

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 31, 2001

LB 85

for purposes of striking the enacting clause.

PRESIDENT MAURSTAD: Senator Wickersham, you're recognized to open.

SENATOR WICKERSHAM: Mr. President, I...it is not my intention this morning to unduly delay final consideration of this bill. Let me make clear that the reason I have filed this motion is because Senator Quandahl came to me and said that he wished to reoffer AM2208, that had been considered by us on Select File. He's having that amendment drafted. I think it's an important enough issue to allow him time to have that amendment drafted, and for us then to again consider that amendment. In case you don't remember AM2208, that was the amendment that I offered that would have reinstated provisions struck by the committee amendments. Those provisions would have provided for substantial regulation of a private prison if a private prison in the state of Nebraska was going to accept federal or out-of-state prisoners. I continue to believe that that is the most prudent course for us to take. I cannot stand before you with absolute certainty and say that the bill as currently constructed is unconstitutional. But I have enough concern about that issue to believe that we should take a safer course. And the safer course is the one that was proposed in the bill as introduced. Now, I understand that there may be a desire to flatly do away with any possibility for private prisons in the state of Nebraska. And you may have all of those urges, and that may be your preferred course. But it is prudent, it is prudent to ask you whether or not you really think you can have what you want, in light of concerns that I think are legitimate about whether or not you can actually flatly prohibit an activity under the commerce clause, or as was suggested by the Attorney General from North Carolina. And I do not know whether that opinion is right. I'm not telling you that I think they're right or that I think they're wrong. I am concerned enough to believe that we ought to pursue a safer and more prudent course. Now, we can pass bills knowing or thinking that they're unconstitutional. We can impose a burden on persons to litigate and to prove that they or we are right. We could subject this bill and the policy decision that we're making to that kind of a test. But I don't think it's prudent to do that. There