENATOR CHAMBERS: On my time I would appreciate it if you would answer the question. You read it and, in case I missed it, would you read where, in what you read to us, where it said a company should be promoted. I thought you were reading about the industry and natural resources.

SENATOR SCHILZ: Absolutely. That's what it said.

SENATOR CHAMBERS: Is TransCanada synonymous with what is read by you, in that language you read, in your mind?

SENATOR SCHILZ: In my mind, you can make that point, yes.

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SENATOR CHAMBERS: So you think that TransCanada is synonymous with what you read to us in that intent language?

SENATOR SCHILZ: What I can tell you is that if you look at what he was saying and...

SENATOR CHAMBERS: Well, I think that could be a yes or no question because I'm asking for your opinion, not mine.

SENATOR SCHILZ: Okay. Then I will say...I will say yes, and I will hit my button and explain that.

SENATOR CHAMBERS: Okay. Thank you. Members of the Legislature, Senator Schilz spoke before he thought. There is no way anybody can say, who is intelligent and understands English, that a specific company is the same as an industry. Now, I know General Motors said, what's good for General Motors is good for America, but General Motors didn't say, General Motors is America. Senator Schilz said that TransCanada is synonymous with that intent language that talks about an industry and natural resources. I think he needs to reconsider in the same way Senator Nelson did, but that's my opinion. He can think whatever he wants to think, but you all are being asked to make a judgment on the basis of what we're telling you.

SENATOR COASH: One minute.

SENATOR CHAMBERS: Anybody can stand up here and say the moon is made of green cheese, and you don't even have to counteract it, but you can draw a conclusion. What appellate courts have said when it comes to a witness being attacked, the court will say that the trial judge had an opportunity to observe the witness, had a chance to observe the demeanor and the actions and, it didn't say this but, body language of the witness and could draw a conclusion. But to hear a disembodied voice on the telephone is not the same as watching and listening to somebody testify in person. This is important, because it relates to how we're going to deal with those people whose names are presented to us as appointees of the Governor to determine whether we're going to agree with the position the committee took. I'm not condemning the committee. They acted on their opinion.

SENATOR COASH: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Chambers. Senator Conrad, you're recognized.



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SENATOR CONRAD: I would yield my time to Senator Haar.

SENATOR COASH: Senator Haar, 5 minutes.

SENATOR HAAR: Mr. President, members of the body. Thank you very much, Senator Conrad. I think we've presented our case. Again, the appointment process is not to be a personal one. It doesn't speak to whether somebody is nice or not nice, it speaks to the qualifications for the particular job to serve the people of Nebraska. And after the discussion, and even before this discussion, I agree that this commission has one too many...one too many purposes. Either it should be to cheerlead for oil and gas or it should be to regulate for oil and gas. The section that I read from talks about its responsibility, and that's to regulate. And I thoroughly question whether a commission that's cheerleading for an industry can also regulate that industry, no matter how good the person is, no matter how fair the person is; and so I think we do need to have this discussion about this commission, perhaps to separate, to give them one charge and to give the charge of either cheerleading or regulating to another group. Thank you very much for your time. This is an important issue.

SENATOR COASH: Thank you, Senator Haar. Senator Schilz, you're recognized.

SENATOR SCHILZ: Thank you, Mr. President; and I told Senator Chambers that I would answer his question on my time as to how I can see that...and it doesn't matter which company it is. As I read the intent legislation, and we all know that intent language is put in there so that you can get the feel of what the Legislature was thinking at the time about what they wanted to see. And, no, there's no actionable law in here or anything like that, but legislatures put intent language in for a reason. So when I see this down at the bottom and it says, "to permit each and every oil and gas pool in Nebraska to be produced up to its maximum," and then you understand the dynamics of the industry within the state right now, in that we can't pump all the oil we can pump. All the wells are not running because we do not have capacity on other pipelines to put them in that run out west. With another pipeline being put in that takes up some of the pressure on those western pipelines, that helps to maximize the production and the oil industry in Nebraska. So if you're going to look at it, that's how I look at it, and you can agree with me or not, but I don't believe that anything wrong has gone on. Now, I will say this and I want to bring everybody around, this is not about the Oil and Gas Commission executive director. This is about Mr. Wistrom, who is qualified by any measure that I can see, and I think we need to dispense with all this, get the vote done, and move forward, and we can have Senator Haar's discussion on another day where more appropriate. Thank you very much.

SENATOR COASH: Thank you, Senator Schilz. Senator Conrad, you are recognized.

SENATOR CONRAD: Thank you, Mr. President. I'd yield the balance of my time to

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Senator Chambers, if he so desires.

SENATOR COASH: Senator Chambers, 5 minutes.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Conrad. And for Senator Schilz, when any issue comes out on this floor, I will discuss it in the way that I think it ought to be discussed. If a person has a point of view, I can understand that being pushed. But the more wide-ranging our discussion is on serious issues, the better the Legislature is operating. I don't care how much time it takes. This is a significant issue. And you know why people are nervous? Because there is a big company, by name, involved in the discussion. And the reason that company is involved in the discussion is because the person who is in the position he holds as director of Nebraska Oil and Gas Conservation Commission, big letters in a full-page advertisement paid for by TransCanada. And if there are people on this floor so insensitive and lacking in understanding that they cannot see how there is a misuse of office, to identify that office with a specific company in an ad paid for by that company, going the direction that company wants to go, and you all don't see anything wrong with that, that is crazy. And I mean that word. You don't have any sense of the line that needs to be drawn between these state agencies and companies that are there to make profit, want a certain position to be adopted by the citizens of this state, and a person paid by the taxes of all of us will be used by that company to promote that company's profit-making interest. This pipeline is not an oil company. The pipeline company builds the pipeline, it does not control the oil that will pass through that pipeline. TransCanada can't tell you what will be done with that oil. The companies that will use the pipeline will say what will be done with the oil, and it's going down to the Gulf, where they can load it on ships and sell it to the highest bidder. Have you ever heard TransCanada tell you that they guarantee Americans that the oil flowing through this pipeline will be made available to Americans? No, because they're not as crazy as some of the people who are in office. They're not as naive; they're not as silly and simpleminded, who know that their words can come back to haunt them if they would utter such a statement. I'd like anybody who has spoken on this floor this morning so far to stand up and tell me that TransCanada is guaranteeing that the oil that passes through that pipeline is going to be used and made available in America. It can't be said and be spoken truthfully. There has been so much misinformation, and people like this Sydow is the one helping to foment it. He is using his office, his position as a state official, to promote the interest of TransCanada, a full-page paid advertisement for TransCanada. You all would not accept that in any other set of circumstances and then to try to hurry up and push it away and say we don't want to talk about that, talk about it another day. Senator Schilz may be able to guarantee...

SENATOR COASH: One minute.

SENATOR CHAMBERS: ...that he'll be alive another day; I can only be sure that I'm

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alive now. I may not be alive when this day ends. So the time for me to strike is when the iron is hot and it's within reach of my hammer, and I'm going to strike. I don't care what Senator Schilz says or how nervous or anxious he gets. It makes me no difference. If he doesn't want to talk, don't talk. He has contributed to the discussion. If he thinks we shouldn't have it, he should not have said anything. But they want to have it their way. It's not have your cake and eat it too, you've got to have the cake if you want to eat it. So maybe you say, eat it and have it too; eat it and have it uneaten. But you've got to have your cake to eat it. These statements don't even make sense. But because people want it that way, he wants to have his cake and eat it too. Don't talk about it. This isn't the time and place; and he talks about it. Well...

SENATOR COASH: Time, Senator.

SENATOR CHAMBERS: You said "time"?

SENATOR COASH: Yes, time.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Chambers. Senator Avery, you're recognized.

SENATOR AVERY: Thank you, Mr. President. I want to applaud Senator Haar for raising the issue of whether we should approve this nomination. Most of us, I suspect, pay little attention to these nominations. We, quite understandably, depend on the committees to evaluate the nominees, and we trust their recommendations. So we vote to confirm nominations; seldom, if ever, do we see a red vote. Seldom, if ever, do we have debate. You get a few comments from people who praise the nominee, but it usually doesn't go much beyond that. And there's basically nothing, really, wrong with this procedure. The committees generally do a good job of assessing the candidate's qualifications. However, perhaps we don't pay enough attention to the significance of these decisions. Members of the various commissions and boards do have authority to influence state policy, and they do have an impact on important activities of the state in our administrative functions. And I'm not suggesting that we need to scrap the system. But I do think we need to pay more attention to the potential consequences of these decisions. The nominee that we are talking about today appears to think that the behavior of Mr. Sydow was just fine. That presents a large problem for me because it calls into question his judgment. Because I remember well that pipeline battle, and I especially remember the role that Mr. Sydow played in that debate. He is an employee of the Oil and Gas Conservation Commission, a state-supported commission. His salary exceeds \$100,000 a year. I don't know what the exact salary is now, but I believe at the time we were having the pipeline debate it was \$103,000. Now, I'm not suggesting that he broke any law when he agreed to become the spokesperson and the poster child for TransCanada in that debate. He was all over TV; he had full-page ads in newspapers

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around the state essentially suggesting, by his endorsement of the proposal by TransCanada, that the commission supported this proposal, and, by inference, the state of Nebraska also. And when he was asked about this, he thought it was no big deal, that what he was doing was legal. Yes, it was legal. But what is legal is not always right. I submit to you it was wrong. It showed bad judgment, and his association with this nominee suggests to me that the nominee shares that bad judgment. I intend to vote "no" on this nomination and it might be the first red vote I have ever cast in this body on a nomination. But I think it's important that we take a look at how we approach these nominations and exercise our oversight and our advise and consent function more seriously. With that I would invite Senator Haar, if he wants to take the remainder of my time, he can have it. Thank you, Mr. President.

SENATOR COASH: Senator Haar, 1 minute 30 seconds.

SENATOR HAAR: Mr. President, members of the body, again, I think this is an important issue that we need to talk about. We, you know, we take these nominations and we're even a part of the discussion, maybe, that goes with it. But we're finally responsible for what we do and don't do. And Senator Carlson is correct. The research I did on his references was after the hearing.

SENATOR COASH: One minute.

SENATOR HAAR: I think that's appropriate. I think that's appropriate and I think it's appropriate that I've asked the question. You may or may not agree with me, and that's why you were elected to the Legislature, to vote your conscience. But I also have to work my conscience, and this is one of those cases. Thank you very much.

SENATOR COASH: Thank you, Senator Haar. Senator Karpisek, you are recognized.

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I will say that I'm in favor of the pipeline. The first pipeline has done a lot of good coming through my district. Schools have money. It's worked well. So I am in favor of the second one coming through because...guess where it goes? Almost the same place as the first one. So I'm in favor of that too, landowners, schools getting more money. But I will say I was not very impressed when I saw the person in the paper saying how good of a deal this was. I guess if we would think about it in any other way, if we would have the head of HHS on ads to do away with the child welfare or something like that because they thought it was a good idea, I don't think that that is the way that an official should act on this. I think they should be neutral. Heck, we can't get most of them to a committee hearing to testify. They send a letter a couple of days after, and if I get one more of those in any of my committees, it's going right in the trash, by the way. So if we can't get them there, I don't think they should be on TV or in the paper or wherever they are telling us what they think about it. Remain neutral. I don't think that it was their place, for

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this to happen. Now, the real reason I stood was this confirmation process. Everyone knows that I have bills that I think that election commissioners in the three biggest counties should have this confirmation process. If we're going to appoint people, then they should be confirmed and we should look at them closely. I don't like how it is working now. I think that the Legislature should confirm. Then when something goes wrong, it's on us. But we do need to look at them more closely, and I will admit that I have not, probably, done a good job on that always. They come in, we look at their credentials, we're glad somebody will do the job, and we let them go. And probably 99.9 percent of the time they do a great job and we're very fortunate to have them. Again, I don't think that this was the right way to go. I just had to get my two cents in on the election commissioners. And I would like to give Senator Chambers the rest of my time, if he would so wish.

SENATOR COASH: Senator Chambers, 2 minutes.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Karpisek. And I wouldn't be offended if you turned your light on one more time and let me have it, because I have something that I've got to point out. I was the one who got into place a DNA testing law that makes it possible for people who have been convicted to have DNA testing done on biological evidence that may have been properly preserved, to determine whether or not there's an indication that there was a false conviction. I believe in DNA testing. But you let somebody say that the state ought to go for a specific company, not one time did I say, the company that ought to perform the DNA test is Company XYZ. There's a difference between talking about a principle and talking about a profit-making enterprise...

SENATOR COASH: One minute.

SENATOR CHAMBERS: ...and that's the confusion that Senator Schilz is suffering under right now. He equates TransCanada company with the natural resources and the promotion of an industry. He doesn't see the difference, and I do. And this is why we need people on this floor who can make these distinctions; not everything be blurred and fuzzy and say *comme ci, comme ça*, it really doesn't make any difference. It does make a difference to some of us who are interested in the welfare of the populace. Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Chambers. Senator Nordquist, you are recognized.

SENATOR NORDQUIST: (Microphone malfunction) time to Senator Haar.

SENATOR COASH: Senator Haar, 5 minutes.

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SENATOR HAAR: Can I yield my time, or not? No, that doesn't work. Thank you very much.

SENATOR COASH: It's your time, Senator Haar.

SENATOR HAAR: Nordquist...Jeremy. Jeremy? Or Chambers?

SENATOR NORDQUIST: So I have the time back? Did you yield it back to me?

SENATOR HAAR: I yield my time back to Senator Nordquist. Thank you.

SENATOR COASH: Senator Nordquist, 4 minutes 30 seconds.

SENATOR NORDQUIST: I yield my time to Senator Chambers.

SENATOR COASH: Senator Chambers, 4 minutes 30 seconds.

SENATOR CHAMBERS: Thank you, Senator Nordquist. Members of the Legislature, there are times that we talk on and on about nothing. And there are times that I will be doing some of that talking which others will characterize in that way. But every time I engage in that kind of discussion, there is a concrete, solid, substantive principle involved, and it's necessary to have that type of discussion. I am deeply disturbed to hear my colleagues, or some of them, find no fault with the head of a state commission using, in a paid advertisement for a company, the name of that commission, using the commission itself written in large, prominent letters that stand out in the advertisement produced by an ad company which knows how to draw people's attention to that which is to be paid most attention to. And the thing that you are to get from this, first of all, at the top: I'm a Nebraskan first. So if you disagree with him, you're not a Nebraskan. And he ought to know, because he's the head of this commission. And that doesn't bother anybody on this floor? All right, the Supreme Court has before it a case involving TransCanada. And the Chief Justice says, well, personally, I don't think these kind of pipelines ought to be built through a state like Nebraska. I'll bet Senator Schilz and those who support the pipeline, I don't know whether he does or not, would holler foul and say the judge should recuse himself. He's already declared a position. And he's the one who is going to make a decision and influence those who are going to make it. And if there is anybody on this floor who thinks that the director of a commission does not influence the commissioners just fell off the turnip truck. People often rubber-stamp what the commissioner says, just like OPS Board of Education rubber-stamped everything that former Superintendent Mackiel said. This is one of the most important issues that will come before us. So I'll tell you what I'm going to do. I'm going to look at every bill that comes up, and when I see issues, I'm going to raise them. And if it's your bill, then I'm going to tell you, yes, it's important to me. You don't think this is important. You want to hurry up and get away from it, don't you? Well, it's not going to be that

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easy. You've heard one lawyer acknowledge that he gave a poor example because it didn't hold water. Suppose I had not questioned him on it. Nobody else would have. You got other lawyers sitting in here. And when their issue comes up, they want people to discuss that issue.

SENATOR COASH: One minute.

SENATOR CHAMBERS: And if the issue is important, I will. But then they're very quiet. They don't give us the benefit of their knowledge and their expertise. But let the issue that comes to them which they like, or which they're going to support, and here they are. I do a lot of work, because I have to. I do the heavy lifting. I lift the heavy end of the log all the time, and they expect me to do it. There were two bills on keno the other day, for example. I wasn't up here and nobody said anything; by the time I get here a vote is being taken. And you know what, people come to me saying, gee, Ernie, where were you? I was in my office working. Let me know what's going on. I'm not going to do your work for you all the time. So why don't they talk to these other people? I said, well, that bill came up and it moved out quickly; who spoke on it? Well, nobody. I said, then that's the way it's going to be. I'm going to pick issues...

SENATOR COASH: Time, Senator.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Chambers. Senator Ashford, you're recognized.

SENATOR ASHFORD: Thanks, and I...Senator Haar, may I ask you a question? I apologize. I haven't been following this discussion as I should have been. But I understand what we're voting on, but I'm...I would ask Senator Haar a question, if I could.

SENATOR COASH: Senator Haar, will you yield?

SENATOR HAAR: Yes.

SENATOR ASHFORD: Senator Haar, would you just...and I apologize for being, I'm sure, very redundant here, but the purpose of this commission, its mission, is what?

SENATOR HAAR: Well, if you look at the intent in...and I can't quote the section right now, but Senator Schilz quoted that, the intent is to recover every drop of oil and gas in this state. Then there is another section that...where they are to regulate that same industry.

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SENATOR ASHFORD: So what we're trying...what we're doing here is promoting oil and gas as a resource and a source of income to the state of Nebraska, is that correct? Is that part of this commission's role?

SENATOR HAAR: Yes.

SENATOR ASHFORD: Okay. And the regulatory part of it is advisory, or is it...are we able to issue opinions that have direct impact on...is this commission able to enter opinion...make decisions that have direct effect on how something is done, how oil and gas project is...goes forward?

SENATOR HAAR: They are given...and the words are...and I'm trying to find the section real quickly, but they are to promulgate rules and regulations. That's the word in the law. So, yes, they are...they are to regulate this industry, not just give advice, but to regulate the industry.

SENATOR ASHFORD: And they issue the rules and regulations; and the compliance part of that is assigned to some other compliance...well, who provides the compliance?

SENATOR HAAR: The commission. And in fact, I just found it, it's Section 57-905, the "powers and duties," and (7) says, "The commission shall have authority to promulgate and to enforce rules, regulations and orders to effectuate the purposes and the intent" of this section of the law. So they are the rule makers; they are the enforcers; they are the cheerleaders.

SENATOR ASHFORD: Okay. And there has been discussion about the...this particular person and the concern...and I don't necessarily want you, necessarily, to repeat yourself, Senator Haar, and I apologize for putting you on the spot, but the concern we have over this confirmation report is...is that there is what?

SENATOR HAAR: Thank you. I do not...

SENATOR ASHFORD: And go ahead and take whatever time you...

SENATOR HAAR: Yeah, yeah, I do not know the person Tim Wistrom; we talked to him on the telephone. And my concern...the thing that raised the red flag in my mind to go on with some other questions was I asked him whether he was...thought it was appropriate for the director of the commission to go on television and in all these newspaper ads and stuff, and he said, yes, that was very appropriate. And we went on a little later to talk about rules and regulations, and he conceded to that as well. And then his references are two members of the oil industry. Nothing wrong with being a member of the oil industry, obviously. What we're talking about is...



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SENATOR COASH: One minute.

SENATOR HAAR: ...walking that fine line between cheerleading and regulation and perhaps we have put this commission in an impossible bind.

SENATOR COASH: Senator Ashford.

SENATOR ASHFORD: That's fine. I might...I put my light on again and I...for the purpose of asking Senator Chambers a question. And I can ask a question as well on my next light, if Senator Chambers would answer.

SENATOR COASH: Senator Chambers, will you yield?

SENATOR CHAMBERS: Yes, I will.

SENATOR ASHFORD: Senator Chambers, again I apologize for not listening to all of your discussion this morning, but Senator Haar has raised a concern about the independence of commission members of this particular commission and the sort of duality here of the cheerleader part of this commission to promote oil and gas industries...

SENATOR COASH: Time, Senators. Mr. Clerk, you have an announcement.

ASSISTANT CLERK: Mr. President, I do. General Affairs will meet in Executive Session at 11:00 in Room 2022.

SENATOR COASH: Thank you, Mr. Clerk. Senator Karpisek, you are recognized.

SENATOR KARPISEK: Thank you, Mr. President. I yield my time to Senator Chambers.

SENATOR COASH: Senator Chambers, 5 minutes.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, before I go into other things, if I have time, I want to call attention to what Senator Karpisek said when he spoke. A pipeline went through his community and it brought what they felt were benefits. This one that TransCanada is talking about may follow a similar route and bring additional benefits. But despite that, he is able to lay that aside and look at the issue that we're dealing with and separate the two. We are looking at the activities of a state employee and the appointment to the commission over which this person is the director, who has given approval to conduct by that director which raises serious questions. That conduct, among other things, consists of appearing in full-page advertisements paid for by TransCanada. And in that full-page advertisement he gave his title and his position and spoke in favor of what this company is doing. Issues that

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had been raised about the pipeline and the possible contamination of the aquifer he just dismissed and said, this is not going to happen, it cannot happen. And he is joining into the propaganda of TransCanada. This man is not a scientist. He has not done research. He was not speaking as a scientist. He was speaking as the director of this commission which regulates oil and gas. And he made that position clear. It would be like putting on the FCC, the Federal Communications Commission, the executive director of CBS, and let's say at the time that that person is to be appointed, CBS is under investigation for something like...what do they call it, that...malfunction...some fashion malfunction, when a woman's dress fell open and her breast popped out, and the television network was facing possible sanctions, and with all that going on you take the director of that television network and put him on the FCC. And he's going to speak in favor of letting these networks do these kind of things and not be called to book for it. This man who is being appointed by the Governor and we're asked to support is going to be in that position after having made it clear that he sees nothing wrong with what was done by the executive director and even if he saw something wrong with it. But the issue came up about what the executive director is doing, then his appointment created the occasion for us to discuss the kind of issues that we are. There has been no settlement of the TransCanada issue. It still is hanging fire.

SENATOR COASH: One minute.

SENATOR CHAMBERS: There are people in Congress taking positions. They've received contributions. Well, we know how that operates. And people want to say it's horrendous in Washington. But when it happens right here in Nebraska and the person who is the director of this regulatory commission appears in full-page paid-for ads by TransCanada, then something is terribly wrong. And Senator Brasch should be informed that none of us is saying that a law was violated. Judges are disciplined before they violate a law, their conduct is not ethical; a lawyer, for the same reason. And when we have people in these positions of trust, long before they reach the point of a law violator, they commit conduct which can result in a justifiable removal of them from that position. So that is what we're talking about. And I think it is serious enough to warrant this kind of discussion. Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Chambers. Senator Ashford, you are recognized.

SENATOR ASHFORD: Thank you, Mr. President. I would ask Senator Chambers the...to...if he would answer a question.

SENATOR COASH: Senator Chambers, will you yield?

SENATOR CHAMBERS: Yes, I will.

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SENATOR ASHFORD: Senator Chambers, in this last go-round, you discussed the issue of the executive director of this commission and his cheerleading for TransCanada or being part of the TransCanada organization in the ads that were placed. And I do recall those ads. And it's my understanding that this particular person suggested that that activity was not a conflict and it was not problem. Is that your recollection?

SENATOR CHAMBERS: I don't know what that person said. But that might be what he would say if the issue was raised. However, anytime somebody is caught with their hand in the cookie jar they say, I didn't do anything wrong. When John Wayne Gacy was arrested and charged with the murders of those people whose bodies were found in his basement, they asked, how do you plead? He said, not guilty. So do you expect the person...and this is a rhetorical question to you, Senator Ashford, is it expected that a person who is doing something inappropriate is going to acknowledge it when it's his intent to continue doing it? I think what he did was absolutely unethical and ought not to have been done.

SENATOR ASHFORD: Thank you, thank you, Senator Chambers. And my concern...my interest has been piqued in this issue with this discussion, and I would just reiterate some of what has been said over the last two weeks about making absolutely certain and being very careful about the decisions we make and the consequences of those decisions. My sense is, Senator Chambers and others, my sense is this session gives us an opportunity to make significant change in many areas, and I...this year...and significant reform for the better, bringing the people into the process more directly, whether it's criminal justice, the environment, tax policy. I know yesterday Senator Chambers has re-raised the issue of a bill that I sweated and traveled around to get passed. But I think that the message here is that whether it's tax policy, whether it's environmental policy, whether it's criminal justice issues, whether it's violence issues, whether it's education, we must prioritize those issues in a way that brings the people of the state directly into the process more effectively. And we do that by having these discussions about those issues. This particular individual may be a perfectly fine person. But the issues...and he probably is, but the issues that are raised around this nomination are important, and they're critical. I think it's time to start, as we move forward, as we get into priority bills, to start thinking about what we are doing and the consequences of what we're doing. Do we want to reform the criminal justice system? Do we want to reform how we deal with environmental issues? Do we want to do significant change in our state to make it more directly involved processes that...with the citizens. I...I do think we're disconnected, Senator Chambers, a little bit...

SENATOR COASH: One minute.

SENATOR ASHFORD: ...in what we do. We proceed along on significant issues; we receive information from the lobby on how we should vote. But I sense there is a

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disconnect. And I think this issue of TransCanada, what...what made me so interested in this issue...and Speaker Flood, I remember having many conversations with the Speaker about his...how he became more and more engaged with this issue as he went along. I think it's a very, very important issue, about how we engage the citizens of our state. What role do they have in this process? And what assurances are we giving them that their interests are paramount to the interests of industry and the lobbyists who represent them. Now, I understand, Senator Chambers, you and I may disagree on tax policy, I understand that. But what drove me right up a tree...

SENATOR COASH: Time, Senator. Senator Ashford, you're recognized.

SENATOR ASHFORD: What drove me right up a tree in that tax discussion was the fact that we...we are the body that brings to the people issues that are of concern to them. We do it through this process. So we had the temerity, the Governor and myself and Senator McCoy, one can disagree, Senator Chambers, as you might, on the policy that we were putting forth on taxes. But the lesson of that event should not be lost on this body, because what we were...we were not hearing from the people; now, they may have agreed totally, Senator Chambers, with your position on some of these tax issues, but we were inundated with special interests, special interests. These were paid special interests who came in here and blew the roof off so that we could not have a thorough discussion on tax policy, because...we had the temerity to bring it up. And Senator Chambers has brought us a bill that says, well, I've got a tax policy bill that gets rid of the half percent sales tax option; I have the temerity to bring it up; I'm going to talk about tax policy. And all of these special...none of those special interests that came to my bill or Senator McCoy's bill, the Governor's bill, they didn't come and testify on your bill. I asked you this morning and you said no, that it was mostly the cities that came and talked about that bill. So I think it's time to take the issues over, to take them back over again. Because I think this session is going in the wrong direction in that regard. I think the session is going in the wrong direction in that regard, not procedurally, Mr. Speaker, but substantively. Whereby...whereby our agenda is being determined not by us, but by special interests who represent a very small sliver of our population. Maybe the well-heeled part of our population, those with the power and those with the authority to do things. So I guess what I would conclude by saying is this, we have a golden opportunity now, today, February 28 at 11:02, to take the issues over, to bring the issues into this body, to make tough decisions on the environment, to make tough decisions on tax policy, to make tough decisions on criminal justice issues, ourselves, within ourselves, by ourselves, because we are the representatives of the people. It isn't those people outside the glass. They are not the representatives of the people. They are the representatives of a certain segment; and many of them aren't even citizens of our state, they're from some other state, with some other interest. It is time today to take these issues over, to create our own agenda based on the issues that are of concern to our citizens, no matter what their status is. And I think this debate on this confirmation has certainly engaged me in that prioritizing exercise. And I appreciate the comments

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that have been made on this issue and I've listened to them and I will continue to listen them, but I think it is incumbent upon us today to do the great, important work that we do do and start today on those great issues. Thank you, Mr. President.

SENATOR COASH: Thank you, Senator Ashford. Seeing no other members wishing to speak, Senator Carlson, you are recognized to close on the confirmation report.

SENATOR CARLSON: Thank you, Mr. President. I would ask for a call of the house.

SENATOR COASH: Thank you, Senator Carlson. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye, all those opposed vote nay. Record, Mr. Clerk.

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

SENATOR COASH: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. Those unauthorized personnel, please leave the floor. The house is under call. Senator Carlson, would you like to close as we're waiting for members to check in?

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'm going to start my close by looking at Senator Haar and saying that he is a good committee member. He's thorough. He cheerleads when he wants to. He questions when he wants to. And he regulates when he can. But he is a good committee member. But our issue now is whether or not to vote for Mr. Wistrom. This is not a vote on the executive director of the Oil and Gas Commission, Mr. Sydow, and we've seen his picture. We've had discussion about his picture. We've had discussion whether or not it was appropriate for him to say positive things about the pipeline. But our discussion on the appointee has been very limited. We've gone from Mr. Wistrom to Mr. Sydow to TransCanada to what the Oil and Gas Commission should do, what the specific duties are. And that's really not what this is about. But I would invite Senator Haar or anyone else to bring legislation, and it won't be this session, it will be next session, to put in statute what the Oil and Gas Commission should do. I believe that Mr. Wistrom should be confirmed. The discussion is good. We have differences of opinions on the confirmation. I'm comfortable to recommend Mr. Wistrom. And again I say it's not about Bill Sydow. I think it's natural to support something you like, to promote it. And most of us at one time or another in this body have opportunities to recommend individuals for various boards, task forces, commissions, and so forth. We generally recommend people who have a positive interest in what...and support what the group does. We generally don't intentionally look for a police officer or an enforcer for a commission. We want people of knowledge, experience, integrity, those that are community oriented, hard workers, energetic people. From our hearing I believe that Mr. Wistrom fits that

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category. And I would ask you to support his confirmation to the Oil and Gas Commission. I would ask for a machine vote, Mr. President.

SENATOR COASH: Thank you, Senator Carlson. Senator McGill, please return to the Chamber and record your presence. Senator Carlson.

SENATOR CARLSON: We can proceed.

SENATOR COASH: Thank you, Senator Carlson. There's been a request for a machine vote. All those in favor vote aye, all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 553-554.) 33 ayes, 6 nays on the adoption of the report, Mr. President.

SENATOR COASH: The report is adopted. I raise the call. Next confirmation report, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the next confirmation report is from the Nebraska Retirement Systems Committee, John Conley to the Nebraska Investment Council. (Legislative Journal page 518.)

SENATOR COASH: Thank you, Mr. Clerk. Senator Nordquist, you are recognized to open on the Retirement report.

SENATOR NORDQUIST: Good morning, members. Thank you, Mr. President. The Retirement Systems Committee held a confirmation hearing on February 25 for John Conley. Mr. Conley has been appointed by the Governor to serve a five-year term on the Nebraska Investment Council. The Investment Council manages the investments of 30 different entities for the state, including our pension funds and endowment funds. Mr. Conley is the president and chief executive officer of Conley Investment Counsel, Inc. He has over 40 years of extensive portfolio management, securities analysis, and marketing experience. He'll bring serious, real-world business and investment experience to the Investment Council and is well qualified to make decisions regarding the investment of public funds. The Retirement Committee unanimously voted to move Mr. Conley's appointment to the Legislature for confirmation, and I ask for your support in confirming this appointment. Thank you.

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Thank you, Senator Nordquist. Members, the floor is now open for discussion. Senator Nordquist, there are no lights on. Senator Nordquist waives closing. Members, the question is the adoption of the report offered by the committee. All those

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in favor vote aye, all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 554.) 32 ayes, 0 nays on the adoption of the report, Mr. President.

SPEAKER ADAMS: The report is adopted. Next item.

ASSISTANT CLERK: Mr. President, the next report offered by the Nebraska Retirement Systems Committee is for the appointment of Darrell Fisher and Elaine Stuhr to the Public Employees Retirement Board. (Legislative Journal page 518.)

SPEAKER ADAMS: Thank you, Mr. Clerk. Senator Nordquist, as Chair of the committee, you are recognized.

SENATOR NORDQUIST: Thank you, Mr. President. The Retirement Committee held confirmation on Elaine Stuhr and Darrell Fisher on February 25. Former state Senator Elaine Stuhr has been reappointed by the Governor to serve a five-year term on the Public Employees Retirement Board. She serves in one of...she'll be serving...continuing to serve in one of the two public positions on the board. The Public Employees Retirement Board oversees the administration of the five public employee plans, which include the Patrol...State Patrol, the judges, school employees, state employees, and county employees. Senator Stuhr lives in Bradshaw, Nebraska, following a career in education and operating a family farm. Senator Stuhr served in the Legislature from 1995 to 2006. She chaired the Retirement Systems Committee for six years, where she was instrumental in identifying and taking corrective action to remedy problems and inefficiencies in the system administration. Her appointment was unanimously approved by the Retirement Committee. Mr. Fisher has been appointed by the Governor to serve the remaining two years of the former State Patrol representative's term on the Public Employees Retirement Board. Again, the board oversees the administration of the plans. Mr. Fisher retired in 2008 from the State Patrol. His public service career includes serving as a member of the Nebraska Community Corrections Council, the Internal Liquor Committee of the City of Lincoln, and a member of the Minority Justice Committee of the Nebraska Bar Association. His law enforcement service spans over 30 years. Again, this appointment was unanimously voted on by the Retirement Committee. Thank you.

SPEAKER ADAMS: Thank you, Senator Nordquist. The floor is now open for debate on the report. Senator Nordquist, there are no lights on. Senator Nordquist waives his opportunity to close. Members, the question is the adoption of the report offered by the committee. All those in favor vote aye, all those opposed vote nay. Have all voted who wish to? Record, Mr. Clerk.

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ASSISTANT CLERK: (Record vote, Legislative Journal page 555.) 27 ayes, 0 nays on the adoption of the report.

SPEAKER ADAMS: The report is adopted. Mr. Clerk, for notice.

ASSISTANT CLERK: Thank you, Mr. President. Series of items: your Committee on Enrollment and Review reports LB94, LB340, LB499, LB262, LB259, LB273, LB620 all to Select File. The Executive Board reports LB242 to General File and LB612 to General File. I have notice of cancellation of committee hearings from the Health and Human Services Committee on LB452 as well as LB395. And finally, your Committee on Agriculture reports LB68 and LB166 to General File. That's all that I have, Mr. President. (Legislative Journal pages 555-562.) [LB94 LB340 LB499 LB262 LB259 LB273 LB620 LB242 LB612 LB68 LB166]

SPEAKER ADAMS: Thank you, Mr. Clerk. (Visitors introduced.) Mr. Clerk, we'll proceed to General File.

ASSISTANT CLERK: Mr. President, first bill, LB225A, offered by Senator Smith. (Read title.) [LB225A]

SPEAKER ADAMS: Senator Smith, as the primary introducer of LB225A, you are recognized. [LB225A]

SENATOR SMITH: Thank you, Mr. President, and good morning, colleagues. This is the A bill for LB225, which, as you recall, would require screening newborns for critical congenital heart disease, or CCHD. The bill is currently sitting on Final Reading. There was a small fiscal note associated with LB225. The amount of the fiscal note was \$16,000. These funds are needed to pay for the educational materials explaining CCHD and the screening process, as well as the expenses for the screening advisory panel that will meet to develop the proper procedures in the rules and regs. The A bill needs to catch up to LB225. And, colleagues, I ask that you please help me to advance this measure. Thank you, Mr. President. [LB225 LB225A]

SPEAKER ADAMS: Thank you, Senator Smith. Members, the floor is now open for debate on LB225A. Senator Smith, there are no lights on. Senator Smith waives his closing. Question is the advancement of LB225A to E&R Initial. All those in favor vote aye, all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk. [LB225A]

ASSISTANT CLERK: 29 ayes, 0 nays on the motion to advance the bill. [LB225A]

SPEAKER ADAMS: The bill advances. Next item, Mr. Clerk. [LB225A]



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ASSISTANT CLERK: Mr. President, LB363A, introduced by Senator Avery. (Read title.) [LB363A]

SPEAKER ADAMS: Senator Avery, you are recognized to open as the introducer of LB363A. [LB363A]

SENATOR AVERY: Thank you, Mr. President. During the public hearing on LB363 the State Historical Society indicated that they might need additional General Funds if this bill were to become law. This additional appropriation is to cover the increased requests the Historical Society believes they will have to make if they are not able to charge for staff time immediately for the retrieval of public records. They believe more people will take advantage of the law. And they will have more requests for records in the first few hours, where they will not be able to charge staff time. I will remind you that I recently agreed to an amendment on my fleet card rebate bill that puts the rebates on fleet cards into the General Fund instead of the agencies that generate the rebates. I had to, basically, acquiesce to the Chair of the Appropriations Committee to do this, with the understanding there would be more money available in the General Fund to fund other things. This is one of them. That amount that went back to the General Fund was \$96,000, and the amount that is being requested in this A bill is about \$78,000. So I would urge you to advance this A bill so that we can move forward with LB363. Thank you, Mr. President. [LB363 LB363A]

SPEAKER ADAMS: Thank you, Senator Avery. The floor is now open for discussion. There are no lights on, Senator Avery. Senator Avery waives his closing. The question before the body is the advancement of LB363A to E&R Initial. All those in favor vote aye, all those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk. [LB363A]

ASSISTANT CLERK: 30 ayes, 0 nays on the motion to advance the bill. [LB363A]

SPEAKER ADAMS: The bill advances. (Visitors introduced.) Mr. Clerk, we'll move on to the rest of General File. [LB363A]

ASSISTANT CLERK: Mr. President, the next bill is LB133, introduced by Senator Hadley. (Read title.) The bill was read for the first time on January 11 of this year, referred to the Banking, Commerce and Insurance Committee. That committee places the bill on General File with no committee amendments. [LB133]

SPEAKER ADAMS: Thank you, Mr. Clerk. Senator Hadley, you are recognized to open. [LB133]

SENATOR HADLEY: Mr. President, members of the body, good morning. When anyone borrows something from someone else at no charge, I believe the expectation of both

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parties is that it will be returned in the same condition as it was when borrowed. If your neighbor borrows your vehicle, you expect to get it back without incident. Unfortunately, accidents sometimes happen and the expected results can change. In the case of a loaned motor vehicle, there is an additional complicating issue. The owner of the loaned vehicle will have insurance that will cover while the vehicle is being driven with permission. If the driver of the loaned vehicle has insurance on his or her own vehicle, normally the driver's insurance will also cover the borrowed vehicle. Both parties have paid for and have contracted for coverage. Both parties have insurance that can pay. I believe that the public expects that if someone borrows a vehicle and negligently causes an accident, the negligent driver's insurance policy would cover the loss. If the driver does have insurance or does not have enough insurance, then the owner's policy is expected to pay. This is only reasonable. Between the owner of a vehicle who did nothing and the driver who caused a loss, common sense demands that the person causing the accident ought to be looked at first to pay for the loss. Surprisingly, there is a recent court case in Nebraska that delivered the opposite result. I believe the better policy in Nebraska is for a driver's coverage to be primary and the owner's policy to be second. When there are two policies and both provide coverage, it is understandable that one should be first and the other second. Currently, there are two lines of cases in Nebraska, some of them holding that the driver's insurance policy is primary and some of them holding that the owner's insurance policy is primary. This bill was brought to me by the Nebraska New Car and Truck Dealers Association in an attempt to have the Nebraska Legislature clearly state public policy and establish the law in these cases. As you know, many car dealers provide free service loaners to customers while the customer's vehicle is at the dealership for service. In fact, some of the manufacturers require the dealer to do so; the dealer has no choice. This bill is necessary because the insurers on both sides of these cases have been attempting to draft complicated policy changes in order to make the other insurer's first and their own policy second. The courts refer to these policy provisions as mutually repugnant. Both policies cover the loss, but each says the other has to go first. The court, insurers, and the public need a clear statement of public policy to clear up which policy pays first. Sometimes the insurance company may insure the owner, and sometimes the same company may insure the driver. Thus, either way, having the primary...the owner primary or a driver primary, will probably average out for the insurance companies. Yet there will be a different result for the owner of the vehicle. When there is an insurance claim, someone's rates are going to go up. The insurer paying for the loss will obviously raise the rates for their insured. In the case of a loaned vehicle, depending on which policy is primary, either the negligent driver's rates will go up or the innocent owner's rates will go up. What could be more unfair than the innocent owner's rates going up when the driver caused the loss? This bill only applies with free service loaner vehicles. It does not require anyone to purchase any insurance coverage. It does not diminish any insurance company; both policies remain in effect. It only clears up which policy pays first and which policy pays second. It only applies for free loaner services by dealers to customers. It allows the insurance coverage to follow the negligence. It only applies

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when policy language is mutually repugnant. Either the negligent party or the owner should be first. We must pass this bill to settle it in the law. I would be happy to answer any questions. [LB133]

SPEAKER ADAMS: Thank you, Senator Hadley. Senator Chambers, you're recognized. [LB133]

SENATOR CHAMBERS: Thank you. Mr. President, I'd like to ask Senator Hadley a question or two. [LB133]

SPEAKER ADAMS: Senator Hadley, would you yield? [LB133]

SENATOR HADLEY: Yes, I will. [LB133]

SENATOR CHAMBERS: Senator Hadley, for the sake of the record, why do you presume that the driver was negligent? [LB133]

SENATOR HADLEY: I am not presuming the driver is negligent, Senator Chambers. [LB133]

SENATOR CHAMBERS: Throughout your conversation you said when somebody is driving negligently and the car is damaged, then the driver should pay. So on what base...first of all, did you prepare the statement that you were reading? [LB133]

SENATOR HADLEY: No, I did not, sir. [LB133]

SENATOR CHAMBERS: Did you pay attention to what you were reading as you read it? [LB133]

SENATOR HADLEY: Yes, I did. [LB133]

SENATOR CHAMBERS: Do you remember reading the word "negligent" or a form of it in that statement you read? [LB133]

SENATOR HADLEY: Yes. [LB133]

SENATOR CHAMBERS: Do you? [LB133]

SENATOR HADLEY: Yes. [LB133]

SENATOR CHAMBERS: And on what basis was the presumption that the driver was negligent? [LB133]

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SENATOR HADLEY: This would be a legal distinction, probably, from the issuing of a ticket by an officer...a police officer, as would be normal in most traffic accidents. [LB133]

SENATOR CHAMBERS: Who wrote the statement? [LB133]

SENATOR HADLEY: The New Car Dealers Association. [LB133]

SENATOR CHAMBERS: And the New Car Dealers Association is a lobbying group, isn't that true? [LB133]

SENATOR HADLEY: That's correct. [LB133]

SENATOR CHAMBERS: And the New Car Dealers are the ones...the dealer is the one repairing the vehicle of the one who borrowed the vehicle, is that correct? [LB133]

SENATOR HADLEY: I don't think you can make that assumption, Senator Chambers. They may repair it, but it could, possibly, they could send it to someplace else to be repaired. [LB133]

SENATOR CHAMBERS: But the dealer is involved in the repair of the vehicle. The vehicle had been brought by the driver to the dealer for repair, whether the dealer did it himself or farmed it out. Is that true or false? [LB133]

SENATOR HADLEY: That's...that's...yes, the loaner is being provided because a vehicle...the owner...the owner is bringing the vehicle for repair, that's correct. [LB133]

SENATOR CHAMBERS: And did the owner purchase it from the dealer? [LB133]

SENATOR HADLEY: May or may not have. [LB133]

SENATOR CHAMBERS: Is the owner going to pay the dealer for the repairs? [LB133]

SENATOR HADLEY: May or may not. [LB133]

SENATOR CHAMBERS: Why would the owner not pay the dealer for repairs? [LB133]

SENATOR HADLEY: It could be a warranty repair, Senator Chambers. [LB133]

SENATOR CHAMBERS: But it would be based on some money that the owner had expended at some point with the dealer, is that correct? [LB133]

SENATOR HADLEY: Not with that...it may not be with that particular dealer, he may

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have...he or she may have bought the car from a dealer 500 miles away. [LB133]

SENATOR CHAMBERS: Is the dealer going to be paid for the repairs when they're done? [LB133]

SENATOR HADLEY: If it is a warranty service, yes. [LB133]

SENATOR CHAMBERS: And who is going to pay? [LB133]

SENATOR HADLEY: If it's a warranty, it's going to be the manufacturer; it could be an insurance company; it could be... [LB133]

SENATOR CHAMBERS: Good enough. The dealer is going to profit from this repair, whoever pays for it, isn't that true? [LB133]

SENATOR HADLEY: That's correct. [LB133]

SENATOR CHAMBERS: So there's a business relationship here between the owner of the vehicle and the dealer. [LB133]

SENATOR HADLEY: Yes. [LB133]

SENATOR CHAMBERS: The dealers are trying to have the Legislature reverse a Supreme Court decision, isn't that true? [LB133]

SENATOR HADLEY: I think there's a...I believe it's in the appellate court right now. [LB133]

SENATOR CHAMBERS: Well, an appellate court decision has been rendered. And the dealers don't like it, is that true? [LB133]

SENATOR HADLEY: That's correct. [LB133]

SENATOR CHAMBERS: Did they appeal that appellate court decision to the Supreme Court? [LB133]

SENATOR HADLEY: I do not know. [LB133]

SENATOR CHAMBERS: You didn't think to ask them? [LB133]

SENATOR HADLEY: No, I did not. [LB133]

SENATOR CHAMBERS: Have they accepted that as the final word in the case?

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[LB133]

SENATOR HADLEY: I do not know. [LB133]

SENATOR CHAMBERS: Thank you. Members of the Legislature, the court was fully advised in the premises, as they say. The court had a case presented during which both sides argued. The dealers lost. They want us to reverse the case decision that was rendered, a case that was decided on the facts that were presented, facts which we do not have. [LB133]

SPEAKER ADAMS: One minute, Senator. [LB133]

SENATOR CHAMBERS: The lobbyists are asking us to do their work in overturning a court decision. And I will have more to say because I can't say it in a minute. But this is a bill that I'm going to oppose. And I don't blame the dealers for trying to do this. If you can find somebody to do your dirty work, then have them do it, especially when you don't have to pay them. Thank you, Mr. President. [LB133]

SPEAKER ADAMS: Thank you, Senator Chambers. Senator Lathrop, you're recognized. [LB133]

SENATOR LATHROP: Thank you, Mr. President, and colleagues. I am going to weigh in on this one. I'm supporting LB133, and I want to explain and maybe clarify how this comes up and what the conflict is. When I take my car into the dealership to be worked on, that old Acura that sits out in the parking lot in space 12, the dealership...next to Senator Chambers' car, the dealership lets me take a car off the lot. It's a courtesy. They could tell me, as I used to do in the old days, I go have work done on my car and then I'd have to have one of my kids pick me up and take me to the office or have my secretary pick me up or something like that. Instead, now dealerships are providing folks who drop their car off for service with a loaner car. And the negligence and the presumption of negligence that's going on in this conversation is necessary because we would never have this battle between two competing provisions in two separate policies until somebody causes a wreck. So we're talking about a circumstance where I'm given a loaner car, I'm driving back to the office, I run a red light and I hit somebody. The question that we're sorting out here is, should my auto policy be the primary policy, or should the dealership's be the primary policy? Supreme Court came down on the side, apparently, I haven't read the case, Supreme Court apparently came down on the side of the dealership. That's because, generally, in the world of sorting these things out, it's the car and not the owner that is primarily responsible. We're working something similar to a rental agreement. When you rent a car, and you go to the airport in Philadelphia and you want to rent a car, your policy is going to become the primary policy. You say that on all the forms, and Avis is going to keep a policy primarily for its own liability or to take care of their vehicle in the event of a crash. There's nothing wrong with us sorting

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out which way this should go. There is a conflict, and who should be responsible? I think LB133 is a fair measure in that I'm getting the car as a courtesy. It only applies if I get the car for free. Now, granted, if I get an oil change and have my tires rotated, I'm paying them something for the rotated tires and the oil change, but I'm not paying for the car they let me drive off their lot so I can go back to the office and do all the things I do with my car in the course of a day. And so I think that this a perfectly appropriate and a fair measure. It is a little bit different than the general or the traditional--do we have the car be the primary and the guy driving it be the secondary? Here's what we're saying: the guy who's driving the courtesy car that he gets for nothing from the dealership, his insurance will be primary and the dealership will be secondary. That's what's going on in the bill. We got to sort it out, the Supreme Court sorted it out. We are flipping it. But there's good...I think, a good policy reason to do that, because it only applies in those instances where they're giving me the loaner for free. If I pay for it, if I rent it from the dealership, then the dealership is primary and my insurance would remain secondary. What are we talking about, about the primary and secondary? If I cause an accident, I run a red light, and let's say that I hurt somebody very badly and that person has a claim that is...their medical bills and everything else is \$500,000. If I have a \$100,000 policy, they're going to take my hundred first and go get the dealership's liability coverage next. If the accident is a \$100,000 accident... [LB133]

SPEAKER ADAMS: One minute, Senator. [LB133]

SENATOR LATHROP: ...they'll take my \$100,000 and the dealership won't have to pay anything out of their insurance policy. That's the discussion we're having. That's what the bill does. And that's the rationale, I think, for LB133, and it's a rationale I can support. Thank you. [LB133]

SPEAKER ADAMS: Thank you, Senator Lathrop. Senator Bolz, you're recognized. [LB133]

SENATOR BOLZ: Thank you, Mr. President. I'll see Senator Lathrop's Acura and raise him an Accord, a beat-up gray Accord in spot 29. I have a question for Senator Hadley, if he will rise. [LB133]

SPEAKER ADAMS: Senator Hadley, will you yield for a question? [LB133]

SENATOR HADLEY: Yes, I will. [LB133]

SENATOR BOLZ: It seems to me that this policy is reasonable and fair. However, if I were to take on the liability of a loaner car, I would want to be informed that that would be my responsibility. Does your legislation contemplate that? [LB133]

SENATOR HADLEY: I would assume that the dealership would have that as part of the

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agreement that you sign when you get the loaner car. [LB133]

SENATOR BOLZ: Do you think that an assumption is enough, or do you think that there should be some indication in the legislation to require the dealer to inform the consumer of this policy? [LB133]

SENATOR HADLEY: I would guess the assumption is that the dealer would want to have this. I can't think of a reason the dealer would not...the dealership would not want this. So I guess I don't see it as a necessary part of the legislation. [LB133]

SENATOR BOLZ: I guess my perspective would be that, as a consumer, I would want to be informed that I have a specific responsibility for the car that I would be borrowing. Thank you for your time. [LB133]

SPEAKER ADAMS: Thank you, Senator Bolz. Senator Chambers, you're recognized. [LB133]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ask Senator Lathrop a question or two. [LB133]

SPEAKER ADAMS: Will Senator Lathrop yield? [LB133]

SENATOR LATHROP: Sure. [LB133]

SENATOR CHAMBERS: Senator Lathrop, under ordinary circumstances, which is in a better position to afford insurance, the driver or the dealer? [LB133]

SENATOR LATHROP: Well, afford it; depends on the person, I suppose. It would depend on the financial circumstances of the dealership and the financial circumstances...I suppose if you go over to the Mercedes dealership, which I don't have my car serviced at, probably more of the people who are driving in there for service might be able to buy and sell the dealership. So it sort of depends, I guess. [LB133]

SENATOR CHAMBERS: Senator Lathrop, there is nothing that requires this dealer or the dealership to provide a loaner car, is there? [LB133]

SENATOR LATHROP: Nope, it's a courtesy. [LB133]

SENATOR CHAMBERS: But it's a part of the business and it's designed to redound to the benefit of the business' reputation and, hopefully, produce...or at least maintain business, is that true or false? [LB133]

SENATOR LATHROP: That would...that's true. I'm sure that's part of their business



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plan. [LB133]

SENATOR CHAMBERS: And if there were not a benefit accrued, that the dealership would accrue, the loan would not be made of the car, would it? [LB133]

SENATOR LATHROP: If the dealer...they don't loan them to anybody but the people who are getting their car serviced there. [LB133]

SENATOR CHAMBERS: Right, so the dealer is going to gain from this also. [LB133]

SENATOR LATHROP: They will when they give me the bill for the tire rotation and the oil change. [LB133]

SENATOR CHAMBERS: And it is a business practice and a part of the cost of doing business that the dealer or dealership would have, isn't it? Because there's not going to be an accident every time somebody borrows a car. [LB133]

SENATOR LATHROP: I am confident that the dealerships are maintaining liability policies right now to cover it... [LB133]

SENATOR CHAMBERS: Thank you...oh. [LB133]

SENATOR LATHROP: ...just as you and I are required to. [LB133]

SENATOR CHAMBERS: Thank you. Members of the Legislature, Senator Lathrop and Senator Hadley are boundless in their compassion and their humanity and their feel for the big shots of the world, in this corner of the world. They are people with a heart. Since I have no heart, I don't feel the same way about the businesses that they do. What I am sympathetic with is the person who borrows the car. I live in a different world from that of the big shots and those with whom they associate. And I take a broader view in determining where responsibility should be parceled out if it's to be between two individuals, which is best able to assume that responsibility. It would be different, in my view, if somebody borrowed the car and then deliberately did something to destroy it, or if somebody negligently drove a car through the front window of a dealership. But here we have a business arrangement between two people of sound mind, or the contract would not be valid. The contract cannot be an adhesion contract, which means that the big shot has all of the advantages and the little shot has to take it or leave it. None of those things are at play here. We have two consenting adults; and the reason I say adult, for the contract to be valid, the person must have the ability and capacity under the law to enter a valid contract in order to be bound by it. So all of those things have been taken care of. And you have two people standing here for judgment. It's similar to a situation... [LB133]

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SPEAKER ADAMS: One minute, Senator. [LB133]

SENATOR CHAMBERS: ...that comes to mind, and since I don't have enough time, I'll wait until I'm recognized the next time as I turn on my light. [LB133]

SPEAKER ADAMS: Thank you, Senator Chambers. Senator Schumacher, you're recognized. [LB133]

SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. I think Senator Lathrop accurately described what's going on here. And I don't think that this is a David and Goliath, poor little consumer, big bad insurance company, kind of thing at all. It's big bad insurance company versus big bad insurance company; let's read the bill. During the time when an insured is operating a motor vehicle provided by a motor vehicle dealer for use while the insured's motor vehicle is being serviced, repaired, or inspected by the motor vehicle dealer, when both the insured person's and the motor vehicle dealer's motor vehicle insurance policies have mutually repugnant clauses regarding primary coverage, the insured person's motor vehicle policy shall provide the primary coverage for the motor vehicle and the motor vehicle insurance policy of the dealer shall provide the secondary coverage. What is a mutually repugnant clause? Both people have insurance. The consumer drove up with their vehicle; they have insurance; that insurance policy says that they're liable for insuring the consumer who drove up. No need for a separate scrap of paper to say--you're responsible if you wreck my car. The dealer has insurance. Says, oh, if my vehicle is involved in an accident when I, for the most part, gratuitously give it out to somebody so that they don't have to have their wife leave the kids at home in order to come in to take them to work after they dump it off. But that car is in an accident. There will be coverage to cover the injured parties out there in the world. And then both those policies point the finger at the other one and say--you go first. And there's a conflict in the courts as to who is right. And most people would say that...and the Supreme Court, in fact, I believe, has said, even though we have a lower court now confusing the issue, that, look it, the person who is driving, who has the last clear chance to avoid an accident, on whose responsibility it is for the safe operation of that vehicle, their insurance should go first. And if they run out, and their insurance company runs out, the other insurance company should come in and pick it up. We're just settling a dispute between two monsters. We're not settling a dispute where there is any inequitable ability. Both people have insurance, or this doesn't come into effect. Both people expect their policies to protect them, or this doesn't come into effect. We're just ordering the pecking order between the two insurance companies. And in doing so, we're bringing some certainty to this area of the law. Consumers are protected; injured parties are protected; everyone knows where they stand. And as a result, we have a very simple situation in which nobody is treated unfairly, nobody has unfair economic advantage over another; and it is just what you would expect to happen in a...I would guess, if you polled the population, they'd say, well, of course, if I cause an accident, probably my insurance should go first. So it's a

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little common sense. And there's no inequities involved at all in this particular case. Thank you, Mr. Speaker. [LB133]

SPEAKER ADAMS: Thank you, Senator Schumacher. (Visitors introduced.) Senator Gloor, you're recognized. [LB133]

SENATOR GLOOR: Thank you, Mr. President, and good morning, members. I am Chair of the Banking, Commerce and Insurance Committee and I want to assure the body that this...as good as this discussion is, it's a replay of a lot of the discussion and debate we had during the presentation of this bill. Let me cover a few things that haven't already been covered, by way of reassuring you. First of all, Senator Bolz said it very nicely, some of us jump into Acuras, some of us jump into Accords; I think most of us jump into Accords and are offered, if we're lucky, a van ride to wherever we need to go. Nobody tosses us the keys to someplace. I certainly take van rides. Happy for that from dealers, who, it should be known, are caught between a rock and a hard place. We are not talking, usually, about loaners that are given out for people who are driving Buicks and Accords. We're talking about owners who are driving much, much higher-end. And what comes along with that is a requirement by the major car corporations that if you're going to get a dealership, along with the dealership requirements are the fact that you have to offer loaners. It's part of the aura, I guess, they want to spin around high-end cars. So dealers are in a position where if given the opportunity, I think, would not offer these loaners. It's one of the reasons very few car dealers offer loaners anymore anyway. And since we're talking about high-end dealers, I got a chuckle out of Senator Chambers' comments about who is better able to cover the expense of this. Given the fact that the auto industry was a recipient of a major government bailout recently during the economic downturn, I'm not so sure that, in some cases, that the owners aren't far better able to handle the loss than are the dealerships themselves. It's not a given. But in either case, I think issues brought up by Senators Lathrop, Bolz, Schumacher cover some important and salient points, and I tell the committee again, or tell the body again, committee listened to these discussions and arguments and felt comfortable bringing this bill forward unanimously. Thank you, Mr. President. [LB133]

SPEAKER ADAMS: Thank you, Senator Gloor. Senator Chambers, you're recognized. [LB133]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have two words to say in response to what Senator Schumacher commented: Bah, humbug. There's a Spanish proverb which says: Shoemaker, to thy last. A last is a part of the equipment used to repair or make shoes. And it's said when somebody steps out of their realm of expertise: Shoemaker, keep fixing shoes. Senator Schumacher is not completely objective, neither is Senator Gloor. They are two of the ones who voted to bring this bill to us. Having done so, would you expect them to stand on the floor and, in the same way that Senator Nelson acknowledged error under my questioning, they would

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acknowledge error not voluntarily. Members of the Legislature, the reason you have two sides in court is because when one side is presented it seems like the argument is unassailable and the conclusion is inescapable until the other side speaks. Senator Schumacher said with a straight face that we have a battle between two monsters, an insurance company on the right, an insurance company on the left. But what he and Senator Lathrop forget to tell you or present to you is the question, who is going to feed which monster? The two monsters are fed. Will you go for the monster who is fed by the one with barns and barns and barns of feed, or to this poor little individual who has scarcely enough to feed himself, his wife, and his hungry children? Now it's easy to see what the answer ought to be. But I'm going to go to somebody else. Solomon, who is considered to have been a wise man, although he had hundreds of wives, and even more hundreds of concubines, and it's hard for me to see that as being a wise thing for anybody to do. But these two women had children, two little babies, and they were all sleeping in the same bed. When they awoke in the morning, one of the children had been smothered and only one baby was alive, and each woman claimed the child as her own. And you might ask, why would that happen if a woman knew that the child that was smothered was not her own; well, she wants compensation. She does not want to lose the baby, so she says, the one that is alive is mine. And the other one said, no, the baby is mine. So they took it to Solomon, when I say "it," I mean the issue, presented it to Solomon and Solomon listened to the two women; and you all know the story, he said, bring me a sword. And a sword was brought. Solomon said, since we have two people making the same claim and we're not able to determine which is telling the truth and which is not, we will settle this by dividing the baby in two and allowing each person to have a half. And one woman said, no, don't do that, give the child to the other woman, and Solomon said, you indeed are the mother because only a mother would not want her child severed in this fashion. I don't believe the story is true at all. But just like all fairy tales, you tell it to reach a point where a moral is to emerge. I would like to ask Senator Gloor a question since Senator Schumacher was the one who was the recipient of most of my wrath. Is Senator Gloor on the floor? [LB133]

SPEAKER ADAMS: One minute, Senator. And, Senator Gloor, do you yield? [LB133]

SENATOR GLOOR: Absolutely. [LB133]

SENATOR CHAMBERS: Senator Gloor, why could not there be a tie and each would contribute to the cost of repairing the vehicle? Why couldn't you do that? And if you can't, just tell me. [LB133]

SENATOR GLOOR: Well, I'm sorry, but I would have to retreat, Senator Chambers, to my days running a healthcare institution, and legal counsels never seem to see things as ties. And that would be my only answer to that. I'm sure it is within the realm of possibility of those of us who take a very straightforward look at the world. But I wonder, in the realm of your area of expertise, the law, whether ties are allowed. [LB133]

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SENATOR CHAMBERS: Since my time is up, I will wait until I'm recognized. [LB133]

SPEAKER ADAMS: Senator Carlson, you're recognized. [LB133]

SENATOR CARLSON: Thank you, Mr. President, and members of the Legislature. And I appreciate Senator Chambers quoting from the Book of Truth this morning and having his story correct. Solomon was a wise man. I would like to address a question to Senator Chambers, if he would yield. [LB133]

SPEAKER ADAMS: Senator Chambers, will you yield to a question? [LB133]

SENATOR CHAMBERS: Yes, I will. [LB133]

SENATOR CARLSON: Senator Chambers, in your heart of hearts... [LB133]

SENATOR CHAMBERS: I have a heart. [LB133]

SENATOR CARLSON: ...if you have a loaner vehicle while yours is being serviced, do you have a moral responsibility to attempt to drive that vehicle safely? [LB133]

SENATOR CHAMBERS: I've never had a loaner vehicle. [LB133]

SENATOR CARLSON: If you had one, would you have a moral responsibility to drive that vehicle safely? [LB133]

SENATOR CHAMBERS: You're making it an "if" question. You're saying "if" I had a loaner? [LB133]

SENATOR CARLSON: Yes. [LB133]

SENATOR CHAMBERS: What would I be "if" great and rich, that is the kind of question which I cannot prophesy on. Apply it to yourself and see what kind of lion would you be if you should be a lion. So I can't really answer the question. [LB133]

SENATOR CARLSON: Senator Chambers, you are on my time. I would ask for a shorter answer if you would give that. But regardless of financial circumstances, is there a moral responsibility to attempt to drive the vehicle safely? [LB133]

SENATOR CHAMBERS: It wouldn't even have to rise to the level or morality, I would have an obligation to do that. [LB133]

SENATOR CARLSON: Good, thank you. I thought you would. Now if you're driving a

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loaner, which you say you haven't, but you may sometime do that, and cause an accident, should your insurance pay or the dealer's insurance? [LB133]

SENATOR CHAMBERS: The dealer's insurance, because the dealer...but for the action of the dealer, I wouldn't even be driving the vehicle. So the dealer is the one who had the last clear chance to prevent all this by not making the loaner available. [LB133]

SENATOR CARLSON: All right, Senator Chambers, if you had a loaner and you're driving it and the other driver is careless and runs into you and there's an accident and it's not your fault at all, but you've got a loaner car, whose insurance should pay? [LB133]

SENATOR CHAMBERS: The other driver. [LB133]

SENATOR CARLSON: Correct. You answered that correctly. And I think the same thing applies if you were driving the car carelessly and had an accident, that it should be your insurance that pays. Thank you for your comments. And I think that that's what this bill specifies and it's as simple as that. I do support LB133. Thank you, Mr. President. [LB133]

SPEAKER ADAMS: Thank you, Senator Carlson. Senator Bloomfield, you're recognized. [LB133]

SENATOR BLOOMFIELD: Thank you, Mr. President. I'd like to ask Senator Chambers a question, if I could. [LB133]

SPEAKER ADAMS: Senator Chambers, will you yield? [LB133]

SENATOR CHAMBERS: Yes, I will. [LB133]

SENATOR BLOOMFIELD: Thank you, Senator Chambers. I was tied up in Exec when you were discussing the court case. Could you, in less than a minute, give me a brief overview of what that discussion was. [LB133]

SENATOR CHAMBERS: When...I didn't understand your...what are you asking me? [LB133]

SENATOR BLOOMFIELD: As I walked back in from an Exec Session, you said something about the Supreme Court had decided something or another. [LB133]

SENATOR CHAMBERS: Oh, what had been stated by Senator Hadley is that there had been a Supreme Court decision which dealt with this very issue and the court decided that the dealer's insurance should go first and the driver should go second. The court

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decided that the dealer's should go first. So the dealers brought this bill to have us reverse that Supreme Court decision. [LB133]

SENATOR BLOOMFIELD: Okay, thank you. [LB133]

SPEAKER ADAMS: Thank you, Senator Bloomfield. Mr. Clerk, you have any announcements or...? [LB133]

ASSISTANT CLERK: Mr. President, one announcement, Judiciary Committee will hold an Executive Session in Room 1113 upon adjournment. And I do have a priority motion. Senator Ashford would move to adjourn until Friday morning, March 1, 2013, at 9:00 a.m.

SPEAKER ADAMS: Thank you, Mr. Clerk. Members, you've heard the motion to adjourn. All those in favor indicate by saying aye. Opposed? We are adjourned.