

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

Floor Debate
February 01, 2007

[LB11 LB25 LB28 LB39 LB44 LB70 LB79 LB80 LB80A LB83 LB94 LB99 LB101 LB115
LB117 LB119 LB120 LB121 LB145 LB161 LB165 LB166 LB167 LB191 LB211 LB213
LB231 LB237 LB238 LB241 LB248 LB263 LB283 LB283A LB291 LB298 LB305A
LB305 LB311 LB313 LB333 LB341 LB434 LB476 LB487 LB527 LB607 LR8CA LR22
LR26]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George Norris Legislative Chamber for this, the twenty-first day of the One Hundredth Legislature, First Session. Our chaplain of the day is Pastor Bob Chitwood, Brownville Christian Church, Brownville, Nebraska, Senator Heidemann's district. Please rise. []

PASTOR CHITWOOD: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you, Pastor Chitwood. I call to order the twenty-first day of the One Hundredth Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

CLERK: I have a quorum present, Mr. President. []

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

CLERK: Mr. President, I have no corrections this morning. []

SENATOR LANGEMEIER: Thank you. Are there any messages, reports, or announcements? []

CLERK: Mr. President, your Committee on Enrollment and Review reports LB166, LB333, and LB283A to Select File, some of those having Enrollment and Review amendments attached. Your Committee on Enrollment and Review also reports LB11, LB25, LB28, LB44, LB79, LB80, LB94, LB115, LB161, and LB167, all of those reported correctly engrossed. That's all that I had, Mr. President. (Legislative Journal pages 435-436.) [LB166 LB333 LB283A LB11 LB25 LB28 LB44 LB79 LB80 LB94 LB115 LB161 LB167]

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

CLERK: Mr. President, the Retirement Systems Committee, chaired by Senator Synowiecki, reports on two appointments to the Nebraska Investment Council. (Legislative Journal page 411.) []

Floor Debate
February 01, 2007

SENATOR LANGEMEIER: Senator Synowiecki, you are recognized to open on your confirmation report. []

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. Good morning, members of the Legislature. The Nebraska Retirement Systems Committee recently held confirmation hearings on January 29, 2007, for two appointments to the Nebraska Investment Council. Members on this council make decisions concerning how public funds are invested, in addition to overseeing the investment of state public pension dollars. The first conferee, Mr. John Dinkel, was appointed to fill a position on the Investment Council for the remaining two and a half years of a five-year term. Mr. Dinkel is the owner and manager of Dinkel Implement Company in Norfolk and Scribner, a company for which he has worked since 1969. Mr. Dinkel is originally from Norfolk and holds a business degree from Northeast Community College. Mr. Dinkel will bring serious, real-world business and investment experience to the Investment Council, and he is well-qualified to make decisions regarding the investment of public funds. The Retirement Committee unanimously voted to move Mr. Dinkel's appointment to the Legislature for confirmation. I would ask for your support in confirming this appointment to the Nebraska Investment Council. The next conferee recommended by the Retirement Committee is Mr. Richard DeFusco. Mr. DeFusco has served honorably on the Nebraska Investment Council since 2003, and he has been appointed by the Governor to serve a full five-year term. Mr. DeFusco has served as a professor of finance at the University of Nebraska-Lincoln since 1982. He holds degrees in finance and management from the University of Rhode Island, as well as a Ph.D. in finance from the University of Tennessee. He was designated as a chartered financial analyst in 1999 and has numerous publications related to investments. Mr. DeFusco will continue to bring a wealth of investment knowledge to the Investment Council, and he is amply qualified to make decisions regarding the investment of public funds. His appointment was also unanimously approved by the Retirement Committee. I ask for your support for Mr. Richard DeFusco's confirmation to the Nebraska Investment Council as well. Thank you. []

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

SPEAKER FLOOD: Members, I just rise in support of the nomination of John Dinkel from Norfolk. He's a personal friend and has done great things for our community. He's a gentleman that invests his time in private school and private school endeavors, but he also has served on the Norfolk School Board. He's been active in our community and would do a great job serving the state in this capacity. So I rise in his support. Thank you, Mr. President. []

SENATOR LANGEMEIER: Thank you, Speaker Flood. Are there any others that wish to speak on the nomination? Seeing none, Senator Synowiecki, you're recognized to close

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

Floor Debate
February 01, 2007

on the report. Senator Synowiecki waives closing. You have heard the closing on the adoption of the report offered by the Retirement Committee. All those in favor vote yea, and all those opposed vote nay. Mr. Clerk, please record. []

CLERK: (Record vote, Legislative Journal page 437.) 40 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. []

SENATOR LANGEMEIER: The report is adopted. Mr. Clerk, first bill on Select File? []

CLERK: Mr. President, LB80A, Senator McGill. I have no amendments pending to LB80A. [LB80A]

SENATOR LANGEMEIER: Senator McGill, you're recognized. [LB80A]

SENATOR MCGILL: I move LB80A to E&R for engrossing. [LB80A]

SENATOR LANGEMEIER: Thank you, Senator McGill. You've heard the motion on LB80A. All those in favor say aye. All those opposed, same sign. Motion carries. Mr. Clerk, will you move to Final Reading? Members should return to their seats and prepare for Final Reading. Mr. Clerk. [LB80A]

CLERK: Mr. President, with respect to LB341E, I have a motion pursuant to Rule 6, Section 8 to dispense with the at-large reading. [LB341]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The first vote is to dispense with the at-large reading. All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB341]

CLERK: 39 ayes, 6 nays, Mr. President, to dispense with the at-large reading. [LB341]

SENATOR LANGEMEIER: Motion carried. Please read the title. [LB341]

CLERK: (Read title of LB341.) [LB341]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. All provisions of law relating to procedure have been completed. The question is, shall LB341 pass? All those in favor vote yea; all those opposed vote nay. With the emergency clause. Record, Mr. Clerk. [LB341]

CLERK: (Record vote read, Legislative Journal page 438.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB341]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. LB341 passes with the emergency

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

Floor Debate
February 01, 2007

clause. Items for the record? [LB341]

CLERK: Thank you, Mr. President. Amendments to be printed to LB283, Senator Stuthman; Senator Fischer to LB305. Senator Dubas offers LR26, a new resolution. That will be laid over. New A bill, LB305A by Senator Fischer. (Read LB305A by title for the first time.) That's all that I had, Mr. President. (Legislative Journal pages 438-439.) [LB283 LB305 LR26 LB305A]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. (Visitors introduced.) []

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB341 and LR22. Next bill, Mr. Clerk. [LB341 LR22]

CLERK: Mr. President, the first bill on consideration of General File this morning is Senator Schimek's LB39. (Read title.) The bill was introduced January 4, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. There are committee amendments, Mr. President. The bill was discussed briefly yesterday. (AM116, Legislative Journal page 400.) [LB39]

SPEAKER FLOOD: Senator Schimek, we have not had an opening yet on the committee amendments, but would you, for the Legislature's benefit, update members on your bill? [LB39]

SENATOR SCHIMEK: Yes, thank you, Mr. Speaker and members. I will do this very succinctly. I predict it will take less than a minute. But the three provisions of the green copy of the bill are, one, that petition circulators would have to be qualified electors. In other words, they would have to be qualified to register to vote, if they chose to register to vote. It would prohibit the payment of circulators on a per-signature basis. It would say instead that you had to pay hourly or a set amount. And then the final provision of it regards campaign reporting, and it just says that when the chief circulator makes the report to Accountability, they have to report the amount paid, but they shall not include the circulator's name, address, or telephone number. And that again is closely regulated by the courts. I will also mention to you the chart that I just had passed around by the Pages. And the reason that you don't see all the states on this chart, of course, is that not all states have initiative and referendum. So that's the reason, but to give you a little bit of a reference to see that some states do, in fact, have some of the provisions that we're talking about in this bill. So with that, Mr. Speaker...or Mr. President, I would yield the rest of my time if I had any rest of my time. Thank you. [LB39]

SENATOR LANGEMEIER PRESIDING []

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

Floor Debate
February 01, 2007

SENATOR LANGEMEIER: Thank you, Senator Schimek. Mr. Clerk, are there amendments? [LB39]

ASSISTANT CLERK: Mr. President, there are. The Government Committee would offer AM116. [LB39]

SENATOR LANGEMEIER: Senator Aguilar, you're recognized to open on the committee amendments. [LB39]

SENATOR AGUILAR: Thank you, Mr. President, members. The committee held the public hearing on LB39 on January 17. The committee heard from many members of the public, both supporting and opposing the bill. The committee had a good discussion on the issues and advanced the bill, as amended, on a 7-0 vote, one member was present and not voting. The committee amendments has two components. The first component removes provisions from the bill requiring petition circulators to be electors. The second component harmonizes provisions by replacing the phrase "entity or individual" with "person." "Person" is a defined term within the Nebraska Political Accountability and Disclosure Act. "Person" as defined includes individuals and almost every type of entity. With that, I would encourage the body to advance the amendment. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the opening on the committee amendments. Senator Friend, you are recognized. [LB39]

SENATOR FRIEND: Thank you, Mr. President. You surprised me. I'm assuming that there were people in front of me. Thank you very much. Members of the Legislature, there's been a little...any time you sign things and do things out here that people can actually track, you can cause confusion. I don't want to cause any confusion. It'll happen as time goes on in this session. I just don't want to do it if I can help it. Specifically, I pulled my name off this bill, as you can see from the committee statement and some of the information that you have in front of you, and for more or less some pretty high-level reasons. I'm not here to stand up and say that this bill shouldn't pass. I'm not here standing to say that it shouldn't have come out of committee. It came out 7-0-1; I was not voting. I just wanted to share with you a couple specific reasons or at least my thought process. There are a lot of reasons you would pull your name off of a bill. One could be that, somebody could stand out here and say, well, I learned a lesson, I'm not going to sign anything that I don't like in the future. Well, in my case, that wasn't the situation. I signed it. I probably would sign it again if it was presented to me in the way...in the particular way that Senator Schimek and the committee proposed the information. Or you pull your name off of something to make a point. I think it could be argued that I would like to make a couple points this morning, at the very least, one. I don't think that was the key reason. Or it could just be because somebody wants to talk

Floor Debate
February 01, 2007

incessantly. Now anybody that knows me knows that I have a knack of falling under that third category, talking incessantly. But let's go back to the second one, and that is to make a point. It's certainly not to offend, like I said, or to stop or thwart. I simply wanted to create an environment out here, because I think it's appropriate. I wanted to create an environment, short if possible, longer if it happens that way, so be it, that may promote some discussion. For me, here's where the discussion begins. It's where it started for me six years ago. It's where it came to a crescendo, if you will, in the last session where I raised my hand and I say, I swear to God, if I have the opportunity, I'm going to drive this type of idea. I'm going to drive this type of initiative. Senator Schimek passed out some very valuable information here, the requirements for initiative petition circulators throughout the nation. I'd like to ask Senator Schimek a brief question, and it's not a trick question or anything like that, and I didn't confront her, you know, before this, so it's just something that I want to get onto the record if she would yield. [LB39]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB39]

SENATOR SCHIMEK: Yes, I would. [LB39]

SENATOR FRIEND: A lot of information out here that you passed out, going to be very valuable for the debate, I admit that, and I'm glad you did. All the states that are represented on the information that we have in front of us, how many of those states are unicameral legislatures, have unicameral legislatures? [LB39]

SENATOR SCHIMEK: Not all the states are represented, Senator Friend, I just explained that. [LB39]

SENATOR FRIEND: Of all the states that are on the sheet, how many of those... [LB39]

SENATOR SCHIMEK: Only Nebraska. [LB39]

SENATOR FRIEND: ...how many of those states... [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR FRIEND: ...implement a unicameral legislature? [LB39]

SENATOR SCHIMEK: Just Nebraska. [LB39]

SENATOR FRIEND: Thank you. That's... [LB39]

SENATOR SCHIMEK: That was not hard, Senator Friend. (Laugh) [LB39]

SENATOR FRIEND: That was not hard. Thank you, Senator Schimek. If I lived in

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

Floor Debate
February 01, 2007

Arizona, Arkansas, Florida, Massachusetts, Michigan, and Montana--particularly Massachusetts, Michigan, and Florida--I'd be real worried about the idea that I don't have any requirements for petition circulators. Those are flat-out representative democracies. You're darn right I would throw enhancements and parameters around what citizens can do. Those are pure representative democracies. We're not, folks. The only one in the country, one of the only ones in the world, we are not. [LB39]

SENATOR LANGEMEIER: Time. Thank you, Senator Friend. We have Wightman, Harms, Burling, and others. Senator Wightman is recognized. [LB39]

SENATOR WIGHTMAN: Thank you, Mr. Speaker, members of the body. I would ask if Senator Schimek would yield for a question. [LB39]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB39]

SENATOR SCHIMEK: Yes, thank you. [LB39]

SENATOR WIGHTMAN: Thank you. In the handout that was given us from the National Conference of State Legislatures, and you referred to this in your opening, you said they weren't all here because a number of states didn't allow an initiative process. [LB39]

SENATOR SCHIMEK: That's correct. [LB39]

SENATOR WIGHTMAN: Now I count 24 out of 50, I think there's still 50 when I last checked. That would be 26. Are there 26 states that do not allow initiative? Can you inform me to that? [LB39]

SENATOR SCHIMEK: I believe that is correct. [LB39]

SENATOR WIGHTMAN: Okay, none of the others would allow any initiatives at all? [LB39]

SENATOR SCHIMEK: They have never passed either a constitutional amendment by the citizens nor has their legislature passed anything that has this provision for initiative and referendum. [LB39]

SENATOR WIGHTMAN: Thank you. I'll yield the rest of my time. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Harms, you're recognized. [LB39]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Schimek, would you yield, please? [LB39]

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

Floor Debate
February 01, 2007

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB39]

SENATOR SCHIMEK: Yes, I would. [LB39]

SENATOR HARMS: We talked earlier and I just want to clarify this. In this bill, we still do not eliminate people from out of state coming in here and being paid to distribute these signatures and petitions. Is that correct? [LB39]

SENATOR SCHIMEK: Well, in the green copy we would, Senator Harms, because the green copy provides that you would have to be qualified to be an elector. But with the committee amendment, then we would not be prohibiting out-of-state circulators being hired to circulate here in Nebraska. [LB39]

SENATOR HARMS: And could you tell me why you've made that change? [LB39]

SENATOR SCHIMEK: Why I made the change in the green copy? [LB39]

SENATOR HARMS: No, why the committee made the change. [LB39]

SENATOR SCHIMEK: No, I'm not quite sure. I have visited with one of the committee members. But I think perhaps you should ask the committee Chair that question or one of the committee members. [LB39]

SENATOR HARMS: Well, here's what I'm after. Colleagues, this is...there's two issues that got this petition drive fired up. One is the fact we were paying money to petitioners, and I also have an Attorney General's Opinion here that says, you might as well forget that because it doesn't make any difference. U.S. Supreme Court held that it was unconstitutional not to pay. The second issue is, here, and I think it's one that's extremely important, is that quite honestly the people in Nebraska do not and are not interested in having people from out of state harassing them at Wal-Mart, K-Mart, or wherever they are. And that's the one very thing that I think got people fired up, that we've got people coming here from out of state. You're paying them. They have no idea about what is the issue of Nebraska. And the Nebraskans spoke about that. They made it very clear when they said to us, look, we're going to turn this over, we don't believe in that. But the reason was, the simple fact is it was out-of-state people, it was millionaires putting money in to tell Nebraskans what to do. That's wrong. And I just don't understand why we want to come back and allow that to happen again. I know we can't do anything about the pay. But I don't think it's...I want to listen to next year someone from Montana or from New York that's being paid by a large lobby group that thinks we ought to bring our taxes down. That's a responsibility of the Nebraskans, and I'm here to tell you, when they think this tax is too high, it will be in the constitution. And we were fortunate that we escaped that issue. This is wrong, people. I don't think it's the way to

Floor Debate
February 01, 2007

go. And we will get the Nebraskans fired up in the next summer or whenever we go through the petition drive again because they object to that. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Harms. We have Burling, Schimek, Louden, and Friend, and others. Senator Burling, you're recognized. [LB39]

SENATOR BURLING: Thank you, Mr. Chair. I'd like to ask Senator Aguilar a question. [LB39]

SENATOR LANGEMEIER: Senator Aguilar, will you yield to a question? [LB39]

SENATOR AGUILAR: I will. [LB39]

SENATOR BURLING: Senator Aguilar, to kind of build on what Senator Harms was saying, originally when I first heard about it, I thought the requirement that the circulators should be electors sounded like a good idea. Could you share with the body anything about why the committee proposed this amendment? [LB39]

SENATOR AGUILAR: Well, quite frankly, we had an extensive discussion about that, and the committee felt very strongly that if we just took out the part where it says petitioners cannot be paid by the signature, that that would eliminate a lot of the other problems. In other words, that's where the out-of-state people were coming in here and working and doing the petition, because they could make a lot of money as long as they got paid by the signature. That's what we wanted to do away with. And our hope is that, in doing that, that we accomplish everything else at the same time, that the rest of that goes away. There's no incentive for out-of-state people to come in once that's gone. [LB39]

SENATOR BURLING: Okay, thank you, Senator Aguilar. Appreciate that explanation. I still am going to have to be convinced, I guess, to support an amendment that excludes the requirement that they need to be electors. So I'll continue to listen to the debate and we'll go from there. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Burling. Senator Schimek, you're recognized. [LB39]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. It is conceivable that if we had the per-signature provision and that was the only provision, that there could be ways around it. I mean, I hate to say that, but there could be ways around it. For instance, it would not prohibit paying somebody on an hourly basis and then giving bonuses for good job performance. I think there might be ways around it. I think the original provision of the bill, there was a safeguard put into the bill because of it. As long as we're referring to the chart on...that the NCSL put out--and that is as of 2006, so it's

Floor Debate
February 01, 2007

pretty up-to-date--you'll notice that one of the columns is U.S. citizenship, one of the columns is state resident, and one of them is 18 years of age. And frankly, those were the kinds of concerns that the Secretary of State raised at the committee hearing last fall, was that too often...he ran into a circulator who he found out was only 15 years of age, couldn't explain the petition at all. And so that was one of the concerns that he had. He also raised the idea that there were people circulating petitions who couldn't really explain the petitions because they weren't very fluent. And sometimes that was because they weren't very fluent, and sometimes it was because they didn't have English as their first language. So the U.S. citizenship, at least, would...or the Nebraska citizenship, might take care of some of that. So if you're qualified to be an elector--in other words, qualified to be a registered voter--then you also would be a citizen of the U.S. and you would be a resident of the state. Those were some of the concerns that I guess we were trying to take care of with that provision. And I think that it's not redundant to have that provision in there. But that's a decision that this body will have to make. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Louden is recognized. [LB39]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Well, as I read through this amendment, I guess I question whether we're going to get anything done. Other than the fact that you can't pay a circulator based on the number of signatures collected, well, as Senator Schimek has pointed out, there's ways around that. So you know, are we doing an exercise in futility here? I haven't seen anything in there that says anything about the age of a circulator, which it should well not be because we never know when there's some situations out there that perhaps some young people don't feel as they are being dealt with squarely or rightly so they have the authority to circulate a petition, is my understanding. When I checked into it and found out, some of this is they want some of this language in this amendment because of the accountability statutes that are in there needs to be clarified or brought up to date or something like that. But as you look at...petition work in Nebraska has always been something of the people. And that was their way of defending something that they didn't think was done correctly. I've always said that you're worried about petition signers, if we do our work properly, why, we probably wouldn't have anybody out there signing petitions to override what's done in the Legislature. More times than not, it's something at that angle. There are divided question in the Legislature the reason petitioners have a chance or not. I agree with Senator Harms that when you have people coming from out of state, that's a road that I think we need to go down, to do something about out-of-state petitioners coming in and circulating petitions like they have before. That's what was really the problem in this last 423 petition work that was done out through the state. And it probably nearly succeeded. If it wasn't for the fact of the intelligence of the voters, why, it would have succeeded. So it was put on the petition. So I don't know if this is the right instrument that we're working on at the present time. I would have liked

Floor Debate
February 01, 2007

to seen something a little bit different, but at the present time I'm going to study this thing some more, and I can't say that I'm supporting it at this time. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Loudon. (Doctor of the day introduced.) We have Friend, Carlson, Erdman, and Fulton, and others. Senator Friend, you're recognized. [LB39]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I want to continue the point real quick. I think...or points. I think we can toss out conventional wisdom when it comes to Nebraska. And we try to compare ourselves to 49 other states, we are missing the mark, can't do it. This is not a question of moving or implementing a bicameral legislature. That may be a good idea, it may be a bad idea. Let's let that slide for now. But because we're unique, we have to understand that any...at least I believe that we have to understand that any infringement on the people's right to affect legislation or to affect our constitution is much different than the responsibility any other state has. If this bill only creates a perception, if the amendment and the bill only create a perception but it's not a real infringement, that's great. And I think Senator Schimek is making a pretty valid argument, along with the Secretary of State's office. When I heard the testimony that a lot of these infringements, and I got kind of animated in that hearing. I think some of it is perceived. But we have to be very careful. That's my only point. We have to be very careful. And if there is a reality here and we are infringing upon those rights, the rights of the second house to affect public policy, then I believe we're making a mistake. Now the amendment, in my view, this is the way I see it right now, the amendment, in my view, would create less infringement than the bill itself. I don't think it's just perceived. This is just my view after the reading, after the five readings that I've done. I don't think it's perceived, I think it's real. There is an infringement here. The amendment creates less infringement. I voted yes to move the amendment onto the bill, and I did not vote on the bill out of committee. In deference to the committee, in deference to Senator Schimek, honestly, that's the way I felt. I wasn't positive about a no vote. The committee knows that, they heard me. But the bill itself, to me...this amendment is important, okay, I think. We attach this amendment, I think it creates less infringement. We don't attach this amendment, I think the bill itself does, in our particular unique situation, encroach on the second house's rights, its constitutional right. Senator Harms brings up a good point. We don't want the outside interests. But you know what? Constitutionally, we can't avoid that, we can't stop them from coming in. We can't do it. I don't like it either. You know what they'll do? If we crank it up, if we crank it up a notch, they'll just pay more money. As I mentioned in committee, the sugar daddies and the folks that have the money will hand it over, they'll come in here, they'll get the votes--not in here--they'll come into our state, they'll get the votes, and they'll get the petition drivers and they'll do what they have to do. I think we all know that. There are freedom of speech issues involved here. There are ideas that stretch out into 9 and 10 and 12 areas of express statutory authority that we're monkeying with here now. My thing is, I'll just leave it at this. This amendment is

Floor Debate
February 01, 2007

important. I felt that way in committee; I think it is now. [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR FRIEND: I think that we're pulling some of the reality of infringement away from LB39. If the amendment doesn't pass, my view is--and we're all going to have to sit on it, I think--is that we're infringing upon the second house's right to affect legislation and the right to produce constitutional authority. That's the way I feel. I don't want to belabor this anymore. Senator Schimek deserves a vote on this. I welcome more discussion. But the fact of the matter is, I'm reticent. I think we can just leave it at that. I'm reticent any time we go down roads like this, because... [LB39]

SENATOR LANGEMEIER: Time, Senator Friend. [LB39]

SENATOR FRIEND: ...we're unique. Thank you. [LB39]

SENATOR LANGEMEIER: Senator Carlson, then Erdman, Fulton, and Avery. [LB39]

SENATOR CARLSON: Senator Langemeier and the rest of the body, I'd like to ask Senator Schimek a question. [LB39]

SENATOR LANGEMEIER: Would Senator Schimek yield to a question? [LB39]

SENATOR SCHIMEK: Yes. [LB39]

SENATOR CARLSON: With the amendment and that passes, the only changes to current law are that petition circulators can't be paid based on the number of signatures, and secondly, that the cost of gathering these signatures in this way must be included in the campaign statement. Would you agree with that? [LB39]

SENATOR SCHIMEK: It already has to be reported. But what this is saying specifically is it shall not be done by name, address, telephone number, that kind of thing. You cannot disclose the name of the circulators on that report. And then there's another small amendment, I think, I'm not sure that Senator Aguilar mentioned it. I think I'm right on this, Senator Aguilar. Is there not a small amendment that inserts the word "person" into the statute, I believe? And I'll check on that. But I think there's a small part of the committee amendment that is inserted into this, too. [LB39]

SENATOR CARLSON: Okay, thank you. And I appreciate your original bill. Being from where I'm from, I'm vitally concerned about water issues. And if the amendment passes, the bill really becomes a watered down bill. I share Senator Harms' concerns about what our constituents have said that they want. But you addressed this, I believe, Senator Schimek, but would you refresh me again? Why wasn't there any age

Floor Debate
February 01, 2007

restrictions as a part of the original bill? [LB39]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB39]

SENATOR SCHIMEK: Yes, I would. [LB39]

SENATOR CARLSON: Okay. I think you covered this and I was concentrating on what I was going to say and I may have missed it. But why weren't there age restrictions in the original bill? [LB39]

SENATOR SCHIMEK: Because that was covered by the requirement that you be an elector... [LB39]

SENATOR CARLSON: Okay. [LB39]

SENATOR SCHIMEK: ...because if you are an elector, you're qualified to be registered to vote. And if you are qualified to register to vote, you have to be 18 years of age by the time of the general election. [LB39]

SENATOR CARLSON: Okay. All right, thank you. I yield the rest of my time. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Erdman, you're recognized. [LB39]

SENATOR ERDMAN: Mr. President, members of the Legislature, I find the debate to be very provocative. Let me give you a little bit of the language out of the constitution before I share my thoughts. This is in Article III, Section 2 of the Nebraska Constitution. The title is "first power reserved; initiative." Now you recognize that this doesn't come as the preamble or the first chapter of our constitution. But the title of this is the first power reserved. This is how the people view their rights under our state constitution. "The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature." We are unique, Senator Friend has belabored that point this morning. But really this is about...you're welcome, Senator. But really this is probably more of a balance of power issue. Let me give you an example that may try to cast a better light than maybe what Senator Friend did in his example. In the event that Senator Friend's proposal comes out here on the floor and is successful and the voters of the state of Nebraska adopt it and we run across the hall and open that up and stick some state senators or representatives in there, we wouldn't have the power to tell them how to pass laws. We wouldn't have the power to regulate what laws they could pass. We would all follow the same process that would be outlined for both houses. Now in our state, we're unique, we have a unicameral. We don't have the ability to say parochially that the same rules that we apply should apply to the electors in the event that they follow petition process

Floor Debate
February 01, 2007

because they're not going to have three readings, they're not going to have committee hearings. But they reserve that right, first and foremost, as citizens of this state. Now that was done before we became a unicameral body. But it is always interesting to hear about the arguments that, well, we need to keep these folks out of the state who want to influence our public policy. You know what? There are folks standing back here today that are from out of state that are influencing our public policy and they have a right to be there. The process that we have is not about making us an island of political process from everybody else in our country and protecting ourselves from the influences that are around us. It's about making sure that in our process, that when the citizens of the state of Nebraska feel that they need the opportunity that they reserve first and foremost, that they have the ability to exercise it. Now Senator Avery has a different idea of how we can accomplish that and he's probably going to address that in his remarks. But I know he's got a constitutional amendment that changes the signatures needed and the percentages. But really, why do those folks feel like they need to pay circulators in the first place? Maybe Senator Avery has part of it right. Maybe it's we have placed such a barrier against the citizens exercising their authority as the second house that they have no other option to be that second house than to use that. Now a lot has been made about the recent petitions. You've got 423, you've had other ideas. We didn't have proposals like this introduced before the Legislature when casinos were out running around, picking up cash to do this. It was a problem then. We didn't have this issue come forward this way when other circumstances were before the people as a petition. So it's somewhat ironic that when there was an effort made to restrict spending or to control the growth of government, that all of a sudden we rushed to defend ourselves. We can stand by the decisions that we make as a body independently... [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR ERDMAN: ...and defend that effectively. Whether we agree or not with the policy, that's what the State Legislature of Nebraska has done. But I would caution you in these discussions to get overly parochial and say, well, we have to prevent ourselves from this or that. Those influences are here today. The checks and balances that we have is that you and I have sworn an oath to the constitution of this state and to the United States to defend it. And we're responsible to the people who elected us. Those same people are going to have an opportunity to vote. And if they were smart enough to send us here to represent them, they're going to be smart enough to see through these other issues. The influence will be there. But I share some of the concerns that Senator Friend has, maybe not to the goals that he may have, but this is about preserving the opportunity that the people themselves cherish as their first right. And I think we must be careful to analyze whatever decisions that we may make... [LB39]

SENATOR LANGEMEIER: Time, Senator Erdman. [LB39]

SENATOR ERDMAN: ...that may infringe upon that. Thank you, Mr. President. [LB39]

Floor Debate
February 01, 2007

SENATOR LANGEMEIER: We have Senator Fulton, Avery, Dierks, Dubas, and others. Senator Fulton, you're recognized. [LB39]

SENATOR FULTON: Thank you, Mr. President. I spoke briefly with Senator Harms after he very eloquently pointed out some of the same concerns that I had. And I think it would be informative to share with the body what we talked about. My aide was able to find a decision by the United States Court of Appeals, 8th Circuit Court of Appeals, from 1997, saying that it would be unconstitutional to require petition circulators to be electors. And I'm not a lawyer but my understanding of the argument here is that those who aren't registered to vote, who aren't electors, who want to participate in the petition process, if you would prohibit that, you are prohibiting their First Amendment right. And so that, as my understanding, that's probably why the committee had to amend the original bill as we see it on the green page. So in a sense, our hands are tied. I mean, I understand the intention that we want to keep rich folks from outside the state from coming in here and influencing our public policy, but there is a ruling by a high court that indicates that it would be an abridgement of the constitution. And so in a sense, our hands are tied in that regard. That would be point number one. Point number two, I do not believe that this bill has as its remedy what the intention is. As it stands right now, we will not be able to pay petition circulators by signature. That pretty much is what the bill is about in its present form. It was said earlier, and I think it's worth pointing out, that those--and I'm going to make this very easy, we're going to say rich folks and poor folks--those rich folks that want to get a petition circulated and get a certain number of signatures, they're probably going to find ways around this bill that we have if it were to pass as law in its existing form. They're going to find ways around that. What about the poor folks, the folks that have an idea, that want to generate a grassroots effort to put forward an initiative? We're telling them that they can't pay per signature either. Now those of you in business recognize that from a cost standpoint, paying for performance is a pretty good idea. And if you don't have a lot of money, it's a way to get something accomplished. I think by passing this measure we actually make it more difficult for those without money to get something accomplished in our state and probably just put another little hurdle that those with money are going to get over anyway. So I make that point just to make it known that I do not believe...I think that this actually has, as its net remedy, the opposite of what its intention is. So I thank you for listening. I'll yield the remainder of my time to the Chair. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Avery, you're recognized. [LB39]

SENATOR AVERY: Thank you, Mr. Chair and members of the body. I am really intrigued by this debate because it addresses a very important subject. I want to start by saying that I deeply support the right of citizens of this state to petition by popular vote. I think it's important to this state. As Senator Friend has pointed out, it is the second

Floor Debate
February 01, 2007

chamber. There were three people who addressed the issue of outside interests coming into the state of Nebraska, using vast resources to amend our constitution to suit them. And I think most people that spoke on that were a bit outraged by it. I'm outraged by it. The citizens of my district are outraged by it. These are people who don't have any interest in Nebraska. They come into our state with deep pockets and they try to tell us how to run our business according to how they want us to do it. I agree with their concern. This bill, of course, does not address that. However, I am happy to be able to tell you that I do have a bill that will be coming before this body in a few days that will address this problem. It is LR8. It would change the constitution by increasing the number of required signatures to amend the constitution from 10 percent of registered voters to 15 percent. That is raising the bar for amending our constitution by petition. This is where almost all of the outside attention has been focused, on amending our constitution. They want to change our constitution to suit them. And they know that for us to go back and undo that is difficult. And that's why they focus it there. At the same time, what I will propose and talk about next week is to lower the number of required signatures to enact laws from 7 percent to 4 percent. Now this will lower the bar for those ordinary citizen groups to get laws enacted. And I will talk about this more later. This is where most of the citizen activity has been traditionally focused, at enacting laws. I want to thank Senator Harms, Senator Erdman, and Senator Fulton for bringing up this issue and giving me the opportunity to get in an early word on my upcoming bill. Thank you very much for that. Finally, I want to speak directly to the amendment. I agree with the committee's decision to drop the requirement that paid circulators be...or, that circulators be electors. I believe, as the committee discussed, that we will tighten the rules to a sufficient degree by restricting the manner in which circulators may be paid. Paying by the hour is not quite the motivator that paying by signature is. The people who are paid by the signature to circulate petitions, I watched them, they are aggressive, they're often abusive. All they want is the signature and an additional amount of money. If we restrict them to simply being paid by the hour, I think we're going to probably get at the problem. I believe this would also pass constitutional muster. Thank you, Mr. Chair. I will yield the rest of my time to you. [LB39 LR8CA]

SENATOR LANGEMEIER: Thank you, Senator Avery. We have Dierks, Dubas, Adams, Wallman, and others. Senator Dierks, you're recognized. [LB39]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. I'd like to ask Senator Aguilar a question, if I could, please. [LB39]

SENATOR LANGEMEIER: Senator Aguilar, would you yield to a question? [LB39]

SENATOR AGUILAR: Yes, I will. [LB39]

SENATOR DIERKS: Senator Aguilar, the committee statement shows that there were about as many people opposed to the bill as there were in favor of it. I wondered if you

Floor Debate
February 01, 2007

could give us a brief rundown on the opposition, what the opposition was all about.
[LB39]

SENATOR AGUILAR: Well, the opposition was pretty clear. They didn't want any restrictions involved whatsoever. [LB39]

SENATOR DIERKS: They just...the entire thing was bad, as far as they're concerned?
[LB39]

SENATOR AGUILAR: The general conversation from the opposition was that they felt the people, you know, is the second house of the Legislature, and they had an opportunity to express themselves in any way, any manner that they deem necessary to get their petition across. [LB39]

SENATOR DIERKS: I know some of them. I've been involved with this issue for a number of years, and I think there's a lot of disappointment at one time about petition drives that were supposedly successful and yet they were not allowed to be on the ballot, and they went to court. And the people were just upset about that. So I understand how there's feelings about this, about restricting them. But I also understand, as Senator Friend and Senator Erdman were discussing, the importance of this whole process to the citizens of our state. We call it our second house. So it's got to be available out there. And I'm still trying to make my decision about the committee amendment. I kind of think you've got to explain to me a little bit. But anyway, thank you for your information and we'll try to make some decisions here before too long. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Dierks. (Visitors introduced.) We have Senator Dubas, Adams, Wallman, and others. Senator Dubas, you're recognized.
[LB39]

SENATOR DUBAS: Thank you very much, Mr. President. I really do appreciate Senator Schimek bringing this bill forward and this discussion this morning. The petition process is truly a key element of our governmental process. It is our second house, as has been stated so many times this morning. And we need to make sure that as a body we are protecting the integrity of that process. And I think that's where the frustrations are coming from the citizens, is they feel this integrity is being challenged. At this point in time, we want to engage our citizens in the process. We want to make sure that they feel like they have this as an opportunity to present their case and to be an active participant in the government. But I think recently we've done more enraging than we have engaging. I know this past summer I was approached on more than one occasion to sign the petition regarding 423. And I was very much offended by the way I was approached. I knew what the contents of the petition was and I knew what it was going to involve. And when I asked questions to the circulator, I received no substantive

Floor Debate
February 01, 2007

answers. They were strictly there as an employee to get signatures. And as I said, I was very offended by the perceived compromise of the process. We do need to be very careful, as Senator Friend said, and Senator Erdman very much helped me understand the constitutionality of what we're discussing this morning. You know, I'm still not quite sure where I'm going to go as far as the amendment. But I am very much appreciating the discussion, the bills that Senator Avery will be bringing forward. I think it's all key in what we need to do in addressing this situation and making sure that the petition process is preserved and protected with its original intent for the citizens to use as their voice in our governmental process. I thank you and I yield the rest of my time. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Senator Adams. [LB39]

SENATOR ADAMS: Thank you, Mr. President. Frankly, I don't know that I can add anything to this debate, particularly about the amendment. But as a member of the Government Committee, at least allow me to tell you what I was thinking. When I first read the bill that was introduced by Senator Schimek, I thought, boy, this is right on the mark. We're going to let Nebraskans control Nebraska. And we're going to control how much money they get paid and we're going to control who distributes those petitions. And I recall myself this summer being affronted by many of them. And I listened to all the testimony on all sides. And in the quandary of it all, I again resorted to my simple mind, I suppose, and I looked at the amendment. And I think the amendment is right on the mark for this reason. Here's what I was reminded of. In the first year that I was mayor in York, a man from Mississippi, a racist, said, I want to march down the streets of York, Nebraska, and Mr. Mayor, I want you to sign that parade permit. I had all kinds of citizens of York coming up to me, said, don't let somebody from Mississippi walk down the streets of York, Nebraska. It's our town, and the statement that he's going to make is not a statement indicative of the community of York. I had to let him march. He has a constitutional right to march. I didn't like what he was going to say. I didn't like the fact that he was from someplace else, coming to York, Nebraska, to say it. But he had the right to say it. And as I thought about this amendment, that episode came to my mind. Now I may not like the fact that somebody from Colorado can stand on a street corner in Nebraska and stand there with a petition. But in my mind, standing with a petition is making a statement. It is making a statement. Their mouth may not be moving, they may not have an armband on or waving a banner, but they're making a statement. And I'm also thinking that if we stop a circulator from out of the state from coming in, not only have we potentially violated that person's First Amendment rights, but then put the shoe on the other foot. Let's say for instance that you're a great advocate of stopping abortion and there was going to be a rally here in town or in your town. And a bus load of antiabortion advocates were going to come to Lincoln and they were coming from Wisconsin and Michigan and all over. You'd want them there. You wouldn't tell them, hey, pack up, this is a Nebraska issue, go away. You'd want them there. If you were the one circulating the petition on an issue that was critical to you, would you want to be hindered by the fact that, oh gee, they can only be Nebraska

Floor Debate
February 01, 2007

people? I think that there is a higher calling here and it's the First Amendment. So I backed away from my original enthusiasm to see only Nebraska electors. The fact that we're saying that the petition circulators are not going to be paid per signature might, I don't know, but it might very well void some of the problems that we see in this--petition circulators carrying a dozen petitions, not reading the objective statement,... [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR ADAMS: ...getting in your face, getting in places where we don't want them to be. When you're getting paid per signature, I think it incites those very things to happen. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Adams. We have Wallman, Nelson, and Schimek. Senator Wallman, you're recognized. [LB39]

SENATOR WALLMAN: Thank you, Mr. Speaker, members of the body. A little lesson there, rich man, poor man. I think the rich people are the ones that get the petitions out. Where are the poor men? Has anybody in here ever carried a petition? Raise your hand. I have. Did I get paid? No. Was it about a Nebraska issue? Yes. And so if we truly are a two-body Legislature with the petitioners, then shouldn't we be Nebraskans? Shouldn't we be from this state? Why should we have to depend on somebody else to tell us what to do? Whether it be constitutional or not, I'm not a constitutional lawyer like Mr. White over here, Senator White. But I truly believe it should be Nebraskans for Nebraskans that care for us, we've got to take care of these people. And I feel very strongly on supporting Schimek's bill without the amendment. And I yield the rest of my time to Senator Schimek. [LB39]

SENATOR LANGEMEIER: Senator Schimek. [LB39]

SENATOR SCHIMEK: Yes, thank you, Mr. President. Thank you, Senator Wallman. I appreciate that. And I wanted to get back into the debate here before it had gone too far down the road. And I do have my light on for later. But I wanted to say that I think Senator Friend and some of the others who have spoken here today--Senator Adams, I think you've raised some really good questions. I don't disagree that we have to be very careful what we're doing here today. And it may be even a finer line to walk than it is in other states because of the fact that we are a unicameral. I don't disagree with that at all, Senator Friend. But I think there's some misinformation being put out on the floor, not that anybody here is circulating it, but it's coming from outside there. And I wanted to refer to Senator Fulton's statement regarding the prohibition on requiring you to be an elector. What the courts have said, what the U.S. Supreme Court has said is that you can't require people to be registered voters. And at one time, Nebraska did require that, I believe, but we cannot do that and we know that and we weren't attempting to do that. What we were attempting to do in this bill is what some other states have done that are

Floor Debate
February 01, 2007

upheld by the courts, that have been upheld by the 8th Circuit, of which Nebraska is a member. And one of those things that the 8th Circuit has upheld regarding, I think it was North Dakota, was the idea of having a prohibition on pay per signature. The 8th Circuit Court has upheld that. And it has also upheld the idea of requiring circulators to be residents of the state. Now that's in North Dakota. So I think we have to be careful what we're saying. I had one senator ask me if maybe we shouldn't bracket this bill until tomorrow or the next day so that people could have a chance to look at some of these cases. And we could do that, but maybe we shouldn't. Maybe we should proceed here and put this bill over on Select File and let people have the opportunity, particularly attorneys in here, read some of those cases. I can assure you that committee counsel did a thorough search of cases this summer when we were looking at crafting language. I can assure you that the assistant to the Secretary of State has also done that kind of... [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR SCHIMEK: ...research. And this isn't just my bill. This came after consultation with the Secretary of State. It came after public hearings, a public hearing that was held in which we heard from citizens that they didn't want their petition process to totally be overrun by outside interests. Now again, I agree, we have to be very careful how we do it. And there are no guarantees, there are absolutely no guarantees that what we do on this floor will pass constitutional muster. That is always true of any bill that we pass. So the question in my mind is, how can we make this petition process the best it can be for the people of Nebraska? That's who we should be concerned about. Not only those who want to circulate petitions... [LB39]

SENATOR LANGEMEIER: Time, Senator Schimek. [LB39]

SENATOR SCHIMEK: ...but those who would be possibly signing petitions. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Schimek and Senator Wallman. (Visitors introduced.) We have Senator Nelson, Schimek, Hansen, Janssen, Erdman, and Karpisek. Senator Nelson, you are recognized. [LB39]

SENATOR NELSON: Mr. Langemeier and members of the body, I appreciate the debate and the comments here. I think that what Senator Adams said, what he advocated pretty much says it all. I don't know how we could add to that also what others have said here with regard to imposing restrictions. I'm going to support this amendment. I think that it's wrong to impose a requirement that there be a qualified elector to circulate the petitions. Now I'm mindful of the fact that really means 18 years of age, and we're talking about rich people and we're talking about poor people. Let's talk about the poor people a little bit who don't have the money to pay circulators. If they have things that they would like to bring by initiative or referendum, who are they going

Floor Debate
February 01, 2007

to get to circulate the petitions? Often it's young people. They may not be 18 years of age. Often they're civic groups and high schools and younger, they can be 16 or 17. They may not do the best job of explaining it but we aren't getting the best job now from some of the people out of the state. And I think the best thing to do is to try and address this situation by requiring that circulators not be paid by the signature that they get, but saying that they can be paid and have that regulated somewhat by the commission. So in order to move this on, I say let's support this amendment and then take up the bill itself. And I will return the rest of my time to the Chair. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Schimek, you're recognized. [LB39]

SENATOR SCHIMEK: Thank you, Mr. President and members. I probably won't use all my time this time. But I do have a couple of things to say. And one of them is in response to what Senator Nelson just mentioned about having 16- or 17-year-olds circulate petitions. And Senator Nelson, I... (laugh) in some ways I agree with you 100 percent. There are some 16- and 17-year-olds that would be very capable of circulating petitions. There are some 40- and 50-year-olds who aren't capable (laugh) of circulating petitions. But somehow, I think the presumption on at least the part of some of us is that we have set up an arbitrary place...an arbitrary line above which people can register to vote and below which they cannot. And that arbitrary line has to do with perhaps a presumption of maturity and education and so forth that these folks are able to vote at age 18. Now there have been suggestions we lower that age. And that's a whole other discussion. But one of the things I need to impress upon you is it is against the law not to explain these petitions. They are mandated by law to do this. And that wasn't put into the statute lightly. That was put in because we didn't want people circulating petitions and going down the street and say, hey, would you sign my petition; it's...you know, in some cases they misrepresented it totally and said it was about one issue and it was about another issue, or they've asked people to sign a whole bunch of petitions they have on their clipboards. We heard about this at the committee hearing. So they're not explaining any of them, they're just asking people to sign. I think that previous legislators have thought that it was only right that a citizen should know what they're signing before they sign it. Otherwise, why do we even have petition circulators? We could just put up lists in the local supermarkets and people could sign up. It's not like petitioning your government on an issue that you're concerned about. It's about changing either the constitution of the state of Nebraska or the laws of the state of Nebraska. The constitution should not be amended lightly. I think we should take it very seriously, and I think that is why, in fact, the courts have allowed certain things to be inserted into our statutory framework so that the process can be orderly, it can be effective. Now I said I wasn't going to take all my time. (Laugh) I take it back. This is an issue we struggle with from time to time. We struggled with it ever since I've been in the Legislature. I think, by and large, most of us want to preserve the petition process for Nebraskans and for, particularly, volunteers who want to do an issue and they don't

Floor Debate
February 01, 2007

have the means to pay circulators. And they have sort of been shut out of the process by the high signature requirement that we have in Nebraska. And we did hear about that at the hearing on the bill itself this time. But that's not what's at issue here. [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR SCHIMEK: And I think part of the Legislature's reluctance to lower that signature threshold has always been, but then that would even make it easier for out-of-state interests to come in and to buy an election in this state. So it's...you know, it's a conundrum, as David Landis would always say. It's a conundrum. And we've even talked on this floor about having a bifurcated system, whereby a volunteer who gets a signature would get an extra credit for another signature through this bifurcated system. And that bill never passed on this floor because people were afraid that it would be unconstitutional, and it may well be. But it's such a difficult thing to regulate this process so that Nebraskans have access to it but also so that it's a good... [LB39]

SENATOR LANGEMEIER: Time. [LB39]

SENATOR SCHIMEK: ...process and that we don't amend our constitution lightly. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Hansen, you're recognized. [LB39]

SENATOR HANSEN: Thank you, Mr. Speaker, members of the body. I rise today to say that I want to preserve the initiative process. I think it's so important. If we don't, we're going to have to go with Senator Friend's idea of a two-house Legislature, and I don't want to go there. I think the initiative process is so important, so basic that we need to leave it like it is. I think it's important to the unicameral system. What I would like to see, an initiative petitioner, a petitioner that's going around, I'd like to know his name. I'd like to know his or her name. That wouldn't be violating a constitutional right. I'd like to know where he's from. Are you from Lincoln, are you from Manhattan, Kansas? I'd just like to know where you're from so I know who I'm talking to. Talking to somebody on the streets, you usually ask their name, where they're from, get to know them a little bit. And then technically I'd like to know if they're paid, if they're a paid petitioner. I don't want to know how much they're paid, I'd just like to know if they are paid, yes or no. Out in the 42nd District, our population is much different than it is back here. If we have an initiative process and get the petition and we need 160,000 signatures, we're going to have to have, more than likely going to have to have outside help, unless it's a really widespread groundswell of an initiative that has broad-based support. Some of these initiatives don't. I think that in District 42 in Lincoln County, we believe in tourism, we want people to come into the state. Anybody can come into the state. We believe in economic development. We believe that people have a right to come in here and work.

Floor Debate
February 01, 2007

And the petitioners are paid, they're coming in here to work. One of the first things I did after the election was go to a large radio station board of directors meeting. And they were shaking each others' hands, saying, great election season, great election season. (Laugh) It was a great election season. They made a lot of dollars, and a lot of dollars were spent on economic development, trying to get petitions through there. One example, and I think what we're...you know, we're not saying it out loud today but we're talking about a lid bill that was proposed last year. It just happened to be spawned in my district so I want to talk about that just a moment. But the only thing I want to bring up, and the most important thing I want to bring up that we've not discussed today because we haven't talked about specific initiatives, is the population, is the electorate. What did the electorate do with a petition that some of the petitioners were rude, some of the petitioners were paid, most of the money came from out of state? Do the numbers 30 for...30 in favor and 70 against ring a bell? The people saw through that. The electorate saw through that. They knew where the money was. Follow the money, that's a pretty well-known statement anymore. They did, they followed the money. They followed it here and they followed it there. They could see through that and I think that is important for the initiative process, that we pay attention to what the electorate says. We can do whatever we want to in this body, but ultimately we're going to be responsible to the electorate. And as far as the electorate in District 42, I'm going to vote against both of these. Thank you, Mr. Chairman. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Hansen. (Visitors introduced.) We have Senator Janssen, Erdman, Karpisek, and Nantkes. Senator Janssen, you are recognized. [LB39]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. Great discussion, it's a great discussion. And while I'm hearing all of these ideas and beliefs that people have, it brought to my mind something that happened to my wife and I, I think it was about two or three years ago. We were at a Little League ball game. It was in Blair. And Senator Mines will know what I'm talking about. They've got a great complex there. There would be about five or six games going on at the same time. And I told my wife, I said, look there, there's a petitioner. There wasn't one; there were probably 10 to 20 people, both men and women, circulating a petition. I can't exactly remember what the petition was about. But needless to say, I was approached by one of these people and he handed me this board. He didn't say anything. He just looked at me. I said, what do you want? And he pointed. He wanted my signature. Well, I said, I need to know a little about what you're circulating here. He never answered but he could see that I possibly was not going to sign that petition, so he went on to the next person. Here we have, there were probably a couple of hundred young kids running around, playing ball. Parents were there trying to watch what was happening at the ball games. And these petitioners, they weren't rude--don't get me wrong, they weren't rude--but they were circulating in amongst...and I'm sure they were being paid, as many of them that were there. And I asked him, you know, I said, what is this about? He wouldn't

Floor Debate
February 01, 2007

answer me. So I believe that if you are going to be a petition circulator, whether you're getting paid or not, but for heaven's sake, you should know what in the world you're trying to impose on people. If you're too ashamed to say so, then don't do the circulating. This is one of the greatest things in this country, is the right to petition your government if you want something changed. But I believe first of all, you should come to the elected officials and try to sell your idea to Senator Hudkins or Senator Pirsch. Come through this process. And if you can't, then go through the petition process. Take your idea before the people, but for heaven's sake, you should know what you're talking about if you're carrying one of these boards around. And that disturbs me immensely. I believe, as far as I can see, there is nothing wrong with Senator Schimek's bill. Looking at the list of other states that have the requirements, I see nothing wrong with that. I'm going to listen to the debate, but I just wanted you to know what is happening out there. And I think it's not in good taste to circulate in these areas, especially with young people around, although I know you have the right to do that. But I was a little upset that day, and there are things like this that does put a bad taste in your mouth for the petition process. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Senator Erdman, you're recognized. [LB39]

SENATOR ERDMAN: Mr. President, members of the Legislature, if those individuals running around in a baseball game or something were candidates for office, we'd dismiss them as just not knowing any better. But once they get a petition in their hand, they grow pointy ears and a tail. And I think that's an interesting analogy, because we view this initiative process--and I hope this isn't the case, but I think there's a certain sentiment in our state--we view the initiative process the way that some folks view our process. And I think we have a responsibility when we're elected to this office and to serve in this body. And as we have had many discussions, whether you're on the right issue or not, or one issue or another, I've always told folks at home, when I go out of the Nebraska Legislature, whether we leave during the morning debate and we walk out the doors together, hey, it was left inside; we can disagree. But I've never questioned the integrity or the character of the folks who are here. And I think a lot of times, unfortunately, people take easy shots at us because we are elected officials. But that also gives us a greater responsibility to make sure that the decisions that we make are appropriate. And I think that's why debates like this are so essential, for us to wade through these discussions and make sure that we have reasoned and thought them out together. Senator Adams has brought up some very valuable insight, I think. The analogy, or the comment that he made was that he wanted Nebraskans to control Nebraska, or Nebraska issues. And I'm paraphrasing a little bit, Senator. I don't know that I got that exactly right. But last I checked--and I...this is a quick review of statute--only Nebraskans can vote, so Nebraskans do control Nebraska's future. In the event that you have other politicians or other folks come to our state, they have that right, just as members of this body and former members of this body have gone to other

Floor Debate
February 01, 2007

states to lobby on initiative and petition ideas in their states. That give and take is there. But the idea--and this is...and for those of you that are new to this process--the idea that somehow something got on the ballot is going to pass; we put stuff on the ballot that was noncontroversial, that everybody in this body supported, that was a good idea that we thought made sense, and the people voted it down. And I'm not talking about pay raises for senators. I'm talking about commonsense ideas that allow nonprofits and other entities to have more tools to be able to better serve the people that they're trying to help. That got voted down. This bill does nothing to affect those processes. And once it gets on the ballot, you still have the campaign. So Nebraskans still control that, because only Nebraskans can vote. One of the things that was mentioned that I think needs to be corrected--and I visited with Senator Fulton about his information--the comment was made, and I don't think directly intended to be interpreted, but this is kind of how I took it, that there was a lot of outside influence trying to influence this debate. Senator Fulton's information came directly from his staff and his staff's research, not from anyone else. And a comment was made earlier that those folks behind the glass who are outside this body are trying to influence this discussion this morning. I don't think that was intended to be that way, but I wanted to make sure that that was reflected. Let me finish up with this, Mr. President. The issues that have been addressed this morning sound to me like a lot of other problems that we have in other statutes, and that is, the law needs to be enforced. I don't like the idea of telling somebody who's 16 years old that they can't be a part of the petition process, when they can be a poll worker. Why can they be eligible to serve--and this is under the green copy--why should they be able to serve in a capacity as a 16-year-old in our state, and work in the election board, and accepting people's votes, but to tell them that they cannot be a part of the... [LB39]

SENATOR LANGEMEIER: One minute. [LB39]

SENATOR ERDMAN: ...petition process? There are things like that that just don't bear logic, both in existing statute and in fundamental fairness. If folks want to be a part of that process and--this is the "and"--and if they follow the law, if they explain the petition, if they understand what their obligations are, and if they sign it accordingly in the conduction of that process, they should be able to do it. There are folks probably 50 years old that probably couldn't do it as well as some of the 16-year-olds, because they won't be as vigilant. But to put arbitrary limits and to say they have to be an elector doesn't make them any more qualified. And again, I think it comes back to taking that fundamental view of this process and balancing it. I think if the committee amendment isn't adopted, I think we have bigger problems. I think some of you would like to go further than even this bill allows. But I think we should be reasoned and take one step. And I think General File is the place to hash this out. If you have ideas, bring them forward. I don't like the idea of simply passing it on to try to work it out. [LB39]

SENATOR LANGEMEIER: Time. [LB39]

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

Floor Debate
February 01, 2007

SENATOR ERDMAN: There are appropriate places to do that, but I think we have the time to address it here. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Karpisek, then Nantkes, Schimek, and Kruse. [LB39]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I agree with Senator Adams very much. I also am on the committee. And when this bill came up in green copy, I decided there's no way that I would let any amendments on this. I believe this. We're tired of people being in our face, getting into our business. As I listen to the debate, Senator Rogert brought up, if we just don't pay them per signature, I think a lot of this stuff will go away. Will somebody come from California to circulate petitions for 10 bucks an hour? I doubt it. And if they do, will they be as in-your-face? I doubt it. So they really...Senator Rogert and Senator Friend did help change my mind. I still would like to make it that the petitioner would be an electorate. But I've heard many times since I've been here, the short time: try to make the bill better. I think that if...I agree with Senator Erdman, if we don't pass this amendment, we may get thrown right out in court. And then what did we do? We haven't helped out at all. I think the reason that we're even talking today is because we do hold the petition process very near and dear to our hearts. We think it's very important. We know that it's important, and we want people to be able to have a voice. But we also owe to our constituents, when they come to us and say, hey, we're tired of being harassed, we're tired of these people coming in here and trying to muck up things, I agree. So in my opinion, this does do what we're trying to do, and at least we can start. If we pass something that's just going to get thrown out in court...and I don't know whether it will. Talking to people that might know much more than I do, they think it will. So I did sign on with the amendment. I think that we can do something here. Something is better than nothing. And right now, I feel that that's what we have, is nothing to try to control our happiness for our people. You don't need to go to a baseball game and have this stuff thrown in your face, or try to go get a loaf of bread. I agree. So I do agree with the amendment, if it will help, and I think it will. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Mr. Clerk, do you have a motion on the desk? [LB39]

CLERK: Mr. President, Senator Friend would move to bracket the bill until May 31, 2007. [LB39]

SENATOR LANGEMEIER: Senator Friend, you're recognized on...to open on your bracket motion. [LB39]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Relax,

Floor Debate
February 01, 2007

please. This is called...(laugh) yes, I did. Members of the Legislature, this is called a bracket motion. Now, I'm going to withdraw this and we're not going to take it to a vote, okay? Here's where we're at, the way I see it. And I'm hearing this...Senator Karpisek, excellent job, because you're absolutely right. That's the way that hearing...or, that's the way the Executive Session went. Here's what I'm feeling, and it's not much different, I think, than what he's feeling, and maybe some others. Because I don't believe...we talked about the perception and the reality earlier, or at least I talked about it. Because I don't believe this is perception, I believe there's infringement involved here, because I don't believe that, I believe we need this committee amendment to pass. This bill does three things. Let's revisit that again really quickly. The bill does three things, the bill itself. It changes...the first change is that it requires the circulators of an initiative and a referendum and a recall petition to be electors of the state. That means you have to be somebody who has the ability to vote, or the ability to register to vote. As the second point or the second piece of this bill indicates--the bill, again, not the amendment--is that the change would...a change would prohibit paying petition circulators based on the number of signatures collected. And finally, the third piece is clarification of campaign administrative issues, Nebraska Accountability and Disclosure issues, things that would in a lot of ways provide some housekeeping, shopkeeping, if you will. The amendment, the committee amendment, removes the first piece. All we have now is the shopkeeping or the housekeeping, and then the fact that we can prohibit payment by signature. Now, there are some who think that that's reality and that's infringement...or, excuse me, that's infringement, and there's a reality behind that. I'm not sure that there is. We regulate all the time the way businesses, anybody, citizens, can pay people. We regulate that all the time. I believe that we can do that. If we can't, I'm sure there's a court somewhere that can speak to that, and they probably will. So let's make it clear. I believe if the amendment doesn't pass, this bill should not move forward. I've come to that conclusion, based on a lot of the discussion that we've had. If the amendment is adopted, I still don't know if I want my fingerprints on it, okay? I may vote no. But this bracket motion doesn't come back. I'm not threatening anything; I'm just saying, I don't...I believe there's infringement here, and I believe if the committee amendment is not adopted, that perception that I talked about turns to reality. Now, a bracket motion until 5-31 essentially kills the bill. With deference to the committee, and of course to Senator Schimek, I don't want to do that. But I really believe--and I told Senator Schimek this once off the record, or at least we were getting into the discussion and then she had to go to the floor; I was going to communicate to her, and I can communicate it on the record--it's not necessarily that the committee did better work than she did, and the Secretary of State, and everybody else involved. It's that I think that we addressed, like Senator Karpisek said, we addressed some of those infringement concerns. And it was a pretty lengthy discussion in Executive Session. That's why this happened. Senator Aguilar didn't just fall off the turnip truck. This amendment is on there for a reason, or we're trying to attach it for a...I don't know if you've ever fallen off a turnip truck, but you didn't today. And the fact of the matter is, this is a pretty decent amendment. And I think it strips...one more time, it strips some of

Floor Debate
February 01, 2007

that reality out. And while there will still be a lot of perception out there, or confusion, I think that it creates some parameters that we can probably live with. But just to be clear, the Government Committee just didn't go through this and do this to Senator Schimek, a very articulate person in regard to this subject matter, we didn't do it for our health. We understood her goals and objectives. We did it because we thought it made the bill better. Quite frankly, if it doesn't get adopted, this could show up again. I would not do it without letting Senator Schimek know it was going to happen, but it could show up again. I think there's an argument to be made, if the amendments aren't adopted, that LB39 should go away. Mr. President, I would withdraw that bracket motion. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Friend. The bracket motion is withdrawn. Back to floor debate. Senator Schimek, Kruse, and Stuthman. Senator Schimek, you're recognized. [LB39]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I am struggling with what to do here. I had just gone up and said to Senator Aguilar that I'm not crazy about the committee amendment, and...but I wasn't going to ask people to vote against it. I believe in our committee system, and I believe only under extreme circumstances should you try to undo what the committee has done. However, I probably wasn't going to support by my green vote the committee amendment. But the more I think about this, I think this has been a really good discussion, and I think there are obviously a lot of points of view on this, and I think there's obviously still some questions about what we can and can't do, what we should or shouldn't do. So I think what I'm going to do is suggest to you that we do whatever you want to do about the committee amendment, and that we move the bill forward. Meanwhile, there are some people on this floor who want to look at the court cases, look at the legalities of it, and be able to come back maybe on Select File with a more informed point of view. I think this has not taken people by surprise, but they just haven't had time to think about some of the ramifications of it. So I guess I'm going to suggest that this is an important issue. And if we never pass this bill, then we never pass it. I'm not going to be personally offended or affronted by it. But I do think that there is a perception out there among the public that something needs to be done, and I think that you may hear from constituents if we don't do anything. But again, I don't have any personal stake in this, and I just think it's an important enough issue that we shouldn't let it just die right here on General File. So I'd ask for your indulgence when it comes time to advance the bill. We can always kill it later if we want to. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Schimek. And that was your third time. We have Kruse, Lathrop, Kopplin, Wightman, and Nantkes. Senator Kruse, you're recognized. [LB39]

SENATOR KRUSE: Question. [LB39]

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

Floor Debate
February 01, 2007

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk. [LB39]

CLERK: 29 ayes, 3 nays, Mr. President, to cease debate. [LB39]

SENATOR LANGEMEIER: Debate does cease. Senator Aguilar, you're recognized to close on the committee amendment. [LB39]

SENATOR AGUILAR: Thank you, Mr. President and members. Thank you especially, members, for a wonderful debate this morning. This is what Nebraska is all about, this is what the Unicameral is all about, and it deserves fighting for, it deserves every part of it, every argument you made today. That's especially important, and I think your constituents would be proud of all of you. You all had good, great things to say. There were some misconceptions out there. You know, when people stand up and make the statement "I just want to know who that person is," we can't do that. We'd love to be able to do that, but we can't do it. There's constitutional issues we need to consider. I do want to correct one thing...not necessarily correct. Senator Schimek got up on the floor and talked about how at the hearing, at the interim study, how people come in and said, you've got to do something about people getting in our face, you've got to change this. What she didn't tell you was there was an equal number of people there promising a court challenge, promising a court challenge if things went through like the way she wanted them to. I think this Legislature has a great Government Committee, possibly one of the best ever. I'm very proud of them. I'm very proud of the young members who get up and fight for what they believe in. We've got some truly deep thinkers on that. Senator Adams is a wonderful example of that. He's a deep thinker. He can take every complicated public policy issue and bring it into a personal reference so that it's explainable, it's understandable to everybody. Great contribution to our committee. We really thought out this issue, and we really came forward with something we believed we could put on the floor, create a little debate, and create some understanding that, yes, we need to do something, but at the same time, not be so restrictive we're going to be looking at court challenges. That's not what we want to accomplish. We want to accomplish better public policy for the state of Nebraska. I think we do that with this amendment. I don't want to vote for the bill without the amendment. I honestly believe it will be challenged, it will be thrown out, and we've accomplished nothing. I ask you to support the amendment. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You've heard the closing on the committee amendment. The question shall be, should the committee amendment to LB39 be adopted? All those in favor say aye...vote aye; all those opposed vote nay. Senator Aguilar, for what purpose do you rise? [LB39]

Floor Debate
February 01, 2007

SENATOR AGUILAR: I would ask for a call of the house and a roll call vote, please. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. The question is, shall we go under call of the house? All those in favor vote yea; all those opposed, nay. Record, Mr. Clerk. [LB39]

CLERK: 37 ayes, 0 nays, Mr. President, to place the house under call. [LB39]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Nantkes, would you please record your presence. Senator Harms and Johnson, would you please return to the Chamber. The house is under call. Would Senator Harms and Johnson please return to the Chamber. All members are present and accounted for. There's been a motion for roll call vote. Mr. Clerk, call the roll. [LB39]

CLERK: (Roll call vote taken, Legislative Journal page 440.) 26 ayes, 9 nays, Mr. President, on committee amendments. [LB39]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The amendment is adopted. Discussion to advance LB39 is reopened, and the house is no longer under call. I raise the call. Senator Lathrop, you're recognized to continue debate on LB39. [LB39]

SENATOR LATHROP: Thank you very much, Mr. President and members of the Legislature. I'd turned my light on before we decided to call the question, and my point in doing that, and the point I intended to make was that I had read the case...and I don't consider myself the last word on constitutional law. But as I read the case of Bernbeck v. Scott Moore, which was a challenge to a statute where this body tried to restrict petition circulators to registered voters, there...the conclusion of the Eighth Circuit, which would ultimately hear this case, was that the limitation that we restrict circulators to registered voters was too restrictive. And so I read that and some of the principles in this case with a view towards whether or not we could restrict it to the electorate. My conclusion, I think we've just done the right thing. Having passed the amendment, let me suggest something to the people in the body, that when you restrict people's right to circulate a petition, you are...according to the Eighth Circuit, the right to circulate a petition is...involves the type of interactive communication concerning political change that is appropriately described as a core political speech. This...the fact that it's protected by the First Amendment means that the court, when it will review what we are about to do, will view it with a strict scrutiny standard. And that's important in constitutional law because sometimes the standard is deference to the Legislature, and when it is strict scrutiny, we better make sure we've done everything correctly and that we have a justification for what we're doing. With respect to LB39, we are now left...with

Floor Debate
February 01, 2007

the amendment, we are left to advance the bill without the electorate requirement, but with the requirement that we now pay circulators by the hour rather than by the signature. I support that, but I can suggest to you that we should have some debate and some conversation and the record should reflect in our debate the state's interest in changing from a...in restricting the circulators to an hourly rate. If the logic behind this bill then is that these people won't be in our face if they're not paid by the signature, then we'll go with that. If there are any other justifications for making that change or making that restriction, we should have that conversation and it should be in the record, because ultimately, the Eighth Circuit will review what we say today and what justifications we advance in making the decision on whether what we've done today is constitutional or not constitutional. So I'd suggest that we address what the evil is that we're trying to get at by changing the...or, by limiting the manner in which petition circulators are compensated. And with that, I'd yield the balance of my time. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. We have Kopplin, Schimek, Kruse, Wightman, Nantkes, and Engel. Senator Kopplin, you're recognized. [LB39]

SENATOR KOPPLIN: Thank you, Mr. Speaker, members of the body. I live in such a simple world in my mind. I saw a lot of petition circulators this summer, I was approached by many of them, and I can tell you, they really didn't stay with me more than about 15 seconds, because that's how long it took me to tell them to buzz off. I think if you want to restrict...if Nebraska wants to change how these petition circulators approach them, maybe they should not sign things they don't know what they're talking about. You see, I voted against the amendment, I'm going to vote against the bill, for this reason. I don't know, down the road, where I'm going to be on some things. Many of the things that I like in Nebraska and I like to support are not necessarily real popular, and I want to have the chance to do...or, to get my viewpoints put out. Every time we restrict the petition process, you may be restricting me down the road. And I find that the wrong way to go. Thank you, Mr. Speaker. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Kopplin. Senator Schimek, you're recognized. [LB39]

SENATOR SCHIMEK: Thank you, Mr. President and members. I just rise to say that several people asked me on the last vote how I was voting, and I said, you know what, in a way, it doesn't matter; I'm going to be not voting. But if we adopt the committee amendment and people have a chance to think about this issue more and they want to come back on Select File and offer some kind of an amendment, they can. But my main reason for getting up here today is saying, I think we should go ahead and advance the bill, and whatever this body decides to do, of course, this body will decide to do. And we could do it on Select File. It's even possible to do that on Final Reading, but you have to pull it back to Select File to do it. Senator Lathrop has raised an interesting question. And Senator Lathrop, I'm going to go back and look at that, too. I'm not an attorney, but

Floor Debate
February 01, 2007

I do want to take a look at what you're reading from there. And I know that it's something that we've looked at before, but it's been quite a while. So I appreciate the willingness of some of the members of this body to research this a little bit further. And with that, Mr. President, I think that will be the last time I speak. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Kruse, you're recognized. [LB39]

SENATOR KRUSE: Thank you, Mr. President and colleagues. Three quick comments. First, I strongly support this bill, because of the chaos out there. And it's pure chaos in several circumstances that I saw and had witness, where the circulator didn't have any idea what the petition was about. That's, of course, against the law, but you can't enforce that. Number two, a comment on some of our discussion that this came because of the nature of this last petition. Well, not for me. It has nothing to do with an anti-budget petition. It's about the chaos. The suggestion was made that we didn't object to the casino buying votes. I certainly objected, and a number of us talked about the objection, because persons were voting there who didn't know what they were voting on...or, signing up on what they didn't know. Third would be also comments that several have made, that the petition process is our second house. I understand that, but I do have to object and try to correct that. There's not a second house in the country that can amend the constitution, and that's what we've got here. It's, to me, an out of control messing with the constitution. It should be harder to get into the constitution. It should be much easier to pass a statute. And you know, we have another bill coming along that will help us to do that. The statute, passing a statute petition, is a second house. It's one with which we can converse and dialogue, and there's a couple of looks at it. And the last...one of the last petitions made that a two-thirds vote. Even without that, my sense of the body is, we would always respect the electors' statement in amending...in providing a statute or amending a statute. I think that's a very strong position to take. Again, I support the bill because I think we have to have more sense out on the street. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Wightman. [LB39]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I've changed my mind two or three times as I've listened here today. It's been excellent debate. Senator Adams, I think you were most persuasive, but many of the members of this body have been persuasive. As I look at the bill as it has been stripped down by the amendment, there really isn't too much left of the bill. We're down to where we're only talking about whether we're going to pay circulators by the signature, basically. At this point, I think I'd be willing to give the process a chance to look first at the constitutional amendment that's being proposed and that was mentioned earlier. There may be more than one of them. But it looks to me like, at this point, maybe we're better off to let the electorate determine this in the way of a constitutional amendment, and I think that

Floor Debate
February 01, 2007

might be preferable. At the same time, I have heard a number of people who have suggested that there don't seem to be very many petition circulators who are able to, in any very sufficient way, describe the contents of that petition. I think even if we look at what we're doing if we pass the bill in its modified form, we're reducing the pool of people who are likely to go out and circulate the petition and be able to explain it. So I think anything we do to cut down the number of circulators at this point is infringing upon the process, upon the petition process of the people to act as that second house of the Legislature. So at this point, I am prepared to vote against the bill. I do not see that it's going to accomplish any substantial purpose, and I think we are reducing the pool of people who might be able to go out and explain the bill. And that seems to be one of the biggest objections we have at this time. I will yield the remainder of my time. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Nantkes, then Engel, Aguilar, and Carlson. Senator Nantkes, you're recognized. [LB39]

SENATOR NANTKES: Thank you, Mr. President, members. Good morning. I rise to first of all echo the comments from a very competent colleague, Senator Lathrop. I think the body took a step in the right direction with the adoption of the committee amendment. But I remain unconvinced that the bill in its current form does not have constitutional problems or issues surrounding it. The case law that Senator Lathrop spoke to earlier, in the Bernbeck case from the Eighth Circuit, has very compelling language in it, telling us that when citizens are engaged in this very type of activity, the First Amendment is at its zenith, the highest point that it can be. And that core political activity is something not to be tampered with lightly. No matter how much we or our constituents find it distasteful or annoying or potentially even harassing, we have to be very cautious as we approach the First Amendment implications involved in the initiative process. Second, doing some research here on the floor this morning, and listening to the enlightened debate, which I've really learned a lot from, I found a report from the Initiative and Referendum Institute that's put out by the University of Southern California's law school. This was issued in May of 2006. And it specifically speaks to the fact that there's...in the 24 states that allow initiative petitions, only 3 of them have banned or prohibited payment by signature to circulators. That ban has been tested in the Ninth Circuit and upheld as constitutional. However, in various other jurisdictions, a similar ban has not passed constitutional muster. And as the Ninth Circuit jurisdiction does not govern our law here within the Eighth Circuit, this question remains unanswered in our jurisdiction. And so I think as we move forward, we need to proceed very carefully. Another interesting dynamic from this report shows that where this has passed constitutional muster, in Oregon, the secretary of state's office has not been able to provide any evidence that there has been less complaints about signature fraud, and overall, they report that there has not been any evidence to demonstrate that the compelling reason, to prevent fraud, has in fact been accomplished by a limit on payment per signature. I'd be happy to share this information with my colleagues. I look forward to continuing this debate, and I think we all need to

Floor Debate
February 01, 2007

proceed with caution, which we are doing here today. Thank you for your time.
(Microphone malfunction)...back to the Chair. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. Senator Engel, then Aguilar, then Carlson. Senator Engel, you're recognized. [LB39]

SENATOR ENGEL: Mr. Speaker,...Speaker replacement and members of the body, I've always supported the petition process. I think that, again, that is the second chamber of our Legislature. The only thing is, my problem with the petition process as it is, it's not a grass-roots situation. In the last several petitions we've had throughout the state, for term limits, the gambling issues, the limiting spending, etcetera, has been all started from out of state, from actually a lot of big-money people who have an agenda of their own, and they want to inflict it on the people of the state of Nebraska. And as far as if it's a grass-roots petition, the people of the state of Nebraska really want something, I'm definitely for it, because I think that's their right. If we're not doing the right job, then they should be able to do that, and I wholeheartedly support that. As far as the amendment, I supported that because I do believe that if they're paid on an hourly basis they wouldn't be quite as aggressive, into your face, even though I agree with Senator Kopplin, it's very easy for me to say, just get lost, you know. And they don't take time to explain to people. And people...it's surprising how...what people will sign without asking questions. And that's sad, but that's the lack of education as far as we educating the public about these situations. But again, when they come in with all that money, it takes a lot of money to rebut, and that's the biggest problem I'm having with that. The thing is, I do support the amendment. I do support the bill. But I...until...I think we should advance it to Select File, and between now and Select File, have listen to Senator Lathrop and my seatmate here, Senator Nantkes, as far as checking out the constitutionality. If it's unconstitutional, well, then we can't do it. That's just very, very simple. So I do support that end. And I like Senator Avery's idea, as far as how to deal with this petition process. So with that, I return my time to the Chair, and hopefully we can do something to make the process work better, and in favor of the people of the state of Nebraska, not the outsiders. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Aguilar, you're recognized. [LB39]

SENATOR AGUILAR: Thank you, Mr. President, members. I'm going to rise in support of the amended version of LB39. I totally support it at this point in time. I do want to make one point, because a couple of things that Senators both Engel and Kopplin said, that it's pretty easy just to tell somebody to buzz off and go about your business. But some of the things we've heard in committee weren't quite that simple. We heard stories of ladies walking with their kids from the parking lot of a grocery store inside, and the circulators following all the way to the door, harassing them. That's not necessary. That scares those ladies, that scares the kids. And that's why we need this bill. So I

Floor Debate
February 01, 2007

encourage you to vote for LB39. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. Senator Carlson, Erdman, Kruse, and Rogert. Senator Carlson, you're recognized. [LB39]

SENATOR CARLSON: Mr. President, members of the body, a law is only meaningful if it is enforced and there are consequences to not complying with it. If a law is not enforced, I don't think it's a law; it's a suggestion. Now, current law indicates a circulator must read the intent of the initiative to anyone being asked to sign it. I would say we've all experienced that's not the case. That's the law. It's not being enforced. Therefore, it's only a suggestion. And so we're discussing LB39. I voted against the amendment because I believe it took some teeth out of something that would help remedy the situation. Now I'm faced with whether to vote on something that's watered down. And...but is it an attempt in the right direction, versus doing nothing? As I've said before, I like calculations. By my calculations, it costs taxpayers \$735 an hour for 49 senators to debate a bill. We've spent at least \$1,500 today, and I hope our spending is worthwhile. Thank you. (Laughter) [LB39]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Erdman, followed by Kruse and Rogert. Senator Erdman, you're recognized. [LB39]

SENATOR ERDMAN: Mr. President, members of the Legislature, I was sitting here, minding my own business, and then the Chair of the Exec Board provoked a response. You can logically make an assumption without knowing the facts. And it can be assumed, based on the way that some of these petitions played out, that they all were under similar circumstances. While I don't always agree with the intent of those introducers, and some of them were before the Government Committee, it is my understanding that 423 was not an out-of-state interest that started it. However, there were others that got involved after the fact. There are individuals from western Nebraska, and North Platte specifically, that began that process. And so to say that they were started by out-of-state interests, which is what Senator Engel said, is not necessarily accurate. But on the bigger sense, I guess the question that I would pose to the body is, if we're going to require that grass-roots--and that was the model that Senator Engel gave us--that grass-roots individuals are the ones that we really want to bring initiatives and petitions and those ideas, then why don't we do it here? Why don't we require so many people to get together in communities across the state before we can introduce a bill? And then the other side of it is, how do you know that the good people are introducing the petitions or not? Senator Kopplin brings that up accurately. Depending upon what issue you're on, you may not agree that it's a good group. So I think it comes back to the reality that we have to allow the process to weigh out, and ultimately, those decisions are made by the voters. The process has to be fair whether you agree with them or not. That's what our process is about. There will be bills out here that I vehemently disagree with, and there will be bills out here that I'm going to try to

Floor Debate
February 01, 2007

get passed. But the process is the same. We have the rules. Write the rules the same, give everyone the opportunity, and then let the voters, just as we as members, have the opportunity to sort out the issues. And I think it's difficult, based on the political makeup, based on the philosophies, and based on the experiences of Nebraskans and citizens of the United States as a whole, to be able to definitively say who are good grass-roots groups and who are not. But out of sake for correcting the record--and my good friend, the benevolent dictator of the Exec Board can correct me--but it's my understanding that that petition specifically was started locally, and there were others that came in. Now, other examples that you gave were started by national groups. This didn't happen to be one of them, as I understand the process. Thank you, Mr. President. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Kruse. [LB39]

SENATOR KRUSE: Mr. President and members, thank you. "Grass-roots" is the word that catches my attention here, and focuses what I am feeling and haven't heard said that clearly. I don't know who started these petitions. And again, the subject of the petitions is not the question; it's the amount of money that is put in there. Those who want to resist a particular petition, and there's millions of dollars on the other side getting it on and promoting it, that is not a level playing field. And there's...we're all into the political process. We know that the decision rendered may not represent the interests of the people. I would also take that base to comment on a suggestion from the floor that if we had fewer petitioners, we would have less quality in petitioning. I don't buy that. I was sitting here at the time it was said, thinking, if we had fewer petitioners, we would have a higher quality of petitioning. I really like grass-roots petitioners. And I would also challenge when we keep saying "in-your-face." I...you know, that's not the question for me. It's not in-your-face; it's a matter of trying to vote or register on something you just don't know about. I've met many a grass-roots petitioner. They are passionate, they're in-your-face, they know what they're talking about. And we need to enhance that part of it, and curtail those who don't know what they're talking about except that they hope for a good paycheck. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Rogert and Senator Gay. [LB39]

SENATOR ROGERT: Thank you, Mr. President, members of the body. As a committee member, I want to resubmit a portion of the testimony that I heard, and encouraged throughout the hearing of this bill, because I think we may not be actually giving the people that are affected by this enough credit. I also will agree--at the risk of costing Senator Carlson another \$86--but I'm going to reiterate that grass-roots initiative process has nothing to do with money, has nothing to do with raising money and paying people to come in and try and change our laws and our constitution. If you look on the committee statement, there was...one of the proponents of this initiative...or, of this bill, would be Gambling with the Good Life. And regardless of whether you agree with them

Floor Debate
February 01, 2007

and their issues or not, they have been very, very, very successful in doing what they do best, and that is getting grass-roots initiatives...they don't necessarily carry initiatives, but they try to stop them, and they don't have to pay people to do that. And I asked the leader, I asked her, I said, how much money have you spent in the last five years to protect the state against what you think is a bad thing when it comes to the initiative process? And she said, other than paying for the staff and some of those type of administrative duties, not a dollar. They have paid nobody to stand in anybody's way, to ask them to do what they feel is right. And we may need to look at that a little bit. And hiring people to come in and try to get our laws changed, and paying them per signature, is the exact opposite of the intention of the initiative process. It's the exact opposite. So think about that for a minute as you...as we move through the rest of this debate, and just think about the fact that there are people that believe in what they want to do, they have the ability to effect change or stop change without money, and that's what we're trying to do here, is protect the grass roots and those people. Thanks. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Senator Gay. [LB39]

SENATOR GAY: Thank you, Mr. President. Listening to the debate has been very interesting. It's been helpful when the attorneys are speaking on the legal ramifications of some of these issues. But just a little story. I know we're all trying to get to the same conclusion, I think, here. But this summer, when we were doing all the petition processes, every week I would go walk into a courthouse or walk into a public body and have something shoved in my face. And I, just out of fun, said, well, what does this do? And every day I got a different answer on the same subject. It just became laughable, of what was happening. Part of the petition process, of course, in the law, too, you must understand what you're pushing here. When we look at this incentive on the per-signature basis, it becomes a quota system, whereas if you're truly interested or passionate on your subject matter and you were being paid hourly, I think you would have a little more incentive to understand your subject matter. It would take care of those people who, wherever they're from, they'd have to believe a little bit in the cause, I would think, to be standing out there. I don't think you're restricting whether you're going to pay someone \$5 or \$15 or \$20 or whatever the case may be. So fairness-wise, I think you get that. So any grass-roots organization would be taken care of, any out-of-state organization. But I think the whole key to any petition process is, if it comes from the grass-roots, you get enough support behind it, you're going to go out and you're going to take the time to explain it. You don't care if you're getting paid by the hour or by the petition...or by the signature. I think if you're paid by the hour, you're going to be more passionate on your cause, especially if you're the one paying for that person out there. You're paying them good money. I think you'd...maybe you'd do some training for these people. Maybe they'd have to understand it, because I think you could go say,...I could go probably...you know, you can't prevent a lot of these suits, but I think you could prevent the option of me saying, you know what, I want to protest or file suit against this particular initiative because...for the examples I said--they did not explain to me one

Floor Debate
February 01, 2007

time the right way, and I think they broke the law. So I think if we look at this now and we advance this on the per-...on the hourly system, I think it makes a lot more sense. You're not going to get that quota system where I hand it here, I hand it here, I hand it here. I'm going to take a little more time, I would think, to explain my situation and get that signature. I wouldn't have to be so rushed, I'm getting paid by the hour, and get the job done. So that's just something to consider that crossed my mind as we're debating this. Thank you. [LB39]

SENATOR LANGEMEIER: Thank you, Senator Gay. Seeing no other lights on, Senator Schimek, you're recognized to close on LB39. [LB39]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Thank you all so much for this debate. I think that we all still have some homework to do on this issue. I know that I will be doing some, as well. I know that Senator Lathrop just raised the question that was raised in the Bernbeck case that was here in the Eighth Circuit. But I just went back and looked at the letter from the Secretary of State that was submitted to the committee at the hearing, and in that letter he says, Senator Lathrop, the reason that he thinks that this would be an approach that we could use when we talk about the idea of, you have to be an elector, he said that this is an outgrowth of the Buckley...his feeling on this is an outgrowth of the Buckley v. American Constitutional Law Foundation decision. And that, incidentally, I believe came after the Bernbeck decision, and it was another case that was going through the courts at about the same time. He says in this letter, and I quote: In that decision, while striking down a requirement that circulators be registered voters, the court did make mention that a requirement that circulators be voter-eligible would be a less burdensome approach. So I think they left the door open in that decision at the U.S. Supreme Court level. So there's a lot of court history and tradition out there that really does guide what we can do and can't do, and we have to be very careful about that, of course. I just want to again ask you to advance this bill. I think that the provision about pay-for-signature is an important provision. I think it could be misused, as I said earlier, but it also could be a very good way to keep some of the problems that developed in this last election from happening again. I had a call in my office just a few minutes ago, apparently, somebody saying, don't forget the chaos that was out there in this last election. And we as a Legislature have a responsibility to try to address that. In addition, remember, there's a couple of little provisions in here--one about, the accountability and disclosure reports from the head circulator cannot, shall not, include the name, address, and phone number of the circulator. And then the other provision was one that the committee amendment put in that I don't know if we even talked about, which says that the amendment also harmonizes provisions by replacing the phrase "entity or individual" with "person." And apparently, that's standard practice in the accountability statutes, so that's another little provision that's in there. With that, Mr. President, I would simply urge the advancement of LB39 to Select File. [LB39]

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

Floor Debate
February 01, 2007

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the closing on the advancement of LB39 to E&R for initial. All those in favor vote yea; all those opposed vote nay. Have all those that care to vote voted? Mr. Clerk, would you record. [LB39]

CLERK: 31 ayes, 11 nays, Mr. President, on the advancement of LB39. [LB39]

SENATOR LANGEMEIER: The bill advances. Next bill. [LB39]

CLERK: Mr. President, LB99, a bill by Senator Wightman. (Read title.) The bill was introduced on January 5, referred to the Judiciary Committee, advanced to General File. The bill was discussed briefly, Mr. President, on January 30. I do have a motion pending. [LB99]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Wightman, you have opened on that, but would you give us a, please, briefing of that opening? [LB99]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I'm kind of like the farmer that, when only a few cows come, or when we've already fed them once, don't want to throw off the whole load, so I'll try to keep my explanation brief. LB99, just very briefly, is a bill that would clarify the law, that would provide that receivers can be appointed to take possession of property, to preserve the property during the pending litigation. There's been a law in effect a long time that says that can be done in foreclosures of mortgages. It was never amended, even though the trust deeds have been in effect since 1962, and...or '65, and in common use since 1982. This would clarify that. It would provide that in the event that deed of trust was assigned to someone else, that the assignee would likewise have the right to have a receiver appointed. The purpose of the receiver is to take possession, see that the property, if it needs to be rented, can be rented; if it needs some repair to keep further waste from occurring, that that could likewise be done. I think it should be a fairly noncontroversial bill, and I mentioned that in more length last time. That was an hour and a half before we closed debate on it. So I will respect the judgment of this body as to whether it's noncontroversial or not. But rather than take up more of your time, having already explained it, I would ask that...for an affirmative vote. Thank you. [LB99]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Mr. Clerk, there is a motion on the floor. My understanding is, Senator Chambers would like to withdraw that. [LB99]

CLERK: Mr. President, that's right. Senator Chambers would like to withdraw his indefinite postpone motion. [LB99]

SENATOR LANGEMEIER: Motion withdrawn. [LB99]

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

Floor Debate
February 01, 2007

CLERK: I have nothing further pending on the bill, Mr. President. [LB99]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Is there anyone care to speak on LB99? Seeing no lights on, Senator Wightman, would you like to close on LB99? Senator Wightman waives closing. The motion before you is, should LB99 be advanced to E&R for initial? All those in favor vote aye; all those opposed, nay. Has everyone that cares to vote voted? Mr. Clerk, please record. [LB99]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB99. [LB99]

SENATOR LANGEMEIER: The bill does advance. Mr. Clerk, next bill. [LB99]

CLERK: Mr. President, LB298 is a bill by Senator Burling. (Read title.) The bill was introduced on January 11, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM93, Legislative Journal page 404.) [LB298]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Burling, you're recognized to open on LB298. [LB298]

SENATOR BURLING: Thank you, Mr. Chair, members of the body. I bring LB298 to you on behalf of the Secretary of State's Office. Currently, it takes 2,000 signatures to petition onto a statewide partisan ballot in Nebraska. And LB298 would set the new requirement at 4,000 signatures for those situations. In addition, the current law requires for each nonpartisan office, other than members of the Board of Regents of the University of Nebraska and the board members of a Class III school district, number of signatures required to place a candidate on the ballot shall be at least 10 percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected. LB298 would place a 2,000-signature cap on that requirement. There's another change that is proposed here by the committee amendment, so I think I'll just close with that introduction, answer questions later, let the committee amendment be introduced. Thank you, Mr. Chair. [LB298]

SENATOR LANGEMEIER: Thank you, Senator Burling. As the Clerk stated, there are amendments from the Government, Military and Veterans Affairs Committee. Senator Aguilar, as Chair of the committee, you are recognized to open on the committee amendments. [LB298]

SENATOR AGUILAR: Thank you, Mr. President. LB298 was advanced from the committee on a 7-0 vote, with one member being absent. There was no opposition to the bill. The only testifier was the Secretary of State's Office, which supported the bill. The committee amendment clarifies provisions relating to petitions for nonpartisan

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

Floor Debate
February 01, 2007

offices. If the district in which the petitions are circulated comprises two or more counties, at least 25 signatures will be obtained from each county which has at least 100 registered voters in the district. Appreciate your support of the committee amendments. Thank you. [LB298]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. The floor is now open for debate on the committee amendments. Does anyone wish to discuss committee amendments? Seeing no lights on, Senator Aguilar is recognized to close. He waives closing. Now the floor...the question before the body is, should the committee amendments pass to LB298? All those in favor indicate by voting aye; all those opposed, nay. Has all that wish to vote voted? Record, Mr. Clerk. [LB298]

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB298]

SENATOR LANGEMEIER: The amendment is adopted. Discussion on the advancement of LB298 to E&R Initial? Seeing no lights on, Senator Burling,...I recognize, Senator Fulton did turn his light on. You're recognized. [LB298]

SENATOR FULTON: Would the senator yield to a question? Senator Burling. [LB298]

SENATOR LANGEMEIER: Senator Burling, will you yield to a question? [LB298]

SENATOR BURLING: Yes, sir. [LB298]

SENATOR FULTON: I just...I don't have any...I'm not going to vote against the bill, I don't think, necessarily. But I'm just curious. This seems to make it more difficult to go through this petition process. So what was the impetus behind bringing this bill from 2,000 to 4,000? Why was it being asked by the Secretary of State that this be introduced? [LB298]

SENATOR BURLING: Thank you, Senator Fulton. I was going to explain this a little more in my closing, but this is great that you asked this question. It was just believed, on his part, with his experience, that 2,000 signatures is probably not enough for a statewide petition, in that our law already said there were some district positions that needed 2,000 signatures. And so on a statewide situation, it ought to be more than 2,000; probably less than 6,000, because you can organize a political party with 6,000 signatures, so we didn't want to go that high. So this was just a figure that they thought would be good. And then I also wanted to say that it also requires at least 50 signatures in one-third of the counties to get placed on a statewide ballot, and that would be included in the 4,000. Is that more answer than you wanted? [LB298]

SENATOR LANGEMEIER: Thank you. Thank you, Senator Fulton. Seeing no other

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

Floor Debate
February 01, 2007

lights on, Senator Burling, you're recognized to close. Senator Burling waives closing. You've heard the closing on the advancement of LB298 to E&R for initial. All those in favor vote yea; all those opposed vote nay. Has everyone that wishes to vote done so? Record, Mr. Clerk. [LB298]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB298. [LB298]

SENATOR LANGEMEIER: The bill does advance. Next bill, LB191. [LB298 LB191]

CLERK: LB191, by Senator Mines. (Read title.) The bill was introduced on January 9, referred to Banking, Commerce and Insurance. The bill was advanced to General File. I have no amendments pending at this time, Mr. President. [LB191]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Mines, you're recognized to open on LB191. [LB191]

SENATOR MINES: Thank you, Mr. President, colleagues. LB191 changes provisions relating to directors of certain corporations. It would add a provision to Nebraska law that would allow a member of the board of directors of a Nebraska corporation, in considering the best interests of the corporation, to consider, among other things, the effects of any actions coming before the board on employees, suppliers, creditors, customers of the corporation, and the communities in which these corporations are located. Currently, they're only allowed to consider those interests of the stockholders. And this expands that so that they can consider beyond stockholders into those areas that I've just read--employees, suppliers, creditors, etcetera. LB191 would also clarify that a member of a board of directors of an insurance company or corporation will discharge his or her duties as a director in accordance with Section 21-2095 of the Nebraska Business Corporation Act. The reason that insurance companies are identified, we have...as you all know, Nebraska has an extraordinary number of insurance companies that are domiciled here in Nebraska. And in considering hostile takeovers, those board directors need to also consider...certainly, they're going to consider what's best for the stockholders, but this just broadens this so they can consider other factors, like, how is it going to impact the community, how is it going to impact their employees. This bill is an amendment to 21-2095, and would reinstate language that was previously Nebraska law. The language was originally enacted in the late 1980s and was repealed in the mid-nineties, when Nebraska substituted the most recent Model Business Corporation Act. There was no specific discussion when this was adopted, of this provision. It's also known as a non-shareholder contingency statute, and similar language exists right now in 29 other states, so this is not new. It allows a member of the board of directors to consider the impact of transitions on other entities, in addition to looking out for those specific impacts on their shareholders. These laws are enacted...these laws were enacted in response to many hostile takeover actions that eliminated a significant number of jobs in various states, and

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

Floor Debate
February 01, 2007

therefore, this legislation would have a positive economic development impact. The bill was heard before the Banking, Commerce and Insurance Committee with no opposition from that committee, and there was no opposition testimony to this bill. Mr. President, I urge that the membership adopt LB191. Thank you. [LB191]

SENATOR LANGEMEIER: Thank you, Senator Mines. You've heard the opening on LB191. We're open for discussion on that bill. Seeing no lights on, Senator Mines, would you like to close on LB191? Senator Mines has waived closing. You've heard the closing on the advancement of LB191 to E&R for initial. All those in favor vote yea; all those opposed vote nay. Has everyone that wished to vote on that done so? Mr. Clerk, please record. [LB191]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB191. [LB191]

SENATOR LANGEMEIER: The bill advances. Mr. Clerk, LB117. [LB191 LB117]

CLERK: LB117, by the Banking, Commerce and Insurance Committee. (Read title.) The bill was introduced on January 8, referred to Banking, Commerce and Insurance, advanced to General File. I do have committee amendments, Mr. President. (AM137, Legislative Journal page 418.) [LB117]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Pahls, you're recognized to open on LB117. [LB117]

SENATOR PAHLS: Thank you, Mr. President, members of the body. LB117 is what might be called the annual omnibus bill of the Department of Insurance. The committee amendments become the bill. The most efficient way of proceeding would be to conclude the opening on this bill and move directly to the explanation of the committee amendments. [LB117]

SENATOR LANGEMEIER: Thank you, Senator Pahls. As the Clerk has stated, there are amendments from the Banking, Insurance and Commerce Committee. Senator Pahls, as Chair of the committee, you're recognized to open on the committee amendments. [LB117]

SENATOR PAHLS: Thank you, Mr. President. Again, the committee amendments become the bill. They not only include the provisions of the underlying bill, LB117, but also the provisions of LB119, LB120, and LB121. All four of these bills were introduced by the Banking, Commerce and Insurance Committee at the request of the Director of Insurance. If you have any questions, we have experts from the Department of Insurance standing by to speak with you and provide you answers that you may need. The provisions of LB117 would amend various sections with regard to insurance. This is the department's housekeeping bill for the year. The bill proposes a reduction of the

Floor Debate
February 01, 2007

filing fees at the Secretary of State for insuring filing articles of incorporation or documents related to domestication, from a flat fee plus a percentage of the annual capital stock, to a pure flat fee, in this case, \$300. As we are able to attract new insurers to domicile in Nebraska, there's obviously an economic benefit to the state. However, imposing significant fees, in theory for filing paperwork, sends the wrong message, and the fee would be...should be brought more into line with what an actual fee should be. This bill would allow a \$500 forfeiture to be imposed on an insurer for the failure to notify the department of a release or replacement of a security held by a bank to secure policyholder claims pursuant to statute. The department has found that several large financial institutions do not file the report required under the state law. The department has the duty to monitor these deposits and report needlessly increasing the administrative burden. The bill would allow the director to work with workers' compensation insurers to provide a backstop, in case no insurer is willing to provide coverage for the workers' compensation assigned plan. Currently, neither the premium charged for participation in the assigned risk plan, nor the losses paid, are state revenues. The backup plan would be conducted on the same basis. It would allow the director to create an alternative assigned risk system involving the sharing of premiums and losses for assigned risk employees among workers' compensation insurers and risk management pools. As employees are required to maintain workman compensation insurance, the state has created a residual market for employees by contracting with private-sector insurers. These amendments arose out of a concern about what would happen if we get no reasonable bids in the future from workman compensation insurers to act as the assigned risk insurer. This will allow the department to address the possibility in advance. Hopefully, it will never come up that we need these provisions. The bill would amend sections regarding insurance policy provisions and forms in response to recent amendments in the Property and Casualty Rate and Form Act, which now permit file and use rather than prior approval of some policy forms. This is truly a cleanup amendment. The amendment would amend the Viatical Settlement Act in order to allow the director to deny a license and then have a hearing if demanded, rather than require the director to hold a hearing before the license denial. This procedure would be consistent with the procedure for insurance producer licensing generally. These settlements, very generally speaking, involve contractual agreements whereby there is a transfer of ownership or a change in beneficiary designated of a life insurance policy to a party that funds payment to the insured life on the policy who is someone with a terminal or chronic illness. Death benefits are ultimately paid out to the investor. Nebraska has a comprehensive body of statutes administered by the Department of Insurance to regulate this business. This bill would adopt the National Association of Insurance Commissioners long-term care insurance model standard, requiring all long-term care insurance producers, that is, agents, to complete continuing education courses aimed primarily at long-term insurance. This would also allow the department to comply with federal requirements. This requirement would be a one-time eight-hour training course by August 1, 2008, and 24-hour training every 24 months thereafter. This bill would allow for industrial insureds by adopting a definition of

Floor Debate
February 01, 2007

"industrial insureds," so that the state has a clear mechanism to allow large insurers to obtain coverage through the nonadmitted market. These purchases are currently being made, and the department receives premium tax payments for this. The department is asking for these amendments in order to have a clear mechanism for accepting these payments. An industrial insured would not be required to obtain surplus liens from the department in order to procure insurance on their risk in state through nonadmitted insurers. Again, we are only talking about large, sophisticated purchasers of insurance coverage. LB119. The next part of the committee amendment, is comprised of the provisions of LB119, which proposes changes to the Insurers Investment Act, often referred to as the investment code. The body of statutes set forth a mind-numbing, complex matrix of quality and quantitative requirements and restrictions regarding investments of assets by the Nebraska domestic insurance company. The department has compiled these amendments to provide an update investment code for our domestic insurance. A large factor in the remaining factors, along with favorable premium tax treatments and significant regulatory expertise, has been Nebraska's adopt of state-of-art investment code provisions. Nebraska has adopted some of these changes on an ad hoc basis in response to specific requests. The bill represents an attempt to get ahead of this process somewhat and anticipate changes before they become critical. Generally, this legislation would address issues surrounding participations, foreign investments, preferred stock limitations, the additional authorized investment provisions, investments in low-grade securities, and security lending. According to the department, in many instances we would be trying to come in line with the NAIC model investment act, in some cases which would be trying to adopt a better view. Again, if you have any questions about some of these amendments, we have experts standing by to provide you with those answers. LB120. The next part of committee amendments is comprised of provisions of LB120. The part of this bill would amend all of the sections of the Nebraska Senior Protection in Annuity Transactions Act, which was enacted in 2006, by repealing every reference to "senior," so the act's protections would apply to all consumers entering annuity transactions, and not just age 65 and older. The current act is...purpose is setting forth standards and procedures for all recommendations made by insurance producers, that is, agents, and insurers to consumer, currently only of 65 years or older. This is regarding annuity transactions, so that their insurance needs and financial objectives at the time of the transactions are appropriately addressed. The next and last part of the committee amendments is comprised of provisions of LB121. The bill would provide the organization and regulation of captive insurers. A captive insurer would be defined as a domestic insurer authorized to provide insurance and reinsurance to its parents, any affiliated entity, or both. This bill would provide for the creation of special financial captive insurers as subspecies of captive insurers. A special purpose financial captive insurance would be limited to providing insurance or reinsurance plans for a parent or affiliated Nebraska domestic life insurer. A captive insurance has as its function the insuring of the risk exposures of their parent company or its affiliates. Pure captives do not market to the public, but are a risk management mechanism. Large business enterprises sometimes

Floor Debate
February 01, 2007

choose not to insure their property and liabilities exposure with insurance companies, but instead self-insure. Sometimes large business enterprises become fairly sophisticated and actually manage their own insurance risks through a separate insuring corporate they own, known as a captive insurer. For reason for establishing a separate corporation rather than managing the risks is the actual operating entity is because the premium paid to a separate corporation is a deductible business expense. [LB117 LB119 LB120 LB121]

SENATOR LANGEMEIER: One minute. [LB117]

SENATOR PAHLS: Approximately half the states allow businesses incorporated in their states to incorporate captive insurance there, too. Current Nebraska law includes no such provisions, and Nebraska-based business entities that form these captives must do so in another jurisdiction. Vermont is the customary jurisdiction for this...such ventures. We have two corporations who would like to look at domestic insuring in this state. They are currently looking at Vermont and South Carolina. We need to have this to...in order that we can keep those individuals, or those corporations here in this state. Thank you. [LB117 LB121]

SENATOR LANGEMEIER: Thank you, Senator Pahls. You've heard the opening on the committee amendments. The floor is now open for discussion. Seeing no lights on, Senator Pahls, would you care to close on the committee amendments? [LB117]

SENATOR PAHLS: (Recorder malfunction)...move the committee amendments to be the bill. [LB117]

SENATOR LANGEMEIER: You've heard the closing on the committee amendments to LB117. All those in favor indicate by voting aye; all those opposed vote nay. Has everyone voted that cares to vote? Record, Mr. Clerk. [LB117]

CLERK: 31 ayes, 0 nays on adoption of committee amendments. [LB117]

SENATOR LANGEMEIER: The amendment is adopted. [LB117]

CLERK: I have nothing further. [LB117]

SENATOR LANGEMEIER: Senator...the floor is open for discussion on LB117. Seeing no lights on, Senator Pahls, you're recognized to close on LB117. [LB117]

SENATOR PAHLS: I ask for the advancement of this bill. [LB117]

SENATOR LANGEMEIER: You've heard the closing on LB117. All those in favor vote by saying aye; all those opposed, nay. Has everyone voted that wishes to? Record, Mr.

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

Floor Debate
February 01, 2007

Clerk. [LB117]

CLERK: 26 ayes, 0 nays, on the advancement of LB117, Mr. President. [LB117]

SENATOR LANGEMEIER: The bill is advanced. Mr. Clerk, items for the record? [LB117]

CLERK: Mr. President, bill read on Final Reading this morning (re LB341) was presented to the Governor as of 9:30 a.m. Your Committee on Business and Labor reports LB211 to General File with amendments. Government reports LB434 to General File; LB527, General File; LR8CA, General File. Transportation reports LB70, LB165, indefinitely postponed. Education reports LB231, General File; LB238, indefinitely postponed; and LB101 indefinitely postponed; and LB241 indefinitely postponed. Revenue reports LB145 to General File with amendments. Judiciary reports LB83 to General File; LB476, General File. Hearing notices from Health and Human Services Committee, Education Committee. Enrollment and Review reports LB213, LB237, LB263, LB291, LB313, LB248, LB311 to Select File, some of those having Enrollment and Review amendments. LB80A is reported correctly engrossed. I have unanimous consent request to move the Retirement Systems Committee public hearing from Room 1525 to Room 1510 on Monday, February 5; a similar request from Business and Labor, to move their public hearing from Room 2102 to Room 1524. (Legislative Journal pages 441-447.) [LB341 LB211 LB434 LB527 LR8CA LB70 LB165 LB231 LB238 LB101 LB241 LB145 LB83 LB476 LB213 LB237 LB263 LB291 LB313 LB248 LB311 LB80A]

SENATOR LANGEMEIER: No objection? So ordered. []

CLERK: And finally, a series of name adds, Mr. President: Senator Fischer to add her name to LB291; Senator Dwite Pedersen, LB476; Senator Nantkes, LB607; Senator Dubas to withdraw from LB487. Mr. President, a priority motion. Senator Howard would move to adjourn until Friday, February 3, at 9:00 a.m. (Legislative Journal page 447.) [LB291 LB476 LB607 LB487]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. You've heard the motion by Senator Howard to adjourn till Friday morning at 9:00. All those in favor indicate by saying aye; all those opposed say nay. All those in favor say aye. Thank you. All those opposed, nay. We are adjourned. []