

SENATOR BARRETT: Thank you Mr. President and members. I also rise in support of Senator Johnson's amendment. Insofar as the bill funds the tort claim after settlement was approved by the Lancaster County District Court I made a change in my particular position. After polling in my district after a lot of soul searching I've come from a point of zero to a point of being able to support this proposal of \$8.5 million which represents the tort claim and a separation of the miscellaneous claim from the bill itself. The miscellaneous claim or the contract claim as it is often called, is another matter given the fact that it was not approved by the court. It was not approved by a court of law. The tort claim was in the sense that the court said it was a fair settlement. The court admitted no liability in making that decision. They said that the claim had a settlement value and that settlement value is apparently \$8.5 million. The tort claim is based on the theory that the depositors were injured due to a negligent act or an admission or omission by the State of Nebraska. The miscellaneous claim is an entirely different situation, based on the fact that the NDIGC was an agency or instrumentality of the State of Nebraska. This has not been proven. I indicated on this floor earlier, on General File, that the contract claim value is approximately zero. Zero. We have had several opinions from special assistant attorney general's. I would call to the body's attention a letter to Senator DeCamp dated May 24th in which he asked whether the provisions of 713 which provide for the payment of \$12 million on the basis of the purported contract or miscellaneous claim are constitutional. The Department of Justice then refers Senator DeCamp to an opinion which was requested and received by myself on February 20th of 1985 which is printed on page 772 of the Journal, which they concluded the payment of such a claim would be constitutionally suspect. They go on to suggest that this opinion dealt with the original version of 713, however, and I quote "We do not find anything in the amended version of LB 713 which changes that opinion, particularly in the view of the decision of the Nebraska Supreme Court in Weaver v. Cain." Opinion Number 26, which is directed to my office also concluded that there was no legal basis or merit to the so called contract claim. As I understand the Johnson amendment the contract claim has now been severed from the bill. The \$8.5 million tort claim remains. I believe that it is a feeling of this body, after debating it today,