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Floor Debate
May 04, 2007

[LB69 LB132 LB142 LB147 LB152 LB221 LB227 LB236A LB252 LB305A LB320 LB321 LB364 LB367 LB440 LB456 LB473 LB481 LB504 LB542 LB547 LB558 LB561 LB564 LB570 LB588A LB641 LB642 LB664 LR103 LR104 LR105 LR106 LR107 LR108 LR109 LR110 LR111 LR112]

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this, the seventy-fifth day of the One Hundredth Legislature, First Session. Our chaplain for the day is Senator Friend. Please rise.

SENATOR FRIEND: (Prayer offered.)

SENATOR LANGEMEIER: Thank you. I call to order the seventy-fifth 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 to the Journal?

CLERK: I have no corrections, Mr. President.

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

CLERK: Enrollment and Review reports LB69, LB132, LB147, LB152, LB221, LB227, LB252, LB364, LB481, LB504, LB561, and LB664, all of those reported correctly engrossed. Your Committee on Education, chaired by Senator Raikes, reports the following bills indefinitely postponed: LB440, LB473, LB547, LB558, LB642. I have gubernatorial appointments, several appointments to the Boiler Safety Code Advisory Board and an appointment as director of Finance and Support for HHS. Mr. President, major proposal priority bill designation. Senator Engel, as Chair of the board, announces the board has authorized the Speaker to Select LB641 as a major proposal. LR103, by Senator Christensen. That will be laid over. LR104, by Senator Schimek and Senator Aguilar, proposed interim study. Referred to the Executive Board. I have Report of Registered Lobbyists for this week, to be inserted, and a series of reports on file in the Clerk's Office. That all that I had, Mr. President. (Legislative Journal pages 1411-1415.) [LB69 LB132 LB147 LB152 LB221 LB227 LB252 LB364 LB440 LB473 LB481 LB504 LB547 LB558 LB561 LB641 LB642 LB664 LR103 LR104]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, Select File, LB305A. [LB305A]

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

Floor Debate
May 04, 2007

CLERK: Mr. President, at this time I have no amendments to LB305A. [LB305A]

SENATOR LANGEMEIER: Mr. Clerk, for a motion. [LB305A]

CLERK: Senator Chambers would move to commit LB305A to the Transportation Committee. [LB305A]

SENATOR LANGEMEIER: Senator Chambers, would you please come to the front of the Chamber? [LB305A]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Senator Chambers, with regard to your motion to commit to committee regarding LB305A, the Chair hereby rules that pursuant to Rule 5, Section 7, Paragraph F, A bills cannot be committed to committee, or recommitted to committee. Therefore, it is the ruling of the Chair that your motion is out of order. For what purpose do you rise, Senator? [LB305A]

SENATOR CHAMBERS: Mr. President, I move to overrule the Chair. [LB305A]

SPEAKER FLOOD: Senator Chambers has motioned to overrule the Chair. Pursuant to our rules, Senator Chambers, you'll have ten minutes to open. Each senator will have one opportunity to speak. Senators may not yield their time in part or whole to another senator without question and answer as part of that yielding. Senator Chambers, you'll then have an opportunity to close. Each senator may speak once. Senator Chambers, you are recognized to open on your motion to overrule the Chair. [LB305A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, we may as well start early in the morning and take up where we left off last night. I had offered a motion to commit an A bill with a different number to committee. The Chair ruled that that motion is out of order. I moved to overrule the Chair, and maybe got 18 votes, but I needed 24. I'm offering that motion this morning, to give us an opportunity to establish a principle that I think is important for the Legislature. I've already explained to Senator Fischer that I have no interest in pursuing an effort to return this bill to committee, or to send it to a committee. I have an interest in trying to persuade my colleagues to correct a blunder that we made last night, and if there was any time when the senators would pay attention, I wish this would be it. And I know that they're not going to, but I want the record to be crystal clear. When I first offered that motion and had my opportunity to speak, I didn't go into any detail about how A bills can be altered in their makeup, because I wanted to see if just logic and common sense would prevail and senators would not take from us a prerogative that we ought to have, to facilitate our legislating. But a number of my colleagues were so irritated with me last night that

Floor Debate
May 04, 2007

they were willing to cut off part of the Legislature's prerogatives in the same way that the citizenry, by a majority vote, was willing to emasculate the Legislature to get me out of here. This amendment, this motion, is to commit an A bill to a committee. The argument made by the Chair in support of its ruling was that A bills never go to a committee, and that's why I framed my motion as a committal to the committee, not a recommittal. I pointed out that Revisor's bills go straight to General File and don't go to a committee. But anybody can make a motion to send one of those bills to the appropriate committee. Whether or not the motion prevails is irrelevant. The motion can be made on bills that never went to a committee, never had a hearing. All that I'm dealing with here is the right of a senator to make a motion. If the motion is not agreed to by a majority of the senators, it will not prevail and the bill will not go to committee. What I explained last night--and now that everybody's brain is clearer--an A bill can be amended. An amendment, if it's necessary to begin this way, will start with a suspension of the germaneness rule, so that an A bill can be used to contain matter which is substantive in nature. It changes the A bill from one which appropriates money to one which amends the substantive law. And if any bill changes substantially as a result of amendment, it can be referred to a committee. But it's an A bill, it cannot. If it's an A bill that has been gutted, and an entirely new bill or series of bills are put into that A bill, it cannot be referred to committee pursuant to the rule that allows it, because you can't make the motion. The motion to refer the bill to a committee is out of order. Here me this morning, if you will. Why will you take from the Legislature the power to do something it's going to need to do, just to get even with me? I can find plenty of ways to take time on a bill, but I want before I leave this Legislature, provided that term limits will be upheld by the Supreme Court, I want before I leave this Legislature to encourage my colleagues to think in institutional terms about this body. Don't cripple itself any kind of way. At the same time you cripple the Legislature, you cannot cripple the executive department, you cannot cripple the judicial, or judiciary department, so why will you cripple your own department and say you are so distrustful of yourselves, in terms of how you vote on a motion, that the motion cannot even be made? That's what I'm trying to tell you. If anybody thinks that I'm not telling the truth about what can be done with an A bill, ask Senator Schimek. She has been here. I've participated in doing that myself. But let's say that somebody doesn't like what happened when the A bill was gutted and new material was put into it, and genuinely feels that it ought to be subjected to the committee process. That bill cannot be sent to a committee, because a motion to do so is out of order. Why are you going to take away from yourself the right to make a motion? But you might do it. Whether I don't remain here after next year, or whether I do, I will never be a part of anything that cripples the Legislature, that hinders our ability to do our work, that in any way infringes on the prerogatives that I think we ought to have. We can cripple ourselves. The Constitution allows us to be fools. It allows us to adopt our own rules that govern us, and if we want to put shackles on ourselves, if we want to put a strait jacket on ourselves, we can do that. It's unwise, but we have the power to do it. The question is, why would we do it? I don't think that we should. So all I'm saying is that we should retain the right to make that motion. There is no rule in the

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

Floor Debate
May 04, 2007

book that prohibits the referral of an A bill to a committee. There is no rule. If there were such a rule, I would not make the motion. There is no such rule. If the argument is made that an A bill has never darkened the door of a committee, the same is true of Revisor bills, some of which we have practically every session. They're put directly on General File, and they do actually amend the law. But they're the types of amendments that can be considered technical or inconsequential, but somebody can take that bill which is a Revisor's bill, and go into the section of statute that is being amended, and change that into a substantive bill. And it can be referred to a committee, but not an A bill. So I want the record to be crystal clear on what is at stake this morning. And if you vote to reconfirm the blunder that was made last night, then it will just be a matter of twice foolish. How much time do I have, Mr. President? Mr. President? He's not even listening. Mr. President, how much time do I have? [LB305A]

SPEAKER FLOOD: One, twenty. [LB305A]

SENATOR CHAMBERS: Thank you. Members of the Legislature, this is the last time this session, perhaps, that I will make this motion, although I may make it every time an A bill comes up, to try to hammer away, because each time I offer it I may have a different cluster of senators who will pay attention. [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR CHAMBERS: But you are spiting yourselves by not allowing a motion to be made. I have no interest in pursuing a motion to refer this bill to a committee. That's not the point of this motion this morning. The point of this motion is to undue something which I feel was made in a heat and a rush last night. So this is an opportunity, "Parson" Carlson, for redemption to take place. Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Schimek, you're recognized. Oh, before we move to Senator Schimek, Mr. Clerk, do you have any announcements? [LB305A]

CLERK: Mr. President, Appropriations Committee will meet in Room 2022 at 9:30--Appropriations in 2022 at 9:30. [LB305A]

SPEAKER FLOOD: One additional announcement. Senator Pankonin's wife baked the cookies being handed out today, while watching the Legislature on television last night. Please thank her for us. Senator Schimek, you're recognized. [LB305A]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Senator Chambers, I think the amazing thing is that you got 16 votes last night, because I think by the time the vote came, everybody was thoroughly exhausted, they weren't listening, and I think the amazing thing is you did get 16 votes. I voted for that last night, even though I don't

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

Floor Debate
May 04, 2007

like to vote to overrule the Chair, because I thought you were right about the rules. And I will continue to think so until somebody has a convincing argument to convince me differently. And you just answered one of my questions which was, if we do vote to overrule the Chair, then do you plan to go ahead with the motion to commit to committee? And you said no, and that was what I was really wanting to know. But when I turned my light on, I turned it on not to speak on this motion, but to speak more to the issue that you were talking about most of the evening, about the Department of Roads itself. And I think there are more voices that need to be added to that particular discussion. So I guess what I'm asking you at this point: If the motion is...well, when the motion is dispensed with, whether we overrule the Chair or not...well, I guess we'd have to say, if we overruled the Chair, are you going to leave your motion to commit to committee up there for a little while so that discussion will continue, or will we need to file other kinds of motions in order to have a little bit of more dialogue on the A bill? [LB305A]

SPEAKER FLOOD: Senator Chambers, will you yield to a question from Senator Schimek? [LB305A]

SENATOR CHAMBERS: Yes, I will. Senator Schimek, I do have other motions, and the reason...if we overrule the Chair, I would remove this one immediately to reassure people that my intent is not to try to get this back to a committee. [LB305A]

SENATOR SCHIMEK: Okay. And Senator, I don't want to necessarily...I don't want to take part in a filibuster. That's not why I turned my light on this morning. What I want to do is have a little bit more opportunity to talk about the Pflug interchange. And I listened to Senator Gay last night. At one point I had my light on, and then I listened to him and then I turned it off. But I think we need to return to that, as well as some of the other issues that you were talking about last night, just so that with the Department of Roads there is a flagging, if you will, of the Legislature's concern about some of those issues that you mentioned, just as we did with the Department of Health. I think it's very legitimate, and if we don't do it, then who does it? So unless I hear a compelling argument not to overrule the Chair, at this point I plan to support you, and I do hope that people will think about this and think about it in terms of the institution, and not of who's in the chair, or not this particular bill, but rather the having...retaining the flexibility to do this. Now there may be another point of view, and I am open to listening to that. But at this point, I plan to support your motion again, because last night I didn't hear a compelling motion not to. And 16 people did support it last night, in spite of the fact that most of the things you were putting up received very little support, Senator Chambers. So people were paying attention. I would give...well, Mr. President, how much time do I have left. [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

Floor Debate
May 04, 2007

SENATOR SCHIMEK: I would let Senator Chambers respond in any way he wants to, if he wants to. [LB305A]

SPEAKER FLOOD: Senator Chambers, would you yield to a question from Senator Schimek? [LB305A]

SENATOR CHAMBERS: Yes, and Mr. President, she had posed a question. Senator Schimek, I'm not going to pursue the attempt to send the bill to committee, but I did bring material to document some of the things I had in mind, so it will not be a discussion solely for the purpose of taking time, but to put things in the record and document with at least some things in the newspaper that I said, so it's clear I'm not making them up. And that would be my response. Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Thank you, Senator Chambers, Senator Schimek. Senator Gay, you're recognized. [LB305A]

SENATOR GAY: Thank you, Mr. President. On the motion here, commit to a committee, last night I did support that, and just was listening a little bit. I did have a discussion afterwards, when we have an A bill that isn't quite keeping up with the actions we're taking on the floor, it's hard to make a decision, an appropriate decision on what to vote for. How much is it really going to cost? I've been a little concerned about that. That is not, after talking with the Fiscal Office, that's not their fault, because they can't get an accurate measure, after all these amendments we're tacking on very quickly on the floor. So I guess if we did this, what is the purpose on this, when you say you're not going to pursue it? This is for discussion. So the question is if Senator Chambers would yield to a few questions. [LB305A]

SPEAKER FLOOD: Senator Chambers, will you yield to a question from Senator Gay? [LB305A]

SENATOR CHAMBERS: Yes, I will. [LB305A]

SENATOR GAY: Senator Chambers, I was...came in a little late after I checked in, and I missed your opening. But different circumstances, where we'd need this--if this was just another opportunity to, you know, delay something I didn't like, or whatever, because there may be instances when you're not here that some of us would want to use this. But why would...that committee had already heard a bill, and then they bring it to the floor and it has committee amendments. We then all listen to the arguments, make other changes, okay? Then the fiscal note...so after we make those changes and vote on General File, the Fiscal Office then goes...makes up the fiscal note. We see it on Select File. Sometimes it happens quickly, sometimes it doesn't. Why would I want to recommit that back to a committee, when I have the same information as they have? What good would it do in that committee to listen to information that we're all going to

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

Floor Debate
May 04, 2007

hear on Select File anyway? Why should they have another crack at it that we shouldn't on this floor? [LB305A]

SENATOR CHAMBERS: Senator Gay, a committee never gets a crack at an A bill, because it never goes to a committee. My motion was to try to get the senators to see that there are avenues and means by which we can get a bill out of the legislative body into a committee. The committee might want to rewrite that A bill and offer an amendment to gut it and turn it into something else--no telling what they'd want to do. But here's what I'm after: retaining the right of a senator to make any motion on any bill that he or she pleases. The attempt last night was ruled out of order. It means that you cannot even offer a motion on an A bill. If such a motion were made and it's in order, you simply vote against the motion and say there's no need for it to go back and make that argument. Since the ruling was made last night that the motion is always out of order, I'm offering it again this morning. It was ruled out of order, and I'd explained how even on the floor, an A bill with an agreement of the body, or at least 25 senators, can be gutted, changed from an appropriation bill into a substantive bill that would change the law itself. And there might be the feeling, even by those who agreed to do this, that it ought to go to the committee and even have a hearing. You cannot make that motion. It's out of order. That bill, since a majority voted for it, would then move across the floor and maybe to final passage, even though senators felt it should have had the committee process. All I'm saying this morning is, we ought to restore the right to the senators to make that motion. If the motion is made, it's up to the senators to persuade the body to agree. Merely making the motion does not result in its going to a committee. It has to get at least 25 votes for that to occur, so all I'm doing this morning is trying to undo what was done last night, which was a ruling that... [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR CHAMBERS: ...took away the power of a senator to even make the motion. [LB305A]

SENATOR GAY: Well, and I...the discussion, I think, is needed, and I do appreciate that. The...what we're talking about in this instance, I have a little...I don't think I would use it that much, but what you're saying is, you may want to--you never know. And I do agree with you on that statement. I voted for it last night and I understand--you're not going to do that on this bill, correct? So...but anyway...well, thank you for that and look forward to continuing to hear more examples where we might need to reserve that power. Thank you. Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Senator Aguilar, you are recognized. [LB305A]

SENATOR AGUILAR: Thank you, Mr. President and members. I just want to have a little conversation, not necessarily ask questions of Senator Chambers, but kind of

Floor Debate
May 04, 2007

explain where I was last night. I was one of the nonvoting members, and quite frankly, the reason behind that was that I didn't fully understand what we were trying to get to, and I was very concerned that if I voted for the override or against it, you know, that we'd be setting some sort of a precedence. And not really understanding the issue, I didn't think that was a wise choice. I knew, however, that before the evening was over last night, there would be enough explanation on the floor to make me fully understand what was transpiring. That did indeed happen. Senator Chambers did explain very well what he was trying to accomplish, and it made sense to me. And with that in mind, I will be supporting his motion this morning. Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Thank you, Senator Aguilar. Senator Erdman, you're recognized. [LB305A]

SENATOR ERDMAN: Mr. President, members of the Legislature, as Yogi Berra said, it's deja vu all over again, and I guess that's an obvious point that may be lost on you. What Senator Chambers is asking you to do is the exact same thing he asked you to do last night, but yet he would have you believe that you can't do it. He's right. Last night we ruled that you...that the Chair's ruling was appropriate, that a motion to commit was not in order, but because there's no specific governing rule, you can offer this motion at any time, ask the body to overrule the Chair and do it anyways. So we haven't tied our hands--alls we've done is placed an additional step in our process, if you would like to commit an A bill to committee. In the absence of a controlling rule to cover a specific situation, and in the absence of controlling custom, usage, and/or precedent, the presiding officer may utilize Mason's Manual of Legislative Procedure as authority. That's in Rule 2, Section 1, sub B of our rules. If you notice up there in the front of the Chamber, to the left of where the Speaker is sitting, there are a number of binders up there. If you get a chance, walk by and look at what the title is on those binders--legislative precedents. When something happens here that's not specifically written the way that the rules are, and we have set a precedence, they keep a record of it up there. I don't think they kept a record of last night, because it's not technically a new interpretation of our rules. We're trying to create something here. And to Senator Chamber's comment about we should have this authority, I agree, and any time you want to do it, we can do it. Any time a bill is substantially new and different by reasons of amendment, the Speaker can refer that bill to the Reference Committee for a public hearing, provided the majority of members may override the Speaker in that case, too. There is a lot of freedom in our rules. I think the point Senator Chambers is trying to get across to us is, is that we should as a body give ourselves all the tools that we want. Sometimes we should give ourselves tools that even the Speaker doesn't want us to have, and I have been here when we have tried that, and I believe that those were legitimate options. You can vote yes or no on the motion to overrule the Chair here, and what you will have done is nothing different than where we were before Senator Chambers offered the motion last night; that will put us back. Actually, Senator Chambers got 21 votes last night. I don't know if it was late in the night and people don't

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

Floor Debate
May 04, 2007

recall, but the vote was 21 to 24. Today, there are three members absent or not checked in at this point, which means that you'll have to get a majority of those present, which will be 24. So you have the same threshold--it's not 25. But I'll concede the day to Senator Chambers. You can vote for this. The interesting question that comes up is not actually what has been ruled on here, and actually goes a little bit back to what I was talking about last night. This is not a priority motion, but today it's an order. Last night there were amendments pending, and this motion was taken up. So if the idea was that this was a precedent or this was not in order, that's not what we ruled on last night, because that's not what the Speaker's ruling was. That was the argument I made to you. Today this is an order, except in Rule 7, Section 3, it says, when a question is under debate, no motion shall be considered except one of the following, which motion shall take precedence in the order stated--and it's A through I. Again, Senator Chambers admitted last night that this motion is not one of those motions listed. [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR ERDMAN: But if you'd like to add a J that's unwritten to this list, you could vote to overrule the Chair, and that's fine. But recognize that any member can offer this motion to commit an A bill at any time, and as long as there's not a controlling rule that says you can't do it, a majority of those present can say, I think today we're going to have this available to us. Senator Chambers doesn't need another motion to take time. I don't think that's what he's trying to get across to you. What he's trying to get across to you is that, do you believe there are times when he's going to hijack an A bill that you should be able to send it back to committee? Sure. I would argue there are other rules. I may even vote today to overrule the Chair on this one, as a gift to Senator Chambers, that I think he has been persuasive. But I will tell you that it's unnecessary, because there are other mechanisms in which that's accomplished. So Senator Chambers, if you will accept my motion to overrule...or my vote to overrule the Chair, will you not filibuster LB305A? [LB305A]

SPEAKER FLOOD: Time. [LB305A]

SENATOR ERDMAN: Sure. Thank you, Senator Chambers. [LB305A]

SPEAKER FLOOD: (Visitors and doctor of the day introduced.) There are no other lights on of senators wishing to speak. Senator Chambers, you are recognized to close on your motion to overrule the ruling of the Chair. [LB305A]

SENATOR CHAMBERS: Mr. President, members of the Legislature, what Senator Erdman said is correct in a sense, and incorrect in another sense, and let me tell you the first one, where he's correct. We can take the opportunity when we're recognized by the Chair to make any motion that we want to, and if the Chair rules it's out of order, we

Floor Debate
May 04, 2007

can move to overrule the Chair. I could make a motion, for example, to amend a rule, and the Chair could say, well, you can't make that motion and amend the rule right here. It has to be referred to a committee. And I'd say, is that your ruling? And the Chair says, yes. Then I say, then I move to overrule the Chair, and we take a vote, and by overruling the Chair, we in effect abrogate our rules. Some people have said you can do anything on the floor with 25 votes. Let's say there's a motion that requires 33 votes and we ask the Chair, how many votes will it take for this motion to prevail? And the Chair rules 33 votes. I say, I move to overrule the Chair, and the rule clearly says 33 votes, and I get 25 votes. I overrule the Chair, and now a motion which our rules say requires 33 votes will now be done with 25 votes. This is why you have to be careful about what you're saying should be done under the rules, and by overruling the Chair simply. Some motions would be out of order, and the Chair could rule there's not even going to be allowed a vote to overrule the Chair, because that motion is always out of order, and the Chair cannot be overruled when the purpose is to change a rule that requires 33 votes, so that it requires now fewer than that. I hope that's not confusing. When Senator Erdman says that all we have to do is move to overrule the Chair, why should we have to move to overrule the Chair and go through that extra step, when the only thing we're trying to do is make a motion. This motion that I'm talking about would not require more votes; it's not being given a priority status. If there's an attempt to do that, then a person could argue that it's in the nature of a recommittal, so I think it should be a priority motion. And that could be argued, and maybe the Chair would rule, well, it's not. And that is one where I think you could vote to overrule the Chair, because the aim and the goal of the motion is the same as the recommit motion. But you can't draft it that way, because it had never been to a committee in the first place. Now what you could do, and I could have done, is drafted the motion to say, recommit to a committee to bring it under the priority status. And somebody could say, well, I don't think that's what it is. Then you can argue that. None of that is involved in what I'm talking about. All of those matters can be argued a different day. I'm saying that, rather than have to go by circumlocution through a number of rules and rulings to try to get to the point where you can, perhaps, make a motion, simply overrule the Chair, and a person can then make that motion. The body will either vote to agree with the motion and send the bill to a committee, or vote against the motion and the bill would not go to a committee. To take Senator Erdman's theory,... [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR CHAMBERS: ...you have all of these other steps along the way, other arguments, and then if you wind up being able to make the motion, you see how much energy and time would have been wasted. I'm taking the time this morning to try to make it clear in the record why I think this Legislature, as a body, should not cripple itself. You don't trust yourself to make a motion? That, in effect, is what you're saying. Protect me from having to vote one way or the other on such a motion, and the way to do it is to prohibit ourselves from making a motion. We are the only legislative authority

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

Floor Debate
May 04, 2007

in this state. We should leave ourselves the prerogative of having full and complete debate and having every motion allowable, and some will indeed be out of order. [LB305A]

SPEAKER FLOOD: Time. [LB305A]

SENATOR CHAMBERS: Thank you, Mr. President. I would ask for a call of the house, and I will then accept a machine vote. [LB305A]

SPEAKER FLOOD: Thank you, Senator Chambers. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB305A]

CLERK: 29 ayes, 0 nays, Mr. President, to place the house under call. [LB305A]

SPEAKER FLOOD: 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. Senators Raikes, Nantkes, Engel, Heidemann, Loudon, Cornett, Nelson, Harms, Fulton, Synowiecki, Ashford, Wightman, Wallman, Preister, and Kruse, please check in. Return to the Chamber immediately. The house is under call. Senator Cornett, Senator Heidemann, Senator Preister, please return to the Chamber. The house is under call. Senator Erdman, for what purpose do you rise? [LB305A]

SENATOR ERDMAN: Point of parliamentary inquiry, Mr. Speaker. [LB305A]

SPEAKER FLOOD: Keep it brief. (Laughter) [LB305A]

SENATOR ERDMAN: How many votes does this motion require to be successful? That's eight words, Mr. Speaker. [LB305A]

SPEAKER FLOOD: Twenty-four. [LB305A]

SENATOR ERDMAN: Thank you. That would be nine. [LB305A]

SPEAKER FLOOD: Senator Cornett, please return to the Chamber. The house is under call. Senator Chambers, all senators are present or accounted for. This does require 24 votes. The question before the Legislature is, should the Chair be overruled? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB305A]

CLERK: 28 ayes, 6 nays, Mr. President, on the motion to overrule the Chair. [LB305A]

SPEAKER FLOOD: The Chair has been overruled. Senator Chambers, your motion to

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

Floor Debate
May 04, 2007

commit LB305A to committee is no longer out of order. You are recognized to open. I raise the call. [LB305A]

SENATOR CHAMBERS: Thank you. Mr. President, I would withdraw that motion. [LB305A]

SPEAKER FLOOD: Your motion to commit LB305A to committee is withdrawn. Mr. Clerk. [LB305A]

CLERK: I have nothing on the bill, Mr. President. [LB305A]

SPEAKER FLOOD: We return to Select File discussion on LB305A. Senator Schimek, you are recognized. [LB305A]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I wanted to take just a few minutes this morning to follow up on the conversation that was rather one sided last night--one person conversation, you might say--and that is the Department of Roads' handling of the so-called Pflug interchange. And I believe that there was a lot of pressure there for the director to write a letter in favor of that interchange, in spite of the fact that it wasn't in the Department of Roads' long-term plans. And credit should be due to the director for saying now that he wouldn't do that again, and I will take him at his word, but it should never have happened in the first place. And I'd just like to read a little bit from the story and from the editorial that was in the Omaha World-Herald regarding this matter, because it is a rather serious matter. First of all, from the editorial, I believe...no, this is from the story. Pflug Road was not in the long-range plans of the Nebraska Department of Roads or the Metropolitan Area Planning Agency. In an assessment based on future transportation congestion, Sarpy County studies suggest an interchange at 180th Street, six miles closer to Omaha, which would best meet the emerging traffic demands. County roads director, Tom Lynam, says flatly that 180th is a better location than Pflug, but Pflug leapfrogged 180th on the projects list. Seldin, who was the developer, seized the moment in 2001 as the state planned its widening of a nine-mile stretch of I-80 from Nebraska Highway 370 to the river. State Roads Department engineers didn't see any need for an interchange there, but they were willing to go along. Completed last December, the three-lane bridge cost the state roughly the same amount it had planned to spend on the two smaller bridges. Now that's just little portions out of that particular story. Now I would like to read from what is the editorial. That was the story. They had a very long, lengthy story, for those of you who didn't see it. Why should we even care whether they build that interchange or not? Well, I'll tell you why we should care, and it's very clearly stated in the editorial. The projects with Congressional earmarks, rather than increasing the amount of funds the state receives, instead reserve a portion of the state's overall slice of the federal pie for the project that received the earmark. While justifiable, that move reduces the total amount of funding available for road projects prioritized by the state and has the same

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

Floor Debate
May 04, 2007

chilling effects of increased inflation and lower fuel sales, by delaying the state's prioritized projects. Each year the Nebraska Department of Roads updates a 20-year assessment of its road needs. That report translates into six-year and single-year plans, which represent the state's road-building priorities. Department of Roads officials say unequivocally that they do not allow... [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR SCHIMEK: ...external factors to sway their decisions on road prioritization, and there is scant reason to doubt the process. A team of state engineers evaluates each project. Department of Roads officials...oh, yet special interests are constantly imploring members of Congress to use earmarks to leapfrog the state process. Sometimes they oblige. If the state of Nebraska chooses to ignore an earmark and proceed with its own road-building priorities, it runs the risk of forfeiting part of the federal roads funding to another state in another earmark. The net effect of pigeonholing federal money for pet projects is that it indirectly usurps state priorities, whether it officially changes the list or not. Money is never free, and there are always limits to the pie. John Craig, director of the Department of Roads, put it bluntly during an interview with the World-Herald. Anything that does not contribute... [LB305A]

SPEAKER FLOOD: Time. [LB305A]

SENATOR SCHIMEK: ...to our needs is an anomalous situation, a takeaway. [LB305A]

SPEAKER FLOOD: Time. [LB305A]

SENATOR SCHIMEK: Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Thank you, Senator Schimek. Senator Chambers, you're recognized. [LB305A]

SENATOR CHAMBERS: Thank you. Mr. President, there are some things I want to get into the record also, and last night, in an exchange between myself and Senator Gay, there were things that he may have said he hadn't read, or something, but I wanted to get things into the record, to establish that I wasn't making them up. And this is from that investigative report that appeared in the Sunday World-Herald on March 25 of this year. And the headline of this particular column that was a part of that investigative study says, "Doubts Fail to Reach Key Ears." The State Roads Department has altered its handling of projects like Pflug. And this is what some of it says. And by the way, after I get into the record what I want, I have no further interest in LB305A, but it may take me a little while to get those things into the record. The Nebraska Roads Department considered an interchange at Pflug Road unnecessary. Nevertheless, the department's director, John Craig, sent a letter to Congress supporting federal funding for it. For

Floor Debate
May 04, 2007

years such contradictions have been standard practice, Craig said. I'm going to digress. The department admits that it contradicted its own practices, in order to go along with unnecessary projects, and some of them would involve state funding ultimately. Continuing with the reading: Local officials, eager to build support, pursued the state's blessing. The department, wanting to be agreeable, dispenses it. "If it has any appearance of a legitimacy for the locals, I think that was basically our measure," Craig said. "We genuinely tried to be good partners and helpful where we could." But faced with projected funding shortfalls and doubts about the value of such letters, Craig said he's ending the practice. Digressing: It was public exposure by the World-Herald in an investigative report that made Mr. Craig say they would no longer do this. It's not that he suddenly realized it ought not to be done. They knew it should not have been done. It would continue being done now, had the World-Herald not exposed it. So as Senator Schimek pointed out, it's good that Mr. Craig said "mea culpa" and I won't do it any more, but these top officials should not be able to escape with a mere, "I'm sorry." They let people run away with the store--I'm sorry. Like the doctors--cut your spleen out when I should have gone for a kidney, because that's what we were transplanting--I'm sorry. But one thing I can say, that I did sew a spleen onto where your kidney went, so I got it half right! But he can't say I'm sorry to the patient, because the patient has been taken over by a fellow professional of his, that fellow professional being the undertaker. Now I'm going back to my reading. There was a person named Monty Frederickson, who is the deputy roads department director, and he said--now I'm going to read from the article: The state uses a three-pronged test to evaluate projects. Does it improve safety? Does it increase the capacity? Does it correct a geometric defect in the roadway? Frederickson said Pflug fell short, even though a study by a private engineer, Kyle Anderson of Kirkham Michael, found that the interchange would relieve congestion and could link to an I-80 overpass. [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR CHAMBERS: That particular person had been hired by those who had an interest in the project going forward. "Would it be nice to have an interchange there?" Sure, Frederickson said. "Does it provide some additional potential connectivity for the local road system? Oh, probably, but that's not our mission. That's not what we're supposed to be spending our money on." And I'll continue the next time I'm recognized. Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Thank you, Senator Chambers. Mr. Clerk. [LB305A]

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone the bill. (Legislative Journal page 1415.) [LB305A]

SPEAKER FLOOD: Senator Fischer, pursuant to our rules, the introducer decides whether to lay it over or take it up. Do you have a preference? [LB305A]

Floor Debate
May 04, 2007

SENATOR FISCHER: Mr. Speaker, we will take up this motion now and be done with it. [LB305A]

SPEAKER FLOOD: Senator Fischer wishes to take up the motion. Senator Chambers, you're recognized to open on your motion to indefinitely postpone LB305A [LB305A]

SENATOR CHAMBERS: Thank you, Mr. President, and probably when we're through, Senator Fischer will say, well done! (Laughter) Members of the Legislature, I'm going to continue reading from this article. That same month...oh, let me go back up here. In 2004 Inez Boyd, then chairwoman of the Sarpy County board, wrote to Craig that state support for the interchange was "vital." "As you are well aware, the opportunity to receive federal funds for a new interchange does not occur very frequently," Boyd wrote. That same month John Snowden, a transportation engineer for the Federal Highway Administration, wrote the Roads Department saying the need for the interchange had not been clearly identified in the Anderson study. And Anderson was the study done through Kirkham Michael, which was hired by those who wanted the project to go. Back to the article: The need was hard to gauge, because the state had not comprehensively studied the need for the new interchange state wide. His concerns, like those of Craig's own engineers, did not reach Congress before the highway bill passed. So these federal representatives from Nebraska were not getting this information from the experts and the authorities who are charged with the responsibility to review these projects. And when interchanges are being considered in a state, they do not just look at the one location where the local people want an interchange placed. They review the entire federal roads system in that state. They determine how many interchanges should be allowed to grant access to that interstate facility. Then they make a determination as to where these interchanges, which are going to be allowed throughout the state, ought to be located. As Senator Schimek pointed out, it was established that an interchange located somewhere other than in the vicinity of the Pflug Road would meet the standards much more closely that are set by the federal government and the Roads Department, than was desired by Seldin and his cohorts, who wanted to put an interchange near the Pflug Road where it was not justified. But when you're politically connected, you can get things done. This article goes on to point out the people with whom Mr. Seldin was connected, how they supported him, the contributions made to U.S. Senators Nelson and Hagel, and U.S. Congresspersons Lee Terry and Fortenberry, and his name is Lee Terry, not Terry Lee, as he was described by Vice-President Cheney, who was in Omaha and said, I would like to recognize my good friend, Terry Lee. He just didn't happen to realize that his friend had two first names, and he got them in reverse. But nevertheless, let me continue, because I want this in the record. When you have a department such as the Roads Department, charged with the responsibility of faithfully attending to the state's business as far as road building, the expenditure of money derived from the gas tax and based on action taken last night, from the sales tax on leased vehicles, there should be more

Floor Debate
May 04, 2007

accountability, more integrity, and officials who do not agree to do their job only when the glare of public exposure has been shined upon them. Now in other states the governor would have a price to pay, because the appointee to the roads department is the governor's. And when you start talking about campaign money being thrown around, and the department whose job it is to oversee road building to admit that they gave formal and official support to a project that their own standards said should not go forward, you have reason to be concerned. And I think when a department has shown that it fails in its primary mission, you should not give them money which is virtually without strings, to continue to misspend in the same way they misused their authority and betrayed the public trust. That's what that Pflug Road constitutes--a betrayal of the public trust. One fellow named Schram, who is on the Sarpy County board and voted for the project, had family members leasing property from Seldin in the area where the Pflug Road was being built, and he would stand to make a windfall. It's not illegal, but it's unethical, and you have more and more public officials saying, well, I know it's not right. It may not be ethical, but it's legal. And that now is becoming the standard. Well, it's legal. And if you have public officials, and the greatest assurance they can give to you is that I won't do anything that's illegal, that lets you know I'll do anything short of that which is illegal, that is not something that inspires confidence in that person as a representative of the best interests of the people, of one who symbolizes what democracy is supposed to be about, where the people are represented by either elected officials or the appointees of elected officials. This is a glaring example. We're not talking about where an employee of the Roads Department used state equipment to plow the driveway--that employee was fired, and probably rightly so. State employees on state time using state equipment should not perform services for private individuals on private property. But if you're going to fire that employee, why are you all not concerned when the head of the Roads Department violates their own standards? This is why I get irritated. That is why I arouse emotions on the floor that will cause "Parson" Carlson to want to stand up and pop me, because he doesn't like to hear these things! Get rid of the little person who's got the little job. But the one who is in charge is to go scot-free. Senator Carlson can confirm this in his "parson" capacity. The book says, where much is known, much is required--where much is known, much is required. But the attitude in this Legislature is that the higher you are in the food chain, the more you can get away with, and your misconduct should not even be discussed, let alone let there be an effort to try to bring some accountability to the mix. Which is worse and more harmful to the interest of the republic, the interest of the state, the interest of society? An employee, trying to do a good deed, but violating a rule that you should not do anything with state equipment on state time on private property...he didn't damage the property, he didn't hurt anybody, he violated the rule, without doubt, and he was fired. So now we go to the top dog. Those who are hired to give him advice relative to projects that meet the standards of that department give him that advice and he violates the public trust, because he wants to get along with some local officials and politicians. Which one did more to damage the public trust? The employee trying to do a good deed, which in fact helped the citizen? Or the department head, appointed by the

Floor Debate
May 04, 2007

Governor, and still in the Governor's good graces, who violates the standards of the department he is to administer, and give his backing to a project which is going to make a laughingstock out of the state? There would be no interchange there, but there's a possibility it will lead to a financial windfall for Seldin, who is the evil genius behind all of this, and the state director of roads went along with it, knowing he should not have--knowing he should not have! [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR CHAMBERS: So if he said the department supports this project, the conclusion could be that it met all the department's standards, and that was a misrepresentation, it was an intent to deceive, because had he told the federal government the truth, they would not have gotten that backing from the state Department of Roads, which in some cases would be essential to the federal government approving a project like that. So you let him off scot-free. Oh, we're going to punish this little guy, because some kid might read in the newspaper that he did what he did in plowing this driveway. But when we look at the head of the department, we tell the kid, now if you get big enough, you can do anything you want to, because you're above the law. It doesn't apply to you. You can fire these people under you for doing less than what you did, but nobody will touch you, because you're the untouchable and there's no Eliot Ness. You are home free. And that's what this Pflug Road is about. That's what it's about, and it's right there for you to see. The next time I speak I have another issue I'm going to raise. Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Time. Thank you, Senator Chambers. Senator Howard, you're recognized. [LB305A]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I'd like to take just a moment to thank Senator Chambers for teaching us more about procedure and protocol this morning. I think that was a valuable lesson, and I appreciated having the opportunity to be better versed in that. Also, I'd like to assure Senator Chambers that I did not, in fact, leave the building, the Chamber, last night at 11:00 o'clock to return home. There are times when it is necessary to be absent from the legislative floor and that does happen, and I wanted to let Senator Chambers know that I am available to him for questioning when he'd care to do that. I would like to read an excerpt from the information that had been published in the World-Herald regarding the roads situation. I too was concerned about that and saved the material. And one paragraph especially jumped out at me regarding the situation. Money for Pflug includes more than \$4 million from 6,300 earmarks for individually funded projects contained in 2005 transportation bill, legislation that many people see as a case of Congressional pork barreling gone hog-wild. This is the key to me: Motorists pay the price. The \$4 million in federal highway funds would come from the gas tax that you and I pay every time you fill up your tank. I'd like to offer the remainder of my time to Senator Cham...to Senator

Floor Debate
May 04, 2007

Schimek. [LB305A]

SPEAKER FLOOD: Senator Chambers, Senator Howard is yielding you 3 minutes and 11 seconds. [LB305A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Fischer and I just had a little discussion. She said the Speaker had said it would go an hour. The hour is up. She wants to invoke cloture, and if that was the understanding, she can invoke it, but I'm going to continue my discussion on other bills this morning. So if you vote cloture, that's what I'm going to do. I don't think there's been any attempt to filibuster this bill. I don't think anything was said that was not on the subject. But she has a right to invoke cloture whenever she wants to. In fact, the introducer of a bill can invoke cloture after the bill is first introduced. But I want to let you know that cloture is not going to stop me from discussing this bill. And the rest of you are the ones who will vote. You voted for cloture last night and you saw what happened. You can vote it this morning, and then we'll see what happens. But I'm not even going to take all the time at this point. Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Thank you, Senator Chambers. I believe it was Senator Howard's intent to share time between you and Senator Schimek. Senator Schimek, would you like the balance of Senator Howard's 2 minutes and 7 seconds? [LB305A]

SENATOR SCHIMEK: I have 2 minutes and 7 seconds? Thank you, Mr. President. Thank you, Senator Howard, Senator Chambers. I too am not up here to filibuster the bill, but I think it is our responsibility to put things into the record. And even if it's only reading from newspaper stories and editorials, I think that is the quickest and cleanest way to get things into the record. So I don't intent to speak very many more times--maybe once when I'm done. But I would like to continue a few things from the Omaha World-Herald story at this point, and it says that the Pflug interchange would usher development deep into the southwest corner of the county--meaning Sarpy--if linked to a proposed bypass, a new thoroughfare running across the county's southern half. The interchange would help draw businesses and housing closer to the river. [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR SCHIMEK: Cecil Steward, founder of the Joslyn Castle Institute for Sustainable Communities, described the river as the most sensitive ecological system in the state, if not the entire Midwest. The group advocates for environmentally sensitive and attractive development along the corridor. The World-Herald also gave a little time to Jarel Vinduska, who led a group of area landowners pushing for stiffer regulations, and he was...he said that the location of the interchange is illogical. It is sandwiched between an area of the Platte River flood plain on the west side that has a history of

Floor Debate
May 04, 2007

frequent ice jamming and flooding, and very steep loess hills on the east, he said. And I might mention that the city of Lincoln owns nearly 800 acres of land for future well fields between the Seldin land and the river. [LB305A]

SPEAKER FLOOD: Time, Senator Schimek, but you may continue. [LB305A]

SENATOR SCHIMEK: Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: You may continue, Senator Schimek, on your time. [LB305A]

SENATOR SCHIMEK: Thank you. And this will be my last time to speak. I just want to get a couple more things into the record. I got to give the Journal Star a little equal time here, and they also did a story and an editorial after the World-Herald story. And it says, so far, the only work that has been done on the interchange is construction of a bridge that would have been done anyhow, because of the ongoing Interstate 80 widening project. The next phase would be the start of major change in the area. Critics who point out that Sarpy County's own studies favored an interchange at a different location say the Pflug Road interchange will ruin a golden opportunity in the I-80 corridor. Does it make sense to put truck warehouses and box stores in the only beautiful area between the two cities, asked Jarel Vinduska of the coalition opposing the interchange. Last year renowned planner and strategist Alexander Garvin urged local leaders to take advantage of the state's natural landscape in developing the I-80 corridor. I'm in wonderment of the gently rolling hills that I saw all along the interstate. Any attractions you build, the landscape ought to be part of it, Garvin said. With broader public involvement, Nebraska's congressional delegation might not have been so quick to earmark \$4 million for the interchange that will eventually cost \$10 million. The flaws and weaknesses of congressional earmarks are on full display in the Pflug Road project. That is really all I have to say on this particular matter. I think...I'm not out to pick on the Department of Roads, but I am out to alert them that this was notice, not only by members of the public, but members of the Legislature. I'm not going to go into some of the other issues that several people raised last night regarding some of the contracts that have had to be redone after a period of years. But I would say to the Department of Roads, please don't ever let this happen again, this which happened on the Pflug project. Thank you, Mr. President. [LB305A]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Chambers, your light is next and you're recognized. [LB305A]

SENATOR CHAMBERS: Mr. President, members of the Legislature, the other issue that I wanted to raise dealt with something I talked about last night, and that's the shabby construction of the interstate system. I had mentioned if you drive between

Floor Debate
May 04, 2007

Omaha and Lincoln, you'll see an area of that highway going east--and probably some on the west, because they've got all kind of work going on, the nature of which I'm not sure--but the stretch that I'm talking about has become undrivable and they're redoing it because the quality of workmanship was so poor that the road was crumbling. So now they're digging up parts of it and redoing it. This is pursuant to the malfunctioning of the Roads Department hierarchy. This goes to the top person. There is no accountability. He's not going to be held accountable for what happened in the Pflug Road fiasco. He is not going to be held accountable when the road is not properly constructed, when inferior materials are used, or an inappropriate methodology was used in laying that concrete. In any case, work that has been there scarcely three years is having to be redone. What kind of roads system do you have when throughout the state you see these repair jobs going on, especially when the road has been so recently constructed? And I'm not talking now about repairs that themselves came apart, but brand-new highway construction, and you give over to this department more money with which to do more of the same. There is nothing in LB367...or LB305--yeah, that's the one we're on--or 305A which does anything about imposing any kind of accountability. Obviously, any laws on the subject are inadequate, any rules and regulations are inadequate, because we see that things are going on that ought not to. So when you take these bills and you don't look at how the administration of the department is being handled when it comes to the Department of Roads, you have to take the same lenient attitude when it comes to the Health and Human Services System. We're talking now about governance and living up to the public trust. The director of the Department of Roads has failed miserably. There is no excuse, and I say again, when you are comfortable in the presence of a situation where a low-level employee--and by that I meant low on the totem pole--is fired unceremoniously and perhaps justifiably, but the top man can do things that are far more hurtful to the society, to the public trust, to the morale of employees, to those who advise this person, something ought to be done to that person, and I think termination would be appropriate. But it takes the Governor to terminate, and the Governor is not going to do that, because the Governor knows that all of these appointments are political, and he's not going to do anything to one of his political appointees. I wanted to call attention to these things, put them into the record, and unlike last night,... [LB305A]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB305A]

SENATOR CHAMBERS: ...wanted to identify the source of some of what I was saying, read directly from it, and when I would depart from what I was reading, declare that I'm digressing, and then point out, I'm going back to the reading now. Thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Gay. [LB305A]

Floor Debate
May 04, 2007

SENATOR GAY: Thank you, Mr. President. I appreciate the discussion we're having. I think it's useful and other people pay attention, that we should oversee what's happening with our dollars. I take issue, though, at some point, and it is this: I think local people...Senator Chambers is pointing out a project that has controversy, of course. Newspaper wrote about it--fine. It's been going on for six years, but there's a certain point...where do we say that local people know what's best? They take past road counts. You got to have a little bit of an idea where we're growing, where counties are growing, what's happening, cities, whatever. If we're going to turn all our roads decisions over to bureaucrats in Washington, D.C. or Lincoln, Nebraska, I just don't think that's good policy. I think it's good policy we watch what they're doing, but if the local and federal decision makers have decided, here's what we're going to do, it's easy to second guess, but he says there will never be an interchange built there? Maybe there won't, with all the hassles you go through to get an interchange. Out at Kearney they've been working on their interchange for 15 years, I think, and still haven't got it, because some federal bureaucrat is holding up the project, I think. So when we decide to do this, this is a...I bet this thing is a 15-year project, possibly--hopefully, not that long. It will take two or three years just to get an environmental impact study. We have people, and there are people--Senator Schimek read in the newspaper--that quite honestly are opposed to that project, but have been opposed to every project in that area, every single project. It doesn't matter if it's roads, if it's housing, if it's anything, they're just opposed to it. So we're always going to get those that are just opposed to everything. But the crux is, I agree there should be...we should watch, but we've created so many standards and hoops for these people to jump through that you can't get anything done. So this Roads Department, I agree, they've restricted where roads are going so much that either they say yes to everything, and that's why we do put roads everywhere, but then when you do get a legitimate project that local people are supporting and have supported ongoing, they then say, well, we're...I don't know. It should be here, it should be there. I think we should decide where those roads are going. So I do take an issue, and when it comes to development and where some of these roads are going, there are processes and boards that look. I think there's a state highway board that looks at roads. There's...on quality, there's the roads standard and classifications board that looks at things. So we do have people. If the problem is that we need to go and fix and improve that, let's do that, then. And...let's do that. But at this point, though, to say, well, this particular project is bad. It's not ever going to pan out. Well, I don't know about that. We'll see. But I'm not for...I think local people should be making local decisions. We can criticize all we want and say how it came about, whatever, and that's legitimate. I don't like earmarks. I don't think they're...we just read this Sunday...there was another article, too, one of those articles about earmarks, and I'm not that familiar with that. But I think the whole process...we can all agree. But until they change the process, that's what's happening, and I agree they should change that process. But I guess there's a different view to this. I do think that local decisions sometimes can be a little better than some guy sitting at a desk out here in the

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

Floor Debate
May 04, 2007

Department of Roads or in Washington, D.C., that you got to go grovel and say, can we please have some money for this road here? And maybe 15 years later, they'll get back to you, and maybe you'll get your interchange. Kearney has been wanting this--and I don't if...you know, how that project is, and maybe it is our duty to look at all these things, but if you want the state to look at everything and every project, then that's what we should do. [LB305A]

SPEAKER FLOOD: One minute. [LB305A]

SENATOR GAY: But let's look at those rules and change those rules. But like I say, I just think there should be local decision making. You may not agree with it, and Senator Chambers, you don't. I fully understand that. But at some point, where is the local decision making in this whole process? So thank you, Mr. President. [LB305A]

SPEAKER FLOOD: Thank you, Senator Gay. (Visitors introduced.) Mr. Clerk. [LB305A]

CLERK: Mr. President, Senator Fischer would move to invoke cloture, pursuant to Rule 7, Section 10. [LB305A]

SPEAKER FLOOD: Senator Fischer, for what purpose do you rise? [LB305A]

SENATOR FISCHER: Mr. Speaker, I request a call of the house, roll call vote, regular order. [LB305A]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB305A]

CLERK: 28 ayes, 0 nays, Mr. President, to place the house under call. [LB305A]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators Johnson, Lathrop, Schimek, Engel, Pedersen, Raikes, Kruse, Langemeier, Mines, McDonald, Wightman, Synowiecki, and Ashford, please return to the Chamber. The house is under call. Senator Pedersen, Senator Raikes, Senator Engel, Senator Kruse, Senator Ashford. Senator Kruse, Senator Pedersen, please return to the Chamber. The house is under call. Senator Dwite Pedersen, please return to the Chamber. The house is under call. All senators are present or accounted for. It is the ruling of the Chair that full and fair debate has occurred on LB305A. Members, the first vote is the motion to invoke cloture. All those in favor...strike that. We shall have a roll call vote in regular order. Mr. Clerk, please read the roll. [LB305A]

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

Floor Debate
May 04, 2007

CLERK: (Roll call vote taken, Legislative Journal page 1416.) 44 ayes, 2 nays, Mr. President, on the motion to invoke cloture. [LB305A]

SPEAKER FLOOD: The motion to invoke cloture is adopted. At this time we shall dispense with all the pending matters before the Legislature with regard to LB305A. [LB305A]

SENATOR CHAMBERS: Mr. President. [LB305A]

SPEAKER FLOOD: Senator Chambers. [LB305A]

SENATOR CHAMBERS: I withdraw that motion, if it's allowable, that's pending. [LB305A]

SPEAKER FLOOD: Senator Chambers, your motion to indefinitely postpone is withdrawn. The remaining pending matter before the body at this time is the question as to whether LB305A shall advance to E&R for engrossing. Senator Fischer, how do you wish to proceed? Roll call vote or machine vote? Senator Fischer requests a machine vote on LB305A. All those in favor of LB305A advancing to E&R for engrossing vote aye; all those opposed vote nay. A record vote has been requested. Have all those voted who care to? Mr. Clerk, please record. [LB305A]

CLERK: (Record vote read, Legislative Journal page 1416-1417.) 44 ayes, 1 nay, on the advancement of the bill, Mr. President. [LB305A]

SPEAKER FLOOD: LB305A advances to E&R for engrossing. I do raise the call. Mr. Clerk, items for the record? [LB305A]

CLERK: Mr. President, Enrollment and Review reports LB236A to Select File and LB588A to Select File. I have a reference report referring gubernatorial appointees. A confirmation report from the Government, Military and Veterans Affairs Committee. Senator Pedersen, an amendment to LB321; Senator Heidemann, LB320; Senator Langemeier to LB570. A series of study resolutions: LR105-112, all study resolutions. All will be referred to the board. That's all that I have, Mr. President. (Legislative Journal pages 1417-1422.) [LB236A LB588A LB321 LB320 LB570 LR105 LR106 LR107 LR108 LR109 LR110 LR111 LR112]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to the next item on the agenda. Mr. Clerk, LB456. [LB456]

CLERK: LB456, a bill by Senator White. (Read title.) The bill was introduced on January 16 of this year, referred to the Revenue Committee. The bill was advanced to General File. There are Revenue Committee amendments pending, Mr. President. (AM84,

Floor Debate
May 04, 2007

Legislative Journal page 643.) [LB456]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator White, you are recognized to open on LB456. [LB456]

SENATOR WHITE: Thank you, Mr. President. My fellow colleagues, this is a technical bill and it will, on the surface, have some dry and uninteresting aspects to it, but I will tell you that it will be potentially one of the most important bills of this session for the long-term economic prosperity of our state. Of that I am certain, and I include in that the tax cuts that we have so recently debated. Let me explain why I believe this to be such a critical bill. No great country, no great society has ever built itself into that without a very effective and viable economic system, whether it was Rome, ancient Egypt, England in the Victorian era, or the United States currently. One of the hallmarks in every effective society has been advancements in the method of forming and holding capital: banking. This is a banking bill and it is a bill designed to ensure that for the next generation of Nebraskans we remain able to accumulate and hold capital in our small towns and in our communities, capital that will come from the labor of our citizens and yet be held and managed in smaller institutions for the benefit of our citizens. Right now, the United States has gone through an unprecedented phase of major bank mergers. That offers efficiencies but it also offers great risks. One of them is, as many of you know from the smaller communities, the banks have often closed their doors in the smaller communities or have been replaced by large chains which don't understand local economies, don't understand the needs of local farmers and small businessmen. Furthermore, the economies of scale of huge banks often make it unprofitable and unattractive for them to get involved in small business development, to understand the constituents in the towns that they live in, to make the loans that are necessary for innovation and progress. Now, despite this large amount of conglomeration occurring in the national banking system, there has been an encouraging trend for smaller financial institutions that are locally based and owned to start developing and forming. That is because they fill a niche and can fill a niche that is not attractive to the larger institutions. These smaller institutions base themselves largely in our local towns and communities. They are more responsive to local needs. And one of the things that is a real concern for them is they must compete on a national and international marketplace, at the same time existing within the state of Nebraska. We are, at most, a very small part of a tale when it comes to tax policy. Tax policy, for our purposes, is made and defined in Washington. One of the major changes that has occurred in Washington is allowing banks to be owned by a different type of legal corporation. Previously, the only type of entity that could own a charter in a bank was called a C corporation or a regular corporation. That has been changed and it is now allowed that sub-S, pass-through corporations, can hold bank charters. This offers enormous advantages under federal tax laws, but because of the way our federal tax laws have changed, our state tax laws remain as they were over 20 years ago. Our state tax laws are now seriously out of step with our federal tax laws, and as a result the small and local banks that we're primarily

Floor Debate
May 04, 2007

concerned with are at a very much competitive disadvantage. Let me explain how that came, and please give me the patience of understanding the difference between a pass-through and a C corporation. A C corporation, when it makes money, pays taxes. A pass-through corporation, when it makes money, does not pay taxes. Instead it must distribute all of the income that it produced that year or substantially all of it down to its shareholders. They then pay taxes. So you do not have two levels of taxation. You do not get a taxation at the C-corp level, and then again when the money is pushed down to the individuals, taxed at that level. Why have a corporation at all? Because of legal considerations such as control of liability. A sub-S corporation, a pass-through corporation, still functions to shield the shareholders from liability but it removes that tax penalty. The federal system recognized this several years ago and encouraged banks to start adopting sub-S systems. That was a very positive development for the smaller banks. It was enormously helpful, and it is one of the things that can help counteract the really large conglomeration of banks, because it makes it more profitable on a tax situation for smaller banks to function. Nebraska, however, did not adjust its tax code. We still tax at two levels. We will tax even a sub-S corporation at the corporate level, and then because under federal law they must pass their income down, they get taxed not only at the federal income tax level but at the state tax level. Now, what that results in is a form of double taxation which, if you look at the fiscal note, on the surface looks profitable for us. Please note the fiscal note in this is overstated for reasons I will go into at length later, but for now it, on the surface, looks like this is an expensive and profitable proposition, the double taxation. In fact, it is not. One of the problems is that the fiscal note does not recognize the amount of money that these banks are paying in income tax or will pay in income tax. In fact, as we move through this debate you will find that if we successfully encourage all Nebraska banks to move to sub-S status, which will help them on a federal tax level, we as a state will make more, not less, money. It sounds ironic but that is often the way it is. Irrational taxes tend to produce short-term, what seems like good profits, but in fact they tend to be poisonous to enterprise in the long run. Good tax policy does produce revenue, but it also encourages industry. We currently have an irrational tax in place on banks, and our long-term economic interest is that we remove it. We remove it to encourage the state banks to take the most effective tax strategy on a federal level, and when they do that we will prosper as well. What this bill does then is says if you are a sub-S corporation under the federal system and you pay the state tax, you will get a credit on your income tax that you received from that bank for the amount you already paid to the state on the corporate level. And let me explain how Nebraska taxes banks, and that is another aspect that I think is really...we need to express in a long-term situation. We do not have what is called a normal income tax for any bank corporation. We got away from that during a time of fiscal crisis. We moved instead to what is called an occupation tax. The nature of this occupation tax is that the amount of money on deposit is taxed at a set rate. That occupation tax depends on the deposits the bank holds. That is the only tax that banks pay. This bill, LB456, would provide that a share of that tax paid by the sub-S corporation would be passed down to the shareholders in the form of a credit, and we

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

Floor Debate
May 04, 2007

would remove a double taxation. One of the reasons we want to move away from depository taxes to income taxes, which is what will happen in this bill, is depository taxes raise less revenue but they are also more unstable. This was a law that was conceived and passed at a time when there was not widespread branch banking, even on the smaller levels between states. Today, many of the surrounding states do not add any corporate... [LB456]

SENATOR ERDMAN PRESIDING [LB456]

SENATOR ERDMAN: One minute. [LB456]

SENATOR WHITE: ...or depository taxes. It is quite easy to move deposits out of the state through a number of different artifices, legal, and we will lose our tax base. If, however, we convert what has been an old-fashioned depository tax into an income tax, we will realize more money, we will streamline the economic system, the local banks will be placed on equal footing with the neighboring states, and we will encourage them to adopt the most efficient tax form that the federal government has asked or has allowed. This bill will, over time in fact, produce substantial revenues. I have a handout that has been passed out. If you look at, on the back, we can talk about the numbers and why, over time, we will actually prosper. [LB456]

SENATOR ERDMAN: Time. [LB456]

SENATOR WHITE: Thank you, Mr. President. [LB456]

SENATOR ERDMAN: Thank you, Senator White. Members, you've heard the opening on LB456. (Visitors introduced.) As the Clerk stated, there are committee amendments. Senator Janssen, as the Chairperson of the Revenue Committee, you are recognized to open on the committee amendments. [LB456]

SENATOR JANSSEN: Thank you, Mr. Chairman, members of the Legislature. The committee amendments do two things. First, it extends the credit to partnerships, limited liability companies in the state, and trusts. The second thing it does, it phases in the credit over two years by allowing 50 percent of the deposit tax paid to be taken as credit against income tax for the year 2007, and 100 percent for the 2008 and thereafter. That is the extent of the committee amendments. Thank you. [LB456]

SENATOR ERDMAN: Thank you, Senator Janssen. Members, you've heard the opening on the Revenue Committee amendments to LB456. Those senators wishing to speak are Senator Langemeier, Senator Wightman, and Senator White. Senator Langemeier, you are recognized to speak. [LB456]

SENATOR LANGEMEIER: Thank you, Mr. President and members of the body. And

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Transcriber's Office

Floor Debate
May 04, 2007

Senator White, I don't know if you were totally done with your introduction. Would he yield to a question? [LB456]

SENATOR ERDMAN: Senator White, would you yield to a question from Senator Langemeier? [LB456]

SENATOR WHITE: Yes, Mr. President. [LB456]

SENATOR LANGEMEIER: Did you need time to finish your introduction? [LB456]

SENATOR WHITE: I would be happy to address some additional issues. I could finish it now or through the debate. [LB456]

SENATOR LANGEMEIER: I would swap time with you if you would like (inaudible). [LB456]

SENATOR WHITE: No, go ahead, Senator Langemeier. I will follow up as you...thank you for the courtesy, however. [LB456]

SENATOR LANGEMEIER: Okay. Thank you, Senator White, for the little dialogue there. LB456, I agree with Senator White; it does create a problem. I think our banks in Nebraska and especially our local S corporations are typically local-owned, I think are very, very important to the state of Nebraska. I do want to bring this up as we look at the fiscal note as Senator White has mentioned, of \$5 million. How true is that number? We don't know. It's kind of unique. We don't like fiscal notes when we think they're high, and when they go the other way we like fiscal notes, but they are what they are. I think it's crucial, though, that we remember as we do these type of bills, as we looked at a revenue package two days ago, this is one of those components that fits into our whole revenue situation for the whole year. And so as we look at what that revenue package offers, here we're taking \$5 million which I agree, I support. I took it out of committee and I still support LB456. But I think we have to remember that this is all part of our total revenue taxing package that we offer out of this legislative session, this One Hundredth Legislature, First Session. And so with that I would thank you, Mr. President, and I would just remind everybody of that. [LB456]

SENATOR ERDMAN: Thank you, Senator Langemeier. Senator Wightman, you are recognized to speak, followed by Senator White. [LB456]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. If Senator White would you yield to several questions, I would like to engage in some conversation with him. [LB456]

SENATOR ERDMAN: Senator White, would you yield to questions? [LB456]

Floor Debate
May 04, 2007

SENATOR WHITE: Certainly. [LB456]

SENATOR WIGHTMAN: Senator White, I'm assuming right now that when a subchapter S financial institution prepares its tax return, it takes a deduction for the franchise tax that you have sought to have a credit for. Is that correct? [LB456]

SENATOR WHITE: Yes. Well, no, I'm sorry. Right now, the subchapter S corporation, does it get to deduct it? No, it does not; not on the state tax return. [LB456]

SENATOR WIGHTMAN: Is that an adjustment from the federal, then? Because I'm assuming on the federal they do get it. [LB456]

SENATOR WHITE: They do get it on the federal, but we, however, do not allow it on the state. They pay two separate taxes, Senator. [LB456]

SENATOR WIGHTMAN: The reason I ask that is that over the years, at least on the federal level, we have occasionally had credits where you are also entitled to a deduction. And I refer to the investment credit income tax or investment income tax credit in which...but I'll agree it was a much smaller amount and was typically a 7-10 percent credit, and you were entitled to the deduction for the depreciation on those same items. [LB456]

SENATOR WHITE: Yes, Senator, I cannot tell you but my understanding, and this is an understanding of a trial lawyer talking to a tax lawyer, is my understanding is when we decoupled that we do not provide a credit of any type for the taxes paid. You know, we no longer go straight off the federal system. And so my understanding is we are clearly taxing them twice. Now I could be in error, but that is my understanding. [LB456]

SENATOR WIGHTMAN: With that, I understand the reasoning behind this; however, there are instances where we do pay double taxation, and one of those is dividends at the C-corporation level, in that there is no deduction for the dividends that are paid out on corporate stock, and then we turn around and we do pay income tax. And I realize in more recent years at the federal level you are entitled to a lower tax bracket, a lower tax rate on those dividends in that now they are taxed at the capital gains rate. So you would acknowledge, wouldn't you, that there are a lot of instances where we do have double taxation? [LB456]

SENATOR WHITE: Double taxation still exists, but I would also take the position that increasingly with LLCs, LLPs, sub-S's, the law has been moving away from it and increasingly trying to strive to a single unified level of taxation. Further, I would submit, Senator, that in the cases of banks in the state of Nebraska at this level, they don't pay dividends. What they tend to do instead is hold and maintain the retained earnings and

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

Floor Debate
May 04, 2007

expand the value of the underlying stock. Then when they wish to, quote, distribute wealth out of the corporation, they take advantage of one of our other state tax laws which allow one-time sale of stock on a completely tax-free basis. [LB456]

SENATOR WIGHTMAN: Now, I'm looking at the back of your sheet, and I'm not quite sure how we get to a positive revenue basis by the year '11-12, and I think you explained that. Could you explain that again for me? [LB456]

SENATOR WHITE: Well, I can certainly try, and let me explain what we believe is occurring. First of all, the negative amount on the fiscal note is cut in half because under the amendment we have divided the time that this comes in, so the initial year is half of what the fiscal note shows. Second, what the fiscal note shows is that certain banks in this state have,... [LB456]

SENATOR ERDMAN: One minute. [LB456]

SENATOR WHITE: ...because of the federal law involved, have already adopted sub-S status. They are paying taxes twice right now. Now, it's still to their advantage because the federal tax takes a bigger bite than the state does. But what the fiscal note is only reflecting is that when those banks that are already converted sub-S, convert, we will no longer get the double taxation. What you are seeing as we move forward is the assumption, economic assumption and belief, that when the double taxation on a state level is removed, more and more institutions will switch to sub-S pass-through corporations. As that occurs, we actually gain more income, more tax revenue, from them as they convert to a system that taxes the shareholders at income level because, as you know, Senator, the sub-S corporations must pass the income down; they must recognize it as income on their personal income taxes. They will still benefit on a... [LB456]

SENATOR ERDMAN: Time. Thank you, Senator Wightman and Senator White. (Visitors introduced.) Senator White, you are recognized to speak, followed by Senator Raikes. [LB456]

SENATOR WHITE: Thank you, Mr. President. Senator Wightman, would you yield to a continued series of questions? [LB456]

SENATOR ERDMAN: Senator Wightman, would you yield to questions? [LB456]

SENATOR WIGHTMAN: Yes, I would. [LB456]

SENATOR WHITE: Now, the numbers improved, Senator, because as we move banks who are currently C corporations to sub-S corporations, the tax base is transferred. That's the underlying assumption of the document. And as we move more of our

Floor Debate
May 04, 2007

institutions away from C corporations paying a depository franchise or occupation tax into paying income tax because they are passed through, we actually make more income. So the faster the conversion occurs, the faster we actually make money on this proposition. It is more lucrative for the state if all of our institutions were immediately converted to sub-S's and paid income tax on all income. The state would benefit fiscally by a substantial sum, even though those institutions would save on taxes because their savings will occur at the federal level. [LB456]

SENATOR WIGHTMAN: Well, that was one of the questions I had, Senator White, is whether you saw this as creating an opportunity to where many of the banks and financial institutions would convert to a subchapter S. [LB456]

SENATOR WHITE: Absolutely, and that would be the hope and the encouragement, because we would not only gain more revenue as we moved our tax code in compliance with the federal system, we would also allow our local institutions to profit better because of the tax breaks afforded to them by the federal system. [LB456]

SENATOR WIGHTMAN: Well, I think you have answered most of the questions that I originally had. Generally, I guess I could say, and I'm on your time now, but generally I am supportive of the idea. I think to the extent we can eliminate double taxation, we probably ought to work to do that. I'm a little fearful of what the first year or two may do to our balancing of the budget between revenues and expenditures, but I guess I'll work my way through that. [LB456]

SENATOR WHITE: And again, thank you, Senator, and I would urge you to recognize that even under the current provisions which I'm not in agreement as to what the...I think our projections are far more accurate, we have cut even the fiscal note in half by phasing this in over the first two years, and it will allow the conversion by other institutions more rapidly, which should cushion the blow to our budget balance. [LB456]

SENATOR WIGHTMAN: Was there some reason this wasn't part of the overall revenue package? [LB456]

SENATOR WHITE: Yeah, because we did not know how the Fiscal Office would see it. I mean, our position was that they should always account for the increased revenue that is likely to occur based on the conversion, and they did not. They show what is lost on depository taxes but not necessarily the net benefit as we perceive the numbers. Therefore, we think our numbers are...you have to look at the whole picture, not just part of it. And so we think it's a net benefit to the state. Although there will be a hit in the early years, it will rapidly overcome that is our belief, and I think it makes sense. In our institutions, Senator, where we've tried this and it's worked, and that's something I want to talk about. Without question one of the great successes in Nebraska's economic history has been our ability to attract and retain insurance companies. We have just

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

Floor Debate
May 04, 2007

gained several new mass of insurance companies in the Omaha area, employing over 300 people, and these are industries that are clean, they don't pollute. They pay very well, they give full benefits, they are good corporate citizens. It is a financial-based economy, tends to be pretty resistant to recession. It is certainly a good complement to an agricultural economy, and in Omaha, a manufacturing economy. And we attracted them by having one of the lowest long-term premium rates, the taxes we charged on insurance policies issued in the state. That has been an industry that's received careful stewardship through... [LB456]

SENATOR ERDMAN: One minute. [LB456]

SENATOR WHITE: ...both Republican and Democratic administrations, and we now truly have...are probably one of the envies of the United States in terms of our base for insurance companies. We can do that with financial institutions. We can absolutely do that with financial institutions. We should do that with financial institutions. The state will gain more money because of the income tax paid not only by the corporations but the employees, and our citizens will benefit as well. [LB456]

SENATOR WIGHTMAN: (Inaudible) time for one more inquiry. Do insurance companies qualify under this act for...as financial institutions? [LB456]

SENATOR WHITE: No, I do not think so because they don't pay depository tax. What this does, Senator, is if you pay a deposit tax, you get a credit. And this is strictly limited to what are the equivalent of federally chartered banking institutions. That's what it's designed for. [LB456]

SENATOR WIGHTMAN: Thank you, Senator White. [LB456]

SENATOR ERDMAN: Thank you, Senator White and Senator Wightman. Senator Raikes, you are recognized to speak on the committee amendments, followed by Senator Heidemann. [LB456]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Senator White,... [LB456]

SENATOR ERDMAN: Senator White, would you yield to questions? [LB456]

SENATOR RAIKES: ...if you would yield to a question... . [LB456]

SENATOR WHITE: Certainly. [LB456]

SENATOR RAIKES: ...to hopefully assist me in my understanding of this. Would it be the case that if you ignored federal taxation, which a lot of us would like to do, I

Floor Debate
May 04, 2007

understand, but let's just for the moment say that that's not impacted one way or the other, then this change in state law would actually make it be a disadvantage for a banking operation, as compared to what there is there now. [LB456]

SENATOR WHITE: Yes. It's been, at least statistically, the numbers that I've been shown and that I believe are accurate, would show that the institution will pay the state more money through this system than it does through the depository tax base. So on that level alone, you're right, but it goes beyond that. There are ways to gain the depository tax that are not as easily done on this system. I'll give you an example. If I had an institution in my district that also had an institution across the border in Iowa, depending on Iowa's tax structure I'm not sure of, but South Dakota I am, you could say to a large depositor, instead of buying this CD here, we'll fill it out here but buy it in our Iowa branch; because in Iowa we don't pay a depository tax, we can give you a better rate. And they can simply transfer their deposits to a state that doesn't tax deposits. There are many different ways that you could do that, but that makes our current tax base, a depository occupation tax base, in my opinion far more vulnerable to being moved around in times of fluid economics than this system, which taxes people who make revenue from Nebraska corporations. Plus, Nebraska corporations can also simply relocate and start transferring to other states. [LB456]

SENATOR RAIKES: So to summarize, assuming again that there is no federal impact, a financial institution would probably be better off considering state tax law only to remain a C-corp and pay the depository tax, perhaps with some flexibility as you've just described, versus becoming a sub-S and paying the income tax. [LB456]

SENATOR WHITE: Yes. [LB456]

SENATOR RAIKES: However, when you bring in the federal tax, that all changes because even though you're going to pay more at the state level, you will pay enough less at the federal level that it will be a profitable switch for you; is that correct? [LB456]

SENATOR WHITE: Absolutely. [LB456]

SENATOR RAIKES: Okay. One other thing I wanted to just reemphasize that Senator Langemeier, a point he's already made, is the fiscal note does say \$5.4 million and then \$4.1 million, and you've done some additional work on those numbers. But when it comes to the green sheet, the green sheet will show \$5.4 million and \$4.1 million; is that correct? [LB456]

SENATOR WHITE: Correct, but the green sheet precedes the amendment that's...the green sheet was premised on full implementation, first year. That has been changed by the amendments which now we do half the first year, half the next year, which we think buffers the impact. [LB456]

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

Floor Debate
May 04, 2007

SENATOR RAIKES: So there will be a revised fiscal note based on the committee amendments. [LB456]

SENATOR WHITE: Only those who reside in the Fiscal Office can tell you for sure, but there should be. Certainly our projections are that, in fact, because we are putting only 50 percent in at this time, we have cut the first impact...we believe we cut that in half, and second,... [LB456]

SENATOR ERDMAN: One minute. [LB456]

SENATOR WHITE: ...we also believe that as banks move, because now they can use the federal basis, from normal C-corp status to S-corp status, they'll pay a lot more additional taxes. We think that actually the fiscal impact is less than half, probably going to be substantially less than half than what is represented in the green sheet. [LB456]

SENATOR RAIKES: Okay. Thank you, Senator White. [LB456]

SENATOR ERDMAN: Thank you, Senator Raikes and Senator White. Senator Heidemann, you're recognized to speak on the committee amendments, followed by Senator Langemeier. [LB456]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members. I do just want to touch base on the fiscal note. I'm going to back my boys up. They've done a lot of work on this. They've took their time. They confer with the Department of Revenue that their figures are right. With the amendment that is on and the figures that I've got, I just want to point this out, if you look at the fiscal note, the first year is approximately 5.4. I believe that figure will go down to 3.5; 3.9, I think is the figure. In the second year it will still show at 4.1. What I want to point out, that this is not in your green sheet yet. This is not accounted for, so that if this bill moves to Select File, whether you agree with the fiscal note or not, it will show as they have forecasted what it's going to cost in lost revenue. That will be over the two years; it looks like \$7.6 million. When you...if you pass this on to Select File, when you go down to line 43, that first box will not be \$28 million anymore, it will be less of \$7.6 million. I'm not saying that I have a problem with this bill whatsoever. I just want to point out the facts about where you're at and where you're going, to make sure that you know what will occur. Thank you. [LB456]

SENATOR ERDMAN: Thank you, Senator Heidemann. Senator Langemeier, you are next to speak on the committee amendments, followed by Senator Pirsch. [LB456]

SENATOR LANGEMEIER: Mr. President and members of the body, thank you. I have a tendency to believe the Fiscal Office; however, with that said I still support LB456 and the intent of the bill, and with the committee amendments I still think is a good policy for

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

Floor Debate
May 04, 2007

the well-being of our S corporation banks in Nebraska. And so I agree with...I support the fiscal note but with that, as I said before, this is part of our total tax plan that we have out there. I think this is kind of a subcategory of that, that we looked at as a Revenue Committee, knowing that this bill would be out here, and so that's how we came with our tax plan. So with that I do support LB456 and the committee AM84 and would encourage the body to support the same. Thank you, Mr. President. [LB456]

SENATOR ERDMAN: Thank you, Senator Langemeier. Senator Pirsch. Senator Pirsch is on his way. Senator Wallman, you will be next after Senator Pirsch. Senator Pirsch, you are recognized to speak on the committee amendment. [LB456]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I was wondering if the...maybe Senator White, if he would yield for a question or two? [LB456]

SENATOR ERDMAN: Senator White, would you yield to questions? [LB456]

SENATOR WHITE: I would be delighted. [LB456]

SENATOR PIRSCH: Thank you, Senator. On your handout, it mentions the proposal as amended. Maybe I need to ask the committee Chair that. LB456 would also now, if passed, apply to partnerships, LLCs, estates, and trusts. How...could you give a specific...is there a specific application or instance in which this has kind of been put forward as used for, or is this at this point in time purely theoretical? [LB456]

SENATOR WHITE: Well, I hope it's more than theoretical, but there is not a specific application. Right now the federal government allows only subchapter S's, which are pass-through corporations, to hold bank charters. We anticipate, and in fact there has been some movement, that that's changing. As that changes, rather than come back and have to change the law to allow for limited liability partnerships and limited liability companies, LLP and LLCs for example, and change the law to adjust that, we would rather make the provision that any pass-through corporation, which for tax purposes they are functionally the same, should now be allowed in Nebraska, this credit. That was we need not come back and again revise the statute. Hopefully what we are doing is anticipating what the federal government is going to do. It certainly does not hurt our structure, doesn't cost us anything. It simply puts the law in a position where it's more likely to remain relevant to current economic conditions today and tomorrow. [LB456]

SENATOR PIRSCH: Okay. Thank you for that answer to the question. I'll tell you, I would yield the balance of my time to Senator White if he... [LB456]

SENATOR ERDMAN: Senator White, you have 3 minutes. [LB456]

SENATOR WHITE: Thank you, Mr. President. And Senator Heidemann, I very much

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Transcriber's Office

Floor Debate
May 04, 2007

appreciated your comments and your defense of the Fiscal Office. I would like to note something and why we believe, one of the reasons why we believe the numbers are grossly overstated, though certainly what shows up in the green sheet will be what shows up in the green sheet. We expect what shows up in our bank accounts, however, will be substantially different, and this is why. The Fiscal Office, as I understand it, has only taken into account the amount of money that will be lost if deposit taxes are allowed to be used as a credit. However, in 2007 alone so far, banks that have recently elected sub-S corporation status, should pay more than \$2,250,000 more in taxes because of that. We have not been allowed a credit for that. So the numbers that we have through the banking institutions...and I know you've been talking to a number of your hometown banks...and through our own fiscal analysts, they netted out. They say, okay, yeah, we lose income on the depository side because we're allowing a credit, but the Fiscal Office has not counted what that means in terms of income that should be paid in at the higher level. Therefore, on that alone we believe the fiscal note is, in fact, not representative of what the actual impact to our budgets will be. [LB456]

SENATOR PIRSCH: Thank you, Mr. President. [LB456]

SENATOR ERDMAN: Thank you, Senator White and Senator Pirsch. Senator Wallman, you are recognized to speak, followed by Senator Loudon. [LB456]

SENATOR WALLMAN: Thank you, Mr. President. I do business in a small rural bank and also we have national banks in our towns, and anything we can do to help our rural banks is good. They support our communities, they do things with our schools, our kids, they have activities. And I'm proud...and my great-grand...my grandfather, great-grandfather started a small bank so no longer am I a banker; I don't have any bank holdings, Senator Wightman. But I think if we can help these banks, and this looks like a good bill to me, studying it over, and I urge the support of this bill and the amendment. And if Senator White would like some more time I would yield to him. Thank you. [LB456]

SENATOR ERDMAN: Senator White, Senator Wallman would yield you 4 minutes and 10 seconds. [LB456]

SENATOR WHITE: Thank you for your courtesy, Senator Wallman. If other members have questions I would be happy to try to answer them. Other than that, I appreciate the time. [LB456]

SENATOR ERDMAN: Thank you. Senator Loudon, you're recognized, followed by Senator Wightman. [LB456]

SENATOR LOUDON: Thank you, Mr. President and members of the body. I support this bill, LB456, and the committee amendments. I was wondering, would Senator White

Floor Debate
May 04, 2007

yield for a question, please? [LB456]

SENATOR WHITE: Certainly, Senator. [LB456]

SENATOR ERDMAN: Senator White. [LB456]

SENATOR WHITE: Sorry, Mr. President. Certainly, Senator. [LB456]

SENATOR LOUDEN: At the present time, then, when people that have stock in these banks or something like that, they not only pay taxes on the income they receive from that bank, but the bank also pays taxes on the money that they distribute as income? [LB456]

SENATOR WHITE: Well, Senator, a C-corporation bank, what normally happens right now is the C corporation pays federal income tax as a C corporation. Okay? That's its federal tax burden. Then it comes to Nebraska, and we don't have an income tax for C corporations that hold banks. Instead we elected to have a different tax structure. What we elected to do is charge that bank corporation a percentage tax on the amount of money it has on deposit in the state, and so they pay that tax. And those are the two taxes the C-corporation banks pay. Now, an S-corporation bank in Nebraska is treated differently again. On a federal level it pays no tax as a corporation. And then on the state level it pays a depository tax, and then because of its status as a sub-S corporation, it must take any income that it earned that year and push it down to the shareholders. Therefore, the shareholders pay income tax at the federal level. They also pay state income tax. Now those folks that are doing that then have paid a depository tax at the sub-S, at the bank level, and they pay the state income tax, and so they are paying twice for the same stream of income. [LB456]

SENATOR LOUDEN: Yeah. Thank you, Senator White. That is certainly one reason I would support the bill, because there is some double taxation here. Part of the reason I support the bill, I think is when you look at the fiscal note and it said something about in there, there are currently 87 banks in Nebraska, and those are probably locally owned, family-owned banks, privately owned banks. And when you get down, when you stop and think 87, in the district I represent I think I only have two family-owned banks left. All the other banks in there are owned by...oh, we've got the Bear (sic--Bank) of the West in places, and of course that's a French holding company, and I think that's Asian money that's got a French holding company. And the closest one we have to a local home-owned bank is First National Bank here from Nebraska. So anything we can do to help out these locally owned banks, I think is something that needs to be done. These are the people do a lot of community work, is your local bankers on these small family-owned banks because usually they are the ones that will help some entrepreneurs if they want to start up something. More times than not they're the ones. They know the community, they know the people, and they usually are a real

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

Floor Debate
May 04, 2007

cornerstone for communities. So I think whatever we can do to help these type of banks is something that should certainly be done. We're losing our community banks like that, our locally owned banks, at an alarming rate. It will be like school districts here. You've got 87 this year, and I'll bet you in about three years from now you'll probably be lucky if you have 77 because it seems like whenever there is a chance, why, they're usually purchased by some larger banking system so they can get into an area and use that service facility for...to leverage their own banking system. So I am... [LB456]

SENATOR ERDMAN: One minute. [LB456]

SENATOR LOUDEN: ...certainly pleased that Senator White brought something forward like this. I think this will be something that's good for all of us and I certainly support it, and I have people in my district that are involved in local banks. Thank you. [LB456]

SENATOR ERDMAN: Thank you, Senator Louden. (Visitors introduced.) Senator Wightman, you're recognized to speak, followed by Senator Raikes. [LB456]

SENATOR WIGHTMAN: Thank you, Mr. President. I do have a few more questions for Senator White, if he would yield. [LB456]

SENATOR ERDMAN: Senator White, would you yield to questions? [LB456]

SENATOR WHITE: Certainly. [LB456]

SENATOR WIGHTMAN: Did I understand in your discussion with Senator Pirsch that right now subchapter S banks, financial institutions, are not allowed under the federal act? [LB456]

SENATOR WHITE: Subchapter S's are allowed. [LB456]

SENATOR WIGHTMAN: Okay. [LB456]

SENATOR WHITE: But to my understanding, LLCs and LLPs aren't, but I think there are bills pending. [LB456]

SENATOR WIGHTMAN: Okay. That answers that question. The next question I would have is, you would concede that the fiscal impact of this bill as far as our revenue is concerned, will make a fairly substantial difference with regard to our balance between expenditures and revenues? [LB456]

SENATOR WHITE: I will agree that in the early years on the green sheet it will show that. I think, Senator, that if we're correct and the banks do move to this because of the savings afforded by the federal system, in fact we will not have anywhere near that

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

Floor Debate
May 04, 2007

negative balance, and I would expect it to rapidly become a positive. So yes, our numbers on the green sheet, as Senator Heidemann said, absolutely they will show what they show. Do I think they will reflect what is going to happen economically? No, sir, I do not. [LB456]

SENATOR WIGHTMAN: But as far as our projections right now, that does become kind of important that we have an at least comfortable reserve between revenues and expenditures, and I assume you would concede that. [LB456]

SENATOR WHITE: Oh, certainly. I mean in terms of what we, as legislators, feel that we can do in terms of the appropriations, in terms of paying for other things, does this have an impact on it? Without doubt. Do I think that impact accurately reflects what is going to happen to the budget? No, I do not. [LB456]

SENATOR WIGHTMAN: I guess...of course, we have to look at those projections as we proceed through our budgeting process and pass on Final Reading a revenue bill, and I know there was considerable discussion yesterday. There may still be attempts to amend the revenue bill before Final or at the time of Final Reading, which could have a substantial impact, as well, on the revenues that are available. Do you agree with that? [LB456]

SENATOR WHITE: Yes. I mean, Senator, given what the sheets are showing, without question. I mean, I guess I would liken it to driving your car. The car shows there is an eighth a tank of gas in there; you may have ten gallons in there, but you've got to assume it's an eighth a tank of gas. And will this impact what our sheets are showing us are available? It certainly will. Will it leave less money? Absolutely. [LB456]

SENATOR WIGHTMAN: If we came in at the time that we have the Final Reading on LB367, the revenue bill at any rate, and somebody were to, through an amendment, attempt to decrease revenues by another \$20 million, we would be in a pretty tight situation, wouldn't we? [LB456 LB367]

SENATOR WHITE: It depends. I mean, look at what happened on the economic forecast recently, Senator. I mean, wasn't it just last week the revenue forecast was increased by \$20 million? [LB456]

SENATOR WIGHTMAN: We also have a lot of appropriation bills that we're looking at, of course, that would add to our financial situation right now or detract from, whichever the case might be. So I guess I would second what Senator Langemeier said earlier, and that is that we have to be very careful as we go through this budgeting process and also a determination, final determination, of the revenue bill as to exactly where we are when we consider the appropriations, because there is not a lot of margin in between. Thank you, Mr. President. [LB456]

Floor Debate
May 04, 2007

SENATOR ERDMAN: Thank you, Senator Wightman and Senator White. Senator Raikes, you're next to speak on the committee amendment, followed by Senator Nelson. [LB456]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Senator White, you, I think, have explained, at least, well, as least as I understand it, that there is enough advantage at the federal level on taxation, that banks can convert to sub-S's at the state level, which would be somewhat a disadvantage to them at the state level, but there's enough offset at the federal level that this could happen. Now, that's assuming that we allow 100 percent deduction of the federal tax deposits, or federal deposit tax, on the sub-S return. In other words, whatever you paid in federal deposit tax, you can deduct 100 percent of that on your sub-S return. [LB456]

SENATOR ERDMAN: Senator... [LB456]

SENATOR RAIKES: My question to you is what if, instead of 100 percent, you did 50 percent? Would that still make it advantageous to do the switch? [LB456]

SENATOR ERDMAN: Senator White, would you yield to that question? [LB456]

SENATOR WHITE: Yes. First of all, no, Senator; I mean, the question is not properly phrased. The federal government does not tax, in any form that I'm aware of, deposits. [LB456]

SENATOR RAIKES: Okay. [LB456]

SENATOR WHITE: The depository tax is strictly on a state level. That's our tax. The federal government does not do that. What the federal government does is impose an income tax. If you are a C-corporation bank, it's imposed at the C-corporation level. If you are a sub-S, it's imposed at the individual level as a federal government. [LB456]

SENATOR RAIKES: Okay, I understand that, Senator, and thank you for correcting my misstatement, that it actually is a state depository tax. But the question is this: We would allow, under this proposal, a 100 percent deduction of the state depository tax if you are a sub-S. My question is, if instead of allowing 100 percent deduction of that state depository tax, you allowed a 50 percent deduction, would it still be to the advantage of the bank to switch from a C to a sub-S because of the federal tax advantage? [LB456]

SENATOR WHITE: Well, I think that...first of all, I cannot tell you for certain, largely because that's going to be driven by each individual person's tax situation. I can tell you that some banks have switched and found it advantageous with no deduction, so there are a number of Nebraska banks that have become sub-S banks even though they get

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

Floor Debate
May 04, 2007

no credit on the depository tax. [LB456]

SENATOR RAIKES: So, Senator, to the extent people are concerned about the fiscal note, would I be on track to believe that if you dropped the percentage deduction from 100 to 50 percent, that you would reduce the fiscal note of this proposal by about half? [LB456]

SENATOR WHITE: And that's exactly what we've done, Senator, in the first year. I mean, that's exactly what the amendments do. They go and phase it in from 100 percent to 50 percent, so certainly the numbers stand there. What, however, we don't know is...I mean, it's pretty clear to us and to the economic analysts that testified before the committee, that a complete conversion actually gives us the most money. So do we save money by reducing this? That assumes it a zero sum game, which it's not. As we get these banks to transfer over, we make more money because they pay higher income tax rates. [LB456]

SENATOR RAIKES: I understand that, Senator, but that doesn't show up on the green sheet, I don't think. I mean, I think you can make the argument and have done so effectively, but my question to you... [LB456]

SENATOR ERDMAN: One minute. [LB456]

SENATOR RAIKES: ...is that if you allowed 50 percent deduction of the deposit tax on the sub-S return, would not the fiscal note that appears on the green sheet be half as large? [LB456]

SENATOR WHITE: And that is obviously true because, as you've seen through the amendment, that in fact is what we've done. It doesn't show on the green sheet yet, but by cutting it in half--Senator Heidemann said it was from \$5.4 million to basically 3.7 or 3.6...I don't recall what he said exactly--certainly that would reduce it. However, that's what will show up on the green note. What won't show up is that then the economic incentive to move to it will be reduced and the recoupment from the income tax will also be reduced. Therefore... [LB456]

SENATOR RAIKES: But I understand... [LB456]

SENATOR WHITE: ...I would argue to you that, in fact, it will cost us more money, but not as, you are absolutely correct, Senator, not that would show up on the green sheet, but... [LB456]

SENATOR ERDMAN: Time. [LB456]

SENATOR RAIKES: Thank you. [LB456]

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

Floor Debate
May 04, 2007

SENATOR ERDMAN: Thank you, Senator Raikes and Senator White. Senator Nelson, you are recognized to speak on the committee amendment. [LB456]

SENATOR NELSON: Thank you, Mr. President. I would direct a couple of questions to Senator White, if he would yield. [LB456]

SENATOR ERDMAN: Senator White, would you yield to questions from Senator Nelson? [LB456]

SENATOR WHITE: Certainly. [LB456]

SENATOR NELSON: I'm looking on the back of your sheet, Senator, where you show these reductions in the amount of the fiscal impact. And down there where you say less additional tax paid by recent S conversions, we're talking about increased income tax there, is that...? [LB456]

SENATOR WHITE: Yes. What happens, Senator, is the economic analysis that was provided before the committee and the testimony that was uncontradicted was that as you convert banks from C corporations that pay depository, to sub-S to paying income tax on a personal level, the state gains money. We gain money as they convert. And so what that shows is if they convert in the future, in other words, removing them from the depository tax base into an income tax base, we actually gain revenue. [LB456]

SENATOR NELSON: So they're paying a state income tax but it's a higher level, is that what you're saying, than the depository tax? [LB456]

SENATOR WHITE: Yes. [LB456]

SENATOR NELSON: All right. And that's going to amount to \$2.5 million. That's... [LB456]

SENATOR WHITE: That's what the projections of our experts are; yes, sir. [LB456]

SENATOR NELSON: Okay. We aren't going to gain anything at all from the individual shareholders because they are getting a credit, and if anything, they're going to pay less tax, would that be correct? [LB456]

SENATOR WHITE: Well, right now, sir, under the C corporation, they don't pay tax. [LB456]

SENATOR NELSON: That's right, but...and we're going to give them credit under the S, sub-S conversion, and because of that, there's going to be...they ordinarily would have

Floor Debate
May 04, 2007

to pay the shareholder...the bank shareholders are going to have pay income tax on those dividends from the S corporation. Now we're giving them a credit, to a certain extent. [LB456]

SENATOR WHITE: If they pay dividends, Senator, but generally they don't. What happens, and under our existing tax code what I understand occurs is the following: These kind of corporations, banks especially, maintain capital. Because of their reserve requirements, they almost never actually distribute dividends, or rarely. A much more effective way to handle that is you simply leave the money in, the value of the stock grows. As it grows, and then it's time for you to cash out, whether you are an employee or an owner or whatever, what you do is utilize existing Nebraska law for a one-time special sale of stock which is completely tax free. This forces them, rather than sheltering income for years and allowing it to grow tax-free because of the operation of the federal tax code, it forces them to realize the income on an annual basis which they are willing to do, not because they want to pay us more but because they wish to pay the federal government less. [LB456]

SENATOR NELSON: So then basically all the reference here in the bill to the credit to the individual shareholders really doesn't have much effect, is that...? [LB456]

SENATOR WHITE: Well, the way this bill affects is right now those individual shareholders aren't paying us any tax generally on what the banks are doing. So it has an effect, in that they now are going to start paying income tax on what the bank does through its economic activities. So it does have an effect, in that it would lessen the amount of income tax they pay, but the net effects to the state is they're going to pay more money, because of the economic activity of the bank under this system than they do under our old existing law. [LB456]

SENATOR NELSON: All right. Thank you very much, Senator. Thank you, Mr. President. [LB456]

SENATOR ERDMAN: Thank you, Senator Nelson and Senator White. Senator Janssen, as Chair of the Revenue Committee, you're recognized to close on AM84. [LB456]

SENATOR JANSSEN: Thank you, Senator Erdman and members of the Legislature. I believe the committee amendments does make this a better bill and it phases that credit in, in two years, allowing just 50 percent of the deposit taken against that credit in the first year and 100 percent thereafter. So I believe this is probably not reflected in the A bill but it does make it a better bill, and I ask for the passage of the committee amendment. [LB456]

SENATOR ERDMAN: Members, you've heard the closing on AM84, the Revenue

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

Floor Debate
May 04, 2007

Committee amendments to LB456. All those in favor vote aye; all those opposed vote nay. Have all senators voted who wish to? Record please, Mr. Clerk. [LB456]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB456]

SENATOR ERDMAN: The committee amendments are adopted. We will now proceed to discussion on LB456 as amended. Seeing no lights on, Senator White, as principal introducer of LB456, you are recognized to close. [LB456]

SENATOR WHITE: Thank you, Mr. President. I want to thank my colleagues for the courtesy of the debate and also their consideration. I bring this bill because I think by providing a rational tax structure we provide the best opportunity to amass capital and then to get it working inside of our economy. Senator Louden touched on it well. A small-town banker with ties to the community will have a good sense of which young man is likely to do a better job trying to start a herd of cattle or begin operations on some land. Those are the sources of the incomes of the future. The growth in the economy and jobs always occurs in startup and small ventures. That's where the middle-class prosperity is tied to. I believe this bill puts us in the best position to help our children and our grandchildren have the economic tools necessary to provide for their future economic security. Thank you, and I would appreciate your vote on this bill. [LB456]

SENATOR ERDMAN: Members, you've heard the closing on the advancement of LB456 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all members voted who wish to? Record please, Mr. Clerk. [LB456]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB456. [LB456]

SENATOR ERDMAN: LB456 is advanced. (Visitor introduced.) Mr. Clerk, do you have any items for the record? [LB456]

CLERK: Not at this time, Mr. President.

SENATOR ERDMAN: Mr. Clerk, next item on the agenda.

CLERK: Mr. President, LB142 by Senator Friend. (Read title.) The bill was introduced on January 8, referred to the Judiciary Committee, advanced to General File. There are committee amendments pending. (AM579, Legislative Journal page 865.) [LB142]

SENATOR ERDMAN: Thank you, Mr. Clerk. Senator Friend, as introducer of LB142, you are recognized to open. [LB142]

Floor Debate
May 04, 2007

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. LB142 is a bill that more or less proposes to amend the existing criminal offense of intimidation by telephone call to include communication devices via computer, electronic communication devices, etcetera. LB142 is intended to stop online predators at the entry level stage, if you will, of their behavior with children. I am in communication this summer with the Attorney General and the Attorney General's Office. I carried this bill on behalf of the office, and the bill came out of committee, split votes. There were no opponents on the bill. The bill has been drafted by the Attorney General's Office and there are, as the Clerk mentioned, there are committee amendments and I think the Judiciary Committee Chair, Senator Ashford, will address that in a minute. It creates the offense of enticement by electronic communication device, and prohibits a person 19 years of age or older from knowingly using an electronic communication device to contact a child under 16 or a peace officer who is believed to be a child under 16, and in so doing uses or transmits lewd, lascivious, or obscene language, writing or sound, transmits or disseminates any visual depiction of sexually explicit conduct, or suggests any indecent, lewd, or lascivious act. Enticement by electronic communication device is a Class IV felony; the bill would accomplish that. The bill would also bring Nebraska's intimidation laws, we feel--the sponsor of the bill and the office--in line with twenty-first century technology. Violence against others is no longer limited to person-to-person interaction and telephone calls. It strikes references to telephone calls and replaces it, if you look at the...if you want to go to your gadget and look at the committee amendment...strikes references to telephone calls and replaces it with electronic communication device, which includes cellular, wireless, and wire-based telephones, text messaging, computers, PDAs. It amends the offense of intimidation to prohibit the transmission of indecent or obscene writings or sound or any visual depiction of explicitly or sexually explicit conduct if the intent is to terrify, intimidate, threaten, or harass. It increases the penalties for all crimes of intimidation from an adult to an adult from a Class III misdemeanor to a Class I misdemeanor. It also strikes references to annoy or offend, again those in the committee statement...or the committee amendment. In Section 28-1310, to limit the offense of intimidation by electronic communication device to only include conduct intended to terrify, intimidate, threaten, or harass another individual. Also it changes from "shall" to "may" the requirement that a court find that the use of indecent or obscene language or the making of a threat or a lewd suggestion is prima facie evidence of the intent to terrify, intimidate, threaten, or harass under Section 28-1310. Members of the Legislature, one of the interesting things, I think, about our criminal code in this area of law--interesting or maybe even a little bit confusing--is that telephone calls are categorized in a way that some would consider, if you look at the penalties in relation to them and you look at the guidelines associated with them, some would consider it a restriction of free speech. I can't call somebody on the telephone, threaten them, terrify them, intimidate them, without having consequences applied to those actions. I have free speech rights. I have a pretty good understanding of what they are, but I can't call one of you on the phone and say I'm going to come over and beat you up, so look out, and I've got all kinds of tools in order

Floor Debate
May 04, 2007

to do that. That's a crime. All we're saying here is that our laws, it could be argued and I would submit to you, are antiquated. And I would like to say, too, to make this really clear, that this language, there are good, honest, knowledgeable people that created this language; also when the committee amendment is addressed, good, knowledgeable, honest people who addressed what they thought were concerns with the original language, with their new language. A lot of people addressing this subject matter is what I'm getting to in regard to the language--a lot of good people and a lot of knowledgeable people. So I would say further, if there are still questions and concerns about this language into the subject matter that I brought up--free speech rights, the idea that somebody is just being painted into a corner and we're being overly aggressive with our criminal code--be willing to discuss that and to talk about that to make the proper enhancements if those are necessary, but frankly, I'm not sure they are. Are there First Amendment concerns with this? Let's run out in front of the bus, okay? Let's get out in front of that bus. There are courts in California and Florida that have indicated already that language, that this type of language, criminalizes conduct, not speech. There will be questions brought up about entrapment. A sexual predator may try to use the idea that entrapment could be a defense. The fact that an officer gave the predator an opportunity to demonstrate his predisposition to commit the offense is clearly not entrapment. I said this in the hearing and I believe it: This is really important legislation and we're probably going to hear a lot of different things out there, as I mentioned before, about language--the confusion and everything else. Let's talk about that. But this is important legislation because our laws...I would submit to you that our laws, our criminal code, is antiquated. That's why I listened to the folks who originally talked about this subject matter from the Attorney General's Office... [LB142]

SENATOR ERDMAN: One minute. [LB142]

SENATOR FRIEND: ...and from the law enforcement community about making the enhancements. I think it's appropriate. I think we need to be deliberate. I'm willing to do that. Patient, calm, understanding, and experience from all of your backgrounds to deal with the subject matter, if we need to do so. I think it's a good bill. I think it's an important bill. And I think it's a tool that prosecutors around this state and our law enforcement community can use to make our communities safer and to enhance efforts in a very, very difficult area of criminal law. Mr. President, that's all I had. Thank you very much. [LB142]

SENATOR ERDMAN: Thank you, Senator Friend. Members, you've heard the opening on LB142. (Visitors introduced.) As the Clerk stated, there are committee amendments to LB142. Senator Ashford, as Chair of the Judiciary Committee, you are recognized to open. [LB142]

SENATOR ASHFORD: Thank you, Mr. President. I'm going to read these committee amendments into the record. Senator Friend did comment on much of what I'm going to

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

Floor Debate
May 04, 2007

say. Clearly, as Senator Friend suggested, before I get started, this will be a debate about the scope of crimes that involve the First Amendment and free speech, and I know that in talking to my colleague, Senator Chambers, that that's a concern of his. There were 5 votes in favor of moving this bill to the floor and the 3 votes against. It is an important issue, and so I expect that there will be a good debate on some very significant issues involving crime and the First Amendment. The committee amendment, AM579, replaces the green copy of the bill and makes the following changes to the bill as introduced. First of all, it creates, as Senator Friend indicated, a new and separate offense of enticement by electronic device, rather than the original bill which enhanced the penalty for the crime of intimidation by telephone when the victim is under the age of 16. The offense of enticement by electronic communication device prohibits a person 19 years of age or older from knowingly using an electronic communication device to contact a child under 16 or a peace officer who is believed to be a child under 16, and in so doing uses and transmits lewd, lascivious or obscene language, writing or sound, or transmits or disseminates any visual depiction of sexually explicit conduct or suggests any indecent, lewd, or lascivious act. Under the committee amendments, this new crime of enticement by electronic communication device is classed as a Class IV felony. Secondly, the committee amendments amend the definition of an electronic communication device to clarify that these devices include cell phones, wireless, and wire-based telephones, text messaging, computers, and PDAs. Thirdly, the committee amendment strikes references to "annoy" or "offend" in Section 28-1310, existing statute, to limit the offense of intimidation by electronic communication device to include only conduct intended to terrify, intimidate, threaten, or harass another individual. Again, here we are narrowing existing statute and existing definitions of existing crimes. Fourthly, the committee amendments amends the offense of intimidation. This is another offense now. Enticement is the new offense--this is intimidation by telephone--to prohibit the transmission of indecent or obscene writings or sound or any visual depiction of sexually explicit conduct. Fifthly, the committee amendment replaces references to "telephone" with "electronic communication device" and updates the terminology to reflect current technology. Lastly, the committee amendments change from "shall" to "may" the requirement that a court find that the use of indecent or obscene language or the making of a threat or a lewd suggestion is prima facie evidence of the intent to terrify, intimidate, threat, or harass under Section 28-1310, existing statute. Thank you, Mr. President. That concludes the committee amendments and I would urge their advancement. [LB142]

SENATOR ERDMAN: Members, you've heard the opening on the Judiciary Committee amendments to LB142. Speaker Flood, you are recognized to address the Legislature. [LB142]

SPEAKER FLOOD: Thank you, Mr. President and members. I just want to first of all say thank you to the senators, their staffs, the Clerk and his staff, Sergeant at Arms and everybody, the pages and certainly their supervisor Kitty, for all the work, and I'm sure

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

Floor Debate
May 04, 2007

I've left somebody out in that intended broad-based thank you. But we had quite a week this week. We dealt with some of the state's toughest issues. It's my intention to adjourn here in the next couple of minutes. This weekend, get everybody well rested up and we will be discussing the budget again at a time certain on Monday. And there are a number of amendments to be considered; we have our work cut out for us the next couple of days. So I just appreciate everybody's hard work and would ask you to have an enjoyable weekend. Thank you, Mr. President.

SENATOR ERDMAN: Thank you, Mr. Speaker. Mr. Clerk, items for the record.

CLERK: Mr. President, Senator McDonald, an amendment to LB321; Senator Schimek, LB321; Senator Heidemann, LB321; Senator Synowiecki, LB542; Senator Langemeier, to LB570. Senators Fischer and Langemeier would like to add their name to LB367, and Senator Lathrop and Erdman to LB564 as cointroducers. (FA101, FA102, AM1166, AM1155, AM1202, AM1194, Legislative Journal pages 1423-1430.) [LB321 LB542 LB570 LB367 LB564]

And Mr. President, I have a priority motion. Senator Flood would move to adjourn until Monday morning, May 7, at 10:00 a.m.

SENATOR ERDMAN: Members, you've heard the motion to adjourn until Monday, May 7, 2007, at 10:00 a.m. All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned.