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Floor Debate  
March 12, 2008

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[LB249 LB280A LB294A LB606A LB606 LB701 LB738 LB765 LB766 LB777 LB797  
LB822 LB853 LB878 LB880 LB889 LB902 LB912 LB958 LB959 LB960 LB961 LB975  
LB1001 LB1001A LB1014 LB1022 LB1048A LB1072 LB1092 LB1094 LB1094A LB1096  
LB1108 LB1157A LB1172 LB1173 LB1175 LR255 LR256 LR257 LR258 LR259 LR260  
LR275 LR276 LR277]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for this, the fortieth day of the One Hundredth Legislature, Second Session. Our pastor for today is Dale Marples of Jubilee Church, Omaha, Nebraska; Senator Nelson's district. Please rise.

PASTOR MARPLES: (Prayer offered.)

SENATOR LANGEMEIER: Thank you. I call to order the fortieth day of the One Hundredth Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: Mr. President, I have no corrections for the Journal.

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

CLERK: Mr. President, I have neither messages, reports, nor announcements at this time.

SENATOR LANGEMEIER: Thank you. We will now proceed to the first item on the agenda, LB878. Mr. Clerk, for a motion. [LB878]

CLERK: Mr. President, Senator Engel, as primary introducer, would ask unanimous consent to bracket LB878 until April 1 of 2008. [LB878]

SENATOR LANGEMEIER: Are there any objections? [LB878]

SENATOR CHAMBERS: I object. [LB878]

SENATOR LANGEMEIER: So noted. Senator Engel, you are recognized to open on

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

Floor Debate  
March 12, 2008

---

your motion to bracket. [LB878]

SENATOR ENGEL: I'd like to move that we bracket LB878 until April 1, 2008. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Engel. You have heard the opening on the motion to bracket until 4-1-08. The floor is now open for discussion. Senator Engel, your light is on. [LB878]

SENATOR ENGEL: I believe we're standing still at the present time and I think we're wasting a lot of valuable time by continuing. We've got several things to do. And with that, I would just like to do this because I think for the good of the order here. So that's why I want to do it. And I think it's...I don't like to give up and I haven't, really. But the thing is, there's a reality check here. The votes aren't there for cloture, it looks like Senator Chambers is going to take it to cloture, and I believe we're running out of time. We got too many things to do. So in deference to that, I would request the approval of the body to honor my request to bracket. Thank you. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Chambers, you are recognized. [LB878]

SENATOR CHAMBERS: Mr. President, members of the Legislature, my intent is not to oppose what Senator Engel is doing, but to come forth with a mea culpa this morning. Yesterday I emphasized that I felt my colleagues, even if shown to be wrong, would not change their position, and then stated that if I were shown to be wrong I would change mine. I baited Senator Engel yesterday over and over to get him to read his bill so he would show that something I said was incorrect so that I could immediately acknowledge that I was wrong and alter my position. We were talking about what statement would have to be reviewed by the judges. He said the judges would only have to review 60 words. I said that that 60-word requirement was only on the defense statement and not with reference to the petition being filed, and there was no limitation on the number of words that could be on the petition. That was patently incorrect. I knew it was incorrect when I said it. I even tried to bait Senator Engel by saying he didn't know what was in his own bill, and I knew at that point he would read it, he'd stand up and call me to book and I could acknowledge that I was wrong. Since Senator Engel, for graciousness or whatever reason, did not do that, I have to come clean on my own. This morning I want to be cleaner than Eliot Spitzer. (Laughter) That comment that I just referred you to was incorrect. I am correcting on the record the error, the erroneous statement that I made. And with that, I probably cannot withdraw my objection, but I'm going to vote in favor of honoring Senator Engel's request. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Engel, your light is on. You could either close or be acknowledged. [LB878]

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

Floor Debate  
March 12, 2008

---

SENATOR ENGEL: I would like to acknowledge the statement from Senator Chambers. And the first time you mentioned that, Senator Chambers, I did respond, and that's also in the record, that it was not the defense statement. And then evidently, Senator Chambers, I appreciate your acknowledging that you were wrong, but I realize when you kept it up and kept it up, I knew what you were doing and therefore I did not continue on. So I want to let you know that, too. So with that, that's my closing. Thank you. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Engel. You have heard the closing on the motion to bracket until 4-1-2008. All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB878]

CLERK: 32 ayes, 0 nays, Mr. President, on the motion to bracket the bill. [LB878]

SENATOR LANGEMEIER: LB878 is bracketed. Next bill on General File, LB1001. [LB878 LB1001]

CLERK: LB1001, introduced by Senator White. (Read title.) The bill was introduced on January 16 of this year, at that time referred to the Revenue Committee. The bill was advanced to General File. There are Revenue Committee amendments, Mr. President. (AM2001, Legislative Journal page 681.) [LB1001]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator White, you are recognized to open on LB1001. [LB1001]

SENATOR WHITE: Thank you, Mr. President. LB1001 is a bill that is designed to meet a current crisis facing many of the citizens of this state. As I go through it and outline the essential elements, please remember it is directed at a very specific subset of the population; that is, people who own a home within 150 percent of the poverty level. That is a very specific group and overwhelmingly it is comprised of men and women who bought their homes when they were working and who are now retired. And we have a particular interest in this subset of citizens because they increasingly, when they leave their homes, become residents of nursing homes and they add substantial costs to Medicare and Medicaid. So as we move through this bill, I ask the members to think about the people it is intended to serve and think about the savings that will result and does result when we enable these folks to stay in their homes past the normal time that they would otherwise go to a nursing home, which we would pay for. What this bill does effectively is takes 5 percent of the sales tax that a power company, one of our public power companies, collects from the sale of electricity. That 5 percent is then identified by our Treasurer. And if the power company decides to participate--it is not mandatory--but if the power company decides to participate, that 5 percent would be paid into a special trust fund that would be matched by the power company. The

Floor Debate  
March 12, 2008

---

matching money would then be administered not by the state, but by the power company. That money could be used and would be used, must be used, to identify homes whose owners are within 150 percent of the federal poverty rate. It would then be used to improve the energy efficiency of those homes. That could include but would not be limited to things like weather stripping, new windows, insulation, more efficient furnaces. The entity itself would contract. And again, I ask the members to focus on the people who would be served by this bill. We're talking elderly citizens who own a home but who are not well-off. Frequently this subset of our state have been victimized by contractor scams who come through, they contract with elderly people, they don't provide the services. They end up putting liens on their homes. The costs are unfair and out of proportion. This bill again is tailored very carefully to serve the elderly in our community. What it does is allows the power company to do the contracting. The power company will make the contract, whether it's for new windows or if it was for insulation or it was weather stripping or for new furnaces. One, they would have economies of scale. They would look at it over a year. Then it's up to them, but they can contract with a contractor to do a number of homes, thereby getting a much better price. Second, the power company would ensure the work was done and done properly. Third, the power company would ensure that payment was made so no liens would be placed on the elderly people of our community. This is a group of folks who are most hard-pressed by the recent explosion in energy costs. We find increasingly that they are not heating their homes, they are not eating properly, and they are not always even then able to afford the medical care they need and the prescription drugs they need to remain healthy. When they do not have adequate food, when they do not have adequate medical care, when they do not adequately heat their homes, they get sick and they come on the Medicare and Medicaid rolls. So really what this is, is very much designed to help them remain healthy and in their homes. And we make sure they're not taken advantage of. Now the fiscal note on this assumes, first of all, there would be complete usage across the state. The total amount that it could cost at the high end according to the fiscal department's notes is, their best estimate is \$4 million across the state. However, the committee has an amendment, which I accept gladly, that will tighten rules on contractors. And you'll note this bill has an important component, though it's not spelled out in the bill, but it will tighten...the amendment will tighten treatment of contractors and this bill deals with contractors. It allows homeowners, elderly homeowners to get essential work done on their homes without being afraid that they are going to be taken advantage of. The amendment that the committee will offer, that Senator Janssen will offer shortly, would also provide a tightening on the reporting requirements for contractors which would say that if you must withhold from work an independent contractor does for your for taxes to make sure the state gets their taxes, unless they are registered with the state and you've checked within a year that they are so registered. That will offer a substantial savings from people who are improperly not paying their taxes. The fiscal note on that, the savings note on that is approximately \$1.6 million. So the package on this bill at its most expensive should cost around \$2.4 million, at its high end. There will, however, be a number of savings that won't be

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

Floor Debate  
March 12, 2008

---

expressed. First of all, it is not at all clear that all the utilities will choose to participate or choose to participate to the maximum of 5 percent of the sales tax they collect. So that would, or could, substantially reduce the fiscal note. Second, the savings that will result from our elderly population being able to stay in their homes in a warm, healthy environment will be very substantial; and we will see that in the resulting years of Medicare and Medicaid. And that is not calculated as a savings in this bill, though it is real and it will be substantial. Now there have been several really thoughtful questions I've been happy to address. Senator Stuthman was very kind to bring to me the question of will this drive up the cost of electricity. Because it does require, if a utility wishes to participate, a 5 percent matching fee. And it also requires the utility to manage this program at their cost. And I would say to you that as best I can tell the answer is no, just the opposite. This bill was brought to me by my power provider, Omaha Public Power District, OPPD. And one of their stated reasons was that it is one of the best opportunities they have to save money on money they must set aside to build new generating capacity. Their position on it is that the best thing they can do to keep costs down is to reduce the need for new electrical generating capacity. And if they do that, the amount that they set aside from every dollar of electricity sales to build a new generator in the future, if they can reduce that money that they must withhold, that they must set aside, and they can take care of that future need in a less expensive manner, it would be far better. It is their position that this could in fact save money because it would reduce the amount of money they have to set aside to build new electric generating capacity. We're also looking at a future in which carbon taxes seem to be very likely, that the reliance on coal that we have overwhelmingly in this state to generate electricity will become more expensive, not less; not because we're running out of coal,... [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR WHITE: ...but because of the cost of cleaning the carbon out of the air. This bill offers us one of the very best opportunities to reduce carbon emissions by making real profound conservation savings, and it does it for the folks who can't afford it. One of the really brutal realities of poverty is that you can't sometimes afford to save money because you cannot make the investment necessary to do it. You cannot afford better insulation so you pay more in heating and you live in a colder home. This bill is a step towards correcting it. I appreciate my colleagues' courtesy in listening to it and I welcome the discussion that follows. Thank you. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator White. Speaker Flood, for an announcement. [LB1001]

SPEAKER FLOOD: Thank you, Mr. President. Just briefly, there was one bill that was intended to be on the consent calendar that was inadvertently left off; it is LB1108. It changes licensure requirements for mental health practitioners, introduced by Senator

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

Floor Debate  
March 12, 2008

---

Erdman. It will be on tomorrow's consent calendar at the very bottom of the consent calendar. Again, that is LB1108. Thank you, Mr. President. [LB1001 LB1108]

SENATOR LANGEMEIER: Thank you, Speaker Flood. (Doctor of the day introduced.) As the Clerk has stated, there are committee amendments offered by the Revenue Committee. Senator Janssen, as Chair of the Revenue Committee, you are recognized to open on the committee amendments. [LB1001]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. The committee amendments combines and clarifies the provisions of LB1001, which allows electric suppliers to opt into a program for providing grants for low-income Nebraska residents and makes energy-saving improvements to their home, and LB1175 which adds a new withholding requirement for a business making payments of more than \$600 for construction services to persons who are not employees. The committee amendment would create the Energy Conservation Improvement Fund to be administered by the Department of Revenue. There is a subaccount for each eligible entity providing matching funds for the eligible conservation improvement program. The fund and the respective subaccount is to consist of a designated portion of the sales tax collected by the eligible entity from customers not to exceed 5 percent of the total taxes remitted in the period, plus an equal amount of matching funds. The Department of Revenue has developed a form to be attached to the sales tax return designating...designated a portion of remitted sales tax and pay the matching funds. Any electric utility that has provided the matching funds may establish and administer a grant program for eligible low-income persons to make eligible energy conservation improvements to his or her residence. The utility would be required to verify that the improvements have been made. LB1175, part of the committee amendments would amend the income tax withholding statute to add a new withholding requirement for any contractor making payments of more than \$600 for construction services to a contractor or a person that is not an employee. The withholding would be 5 percent. This requirement shall not apply if the payee shows that any income that is earned would not be subject to income tax because of a treaty obligation of the United States, or that the payor determines that the payee is a contractor that is registered under the Contractor Registration Act. The amendment would also require contractors to withhold from subcontractors any amount sufficient to guarantee that all taxes, including unemployment taxes and withholding, are paid. Failure to comply or obtain clearance from the Department of Revenue renders such contractors liable for the amount of the bond currently required of the subcontractors. That is the extent of the committee amendments, and I hope you will go ahead and verify the committee by a green vote on the committee amendments. Thank you. [LB1001 LB1175]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Mr. Clerk, for a motion. [LB1001]

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

Floor Debate  
March 12, 2008

---

CLERK: Mr. President, Senator White would move to amend committee amendments, AM2244. (Legislative Journal page 867.) [LB1001]

SENATOR LANGEMEIER: Senator White, you are recognized to open on AM2244. [LB1001]

SENATOR WHITE: Thank you, Mr. President. Thank you, Senator Janssen. The section of this with the contractor registration and the collection was brought to me by the administration to try to correct a hole in our laws that have allowed unscrupulous independent contractors to not properly pay taxes that are due and owing to the state. The amendment to the committee's amendment was likewise brought to me by the Department of Revenue. We have throughout this process worked very hard with the home builders' associations, the contractors to make this bill as easy to obey, should it be enacted into law, as possible. This amendment is intended to streamline it for the contractors so that we will make one phone call essentially and find out if the person they're dealing with is a properly registered contractor, in which case they don't have to withhold. So this bill remains a work in progress on that. We continue to work with business and we will continue to work with business. It is my firm belief, and I believe that of the fellow members on the Revenue Committee, that while paying taxes is not pleasant, it should not be difficult. We should make it as easy to obey the law as possible, take away the headache and the hassles. So this amendment--which I would ask you to pass, and I would also ask you to adopt the committee's amendment to the bill--are really designed to allow the state to properly collect taxes that are due and owing to us, to capture those taxes that have been withhold wrongly by people who are taking advantage of the system, but to make it easy for the law-abiding contractors to be in compliance with the law and not face the risk of improper collection of taxes and liability for the failure to collect those taxes. So with that, I'd ask that this amendment be passed, adopted, and also then again the committee amendments to the bill. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator White. You have now heard the opening on LB1001, the committee amendments, and AM2244. The floor is now open for discussion. Those wishing to speak, we have Senator Pirsch, Howard, Preister, Harms, Stuthman, Burling, and Janssen. Senator Pirsch, you're recognized. [LB1001]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator White would yield to a question or two. [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly. [LB1001]

SENATOR PIRSCH: Thank you, Senator White, and I think you had mentioned that this is totally voluntary, the participation of the power companies in this program. Is that

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

Floor Debate  
March 12, 2008

---

correct? [LB1001]

SENATOR WHITE: Absolutely, yes. No power company need participate, no power company need participate up to the maximum 5 percent. They can participate one year and not the next. [LB1001]

SENATOR PIRSCH: Very good. How many, just to get a better idea, how many power companies...this is a public power state, correct? [LB1001]

SENATOR WHITE: Right. [LB1001]

SENATOR PIRSCH: And how many power companies then are there out there in the state? [LB1001]

SENATOR WHITE: I don't know the answer on numbers, Senator Pirsch. [LB1001]

SENATOR PIRSCH: Okay. With respect to the details of this as a homeowner, is there some requirement either for the power companies to look at or the homeowner to present...in talking about the specific project, to have it done it is the power company who decides what type of project, is that correct, can be completed? [LB1001]

SENATOR WHITE: Yes. I mean, the only requirement is that it be done on homes owned by somebody within 150 percent of the federal poverty level. And that flexibility for the power company to make decisions is very important to the bill. One of the main incentives to the power company is they want to save on the cost of generating electricity and building new facilities. It allows them to select where they think the money will be best utilized in their area and they, by far and away, will have the best and most intimate knowledge of the marketplace that they serve, rather than the state. [LB1001]

SENATOR PIRSCH: Thank you. Would the power company perhaps take on a different task on a case-by-case, house-by-house basis, or would it be a broad authorization of in all homes within our jurisdiction we would do caulking? You know, do you... [LB1001]

SENATOR WHITE: That's up to the power company, Senator. You know, and I think if they're driven by economic interests, the power company is probably going to look at how can we save the most energy and the most cost with the least investment. So whether that is focusing on 100 homes or providing minimum weather stripping for 10,000 homes, that would be up, you know, obviously for their decisions to be made. But I would tell you, I trust that they are going to be driven by their own economic desire to keep rates low and save money, and that will be to take each dollar and stretch it as far as possible. [LB1001]

SENATOR PIRSCH: And that's because they have skin in the game, so to speak. It

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

Floor Debate  
March 12, 2008

---

requires a matching fund, is that correct? [LB1001]

SENATOR WHITE: Absolutely. And also, for them the savings really, truly is, is if they can reduce the demand on kilowatts, those kilowatts will be available to spur growth. And they will tell you that the cheapest generating capacity that they can make is conservation, because it frees up room in the generator for new business, for new economic development. [LB1001]

SENATOR PIRSCH: Well, I would agree with that statement, as well. I'd yield the balance of my time to Senator White, if he had any additional comments. [LB1001]

SENATOR WHITE: Thank you, Senator Pirsch. Another very good question that was raised to me was from the city of Omaha's lobbyist who wondered if this will cut down on local sales tax revenue. And it is my understanding, and it is certainly my intention as the sponsor of this bill, that it will not. This applies only to the state funds, not to funds that would go to city or county, because they are collected by the State Treasurer. So it does not and should not and is not intended to in any way impact... [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR WHITE: ...county and city revenue. I'd also again urge the senators to...and I recognize that we're in tight times and this bill needs to compete on its merits with other bills. But at this level I'd ask that we just advance it, we advance the committee amendments, and that we look at it on its merits. But please talk to your constituents about what energy costs have done to them in the last year. One of the things that's another hidden point in this bill is, the oldest housing stock in the state, which is generally by far and away the most energy inefficient, is in rural areas. That is the area that is most desperately in need of this kind of work because as homes age, furnaces that are 25 or 30 years old are far less efficient than the newer ones. The insulation is not as good. I think as a totality this is a bill that will substantially save us money, but it will also do a real kindness for our elderly citizens. Thank you, Mr. President. Thank you, Senator Pirsch. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Senator Howard, you're recognized. [LB1001]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I stand in support of Senator White's bill. I thank him, and I thank our publicly owned utilities, Omaha Public Power, for coming forward in support of LB1001. This is a concept that will provide tangible, needed support for those individuals in our communities who simply want to live out their lives in their own homes but being on fixed incomes, being eligible for poverty level consideration, have difficulty making needed improvements. My district, District 9, comprises neighborhoods made up of older homes mainly, but could

Floor Debate  
March 12, 2008

---

benefit from up-to-date, energy-efficient improvements. Frankly, not only is it expensive to live in a drafty, leaky house, but it also takes a toll in terms of anxiety and worry. When an individual knows that their house is wasting money that they just don't have and they have no resources to fix it, they feel that their back is up against the wall. This is a hard way to live. You can't dread every winter or suffer through the hottest days of summer because you don't have the price of weather-tight windows or doors. This is a bill that improves our communities and helps our homeowners make needed energy-efficient improvements that otherwise would not be done. I ask the body's consideration for this bill. This is certainly a bill that helps people that need it the most. Thank you. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Preister, you're recognized. [LB1001]

SENATOR PREISTER: Thank you, Honorable President, friends all. I rise in support of AM2244. I rise in support of the Revenue Committee amendment and also Senator White's underlying bill. I think Senator White gave a very good description of what it does, explanation of why it does it. I think Senator Janssen gave the refinement in the committee amendment and its purposes. And I certainly, as a member of the Revenue Committee, concur with all of those reasons. What I want to add to that discussion is a highlight of what Senator White said, and that is that the cheapest kilowatt is the one that you don't ever have to generate. He said that a couple of times in different words. If we don't have to build new power plants because we conserve, we don't have to expend that money. And if there are people concerned about increasing costs by the utilities, this has the opposite effect. So I'm concerned about those ratepayer charges and the cost to the ratepayer. This should have the opposite effect; it should help to keep our rates low. Secondly, I will also underscore what he said about the fact that this is good for the low-income residents of our entire state. Because the program is voluntary, it's up to the individual local utility to decide whether or not they're willing to participate. It's voluntary. They make the choice if they participate or don't. And when they implement the program, to kind of highlight for Senator Pirsch, normally these types of programs don't just go in and automatically do the same thing for everybody, although they have some basis for doing that. Caulking is certainly one of those things, insulating is another. They have the base kinds of approaches, but what they do is go in and do an individual assessment. So they make a determination with a professional contractor. What is the best thing to do to make this individual house energy efficient? Once they have determined that, then they can look at how they implement all of those things. However, this is open and it's up to each individual utility to make the determination as to how they approach it and what they end up doing. So they know and energy contractors know what the payback period is, what the amount of savings is likely to be, and what impact that will have on that particular customer's bill. The impact on the individual customer's bill again comes into play because we want to help those low-income folks--the elderly, the veterans, the disadvantaged--to be able to afford to

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

Floor Debate  
March 12, 2008

---

pay their utilities. Right now we have a lot of people in Omaha, and I would venture to guess all across this state, that had difficulties paying their heating bills this winter because it was especially cold. I might make a note there that for those who think that global warming means every winter is going to get warmer, global warming essentially means we're going to have unsettled weather patterns. It means we're going to have colder spells, warmer spells, more droughts, more deluges. It means that the patterns are unsettled and we're going to have the extremes in all of these things. This winter wasn't exactly an extreme, but we saw much colder weather than we had for a number of winters. We have more people needing energy aid assistance. That puts a strain on the utility and drains other resources from the community. This will help to alleviate some of that because those folks won't have to pay... [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR PREISTER: ...these bills, not only next winter and the winter after, but on into the future, they will realize that savings. The utility will realize the savings because they won't have to worry about building additional capacity. And at some point as the city grows and the demand grows, we will need to get there. This slows that and I think that's very, very important. I would like to also thank OPPD and the utilities for supporting this. I think it's "farsightful." I think it's showing consideration of their customer base. I think the creation of the renewable, sustainable energy, energy efficiency department at OPPD is an excellent sign of their commitment to renewable energy and to responsible development at the same time they honor lowest cost electricity and honor their customers and their commitments... [LB1001]

SENATOR LANGEMEIER: Time. [LB1001]

SENATOR PREISTER: ...to the environment and to the state. Thank you. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Preister. Senator Harms, you're recognized. [LB1001]

SENATOR HARMS: Thank you, Mr. President. Would Senator White yield for a question? [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly. [LB1001]

SENATOR HARMS: Senator White, I noticed in your fiscal note that you're calling for about \$97,000 in reprogramming. Is that actually going to be enough? This is going to be a fairly large program, isn't it? [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR WHITE: Well, actually...and I appreciate that question, Senator Harms. The original fiscal note showed a number of about \$15 million. And I have...we changed the formula on where we get the money. So I am reading from, and will have for anybody who would like a copy, a memo from Dave Dearmont to Cathy Lang in which he said, and I'll just read the last section, that data is dated a bit, 2004 being the latest. But forecasting forward, I get about \$4.5 million from the first approach and a little less than \$3.5 million using the Energy Office data for fiscal year 2006-07 for 5 percent of the total; bottom line, I guess, about \$4 million, maybe a bit more for the 5 percent share. So the actual cost on this aspect alone would be \$4 million a year. But going...that would not include the offset from the contractor savings, which would be approximately \$1.6 million a year. [LB1001]

SENATOR HARMS: Would that be the money actually coming from our general budget? [LB1001]

SENATOR WHITE: What would happen is our general budget would take, if this bill was passed, in less revenue in the approximate amount, if it was fully subscribed to, approximate amount of \$2.4 million, based on our best estimates. [LB1001]

SENATOR HARMS: Okay. I have one other question. Do you have your white copy handy, on page 2? [LB1001]

SENATOR WHITE: Yes. [LB1001]

SENATOR HARMS: Item...line 16 where you talk about being a low-income family. [LB1001]

SENATOR WHITE: Yes. [LB1001]

SENATOR HARMS: One of the things I have found of so many programs, that it's so complicated for people to be able to fill out all the information that they want to make this qualification. They just walk away. Is this going to be a simple process so people can get in and get what they need to have? I think it's important to do this. I just...I know what happens with these programs, and I've worked with low-income families and people all my life, and I can tell you that that's one of the biggest issues for them. They don't know how to fill them out, they don't understand it. And I'm not saying that they don't have the ability. It's just foreign to them. [LB1001]

SENATOR WHITE: Yes. And actually, that's one of the things we took...and I appreciate those questions. That's one of the things we tried to take into consideration in this on a couple of levels. First of all, the \$97,000, which I didn't really address, that should not be a very serious recurring expense. The vast majority of the cost of administrating the program will actually be borne by the utility that decides to participate. Similarly, they will

Floor Debate  
March 12, 2008

---

make the qualifications. And their interest, the overwhelming economic interest of the utility is to get energy saved and so...to make it easy for older people, for poorer people to participate. The bill allows them to just...for example, they know their billing practices. They're going to know who's having trouble paying their bills. They're going to know from general economic data in an area who's most likely. I would anticipate in OPPD's situation they will go to people who they know will fit this, they will do infrared studies of their homes and say we can save you a lot of money. They will then enter into a large contract if, in Senator Pirsch's case, saying okay, we got 10,000 homes here, we've got enough money; let's send in a contractor to just simply weather-strip and caulk these homes, and that would be maybe the first year. So it would be, I anticipate, very simple. We didn't write the requirements because I don't want to get in the way of local people making it accessible and easy to access it. [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR HARMS: Well, thank you. I appreciate that answer and I think that will make this program successful. Thank you. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Stuthman, followed by Senator Burling. [LB1001]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I am in total support of the bill and AM2001 from the Revenue Committee, the committee's amendment to the bill. But I have some real concerns with Senator White's AM2244. The bill initially is to create an Energy Conservation Improvement Act, and that is done by the power companies that want to participate in this program. I think that's very good. I think that gives opportunity for a power company to contribute money into a fund and utilize that to hopefully, you know, insulate or upgrade homes, older homes in the community. But the concern that I have with Senator White's amendment is the fact that we're dealing with really nothing with the fixing of the homes or anything like that. We're dealing with the contractors. We're dealing with the Department of Revenue. The contractors...we have a bill already that states, you know, what contractors have to pay in, what they have to withhold. We adopted the Contractor Registration Act, which we did this year. And now this is, in my opinion, something that shouldn't be attached to this bill because I think that's already in place. On page 1 of this amendment, on line 20, it says the Department of Revenue shall create a database of contractors who are licensed, granted a permit, or registered under the Nebraska Revenue Act. I think that portion is already taken care of in the Contractor Registration Act under the Department of Revenue. Why are we adding that to this bill? That is a real concern of mine. And it has in there how the payments are to be made and everything like that from the contractor. Those things are in place. So I oppose this amendment because I think we should deal with the issue of the bill. The issue of the bill is to create an Energy Conservation Improvement Act where power companies contribute money into a fund,

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

Floor Debate  
March 12, 2008

---

they take 20 percent. They can take 20 percent of the sales tax that they send into the state, contribute that to a fund. They run the fund, they set up the rules of the fund, they establish the fund, and they provide matching funds. I think that's very, very good. But I think adding this contractor issue to it, those things should fall into place already. I do not know why they are added to this bill. And I would like to ask Senator White a question. [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Yes. [LB1001]

SENATOR STUTHMAN: Senator White, what is your intention with adding this contractor information onto this bill? [LB1001]

SENATOR WHITE: Oh, actually it was the committee, Senator Stuthman. The committee...the amendment that you're concerned about that adds the contractor information was the committee's. My amendment to the committee's amendment was brought to me, again, by the Revenue Department that wanted it further refined because of input from the homeowners and other contractors who wanted to make it easier to join. So the whole concept of the contractor collection where they would have to withhold for independent contractors unless they were registered is the committee amendment, not mine. [LB1001]

SENATOR STUTHMAN: Senator White, your AM2244 is your amendment to the committee amendments. [LB1001]

SENATOR WHITE: Yes, sir. Yes. Yeah, to the committee's amendment. [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR STUTHMAN: To the committee's amendment. And that is...deals with the contractor part of it. [LB1001]

SENATOR WHITE: Right, but AM2001 is the one that introduces it. And then after that committee amendment was made, there were further negotiations because, as I said, we continue to work very hard with the industry to make sure that they can live with this bill, that it's easy for them to abide by its provisions. They had additional suggestions that would make it easier for them to comply, less onerous. So we gladly agreed and that's why AM2244 exists, because the contractor association asked that these provisions be made to simplify the committee amendment. [LB1001]

SENATOR STUTHMAN: Do you feel that, Senator White, that this should be a component of the creation of the Eligible Energy Conservation Act? [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR WHITE: Yes, I do. And Senator, I think... [LB1001]

SENATOR LANGEMEIER: Time. [LB1001]

SENATOR STUTHMAN: Thank you, Mr. President. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Those wishing to speak: we have Senators Burling, Janssen, Hudkins, Wightman, Raikes, Wallman, Loudon, and others. Senator Burling, you're recognized. [LB1001]

SENATOR BURLING: Thank you, Mr. President. I'd like to ask Senator White some questions, if he would. [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly, sir. [LB1001]

SENATOR BURLING: Senator White, we discussed this a little bit in Revenue, but not a lot, and so I have some questions for you. I think I support this amendment because it is an effort to work with the builders' association and not put any more strain or work onto the contractors that we have to, to obtain the goal of the thought of collecting these taxes. But I have some questions for you as we move along here. I own a plot of ground and I want to build a house and you're a general contractor. [LB1001]

SENATOR WHITE: Yes, sir. [LB1001]

SENATOR BURLING: Do I, as the owner, have to withhold from you if you're not on the database? [LB1001]

SENATOR WHITE: If you are a general contractor on this, you would, as I read it. But generally it's people, I think, that are in the business of being general contractor that it's aimed at. I certainly, Senator, would look with the Department of Revenue, if they think it applies to individual homeowners building one house, I would like to see that exempted if in fact it's read that way. [LB1001]

SENATOR BURLING: Okay, thank you. Can the...can you, a general contractor, force the owner to directly pay the subcontractor that you hired and withhold if they're not on the database? [LB1001]

SENATOR WHITE: I don't think you can force them, certainly not under this law. I mean, and I certainly wouldn't do business with a general contractor that tried to do that to me. [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR BURLING: So the general contractor...it's generally accepted the general contractor pays all the subcontractors. [LB1001]

SENATOR WHITE: Yes. And under the lien law, that's how you want it. That's where, as a homeowner, you get your protection. If you individually contract with a subcontractor, they can place a lien on your home even though it's a private dwelling. Our lien laws right now would protect you from that if you did business with the general contractor in the event the general contractor didn't pay it. So this is congruent with lien law. [LB1001]

SENATOR BURLING: Yeah, I understand that. And that's another issue, really. So if a subcontractor doesn't want the withholding done, all they need to do is simply register in the database. [LB1001]

SENATOR WHITE: Absolutely. And all that the general contractor needs to do if he wants to do business with the contractor is pick up the phone, call the Department of Revenue, and they'll say yeah, he's properly registered, you don't have to withhold, and it's over. [LB1001]

SENATOR BURLING: Okay. Now if a general contractor does withhold from a subcontractor who's not registered, what's the provision then for remitting? Do you get to withhold some of that for your extra work or... [LB1001]

SENATOR WHITE: Not to my knowledge, no. It would be like an employer withholding from an employee, Senator, same provisions. You simply have to withhold and then you remit the money to the state. The independent contractor files their tax return and whatever they're entitled to out of that withheld money they get. And if it's properly paid as taxes it's paid over to the treasury. [LB1001]

SENATOR BURLING: Okay. That's what I thought, Senator, and I appreciate the dialogue. Thank you. Thank you very much. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Burling. Senator Janssen, you're recognized. [LB1001]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. I stand in support of Senator White's amendment to the committee amendments. It makes it a better bill and safeguards the recipients and the providers to the point where there is less that can happen. You know, we have one of the greatest and unique power systems in this state. Actually, we're probably the envy of the country with the type of public power we have in this state. And I believe that this bill is something that is going to be used on homes that are a little harder to heat and so on, and it's a conservation

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

Floor Debate  
March 12, 2008

---

type of program, to the point where you have a problem with your older home, you don't have a lot of money, you can come in and contractors can come in and suggest things, how you can save energy. And that's what it's all about. So I do stand in support of Senator White's amendment. I think it makes it a better bill. With that, I give the rest of the time back to the Chair. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Senator Hudkins, you're recognized. [LB1001]

SENATOR HUDKINS: Thank you, Mr. President, members of the body. I would like to ask Senator White a few questions, if I may. [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly. [LB1001]

SENATOR HUDKINS: Senator White, I appreciate you bringing this bill forward to us, and I appreciate the facts behind it to allow for low-income houses to update their homes for energy efficiency. Let me see if I have this right. So the power companies could, if they wanted, designate 20 percent of their sales tax revenue to this special fund for these grants. Correct so far? [LB1001]

SENATOR WHITE: No, 5 percent. [LB1001]

SENATOR HUDKINS: Five percent, I'm sorry. And then the power company would then match that 5 percent with its own funds. [LB1001]

SENATOR WHITE: Correct. [LB1001]

SENATOR HUDKINS: Do you know of any power companies that are really wanting to do this right away? [LB1001]

SENATOR WHITE: OPPD. [LB1001]

SENATOR HUDKINS: Okay. Do you know, with the 5 percent sales tax that they are putting into the state and then their own 5 percent, what is that likely to cost OPPD on a year's basis? [LB1001]

SENATOR WHITE: Well, I don't think it will cost them anything. I think they will save money. That's their position. OPPD said that if this bill is enacted and they take the 5 percent that would come from the state funds...and I want to emphasize, the fiscal note that estimates \$4 million--somewhere between \$3.5 million and \$4.5 million, \$4 million their best estimate--is only if every utility 100 percent participates. So the actual number

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

Floor Debate  
March 12, 2008

---

will be lower than that almost inevitably. But OPPD indicates to me that if they can have this plan in place they will save money, and a lot of money. [LB1001]

SENATOR HUDKINS: So their incentive is that if they do this, they would have to generate less electricity and therefore wouldn't have to build new facilities. [LB1001]

SENATOR WHITE: Well, and what it actually is, they won't have to build a new generator, which is very expensive. [LB1001]

SENATOR HUDKINS: Yeah. [LB1001]

SENATOR WHITE: They can reduce the use in the homes and then they can resell that available generating capacity, and that is more profitable than building a new generator and selling newly generated electricity. [LB1001]

SENATOR HUDKINS: All right. I think I heard you say earlier that the withholding part of it was not your amendment; that was the Revenue Committee's amendment. [LB1001]

SENATOR WHITE: Yes. The Revenue Committee asked that the contractor provision be added to it, and I think it belongs here, and I am very happy that it is in here. [LB1001]

SENATOR HUDKINS: Okay. Can you explain how that works? I missed that part of your explanation. [LB1001]

SENATOR WHITE: On the contractor withholding thing? [LB1001]

SENATOR HUDKINS: Yes. [LB1001]

SENATOR WHITE: Yes. One of the things last year we passed, the Contractor Registration Act. And one of the problems the administration has acknowledged with independent contractors--it's been an ongoing problem, it's not the only one but one of them--has been a number of them will come in, they'll do work, they will never pay taxes. Nobody withholds, they won't file, they just don't pay taxes. The cost to the treasury is estimated at \$1.6 million a year for that. Well, this bill builds on what we did last year and it tells a contractor, a general contractor, look, you have to withhold 5 percent of what you would pay them for taxes unless they're registered. If they're registered, make one phone call, confirm they're registered, and no problem, not at all. So it's very...and if we can make it even easier to obey, we will. But it's very...designed to be very easily obeyed, not cause additional problems for general contractors. But absolutely we intend to get the people who have not paying their fair share of taxes. We do intend to get them. [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR HUDKINS: All right. Thank you, Senator White. And thank you, Mr. President. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. Senator Wightman, you're recognized. [LB1001]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I'm generally in support, or am in support of LB1001 and the committee amendment. I might have had some problems had the committee amendment not reduced the fiscal note substantially from \$21 million and \$15 million to the current \$4 million, but Senator White is saying it's probably closer to \$2.4 million. I think we can live with that. I think it's a laudable bill as far as...and probably in the long run will save considerable energy throughout the state. Somebody asked are other power companies in favor of it. I did visit with a Nebraska Public Power District representative and they are supportive of this bill. And so I think generally probably the public power districts throughout the state are in favor. I do have some problems, however. I have some questions, first of all, with regard to Senator White. And then I will direct some of those to AM2244, if he's available. [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly, sir. Yes. [LB1001]

SENATOR WIGHTMAN: Senator White, I noticed 150 percent of poverty being the qualification threshold. Can you tell me how that's arrived at? [LB1001]

SENATOR WHITE: Yes. Senator, what we want to do is try to pick a number that will actually get the folks that are being squeezed the hardest for energy, but it has to be high enough that they actually own a home. And so we came to that number, and it's throwing darts. I mean, there is no exact science. But to the best of our abilities to estimate, what that number captures is a person who during their working days were able to buy a modest home, they retired and now they're living on Social Security or near Social Security, and therefore they are most eligible. If you get much lower than 150 percent of poverty, they don't own homes. If you get much higher than that, they ought to be able to do this on their own. So that's our best effort to try to target it to people who are on fixed low incomes who want to stay in their home they've lived in for years and try to keep them there. And also then if you look at that targeting price, those are people who will jump on Medicare/Medicaid if they lose their home. And so therefore we get the backside savings if we keep them in their home. [LB1001]

SENATOR WIGHTMAN: And I don't have any problem with the 150 percent. I think it probably is a logical compromise as to where you're going to reach that threshold. I know that sometimes this percentage of poverty level is used in jockeying for position

Floor Debate  
March 12, 2008

---

among political parties and I refer to the SCHIP's program in which one of the parties wanted to set that at about 240 percent of the poverty level, if I remember, and then that became the big sticking point on whether the legislation passed. [LB1001]

SENATOR WHITE: Yeah. No, that's not it. To us...I mean, because again, it really is voluntary. I mean, this...theoretically this bill could cost us nothing because maybe nobody will participate. But for the utilities we had to cast it high enough that we can actually get at the people who own the homes. And I'll be real frank: what I like about it is it's for elderly people on Social Security. That's who I really want this aimed at, and I think that's going to be overwhelmingly the people we'll help. And I think they're very deserving. [LB1001]

SENATOR WIGHTMAN: And I appreciate your response to that, and I believe the 150 percent is a fair determination as to what the eligibility ought to be for that program. I do have more questions with regard to AM2244 and particularly, you made the comment that this is to avoid unscrupulous contractors. I take some offense at that because I think there are a lot of the small contractors who may not be registered that don't even know what the law is. And I'm probably not going to be a one-man campaign to inform them of what the law is. But I don't think all of these contractors... [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR WIGHTMAN: ...who might do this business are unscrupulous. Thank you. [LB1001]

SENATOR WHITE: No, I would agree. They're not all unscrupulous. But there are a number of them, Senator, who are out there who aren't paying their taxes. And you know, we can talk about that, but in the end we all owe taxes and we should pay what we owe. [LB1001]

SENATOR WIGHTMAN: And I'm not sure I will support that amendment. I know we fought this battle and I think you said that a bill was passed last year, but I believe it was finally passed this year on the registration of contractors. It was debated last year, as I recall. [LB1001]

SENATOR WHITE: Yeah. Again, Senator, all I can tell you is this aspect was actually brought by the administration. The administration and the Revenue Department believe this is necessary to fairly enforce our tax laws. And I would urge you, as much as it might feel uncomfortable for small...some of the small independent contractors, when they don't pay their taxes other people pay more. And that's not fair. [LB1001]

SENATOR LANGEMEIER: Time. [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR WIGHTMAN: Thank you. Thank you, Senator White. Thank you, Mr. President. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Raikes, you're...oh, excuse me. Mr. Clerk, for an announcement. [LB1001]

CLERK: Mr. President, first of all the Agriculture Committee will hold an executive session at 10:30 in Room 2102; Ag Committee at 10:30 this morning. A new resolution, LR275 by Senator Flood, calling for an interim study. That will be referred to the Executive Board. Senator Friend, an amendment to LB1072. And I have a notice of hearing from Business and Labor Committee. That's all that I had, Mr. President. Thank you. (Legislative Journal pages 914-916.) [LR275 LB1072]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Returning now to floor discussion on AM2244. Those wishing to speak, we have Senator Raikes, Wallman, Loudon, White, Dubas, Gay, and Engel. Senator Raikes, you're recognized. [LB1001]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Senator White, if I might, I would like to ask you a couple of questions. [LB1001]

SENATOR LANGEMEIER: Senator White, will you yield to a question from Senator Raikes? [LB1001]

SENATOR WHITE: I will certainly try to. [LB1001]

SENATOR RAIKES: Senator, first I appreciate your continued effort on the contractor issue. I don't know that I have any objection to this particular proposal. I think I support it. So I just wanted to mention that. I do have some questions, and that's really all they are, about the energy part of the program. And one of the questions is this: Suppose I am an investor, perhaps a little short of scruples, and I am willing to go into an area in Omaha, for example, and buy some houses that I think would be the types of houses that you would be focusing on in this program, continue to rent them out to the existing renters, allow OPPD to come in and fix them up, which would increase their value, and then once that's done simply resell them. Would I be able to do that? [LB1001]

SENATOR WHITE: I don't think a person within 150 percent of the poverty rate could buy those homes to begin with. [LB1001]

SENATOR RAIKES: Okay. [LB1001]

SENATOR WHITE: Second, I don't think OPPD is going to have any particular interest in helping a person like that as opposed to helping a lot of ratepayers who they have to also stand for election on. So I would tell you, as a practical matter I don't think that's a

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

Floor Debate  
March 12, 2008

---

real risk, though certainly, you know, I suppose any good thing could be abused by someone if they spent enough time on it. I don't think this is a law that will be easily abused, however. [LB1001]

SENATOR RAIKES: Okay. So you're comfortable that abuse is blocked out, that we're not going to have difficulties with that. [LB1001]

SENATOR WHITE: Well, I would be... [LB1001]

SENATOR RAIKES: So let me ask you this, then. What about I am this owner of these homes, you live in one of them, you're paying the rent, you are not above 150 percent of poverty. In terms of this program, you're out of luck. OPPD is not going to be able to do anything for you to improve that home so that your utility payments would go down. [LB1001]

SENATOR WHITE: Right. One of the restrictions on this is you must own your own home. [LB1001]

SENATOR RAIKES: So renters are out of luck? [LB1001]

SENATOR WHITE: Renters wouldn't be available for this program. Whether we could do another program or a different program...certainly, for example, last year I brought a bill that would start doing energy audits, things like that. But in order to control this and really to target, which are elderly, and to get the savings you must own your own home. [LB1001]

SENATOR RAIKES: Okay. So there is potentially an inequity there that... [LB1001]

SENATOR WHITE: Yeah. I mean, not all laws, Senator Raikes, will always fix all problems all at once. So yes, this one is designed to keep older people in their homes which they own, and it's designed for that. Does it apply to renters? No. Do I think, for example, that the state should subsidize a landlord who owns a lot of homes in making his improvements? I don't, I don't. There are other programs, however, for renters that are available. For example, they can, if they're charged with utilities, apply to OPPD and various agencies for assistance in paying their bills. This is a different program for a different class of people. [LB1001]

SENATOR RAIKES: So again, go back to a different angle maybe here a little bit. It's...I have to be a homeowner and 150 percent of poverty... [LB1001]

SENATOR WHITE: Your income must be within 150 percent of the poverty level. [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR RAIKES: Okay, my income, not my wealth. So I might be in a situation where my actual annual income... [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR RAIKES: ...meets, but suppose I own an asset someplace that's worth a lot of money. [LB1001]

SENATOR WHITE: Yes, but generally when you own an asset worth a lot of money it produces some kind of income, whether it's farmland, whether it's stock, whether it's whatever. Your income must be within 150 percent of poverty and you must own your own home. [LB1001]

SENATOR RAIKES: Okay. And there is no way...I mean, suppose I'm in this situation and OPPD, for example, comes in and fixes my house for me, which would increase the value of my house. [LB1001]

SENATOR WHITE: Correct. [LB1001]

SENATOR RAIKES: And I don't have to pay any of that. [LB1001]

SENATOR WHITE: Not necessarily. [LB1001]

SENATOR RAIKES: There's no way that any of that increase or reduction in utility cost is captured and reinvested in the program? [LB1001]

SENATOR WHITE: Actually, Senator, and I appreciate that question because we had this debate and there is a provision in the bill that allows the power company to recapture a portion of what's invested. They don't have to, but they can. [LB1001]

SENATOR LANGEMEIER: Time. [LB1001]

SENATOR RAIKES: Thank you. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Raikes. Senator Wallman, you're recognized. [LB1001]

SENATOR WALLMAN: Thank you, Mr. President. And I too have a little bit of trouble, Senator White, with AM2244. But I realize you researched this, Revenue did. But I appreciate you bringing this forth and I think we're trying to make sure slum lords don't get this money, what my wife calls them. And renters would benefit from this but we can't use it, I realize. But we have people living in these smaller communities, energy inefficiency, power companies, the best way is to save electricity, save generation,

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

Floor Debate  
March 12, 2008

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because coal-fired plants are not being built in Kansas, Texas. So we go nuclear, we're more green energy. So I think this is a good amendment, a good bill, and I guess we got to start somewhere. And if we don't do anything, we won't go anywhere. Thank you, Mr. President. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Louden, followed by Senator White. Senator Louden, you're recognized. [LB1001]

SENATOR LOUDEN: Thank you, Mr. President and members. I would like to ask Senator White questions, if he would yield, please. [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly. [LB1001]

SENATOR LOUDEN: Yeah. Senator White, I support the bill and I support the amendment for the most part, because I usually rely on some of the other lawyers around the floor to take out some of the kinks out of the thing. And as near as I can tell, it looks all right. I guess my questions are more on who's going to be eligible to do this. And I was looking here on one of the pages, I think page 2, and you describe who the eligible entities are. And now in Nebraska there's about five municipal generation systems and of course there's a couple of state ones, Nebraska Public Power and also Central Power and Light that generates power out of Lake McConaughy. And not only that, 35 rural electrics, and altogether there's probably 170 electrical entities in the state of Nebraska. And I'm wondering, when you mentioned on page 2 in the amendment the different entities' descriptions, does that take all of them in or does that cover them all? [LB1001]

SENATOR WHITE: It's certainly meant to, Senator. And if one is not covered and would like to be, I will gladly amend so they can participate. But this is meant to be an exhaustive list so anybody that provides electrical power and then collects bills could participate if they want to. [LB1001]

SENATOR LOUDEN: Okay. And then that takes care of the co-ops and the rural public power districts. What I'm wondering, some of the...like Central Power and Irrigation, I don't know if they sell power but I think it probably goes out onto the grid. And I don't know if they sell power to individuals. So something like that they wouldn't necessarily be involved in something like this, would they? [LB1001]

SENATOR WHITE: You know, and my position would be, Senator, that if they'd like to be and this language does not include them, I will include them if they want. [LB1001]

SENATOR LOUDEN: Okay. [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR WHITE: I mean, my view should be that any consumer of electricity, wherever they get it from, and the people that sell it to them ought to be able to participate if the entity wants to. [LB1001]

SENATOR LOUDEN: Okay. [LB1001]

SENATOR WHITE: Not that they have to, but if they want to they ought to be able to anywhere in the state. [LB1001]

SENATOR LOUDEN: Now out in the western end of Nebraska, Tri-State Generation out of Colorado serves a lot of the western end of the state and they have their own...oh, they have incentives for electric hot water heaters and changing...I mean, all kinds of incentives they've had over the years. If they so decided to participate in this, they would have to do it through their line companies rather than directly such as they do it now. Most of that participation comes down through the line companies. It'd work the same way, would it? [LB1001]

SENATOR WHITE: Yes, I believe that's true. [LB1001]

SENATOR LOUDEN: Okay. Thank you, Senator White. That was mostly my concern, is how it was going to work on some of our public power districts and some of our rural co-ops if they wish to participate in this and where they could come across and do these things, because there are incentives already. And one thing I would point out, that Senator White has said, is to save energy and to fix up houses and stuff; you're not only saving electricity, you're probably going to be saving more natural gas than you are electricity because most of these homes that he's speaking of anymore are heated by some type of gas. A few of them are still left that use number one stove fuel, but most of those have went by the wayside. [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR LOUDEN: And so you're probably looking at conservation of a lot of natural gas and some electrical energy, but not that much. So thank you, Mr. President. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Louden. Senator Dubas, you are recognized, followed by Senator Gay. [LB1001]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I appreciate and I applaud Senator White for bringing this bill forward. Energy issues are very important to me. I've been working on renewable energy issues since taking office. And as I get out and about in my district and across the state, I realize that they're important to a lot of

Floor Debate  
March 12, 2008

---

people. And so we spend a lot of time talking about how do we create new energy and how do we develop renewable energies. But what Senator White is trying to address in this bill is a key component to talking about energy policy. We've got to be talking about how do we conserve energy. You know, as we watch the price of energy and fuel just go through the roof practically every day, it becomes really easy for us to get frustrated and very angry about what's going on. We rely on energy for every single thing that we do, whether it's work or play. I mean, it's just a part of the picture. And because of the prices we also feel very helpless. You know, there's nothing that we can do, and so that just fuels our, again, our frustration and our anger. But this bill shows that there is a lot that we can do as individuals and collectively. I was in high school during the energy crisis in the seventies and I remember when we lowered the speed limit, and we did a lot of things to try to conserve energy at that time. And they worked. But for some reason, you know, when the crisis passed and energy prices weren't quite so exorbitant we just left those conservative ways and the thought about energy needing to be saved, and we went back to taking it for granted and using it like it was always going to be available with no restrictions. And I've often wondered today if we had continued along those some types of habits, would we be in the place that we are today with energy? I know I've mentioned to high school kids when I talk to them about, I remember when we had to lower the speed limit to 55 miles per hour. You know, nobody seemed to mind too much at that time. But you say it to the kids today and it's like, I can't go that slow. They just think it's a terrible idea. But again, if we had continued along that path, you know, maybe we wouldn't be quite in the situation that we are today. But unfortunately our human nature causes us to not continue with those concerns unless we're directly impacted. This bill, and I think the amendment, is a huge step in the right direction towards raising the importance of energy conservation as a part of a comprehensive and a complete energy policy. And I do support Senator White's bill and the amendments and, again, applaud him for his efforts. Thank you. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Senator Gay, you're recognized. [LB1001]

SENATOR GAY: Thank you, Mr. President. I was listening to the debate earlier. I was a little leery on adding more duties to contractors. But listening to the debate, I am understanding it a little better and tend to be in favor of the amendment. So just a few things as we are looking at this, I do think this is a good bill. There's some real merit to it. The question of 150 percent of poverty, what that is, Senator White has referred this that it would help elderly members of the communities, and I think it will. I don't know exactly what 50 percent of that poverty line is. But looking at 150 percent of the poverty line for a family of three would be about \$25,755. I do think under this, though, if you're low income or working poor, this would also benefit them along the way because many of them probably would qualify. Maybe they're in a house or not, you never know everyone's exact situation. So I think we can come up with all sorts of scenarios. The point I wanted to make, I do think this is a pretty innovative idea that will help

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

Floor Debate  
March 12, 2008

---

promote...you know, this is an opportunity here where I think we're looking...many times we're brought...let's increase the percentage that we're going to pay for TANF funds and some of these things, you know, but this could be a real win-win situation, I think. Because you're helping some of those people if we don't help we're going to be helping or be pressed to help in another way, and this is a way to do it. We're saving energy, we're doing this. The contractor amendment here that we're going to talk about, I will be asking questions on that. But I suppose what I'm seeing is looking at how you do this. There are more creative ways than just pointing money at the problem. Now on this, we're benefitting somebody, you know, and working with somebody. And I looked at the proponents of this and no opponents, but I was surprised to see, you know, all the power companies are involved in this and seem to be very supportive of it. So I've heard good things. The one question, though, if Senator White would yield to a question. [LB1001]

SENATOR LANGEMEIER: Senator White, will you yield? [LB1001]

SENATOR WHITE: Yes. [LB1001]

SENATOR GAY: Thank you, Senator. Senator White, you talked about the Department of Revenue brought you this amendment to make it a better bill. [LB1001]

SENATOR WHITE: Yes. They actually...it was a separate bill they asked me to introduce, which I did. [LB1001]

SENATOR GAY: Okay. And then we were talking about the Contractor Registration Act, which I did not support. I fought against that. I told you the whole list of people on that contractor registration list; it was very extensive. [LB1001]

SENATOR WHITE: Yeah. And I want to be clear, and I misspoke. Tony Fulton, Senator Fulton was very kind to point out that actually Department of Revenue will compile their own list as well. So basically it's if you're a contractor, you're registered on that one, you're paying taxes or whatever, the Department of Revenue will have a list. And they'll say oh yeah, no, we know about that contractor, you know, they've got a taxpayer ID number, whatever it is; they're fine. So then you no longer have the obligation to collect taxes or hold taxes. [LB1001]

SENATOR GAY: Right. So the question, Senator, is this: On this, they will go...they wouldn't pay...if you're not on that list or a list they're going to make up, and I assume they'd work with the Department of Labor, if you're not on this list you can't participate in improving these homes, correct? [LB1001]

SENATOR WHITE: No, I'm sorry. The way it would work is, on that part of it is, a contractor...if I'm a general contractor and I want to do business with you and you say, I

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

Floor Debate  
March 12, 2008

---

will put the insulation in on this home or any home because it's... [LB1001]

SENATOR GAY: With the power company, you mean. [LB1001]

SENATOR WHITE: It would be anybody, right. And I'd say, I'm the general contractor, and you'd say yeah, great. And I'd say, are you recognized by the Department of Revenue as being a contractor in compliance with the laws here? And you say, well, I don't know. So all I have to do is pick up the phone and call. And if they say yeah,... [LB1001]

SENATOR FISCHER PRESIDING

SENATOR FISCHER: One minute. [LB1001]

SENATOR WHITE: ...we have Senator Gay, he's registered, I don't have to withhold. If you're not on that list, I still do business with you, sir. But I have to withhold 5 percent. [LB1001]

SENATOR GAY: Right, okay. But in reality, Senator, then most people are going to be on this list. The point I want to make real quick is we just expanded this. The list is already large. We gave more money for another person in the Department of Labor to manage this list. The problem I had, they're already currently not doing that. I would encourage them to start looking at this list. What you're preventing is people coming in from the outside, doing some work, and never paying taxes. But what I'm saying earlier, why I opposed that, and I'm just bringing it up again at this point, is because we never enforced it to begin with and now we have two people. And hopefully the Department of Labor will enforce this. If the Department of Revenue, which came to you and asked you to do this, they need to get together and make sure they're enforcing what we currently have. And I also didn't like the fees in that contract, but that's water under the bridge. It is the law. So hopefully they will work together and enforce the current law that we have. Thank you, Madam President. [LB1001]

SENATOR FISCHER: Time. Thank you, Senator Gay and Senator White. Mr. Clerk. [LB1001]

CLERK: Madam President, the Ag Committee will meet now in Room 2022; Agriculture Committee in Room 2022. [LB1001]

SENATOR FISCHER: Thank you. Senator Engel, you are recognized. [LB1001]

SENATOR ENGEL: Madam President, basically I just want to mention a few words and I want to ask a question of...or maybe just a statement for Senator White. First of all... [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR FISCHER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Yes, ma'am. [LB1001]

SENATOR ENGEL: Do you yield, Senator White? First of all, you had...the bill would authorize certain public power entities to designate. Now I notice in your bill it's OPPD and Aquila and so forth. Have they all come forward or is this just they can if they desire? [LB1001]

SENATOR WHITE: OPPD came forward. NPPD talked to me. They both are very supportive. But no one else came forward specifically, although I understand generally they're supportive. [LB1001]

SENATOR ENGEL: And they probably all will. [LB1001]

SENATOR WHITE: Yeah, they don't have to participate, Senator. It allows them, if it makes sense in their plans and how they're going to manage their need for electricity. This is just a tool they can use should they choose to. [LB1001]

SENATOR ENGEL: Okay. And then when I first brought on my light, Senator Raikes asked the question I was going to ask as far as that landlords. But actually it's just for homeowners. But I just wanted to let you know that there are programs for landlords through the Goldenrod Hills with the weatherization projects they have. And if you're below the poverty level, and that's for air conditioning and furnaces and windows and so forth. And it's actually...in the same effect, does the same thing because you weatherize the home, it's going to cut down on the utility costs. So those are...those programs are in force. And also, in answer to Senator Raikes...another question as far as that landlord, could he sell that home right away? Well, actually any landlord who participates this...in that program signs a rental agreement that they can't...for one year they cannot evict and/or can they raise the rent. So that is one stipulation, so it is a stipulation to keep them in the home. So I just thought that we'd just offer that for you. Thank you. [LB1001]

SENATOR FISCHER: Thank you, Senator Engel. Thank you, Senator White. (Visitors introduced.) Welcome to your Legislature. Senator Nelson, you are recognized. [LB1001]

SENATOR NELSON: Thank you, Madam President, members of the body. I want to commend Senator White on bringing this bill. I'm generally in support of it so far as I can see. I do have a concern and perhaps a couple of questions that I would like to address if, Senator White would yield. [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly, sir. [LB1001]

SENATOR NELSON: We talked...are you intending to take up the A bill today also? [LB1001]

SENATOR WHITE: Yes. I'd like it to accompany it as we move forward, and then we can make choices as we get down to running out of money, Senator, as that goes. [LB1001]

SENATOR NELSON: Taking a look at the fiscal note, where we've gone from over \$15 million down to about \$4.2 million, are we going to see a revised fiscal note? That's really a jump down as far as I'm concerned, and I'm wondering what the basis is for such a drastic reduction. [LB1001]

SENATOR WHITE: Well, Senator, what occurred was this: First there was a debate as to whether or not it was being calculated properly. Initially the bill, as drafted, would have the utility withhold a portion of sales tax it paid. In other words, if it bought a new truck and it paid sales tax, they'd withhold a portion of that. That was how it was originally drafted and the fiscal note was prepared at that point in time. And I'm not sure that they didn't think all sales tax, both what they pay and what they collect. Then as we went through the process we worked with the Revenue Department and that was in turn flipped over to 5 percent of the sales tax that they collect. In other words, the utility collects; so in other words if you pay your electrical bill on a portion--not all electrical bills are subject to sales tax. Certain businesses aren't, things like that. So where the utility actually collects sales tax, the bill now would take up to 5 percent of that to go into this fund. So as we were trying to figure out the source of the money, the numbers went back and forth. What I do have for you, Senator, is I do have a memo that I read a portion from that said their best estimate is \$4 million but that does not include the offset of the two amendments, which would then drop it hopefully to \$2.4 million. And that, by the way, Senator, is only...that \$4 million is only if there was 100 percent participation of every utility to the full amount. Actual numbers are going to be very much lower. [LB1001]

SENATOR NELSON: All right. Thank you very much. In your opening remarks you talked about doing this for the elderly. I don't see anything in the bill that sets an age limit and says it's going to be for the elderly. [LB1001]

SENATOR WHITE: No, it's not drafted that way. But as a reality, Senator,... [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR NELSON: Uh-huh. [LB1001]

SENATOR WHITE: ...think for a moment, how many folks do you know own their own home? I mean it should be for anybody who can and it's not excluded, and that's on purpose. But overwhelmingly, the number of people who own their own home within 150 percent of poverty, not very many families making that kind of money can afford to buy even the most modest of homes. [LB1001]

SENATOR NELSON: You and I, of course, are more familiar with our situation in Omaha. Senator Gay raised this issue about 150 percent of poverty level. Would you agree with this figure of around \$25,000? [LB1001]

SENATOR WHITE: To the best of my knowledge. [LB1001]

SENATOR NELSON: Okay. It's my perception that in outstate Nebraska, and maybe some of the outstate senators can correct me on this, that you're going to find older homes in a lot of small towns that can be purchased for \$15,000 to \$25,000 or something like that, which would probably be within the means of younger couples or couples starting out. And they might not ever achieve \$25,000 in income in those smaller places. So this would include those type of people. [LB1001]

SENATOR WHITE: Yes, and that's fine. I mean, because again if we can get younger people, especially folks who are not making a lot of money into home ownership,... [LB1001]

SENATOR NELSON: Uh-huh. [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR WHITE: ...that does enormous good things for the state on a lot of levels. [LB1001]

SENATOR NELSON: Right. [LB1001]

SENATOR WHITE: So I don't have a problem with that, but I do believe the vast majority served by this bill will be elderly. [LB1001]

SENATOR NELSON: All right. Just a matter...if you look at the bottom of page 1, eligible energy conservation improvement, it talks about a device or equipment. And you go over to the top of page 2, which would result in increased efficiency. And then on line 4 you'll see furnace efficiency modifications. What do you understand that to be? Is that going to be replacement of a furnace? That's... [LB1001]

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

Floor Debate  
March 12, 2008

---

SENATOR WHITE: Could be...it could be anything. [LB1001]

SENATOR NELSON: Um-hum. [LB1001]

SENATOR WHITE: It's meant to be as broadly defined as possible because again, Senator, and it's a philosophical position, I don't think we're in the best position to decide what will best serve a given community to save energy or utility. [LB1001]

SENATOR NELSON: Uh-huh. [LB1001]

SENATOR WHITE: And I don't want to be in a position making a policy decision on that level that, well, we can't help that... [LB1001]

SENATOR LANGEMEIER: Time. [LB1001]

SENATOR NELSON: All right. Thank you, Senator White. Thank you, Mr. President. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator Howard, you are recognized, followed by Senator Stuthman. [LB1001]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Senator Nelson answered some of my questions. But if Senator White would be available to answer I think, two, maybe three more. [LB1001]

SENATOR LANGEMEIER: Senator White, will you yield? [LB1001]

SENATOR WHITE: Certainly. [LB1001]

SENATOR HOWARD: Thank you. Senator White, I just was contacted by a constituent who just had some clarification type questions. And when you and Senator Nelson were talking it sounds like there won't be a cap or a ceiling on the amount of money that one homeowner would be eligible for, say a furnace replacement would be more expensive than a storm door. How would that work? Or how would you see it working? [LB1001]

SENATOR WHITE: Well, in fact, there may be. But we won't set it. This is a bill that is designed to allow the utilities...and again, you know, public power means they are publicly elected. [LB1001]

SENATOR HOWARD: Right. [LB1001]

SENATOR WHITE: And they will be able to set that. If, for example, they said in one year we only have X dollars, and we have 100 applicants, no more than X dollars per

Floor Debate  
March 12, 2008

---

applicant, that might make sense that year. If they had another year where they had fewer applicants, but real screaming need in a specific...they may choose to change that. I think as a practical matter, if this bill is passed, they're going to be responsive to their ratepayers and the people who elect them to fairly distribute the proceeds. And that's what it's designed to do. And that's going to be...I think if we trust economic self-interest, utilities are going to want to save the most power across the board, because those folks are going to want to get reelected, and they're going to want to make their constituents happy. So I think it's designed not to get in their way. I think often when we worry about, well, one person may take advantage of it, we make it unworkable for hundreds. And so I'm going to trust the utilities to do it. If it becomes a problem, we'll solve it. But I think we can trust our elected representatives. The public utilities have done a wonderful job so far. [LB1001]

SENATOR HOWARD: I agree with you. It sounds like this will really put the framework out there and they'll add the more...the details and more to the actual program as they have the opportunity. Well, do you anticipate any extra cost to the homeowner, anything above and beyond what they would be eligible for that would be provided by the utilities program? [LB1001]

SENATOR WHITE: I'm sorry, Senator, I guess I didn't understand that. [LB1001]

SENATOR HOWARD: Would there be, or do you expect there to be any additional costs that the homeowner would have to pay themselves? [LB1001]

SENATOR WHITE: Well, that...again, I think, the utility, for example...nothing in this bill says they couldn't say we want homeowners, to the extent they are able, to match it. [LB1001]

SENATOR HOWARD: Okay. [LB1001]

SENATOR WHITE: They could say...they could go in and say, look, you guys are...you have some assets or you have some money available. We will put in X dollars, but you will put in Y dollars. We don't...I don't want to tie their hands. [LB1001]

SENATOR HOWARD: Okay. [LB1001]

SENATOR WHITE: I want them to look at this and be as creative and adaptive to the local conditions as best they can, just giving them the tool. I think we need to trust them with the tool, and I think they'll use it well, if given the opportunity. [LB1001]

SENATOR HOWARD: All right. The third question that I was asked may be along those same lines. But I do think this is important to consider is how people are going to learn about this program once it's in place. Do you expect or would you encourage like a

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

Floor Debate  
March 12, 2008

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mailer or possibly using some our senior agencies as resources to get out the word kind of thing? [LB1001]

SENATOR WHITE: Absolutely. But again, it won't be in place in the sense of being available to the public until a utility that serves that area decides to make it available. And that again is by design. I don't want to force this down anybody's throat. If it works for them and they make it available, I expect one of the things would be a simple insert in their bill, you know. And they could say if they recognize...and they're going to know, you know, people who are having trouble paying their bills or whatever they want to do. They can put it out for everybody; they just put a flier in their bill. I mean, there are a lot of things the utility can do, should they choose to participate. [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR HOWARD: All right. Thank you. That does provide additional information. It sounds like this program really offers the opportunity for local communities, public power to pick this program up and make the most of it. So thank you. [LB1001]

SENATOR WHITE: Thank you, Senator Howard. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Howard. (Visitors introduced.) Returning to floor discussion on AM2244. Those wishing to speak: Senator Stuthman and Senator Nelson. Senator Stuthman, you're recognized. [LB1001]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. The initial group that brought this bill forward in my understanding is the Omaha Public Power District. And in the opening statement there was some talk about carbon credits, that the power district would be able to utilize some carbon credits. Could I engage in a little conversation with Senator White? [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly. [LB1001]

SENATOR STUTHMAN: Senator White, you recall that you made some statement as far as carbon credits that a public power district could use? That would hopefully offset the fact that...you know, the money that they would contribute to this matching fund? [LB1001]

SENATOR WHITE: Yes. Actually, Senator, it's kind of interesting. They're already being sold pretty broadly. And people, for example, especially in Hollywood, I guess, they have more money than I do. But they will buy them sometimes to offset trips or something. And this would certainly...I mean, if a public utility said, look, we spend X

Floor Debate  
March 12, 2008

---

dollars preventing the burning of X tons of coal, they could issue a certificate. There's nothing in the law to stop them. I'd some day like to see that made part of state law. I think that would be a great leap forward in conservation. [LB1001]

SENATOR STUTHMAN: The utilization of these carbon credits, the only way that they could utilize these is because of the fact they are generating electricity and that they're utilizing coal that's being...emissions are being put into the air. Are those the only ones that can utilize those carbon credits? [LB1001]

SENATOR WHITE: Well, actually you know there's no real, that I'm aware of, overwhelming government regulation saying what you can do. I mean, there are people, for example, who are selling "a square foot of rain forest" or planting trees, you know. And you can buy these as gifts. People will given environmentally concerned friends and relatives a gift of--we've set up a tree plantation in Brazil, we're planting X thousand acres of trees, here's a certificate for \$100. So I mean, there's a lot of different ways, carbon sequestration, and it's actually a market developing for it. The issue is whether or not the actual...the economies go towards a required federal market where there is actually a federally regulated carbon sequestration, which would be, I'm building...I'm putting in trees that will grow and take carbon out of the air, or carbon reduction, which would be with conservation we prevented the burning of a ton of coal. The question is whether there will actually be a market and whether ultimately those will be options. Right now they are just being sold on the free market for environmentally concerned citizens. [LB1001]

SENATOR STUTHMAN: Yes, I totally agree that it's for environmental concerns. And as a farmer, you know, I can plant alfalfa and have it there for five years, and I can sell those credits off to someone that is emitting pollution into the air, because the green portion, the way I understand you know, hopefully cleans the air because of the green growth. I visited with our power company and they wouldn't...at the present time are really not interested in this program. So I am concerned, you know, if this program is going to be utilized by a lot of companies, a lot of generation, or is it just going to be mainly utilized by those that are...can acquire and utilize the carbon credits to offset the fact that they are emitting pollutants into the air? [LB1001]

SENATOR WHITE: Well, I guess I would say, Senator Stuthman, first of all, that is a small aspect of this. The power companies that are interested in this, OPPD, which is the largest generator in the state, and they're very interested, they're interested in it because they don't have to build new generators. That's the biggest economic savings for them. A secondary saving is... [LB1001]

SENATOR LANGEMEIER: One minute. [LB1001]

SENATOR WHITE: ...they could sell, if they chose to, certificates that through a

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

Floor Debate  
March 12, 2008

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conservation process they prevented the burning of additional coal. They could. And I would tell you to the extent if your provider does not want to participate, that's certainly their choice. And it will reduce the fiscal note considerably. When people choose not to participate that fiscal note, as I anticipate, will drop rapidly. [LB1001]

SENATOR STUTHMAN: Thank you, Senator White. The thing that does concern me, and when I visited with my local power company, is that they would not be able to utilize the carbon credits that would help them, because they're not generating the electricity. They're buying electricity from Nebraska Public Power and utilizing their...and the 20 percent that they would have to contribute to the fund would have to come from an increased rate that the individuals would be paying, because they would have no way to recapture that amount. With that, thank you, Mr. President. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Nelson, you're recognized. [LB1001]

SENATOR NELSON: Thank you, Mr. President. Will Senator White yield to another question or two? [LB1001]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly. [LB1001]

SENATOR NELSON: Senator, I wasn't able to quite finish my line of thought during our previous discussion. I apologize for keeping you on your feet a little longer here. But we were...might...I was questioning what would come under the category of equipment that increases efficiency and modifications? It would seem to me that new furnaces and heat pumps could come under that category or would fit within that. [LB1001]

SENATOR WHITE: They could, also things like new light bulbs, you know, that are much more efficient... [LB1001]

SENATOR NELSON: Right. [LB1001]

SENATOR WHITE: ...in electricity than old fluorescent bulbs. It could be anything. And it's designed so that if, for example, we have new developments, technological developments, Senator, we haven't limited them. We have allowed the utility that's going to know a lot better than I do about what's available to utilize what they wish. [LB1001]

SENATOR NELSON: All right. That brings me to OPPD then, and I have some experience. I think they're doing a great job. The fact remains that they provide some incentives for people getting rid of inefficient furnaces and putting in new furnaces, and

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

Floor Debate  
March 12, 2008

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especially with heat pumps. And I've had a little bit of experience with that, and I do know that there is a definite amount of savings, not only in the energy use, but also in the cost. My thought is this, that those are pretty big ticket items. And, of course, it may be limited by the amount of money that OPPD, for instance, has to provide in the way of grants. But what I'm leading up to here is LB1001 would also exempt from sales tax energy saving improvements. And with an item like a furnace and heat pump that could run you anywhere from \$6,000 to \$10,000, that's a pretty substantial amount of sales tax. Are we as the state of Nebraska going to be losing that considerable amount of sales tax? And how does this effect the city of Omaha, because they're part of that? [LB1001]

SENATOR WHITE: Well, I guess what I would tell you is as I understood the bill it's only the stuff that the utility purchased. Okay? So if the utility purchases under this program, we're not paying sales tax on it. And so in other words we're not getting it back, and then when they make the improvement trying to take sales tax on it. And that is considered in the fiscal note as I understood it. [LB1001]

SENATOR NELSON: Okay. [LB1001]

SENATOR WHITE: So that's the main point on that. The other one I would tell you, when we're dealing with 150 percent of poverty, Senator, should they decide to go for a big ticket item like that, instead of a case of caulk and the labor, which I think is more likely, but should they, those folks aren't going to be able to buy that. I mean, they're not going to be able to buy a heat pump. There is no way somebody struggling to own a home with \$20,000, \$25,000 income is going to be able to afford that kind of an investment. [LB1001]

SENATOR NELSON: Um-hum. But if I understand you correctly, on the large item itself we're not giving up sales tax, if they are able to purchase it. [LB1001]

SENATOR WHITE: Well, I mean...well, if the utility purchases it as part of this program, my understanding is we're not charging tax on that. But if I chose to do one, absolutely, we're getting sales tax. If I replace my furnace with a heat pump or a new furnace, absolutely, I'll pay sales tax. [LB1001]

SENATOR NELSON: All right, thank you very much, Senator. Thank you, Mr. President. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Senator White, your light is on, but there are no other lights. So you could either close or you could use your time. [LB1001]

SENATOR WHITE: I'd like to close, if I may. [LB1001]

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

Floor Debate  
March 12, 2008

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SENATOR LANGEMEIER: Senator White, you're... [LB1001]

SENATOR WHITE: And first of all, thank you. George points out that we took the sales tax exemption out, Senator Nelson. And that's another one of the reasons the fiscal note dropped on this. I would like to point out to Senator Stuthman, he's not here at the moment, but even though his distributor works with NPPD, NPPD and its distributor could work together to provide this available to anybody. It doesn't have to be just the power company. I mean they...it's deliberately written in a way that NPPD could say to anybody who's running a rural electric, we generate for you, but here's a deal we'll pass back. It is going to allow any entity or series of entities that want to participate, to participate. That's the point. I want to thank everyone for the conversation. I ask your support for this bill. I think it is a bill that actually will cost far less than it appears, both in what we actually outlay because, as Senator Stuthman said, perhaps his district will not want to participate. Many will not, and that will directly reduce the cost, but the savings will be substantial where we do participate. We will, and you have my pledge and my pledge to industry with regard to the contractor part and withholding, continue to work closely with the business community to make this a bill that is easy for them to live with, but still collects properly due and owing taxes. So with that, I ask your support for the amendments and for this bill. Thank you. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator White. You have heard the closing on AM2244 offered to the committee amendments. All those...the question before the body is, shall AM2244 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Senator White, for what purpose do you rise? [LB1001]

SENATOR WHITE: Never mind, Mr. Speaker. [LB1001]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB1001]

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of the amendment. [LB1001]

SENATOR LANGEMEIER: AM2244 is adopted. We return now to discussion on AM2001. Seeing no lights on, Senator Janssen, you're recognized to close. Senator Janssen waives closing. The question before the body is, shall AM2001 be adopted to LB1001? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1001]

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB1001]

SENATOR LANGEMEIER: AM2001 is adopted. We return now to discussion on

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

Floor Debate  
March 12, 2008

---

LB1001, the bill itself. Seeing no lights on, Senator White, you are recognized to close on LB1001. [LB1001]

SENATOR WHITE: Once again, I thank the members for their patience, their courtesy, and their really insightful questions. I ask that this bill be adopted. I appreciate your concern and your thoughtfulness. I think it will help, not just the elderly, though I think that will be the majority, but as Senator Nelson pointed out, in many of our small towns, young families buying old homes, trying to start a life in our smaller communities, may also be helped by this. Therefore I ask your support, and thank you. [LB1001]

SENATOR LANGEMEIER: Thank you, Senator White. You've heard the closing on LB1001. The question before the body is, shall LB1001 advance...be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1001]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB1001. [LB1001]

SENATOR LANGEMEIER: LB1001 does advance. Mr. Clerk, next item on the agenda. [LB1001]

CLERK: LB1001A, Mr. President, by Senator White. (Read title.) [LB1001A]

SENATOR LANGEMEIER: Senator White, you are recognized to open on LB1001A. [LB1001A]

SENATOR WHITE: Thank you, Mr. Speaker. This is the A bill that will accompany this. There will be substantial changes based on the memorandum. We believe that I've read, and again copies will be available, I believe that with the amendments the net cost, based on the best estimates, Department of Revenue, is \$2.4 million if every utility participates fully. Actual cost, I believe, will be very substantially less than that. And also that does not include the savings that we will reap by keeping our elderly in their homes and out of nursing homes. With that, I'd ask the A bill be advanced along with it so that we may consider it as the session draws to a close. Thank you. [LB1001A]

SENATOR LANGEMEIER: Thank you, Senator White. You have heard the opening on LB1001A. The floor is now open for discussion. Seeing no lights on, Senator White, you are recognized to close. Senator White waives closing. The question before the body is, shall LB1001A advance? All those in favor vote yea; all those opposed vote nay. Have all those vote that wish to? Record, Mr. Clerk. [LB1001A]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB1001A. [LB1001A]

SENATOR LANGEMEIER: LB1001A does advance. (Visitors introduced.) Mr. Clerk,

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

Floor Debate  
March 12, 2008

---

items for the record. [LB1001A]

CLERK: Mr. President, your Committee on Appropriations, chaired by Senator Heidemann, reports LB249 to General File with amendments; LB959, LB960, LB961, all to General File with amendments. Senator Heidemann introduces LB249A. (Read LB249A by title for the first time.) Enrollment and Review, Mr. President, reports LB853, LB1157A, LB1092, and LB777 to Select File, some of those having Enrollment and Review amendments attached. That's all that I have, Mr. President. (Legislative Journal pages 917-919.) [LB249 LB959 LB960 LB961 LB249A LB853 LB1157A LB1092 LB777]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now proceed down the agenda to General File to LB1094. [LB1094]

CLERK: Mr. President, LB1094 is a bill originally introduced by Senators Carlson and Christensen. (Read title.) Bill was introduced on January 23 of this year, referred to the Natural Resources Committee for public hearing. The bill was advanced to General File. There are committee amendments, as well as other amendments pending to the bill, Mr. President. (AM2036, Legislative Journal page 688.) [LB1094]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Carlson, you are recognized to open on LB1094. [LB1094]

SENATOR CARLSON: Mr. President, members of the Legislature, today I introduce LB1094, a bill to provide a solution to the question of how to repay the farmers in the Republican River Basin who gave up surface water in 2007 to help the basin NRDs comply with state statutes and their integrated management plans. This bill has nothing to do with state obligations toward the compact with Kansas, but I believe it has everything to do with how we, as Nebraska legislators, should treat our citizens. You'll recall that LB701 was passed in the 2007 Legislative Session. The vote was 43 for, 0 against, and 6 abstaining. In LB701 we authorized the NRDs in the Republican Basin to levy a local property tax on all real property and an occupation tax on irrigated acres to raise dollars to purchase surface water for the 2007 crop year. The purpose of this purchase was to be able to deliver this surface water, which wasn't used for irrigation, to Kansas for compact satisfaction. It was a local solution, preferred by the NRDs in the basin, and these NRDs are divisions of state government. The plan worked and we are in compliance for 2007. With the authorization of LB701, well over 300 farmers negotiated a price per acre with the NRDs and legal contracts were issued and signed. Under these contracts, payment was promised for delivery to these farmers in December of 2007. This was the same approximate time that farmers who used their water to grow corn had harvested a crop, could sell it with the price of corn at an all-time high. However, a group called Friends of the Republican filed a lawsuit concerning the use of a local property tax. As a result of this lawsuit, the bonding company stopped the procedure to issue bonds which would have provided the money in December to pay

Floor Debate  
March 12, 2008

---

the farmers. The bonds were to have been repaid in part by the property tax authorized by LB701. The judge has not ruled on the case as of this date. Probable appeals could delay payment for months or even years. This circumstance is not the NRD's fault. This circumstance is not the Legislature's fault. But the farmers were not paid. Concern for this situation has been the top priority for both Senator Christensen and me since the day the lawsuit was filed. Senator Christensen has prioritized this bill and I thank him for that priority. It is most important that we address and provide a solution to this issue now. Whether the state wins or Friends win the lawsuit, we need to, I hope we want to, and I believe we should demand to see that these farmers are paid. There are two other important aspects to approaching this bill that I want to discuss. LB1094 involves a request to transfer money from the Cash Reserve to address this problem. Think with me for a moment the purpose of a Cash Reserve Fund. We normally think of this, the Cash Reserve, as being there for an unknown future emergency. It's a good reason. But I believe it's also there for a present known emergency, and this is what we have now. The second aspect that I'd like you to think about involves the difference between a spending appropriation and a cash advance appropriation. In an appropriation to spend, we okay money to be utilized for many, many different reasons in the state, and for most of these reasons we don't have any direct feeling that this money is going to return in some fashion. But this is an appropriation for a cash advance. There is a plan to repay the requested transfer and the repayment will be to the Cash Reserve. I ask you to keep an open mind about the use of the Cash Reserve and the difference between a spending bill and a cash advance with a plan to repay as we discuss this bill. There is a committee amendment to follow that will give more specifics, and after it is introduced I'll speak more on the amendment and the bill. Thank you. [LB1094 LB701]

SENATOR LANGEMEIER: Thank you, Senator Carlson. (Visitors introduced.) As the Clerk has stated, there are committee amendments offered by the Natural Resources Committee. Senator Louden, as Chair of that committee, you are recognized to open on the committee amendments. [LB1094]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. LB1094 was heard in committee on February 13 as a proposal to use the Natural Resources Development Fund for an additional purpose to provide aid in drought situations. However, an amendment was introduced that significantly changed the original bill. That amendment had its own public hearing on February 20 because I believed the change was so significant. The amendment creates the Water Contingency Cash Fund, transfers \$9 million from the Cash Reserve Fund to the Water Contingency Cash Fund, and requires repayment by the natural resources district that receive funding from the Water Contingency Cash Fund. I would ask the body to vote down the committee amendment and adopt Senator Christensen's amendment...or Senator Carlson's amendment, excuse me. Senator Carlson's amendment contains all the provisions adopted by the committee, as well as provisions that were necessary but didn't come to light to the committee advancing LB1094 as amended. With that, we had to do some

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

Floor Debate  
March 12, 2008

---

extra work on it, so I would ask that you vote down the committee amendment and vote for Senator Carlson's amendment. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the opening on the committee amendments, AM2036. The floor is now open for discussion. Those wishing to speak are Senators Avery and Carlson. Senator Avery, you are recognized. [LB1094]

SENATOR AVERY: Thank you, Mr. President. It is my intention to vote for this legislation. For me, it's a matter of honor. The question is whether this Legislature will keep its word. I think we will. We entered into a solemn covenant with the irrigators in the Republican River Basin last year, and that means that we made a solemn promise to take a specific action. More importantly, a covenant, in contrast to a contract, is a one-way agreement. It may have prerequisites, it might have some conditions as we do in this case, but we did make a promise. We made that promise to the water rights holders in the Republican River Basin. We need to keep it. They agreed to forgo water use in exchange for our promise to compensate them financially, and as you have heard, our ability to do that was restricted by a lawsuit. Now we're faced with a situation that requires us to meet our obligation anyway and to honor that commitment. It is a covenant. It's one that I think we need to honor. I intend to vote for this and I urge you to do the same. Thank you. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Carlson, you're recognized. [LB1094]

SENATOR CARLSON: Mr. President, members of the Legislature, Senator Avery, I appreciate your words. Because of the technicality of what we're trying to do here, I want it completely understood, as Senator Louden indicated, that AM2036 we're asking to be voted down, and then we want to introduce the amendment that is the bill and I'd really like to discuss the portions of that bill at that time. So I would ask that we maybe not have any further discussion but we vote to vote down AM2036. Then we can get on with the amendment itself. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Stuthman, you're recognized. [LB1094]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I think in good faith we passed a bill last year that we had hoped that we would get things pretty well taken care of, accommodating the people that gave up their water to hopefully satisfy the demands of Kansas. I think a lot of you people don't realize that these people that were not paid out because they gave up their water, you know, haven't had income for a long time. They've had the cost. They've got their daily cost. They've not received what was intended to be given to these people because of this lawsuit. I think we should

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

Floor Debate  
March 12, 2008

---

be very considerate of that. How would individuals feel that were working somewhere and you was supposed to be getting a paycheck at the end of the month, but because of a lawsuit of the company, they didn't give it to you but you had your daily expenses every day, your living expenses, and you did not receive the money? And I'm sure that there's a number of these people that have a lot of money due to those people, and I would say they're in a financial crisis. I think it is our obligation, the state of Nebraska, to make good, you know, on our word of what we intended to do, because these individuals were doing something to hopefully satisfy Kansas. The natural resources districts, the NRDs, you know, came up with something. I do not totally agree what they come up with, but they came up with something and agreed upon it and now they're sitting there, waiting for the check to come. And it's not going to come for quite awhile, unless we take some type of an action. And I commend Senator Carlson and Senator Christensen for bringing forth this bill, hopefully that we can get these individuals paid and get that taken care of. I think that's very, very important. And as the state of Nebraska, I think we owe it to them. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Seeing no other lights on, Senator Louden, you are recognized to close on AM2036, the committee amendments. [LB1094]

SENATOR LOUDEN: Thank you, Mr. President. As I would reiterate that I would ask that the committee amendment, AM2036, be voted down and then we will work on Senator Carlson's amendment, which is the actual bill. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the closing on the committee amendments, AM2036. The question is, shall AM2036 be adopted to LB1094? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB1094]

ASSISTANT CLERK: 0 ayes, 28 nays on the adoption of committee amendments, Mr. President. [LB1094]

SENATOR LANGEMEIER: The committee amendments are not adopted. Mr. Clerk, for a motion. [LB1094]

ASSISTANT CLERK: Mr. President, the next amendment I have is offered by Senator Carlson. Senator, I have AM1808, but a note you wish to withdraw this one. [LB1094]

SENATOR CARLSON: Yes, I do. [LB1094]

SENATOR LANGEMEIER: It is withdrawn. Mr. Clerk, for a motion. [LB1094]

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

Floor Debate  
March 12, 2008

---

ASSISTANT CLERK: Senator Carlson would offer AM2234. (Legislative Journal page 843.) [LB1094]

SENATOR LANGEMEIER: Senator Carlson, you are recognized to open on AM2234. [LB1094]

SENATOR CARLSON: Mr. President and members of the Legislature, we have in present statute the ability to authorize loans to NRDs and other state agencies, and AM2234 uses the precedent of present statute to apply to the Republican Basin. This request does not set a new precedent. There were concerns from the Governor's Policy Research Office, the Budget Office, and the Fiscal Office, and the Department of Natural Resources about the language concerning the loan from the Cash Reserve to the Water Contingency Cash Fund, the repayment to the Water Contingency Cash Fund from the NRDs, and the transfer of these payments back to the Cash Reserve. We met with these entities last Thursday. We addressed their concerns in AM2234. We are creating the Water Contingency Cash Fund to allow \$9 million to be transferred from the Cash Reserve for this purpose. We are not using the Natural Resources Development Fund or the Water Resources Cash Fund, and hopefully this alleviates concern about possible invasion of these other funds. If the state of Nebraska wins the lawsuit, the provisions of LB701 will be used to repay the state and return the dollars to the Cash Reserve. If the state of Nebraska loses the lawsuit, the dollars will be repaid through the occupation tax or withholding of future appropriations to the Republican Basin or such other means as provided through future legislation. That's the power of the Legislature. I believe that further speculation on the specific procedure of repayment is inappropriate at this time. Once the lawsuit is finally settled, we can determine the proper repayment plan. Regardless of the outcome of the lawsuit, there is a plan of repayment. I urge the Legislature to vote for AM2234 and the underlying bill, LB1094. Hopefully, we can expedite the process, have the money transferred and the farmers paid. I believe it is the right thing to do, and I would be happy to address questions concerning this amendment. Thank you, Mr. President. [LB1094 LB701]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Mr. Clerk, for a motion. [LB1094]

ASSISTANT CLERK: Mr. President, Senator Christensen would offer FA198 to the Carlson amendment. (Legislative Journal page 892.) [LB1094]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Christensen, you are recognized to open on FA198. [LB1094]

SENATOR CHRISTENSEN: Thank you, Mr. President, fellow senators. FA198 is just a small clarification. On page 5, line 6, it just adds the word "for the specified contract period." The reason for this, it reads, "benefits received and the value of the rights

Floor Debate  
March 12, 2008

---

surrendered." I wanted to make sure everybody understood the water right that they have to have surface water wasn't surrendered, that it was just a use for a contract period, for a one-year time period, that this payment is for. So the amendment is very simple, just trying to clarify some language here, so that there's no misinterpretations here. Another thing on the bill, this is a one-year deal. We will not have to come back asking for money next year to make up for a payment for something going on next year. Part of the problem with this is, with LB701 being in a lawsuit, is the fact that the NRDs' hands are tied. They are doing nothing right now. That could hinder the state of Nebraska a little bit in getting in compliance, but there should be enough surface water, with the new IMP plans, to put Nebraska in compliance. But the tools of LB701 right now are locked up till the lawsuit is done, so there won't be additional water purchased by the NRDs or anything that we will be coming back next year for money. I just want to clarify this is a one-year deal, not someone coming back again. Besides being a repayment plan with this bill that we will do, it shouldn't happen next year. A little further on this bill, I'm just going to go on a little bit, is when I went around, visited with all of you, there was some language that hadn't changed in this bill that this AM2234 addresses. I want you to understand that on page 4, we're striking lines 18 through 24, which is the commingled language that was added in a year ago at the request of some senators which prohibits a farmer from being able to sell his surface water and turn around and pump. And the reason that has been stricken is a request of DNR because we're trying to, for the sake of compliance, make sure that we get out of a water-short year. In this compact and in the last settlement that we had with Kansas and Colorado, depending upon how much water is in Harlan County makes a difference in where the water is measured in the stream. If we have plenty of water in the dam, we're not in a water-short year, we measure it at Guide Rock. If we're in a water-short year because we don't have enough water in there, we measure it at Hardy--makes a difference of about 30,000 to 40,000 acre-feet a year in compliance that is figured up in here. So it is in the state's interest to make sure that we're in...out of a water-short year by having enough water in Harlan County. And in efforts to do that, Frenchman-Cambridge and different irrigation districts have agreed to not start irrigating till after June 25. They a lot of times will start anywhere from June 10 to 15. It varies year to year, depending upon rainfall, but they're agreeing not to take water till after the 25th if this language is removed. The reason being, if the language isn't, the water that is allowed to go downstream could be subtracted off of their allocations. What they're doing is allowing that water to go and not use it, but there's enough water in the dam to give them their eight inches, which is the allocation this year. So we want to make sure the surface guys don't lose some of their allocation by allowing that to go downstream, so this language is being struck so that the farmers can still get their water out of the dam, have their full amount, and they can allow that water to flow down that stream into Harlan in efforts to get out of a water-short year. That is very important, as I said, in the accounting process. So I just wanted to mention that to everybody because when I visited you one on one, that language wasn't struck at that time. That has come since members out of the Governor's Office and DNR come and visited with Senator Carlson

Floor Debate  
March 12, 2008

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and my staff about making some changes to this bill. And that's why...one of the reasons why you just killed the committee amendment and went with...and we're asking you to go with the amendment AM2234. Again, I just want to state that, you know, allowing these purchases, also by striking this language, if we have a situation, we don't have enough water for...to get out of that water-short year or to reach compliance, this will allow us to keep the price paid per acre down. There's a couple of benefits for that. You know, if we allow that surface to go on down, that's the quickest way of compliance that we have. You shut a well off, it takes several years to return that to the streams. You shut off that surface, it can be delivered immediately. But if a farmer is going to give up his surface water right and can't be...and can't pump, then he's going to want more out of that, and that's part of the language that I'm amending in there. Because when you read it says, "giving consideration to benefits received and the value of the rights surrendered," and I'm adding, "for the specified contract period." The intent of that language, Senator Wightman brought it to us, was the fact that we all agree if a farmer is going to give up his surface water and still pump, he shouldn't be paid as much. He may have some fees that should be paid because he's buying that water on a per-acre basis, but someone that gives up their water for the use for the whole year deserves more, and that was an effort that Senator Wightman brought forth, trying to give the tools to the NRDs to be able to work within, and that's why that is another benefit in striking that previous language ahead of this, is we can try and keep that cost down to our taxpayers. Because inevitably, there is going to come back to property tax or occupation tax on the long term, this LB701 setup. You now, we want to hit that quick compliance of the NRDs. As they said, it's going to save approximately 40,000 acre-feet if we can get that 3,000 acre-foot of water into Harlan County. So that's why we're asking for the amendment, AM2234. I'm asking you to put on FA198 just to make sure we're clarified that no one is giving up a long-term right. Thank you. [LB1094 LB701]

SENATOR LANGEMEIER: Thank you, Senator Christensen. You have heard the opening on FA198. The floor is now open for discussion. Those wishing to speak, we have Wightman, Johnson, Preister, Wallman, Hansen, White, and Loudon. Senator Wightman, you're recognized. [LB1094]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I rise in support of both LB1094, AM2234, and Senator Christensen's amendment, FA198, I think. Originally...well, first of all, there's no question in my mind that this is the right thing to do. One of the alternatives being suggested was that maybe it be in the form of a grant. I think that was far ahead of the bill actually being submitted, that it be a grant, and I would have had a hard time supporting that. But I think that a loan made to the NRDs, in order that they can discharge their obligations under the contracts they signed--under legislation, by the way, that we passed--is absolutely the right thing to do and I think it preserves the integrity of the state of Nebraska and, moreover, preserves the integrity of this body. We passed the legislation. If we can't find a way--and Senator Carlson has certainly told you that this has been researched and this is the best way of

Floor Debate  
March 12, 2008

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handling this matter--to make a loan from the Cash Reserve Fund, there are measures in place that will pay this. I happen to own an interest in some land in the Republican River Basin. In the event that the lawsuit would succeed, I will probably be paying more as a result of that, so maybe I'm voting against my pocketbook, I don't know. But at any rate, I do support the amendment. And the reason I say that I might be voting against my pocketbook is that I would end up paying, with many, many other irrigators in the Republican River Basin, end up paying that through the way of additional assessments if the lawsuit is successful, so that I think the method of paying it will be to pay it through the assessments; rather than the ad valorem tax, it will be added on to the tax of all of the people in the Republican River Basin. At any rate, first of all, I might, if you want to turn to line 15 on page 4, that was the subject of a separate bill, LB975, that I introduced in the Natural Resources Committee. The bill, as originally introduced, was a lot different than this. It was amended in large part because of Director Bleed's statement that it would be almost impossible to negotiate under the bill as originally brought in LB975 and that it would have deprived irrigators of receiving any money if they also had surface...or ground water rights on the same acres. She indicated that it would be almost impossible to deal with the ditch companies and you have to understand that there's a two-tier type of an arrangement on this, one that the natural resources...director of Natural Resources deals with the natural resources districts. It's actually the natural resources district that enters into a contract, not with the irrigators themselves, but with a canal or a ditch company that has the ditch, to buy these surface water rights. And then it works its way on down to the irrigators who are appropriators from the ditch. And so this language was to try to facilitate being able to buy those rights at a more reasonable rate. It actually undoes some of LB701, which totally eliminated the possibility of those people drawing payments. [LB1094 LB975 LB701]

SENATOR LANGEMEIER: One minute. [LB1094]

SENATOR WIGHTMAN: This would allow the director, through the natural resources district, to negotiate contracts, and the language that Senator Christensen stated that was part of my bill provided that they had to give consideration, the ditch company, to the benefits received and the value of the rights surrendered. And Senator Christensen wanted that amended to make absolutely certain that we were only talking one year in the event it was only a one-year contract. So I urge advancement of the amendments and the bill. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Wightman. (Visitors introduced.) Returning to floor discussion on FA198, we have Senators Johnson, Preister, Wallman, Hansen, White, Loudon, and others. Senator Johnson, you're recognized. [LB1094]

SENATOR JOHNSON: Mr. President, members of the Legislature, I also stand in favor of FA198, AM2234, and Senator Carlson's bill, LB1094. To me, as the previous two speakers have said, this is what is the right thing to do. The state has essentially

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

Floor Debate  
March 12, 2008

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entered into a contract with these farmers and, yes, the lawsuit did come along and upset things, but that is not the fault of these individual farmers. It is not the fault of the Legislature, but we have the obligation to these farmers. We are literally taking the money out of their checkbooks and their pocketbooks, and that just is not the right thing to do. So we must find a way of doing it. This sounds like a reasonable way that we accomplish it. And I would call your attention to one thing. Not only did we renege on not providing the farmers with the money that they had coming, but one of the things that coincidentally happened was that we deprived them from raising the best corn crop in the history of Nebraska, if you look at the price per bushel. So they actually have taken a double hit on cooperating and being good citizens with Nebraska. So again, I would strongly back Senator Carlson's attempt to right what I see as a grievous wrong. Thank you. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Preister, you're recognized. [LB1094]

SENATOR PREISTER: Thank you, Honorable President, friends all. I would like to ask Senator Carlson some questions, if I might, please. [LB1094]

SENATOR LANGEMEIER: Senator Carlson, will you yield? [LB1094]

SENATOR CARLSON: Yes, I will. [LB1094]

SENATOR PREISTER: Senator Carlson, I appreciate the work that you have put into this. This is, and I want to make sure I'm clear, this is a follow-up essentially to LB701 that we passed last year? [LB1094 LB701]

SENATOR CARLSON: Yes, it is. [LB1094]

SENATOR PREISTER: And the reason that...you're essentially having two provisions here. One is the water that we paid or entered into a contract to pay for so that we had more water, not used for irrigation but used to go down the stream to go to Kansas to supply the water that we're in a compact agreement to provide. And that money isn't currently being paid that we had agreed to pay those farmers, and you're trying to address that, correct? [LB1094]

SENATOR CARLSON: That's correct, and the fact that these farmers negotiated in good faith is what allowed us to be in compliance for 2007, and yet they have no money. [LB1094]

SENATOR PREISTER: And that compliance is important for what reason? [LB1094]

SENATOR CARLSON: It's tremendously important because of our compact with

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

Floor Debate  
March 12, 2008

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Kansas, and if we're not into compliance we're facing a possibility of a big fine that would be paid to Kansas, and something like that, money goes directly from Lincoln to Kansas and through nobody's hands in the state. And this money that we're talking about now gets back into the hands of the residents of the basin and that has great economic value to that area of the state. [LB1094]

SENATOR PREISTER: And so by allowing the state or providing that the state of Nebraska is in compliance with the compact with Kansas, would you say that demonstrates good faith on the part of Nebraska to Kansas that we are genuinely trying to provide the water that we have agreed to give to them? [LB1094]

SENATOR CARLSON: Yes, it does, and you understand and I understand that's vitally important. But it is a step of good faith. [LB1094]

SENATOR PREISTER: And Senator, as we do this, and I agree that that is important to any future discussions or hopefully not any litigation with Kansas, we also need to be aware of what that does to our state Cash Reserves. Because we're taking all this money out of the current Cash Reserves, correct? [LB1094]

SENATOR CARLSON: Yes, we are. [LB1094]

SENATOR PREISTER: So you're also providing in the bill that that money actually be repaid to the state of Nebraska. Is that correct? [LB1094]

SENATOR CARLSON: Very much so, and there's no pretense of anything otherwise, Senator Preister. [LB1094]

SENATOR PREISTER: So this is not a grant. This is essentially a loan to fulfill an obligation that the farmers who agreed to it and the state of Nebraska entered into. [LB1094]

SENATOR CARLSON: That's correct, yes. [LB1094]

SENATOR PREISTER: Okay. And one other thing you mentioned, you mentioned litigation that is creating the problem. You're not referring to litigation between the state of Nebraska and the state of Kansas, I don't believe, are you? [LB1094]

SENATOR CARLSON: No, this has to do with a lawsuit filed by some residents in the Republican Basin against the concept of using a local property tax. [LB1094]

SENATOR PREISTER: So this is really a taxing issue that the litigation is over and not a disagreement between states or an actual water issue. [LB1094]

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

Floor Debate  
March 12, 2008

---

SENATOR CARLSON: It's entirely about a taxing issue of a local entity, yes. [LB1094]

SENATOR PREISTER: Okay. Thank you, Senator Carlson. [LB1094]

SENATOR CARLSON: Thank you. [LB1094]

SENATOR PREISTER: I appreciate you answering those questions because I think they're important, and they're essentially the heart of what we're doing here and critical to the agreement that we have with Kansas, but critical to a contract that we entered into with these farmers. Because of that, I am supportive of the underlying bill. I'm supporting Senator Carlson's amendment because I think he's worked on this for a long time. I appreciate the efforts that he's put into it. But for those people who still had concerns, he was willing to continue listening and to take those into account. That's why we voted down the committee amendment. [LB1094]

SENATOR LANGEMEIER: One minute. [LB1094]

SENATOR PREISTER: That's why we have this amendment. And I also appreciate Senator Christensen's clarification and his floor amendment. I also support that. Thank you very much. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Preister. Senator Wallman, you're recognized. [LB1094]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Carlson be open for a question? [LB1094]

SENATOR LANGEMEIER: Senator Carlson, would you yield? [LB1094]

SENATOR CARLSON: Yes, I will. [LB1094]

SENATOR WALLMAN: And I, too, appreciate what you've done on this bill's water. As you realize, I had a little trouble with LB701 on the taxing issue with dryland versus irrigation. What about next year? You know, what do we do next year for funding? Will that be taken care of by the NRD or...? [LB1094 LB701]

SENATOR CARLSON: Well, what do we do next year, is a good question. Certainly there could be no more negotiation for purchase of surface water if somebody isn't paid for last year, and that would take an important tool out of the box that we need to deal with compliance and that's another reason that it's so necessary to get these people paid so that there is the possibility that they could negotiate for surface water for 2008. [LB1094]

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

Floor Debate  
March 12, 2008

---

SENATOR WALLMAN: Thank you. And I, too, agree, a deal is a deal. We made a deal with these farmers and it was passed here, and so a deal is a deal. Are we going to honor our deal? And I think it's important that we do. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Hansen, you're recognized. [LB1094]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I've made hundreds of contracts over the course of my life and probably signed maybe three or four. Most of them were verbal contracts, a shake of the hand, and that does it. I've made some bad contracts. I guess a good contract is when I sell someone some feeder cattle, they're just as upset as I am, for the price I got, that the price they had to pay. So these negotiated contracts are very important, whether you do them by the shake of a hand or passing of a law. I do support Senator Christensen's floor amendment and appreciate that he wants to put into the statute that it only covers last year and that it will be paid this year, but it only covers one year. I do have a question for Senator Carlson, if he would yield. [LB1094]

SENATOR LANGEMEIER: Senator Carlson, would you yield to a question? [LB1094]

SENATOR CARLSON: Yes, I will. [LB1094]

SENATOR HANSEN: Thank you, Senator Carlson. I think we need to talk a little bit about the lawsuit that was filed and maybe how many irrigators this actually affects, and then the outcome, I guess both ways, if the state wins or the state loses; what happens to the payment, what happens to this \$9 million that we're going to put in the water cash fund? [LB1094]

SENATOR CARLSON: Okay, Senator Hansen, one of...your question, I'm going to expand a little bit. How many farmers does this affect? It really affects all the farmers in the basin but specifically some 300 that negotiated to give up their surface water and then hadn't been paid. And because the lawsuit is so important to the way that repayment would take place, if the state wins the lawsuit and if this could be settled in a reasonably short period of time, there's already been \$1.3 million collected through the occupation tax and the property tax through February. The bulk of the money will come in the 1st of May and the 1st of September for the payments due for last year. And so if LB701 and the taxing methods are able to be used to repay, it's quick repayment as soon as that lawsuit is settled. Now if the state would eventually lose the lawsuit, that did not affect the occupation tax. So that would mean it would probably take two years to repay instead of one, because the property tax wouldn't be a part of it. And then beyond that, we've got the potential of withholding appropriations into the Republican Basin for future compliance issues, which would be a bad thing. But that remains a

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

Floor Debate  
March 12, 2008

---

possibility. That's another method of repayment, or any other such other method that a future Legislature would decide to be appropriate. The Legislature has the power and the authority to levy a certain tax. [LB1094 LB701]

SENATOR HANSEN: Under LB701 last year and the taxing authority that we gave the NRDs, that payment supposedly would have been made by now. Is that correct? This is the calendar date now it would have been paid? [LB1094 LB701]

SENATOR CARLSON: Well, the payment would have been made as a result of the bonding process, and the bonding, you know, a bonding project is to bring money up front, which would have occurred, so that money could have all been paid out in December, the way it was supposed to. But the company that was handling the bonding stopped the process until the lawsuit was settled, so that money is not there. And the way it would have been repaid to the bonding company was in 2008 as these taxes are collected and then paid, and that would have been done by the end of 2008. [LB1094]

SENATOR HANSEN: It was the time frame in December that I was getting after. The original idea was to pay the surface irrigators last December. [LB1094]

SENATOR CARLSON: Correct. [LB1094]

SENATOR HANSEN: Is that correct? [LB1094]

SENATOR CARLSON: That's what their contract says. [LB1094]

SENATOR HANSEN: And now, no matter what happens with this transfer of funds,... [LB1094]

SENATOR LANGEMEIER: One minute. [LB1094]

SENATOR HANSEN: ...they are going to be paid incrementally over the next year or maybe even longer. Is that correct? [LB1094]

SENATOR CARLSON: Well, that's correct unless we pass this bill so that the money is transferred and they're paid now. [LB1094]

SENATOR HANSEN: They're paid now. Okay, that's all I want to know. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Senator White, you're recognized. [LB1094]

SENATOR WHITE: Thank you, Mr. President. Would Senator Carlson yield to a

Floor Debate  
March 12, 2008

---

question? [LB1094]

SENATOR LANGEMEIER: Senator Carlson, would you yield? [LB1094]

SENATOR CARLSON: Yes, I will. [LB1094]

SENATOR WHITE: Senator Carlson, last year one of my primary concerns is that the longstanding constitutional tradition that all ground water is owned by the people and cannot be bought or sold because it's held by the state for the trust of the people to be honored. Anything in this bill, in your opinion, authorizes or in fact allows or provides for the purchase of ground water as opposed to surface water? [LB1094]

SENATOR CARLSON: Okay, Senator White, that's an appropriate question and there is not anything in this bill that would give any credence to the sale of ground water. That ground water is owned by the state of Nebraska. People have the right to the use of that ground water. And really, on the surface water portion of this bill, they also have a right to the use of surface water and that right is what's being negotiated here and not ground water. [LB1094]

SENATOR WHITE: And Senator, you, I take it, fully support that provision that the ground water is owned by the people and the state, not any individual. [LB1094]

SENATOR CARLSON: I fully support that and state law which says that ground water is to be shared and shared alike. [LB1094]

SENATOR WHITE: And with that, Mr. President, I would urge the body to adopt the amendment and pass this bill. People trusted us in good faith. I, too, have negotiated a lot of settlements. I've had a lot of deals, some good, some bad. One of the things that makes this state governable, that makes this state a good life is generally we can trust each other and we can do business in an efficient way. If we fail these folks, that will be severely diminished and that is a price far too high to pay. Therefore, I urge my colleagues to vote for the amendment and the bill. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Louden, you are recognized, followed by Senator Harms. [LB1094]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I just want to state that I support Senator Christensen's FA198 to the AM2234. That cleared up some language in there that could be construed to mean different meanings and, with that, it cleared up the bill, made it a little bit easier to understand and took care of some language that needed to be in there. With that, I support FA198 and I would ask the body to adopt FA198. Thank you, Mr. President. [LB1094]

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

Floor Debate  
March 12, 2008

---

SENATOR LANGEMEIER: Thank you, Senator Louden. Senator Harms, you're recognized. [LB1094]

SENATOR HARMS: Thank you, Mr. President and colleagues. Want to thank Senator Carlson for this bill. I think we had a discussion this summer early, about the issue that we have. I think that, first of all, I support both amendments and the bill. I think it's almost an embarrassment to the state of Nebraska for us to even have this discussion. We had a responsibility to meet that agreement; we chose not to do that. And I guess if I was a farmer and the next time the big father comes and asks me to maybe make another deal, I'd probably have to think twice about that, because now we have to go through the legislative process to get them their money, which I absolutely think is wrong. And so I thank Senator Carlson and Senator Christensen for doing this because I think it's the right thing to do, and I would urge the body to support both amendments, as well as the bill. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Harms. Seeing no other lights on, Senator Christensen, you're recognized to close on FA198. [LB1094]

SENATOR CHRISTENSEN: Thank you, Mr. President. I'd just like to encourage the advancement of this amendment to clarify some language. Thank you. [LB1094]

SENATOR LANGEMEIER: You have heard the closing on FA198. The question before the body is, shall FA198 be adopted to AM2234? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1094]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of Senator Christensen's amendment. [LB1094]

SENATOR LANGEMEIER: FA198 is adopted. We return now to discussion on AM2234. Seeing no lights on, Senator Carlson, you are recognized to close on AM2234. [LB1094]

SENATOR CARLSON: Mr. President, members of the Legislature, I very much appreciate the testimony that's taken place concerning this bill. I appreciate the support and I would reiterate that this whole circumstance was not the fault of the Legislature and it was not the fault of the NRDs, and it certainly wasn't the fault of the farmers that entered into these negotiated agreements. But we have the opportunity to make it right and we need to do that. And I would close by saying that, as a portion of the testimony in the hearing, former Senator Ed Schrock was there and he said that, in his opinion, in this bill the credibility of the state is at stake. I believe it is. And I appreciate the discussion, I appreciate the support, and I ask you to vote for AM2234. Thank you. [LB1094]

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

Floor Debate  
March 12, 2008

---

SENATOR LANGEMEIER: Thank you, Senator Carlson. You have heard the closing on AM2234, offered to LB1094. The question before the body is, shall AM2234 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1094]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of Senator Carlson's amendment. [LB1094]

SENATOR LANGEMEIER: AM2234 is adopted. We return now to discussion on LB1094, the bill itself. Senator Preister, you are recognized. [LB1094]

SENATOR PREISTER: Thank you, Honorable President, friends all. May I ask Senator Carlson a question, please? [LB1094]

SENATOR LANGEMEIER: Senator Carlson, will you yield? [LB1094]

SENATOR CARLSON: Yes, I will. [LB1094]

SENATOR PREISTER: Thank you, Senator Carlson. We've got just a couple minutes and we can get to a vote, and I support that, and it looks like you had lots of scurrying support coming in for the bill. One of the components of what we tried to do in LB701 last year was to deal with the vegetation in the streambed. You and I have served on that committee, and could you just give us a brief update so the body is aware, since most of the people here haven't been a part of that process, how you have seen it unfold and what you think of the process? [LB1094 LB701]

SENATOR CARLSON: Okay, thank you, Senator Preister, for the question. Thank you for your work on the task force. And certainly as you may recall, part of LB701 was an appropriation of \$2 million in 2007 and \$2 million in 2008 to clear the vegetation in the streambeds of the Republican and then whatever we could on the Platte River, and there have been tremendous strides made in this direction. The work put forth by those that have been involved in the actual removal of vegetation has just been terrific. The education portion of it has been wonderful. And in the portion of the Republican from Harlan County Lake on down to the Kansas line of those property owners, 170 property owners were talked to, only 2 out of 170 said they didn't want to cooperate. And so it's been a wonderful start, which involves killing some of that vegetation through spraying. It also involves physical removal. It's going to involve some biological applications and others, so it's a many-faceted project that to this point I couldn't be more pleased with what's happening. I look forward to what's going to happen in 2008, and a year from now we'll come back with a report to the Legislature on what we think the total results are. But so far it's been very, very encouraging, and I thank the Legislature for the support last year and those that have been a part of this task force. Thank you. [LB1094]

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

Floor Debate  
March 12, 2008

---

SENATOR PREISTER: Thank you, Senator Carlson. I appreciate that answer and I would agree with that. I would just add that part of my concern with that part of the process was that we didn't go in and do wholesale chemical spraying of the riverbed and that we would, if we did it, do it selectively and with the least hazardous chemicals we could use. And I have been convinced that that is what they're doing. I feel good about that, that more than half of that money has gone not to spraying, but to some mechanical removals, to partially or wherever feasible removing dead timber that create the jams and create the islands. So I think that's been useful. The other thing that I wanted to underscore is that we need to keep sending that message so that Kansas understands we are doing things, we are making a concerted effort, we're spending these taxpayer dollars, Nebraska taxpayer dollars to try to ensure here, as well as with what we're doing with LB1094 or at least the follow-up of it, to ensure that that water gets down to Kansas. We are not ignoring the compliance requirements in that contract, just like we're not ignoring the contract that we have with these irrigators. We are truly trying to be in compliance with Kansas. We are truly trying to ensure that that water gets to them. We don't want to hurt Nebraskans in the process, but we are making, I think, very dedicated, strong efforts to be in compliance with our compact. And Senator Carlson and Senator Christensen have taken a leadership role in that effort. Senator Langemeier has been very helpful to that process as well, and I appreciate all of their work. Thank you. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Preister. (Visitors introduced.) Returning to discussion on LB1094, Senator Pankonin, you're recognized. [LB1094]

SENATOR PANKONIN: I know we want to get to a vote here but, Mr. President, members of the body, I just want to add just one quick comment to the discussion. I appreciate today. I don't know that much about irrigation but I've spent 33 years this month working with farmers, dealing with farmers as a farm equipment dealer, and they're the finest people for sticking to their word. And a deal is a deal and that's what we based our business on for 125 years now, and I'm really glad that we're going to follow through and do what's right with the people we promised that this was the deal. So I thank you for the discussion. I thank Senator Carlson and Christensen for their hard work on this issue, and I think we're on our way to doing the right thing. Thank you. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. Seeing no other lights on, Senator Carlson, you are recognized to close on LB1094. [LB1094]

SENATOR CARLSON: Mr. President and members of the Legislature, again, thank you for the good discussion concerning this bill and I appreciate all of it. And with that, I ask you to vote green once we get the instructions in a moment. Thank you. [LB1094]

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

Floor Debate  
March 12, 2008

---

SENATOR LANGEMEIER: Thank you, Senator Carlson. You have heard the closing on LB1094. The question before the body is, shall LB1094 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1094]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB1094. [LB1094]

SENATOR LANGEMEIER: LB1094 does advance. [LB1094]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR255, LR256, LR257, LR258, LR259, and LR260. Mr. Clerk. [LR255 LR256 LR257 LR258 LR259 LR260]

CLERK: LB1094A, a bill by Senator Carlson. (Read title.) [LB1094A]

SENATOR LANGEMEIER: Senator Carlson, you are recognized to open on LB1094A. [LB1094A]

SENATOR CARLSON: Mr. President, members of the Legislature, I'm so excited about the first vote I forgot about the A bill here. Now the A bill that you can bring up is not accurate because that had to do with AM1808. There is an A bill and the reason there is, is because when you transfer money out of the Cash Reserve Fund you have to account for interest lost. And how much interest lost is an estimate because it depends on the time and length of time of repayment. So I would ask you to vote for the A bill and then on Select File we'll have an A bill that is just an estimate, but it pertains to AM2234. So I do ask for your vote here. Thank you. [LB1094A]

SENATOR LANGEMEIER: Thank you, Senator Carlson. You have heard the opening on LB1094A. The floor is now open for discussion. Seeing no lights on, Senator Carlson is recognized to close. Senator Carlson waives closing. The question before the body is, shall LB1094A advance? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB1094A]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB1094A. [LB1094A]

SENATOR LANGEMEIER: LB1094A does advance. Mr. Clerk, items for the record. [LB1094A]

CLERK: Mr. President, your Committee on Agriculture reports LB1172 to General File with amendments, that signed by Senator Erdman as Chair. Amendment to be printed, Senator Pankonin, to LB902. An announcement: Business and Labor will hold an Exec

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

Floor Debate  
March 12, 2008

---

Session at 2:00 this afternoon under the north balcony. (Legislative Journal pages 920-921.) [LB1172 LB902]

And a priority motion, Mr. President: Senator Lautenbaugh would move to recess until 1:30 p.m.

SENATOR LANGEMEIER: You have heard the motion to recess till 1:30 p.m. today. All those in favor say aye. Those opposed say nay. The ayes have it. We stand at recess.

RECESS

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. 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 items for the record?

CLERK: Mr. President, Health and Human Services Committee reports LB1022 and LB1173 to General File with amendments attached, those signed by Senator Johnson as Chair. Enrollment and Review reports LB606, LB606A, LB766, LB797, LB822, LB912, LB1014, LB1096 as correctly engrossed. That's all that I have, Mr. President. (Legislative Journal pages 922-928.) [LB1022 LB1173 LB606 LB606A LB766 LB797 LB822 LB912 LB1014 LB1096]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now proceed to the first item on the afternoon's agenda. Mr. Clerk, LB765. [LB765]

CLERK: LB765, a bill by Senator Gay. (Read title.) Introduced on January 9 of this year, at that time referred to Health and Human Services, advanced to General File. There are committee amendments, Mr. President. (AM1755, Legislative Journal page 515.) [LB765]

SENATOR LANGEMEIER: Senator Gay, you are recognized to open on LB765. [LB765]

SENATOR GAY: Thank you, Mr. President. The purpose of LB765 is to help control costs in the areas of rehabilitation services and long-term care services. The bill also clarifies the existing statutes and, I believe, will reflect what the Legislature's intent was when this subject was last visited in 1997. I'd first like to give you a brief history of the

Floor Debate  
March 12, 2008

---

certificate of need law in Nebraska and a summary of how we arrived where we are today. It is my intent that we discuss this bill, we have a conversation on what we need to do to maintain a quality standard of care, while at the same time maintaining fiscal responsibility in two important areas of rehabilitation services and long-term care services. So I will start just a history. In the 1970s, clear through 1997, Nebraska had a certificate of need law for all areas of healthcare, not just rehab services and long-term care, but everything. During this time if a healthcare facility wanted to expand it had to file an application, prove there was a need for the expansion, and get approved from the Department of Health and Human Services, so you went and applied for this. The belief was that if we limited the amount of healthcare available we could reduce cost. In 1997, for the most part, Nebraska and many other states repealed the certificate of need law. However, at that time it was agreed that certificate of need should remain in place for two important services--rehabilitation beds and long-term care beds, due to cost controls. At that time it was decided that these rehab beds and long-term care beds could grow at a moderate rate without certificate of need approval. And when we're talking rehab, we're talking acute rehab, not the joint type of thing. We're talking brain injuries, some of these things. So there's differences in the amount of rehabs. But the rule was the lesser of 10 beds or 10 percent of either the total rehab beds or long-term care beds of the facility over a two-year period. For example, if a hospital had 20 rehab beds it could add the lesser of 10 beds or 10 percent of the 20 rehab beds, or 2 beds over a ten-year period. If it wanted to add additional beds it would go through the certificate of need process. This is how the department has interpreted the language for the past ten years, and this method has controlled unrestrained growth. It also, quite honestly, has worked very well up until recently. There have been no real complaints about this. Why did we need LB765? Because right now it has been interpreted by a court that this is all beds. So if you have 2,000 beds, you could go and expand to 200, let's say. So the rehab on long-term care beds is what we did. And there will be an amendment that we'll discuss why we did this. So what we want to do is get an interpretation of the law as we thought it was in 1997. And that's what we're going to decide here, I guess today, is what we want to do. But we believe this was not the intent of the Legislature. I'm interested in this, like I say, to make sure that uncontrolled cost, that we don't just have a...that the quality of the care being provided...you have to have certain quality in order to be accredited, so many cases, so many examples of cases to be accredited and meet federal standards from CMS. So the reason why we want to do this is to make sure we just don't have a proliferation of services. Right now there is some data, and if we need to get to that we can hand that out, of the amount right now, the occupancy rates of what is happening in the different hospitals. I will hand out...I'll get a page...I will hand out where our current rehab beds are right now and what could happen as we go on. But this chart that I'll hand out will show you the current beds. So like I say, LB765 reflects the interpretation that has been in place for ten years. It reflects what I believe to have been the intent of the Legislature, and I still believe it's sound policy. This does not prevent growth. And that's what many of you, I know, are going to have a concern. Does this prevent the growth? It doesn't prevent the growth;

Floor Debate  
March 12, 2008

---

it's controlled growth. And that's what we wanted to make sure that we talked about. Just in general, the beds on long-term care beds, recently we had a discussion, and Vivianne Chaumont, I will just read, on the nursing beds, on the nursing facility: Nebraska suffers from a surplus of nursing facility beds. Through the Medicaid reform effort we are encouraging development of home and community-based care as an alternative to more costly based facility care. Construction of a new facility will negatively impact our Medicaid budget in two ways. Well, I'm not going to get into the ways. But what it would do, right now, if we would just get to the average of the national average on long-term care beds we'd save \$13 million a year. So we have a surplus of long-term care beds. So I think if...some of the talk I've heard has been on the rehab side. But on the long-term care we did separate the two, and we still would want to maintain the long-term care certificate of need legislation. And we'll see what happens on the bill as we discuss it today. So with that, Mr. President, I would close and we'll get to the amendment. Thank you. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay. As the Clerk has stated, there are committee amendments offered by Health and Human Services. Senator Gay, as Vice Chair of that committee, you are recognized to open on the committee amendments. [LB765]

SENATOR GAY: Thank you, Mr. President. The amendment is just a technical redrafting of the bill to provide additional clarity. Certificate of need requirements relating to long-term care beds and rehab beds are drafted in separate subsections to clearly distinguish the two classifications and levels of care. The amendment also deletes existing subsection (6) and (7) of Section 71-5829.03 as obsolete. So what we did to make sure there's no future arguments, and this is a clarification bill, we divided the two, between long-term care beds and rehab beds, just so we don't run into any problems down the road if somebody wants to argue. We just thought for further clarification this would help. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay. You have heard the opening on LB765 and the committee amendments, AM1755. (Visitors introduced.) The floor is now open for discussion on AM1755. Those wishing to speak we have Senator Schimek, Wightman, Hudkins, Aguilar, and Johnson. Senator Schimek, you're recognized. [LB765]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I rise in support of LB765 and also AM1755 which, as Senator Gay explained, is just kind of a technical rewrite of the original bill. And I want to tell you why I'm supporting this bill. I was here when we did away, basically did away, with certificate of need except for certain instances. And I can tell you that there were a number of attempts over the years to do away with certificate of need. And I remember particularly that Senator Chambers and Senator Wesely and others fought doing away with certificate of need. And if you

Floor Debate  
March 12, 2008

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remember, Senator Wesely was and had been Chair of the Health Committee for many, many years. And he believed it was the wrong thing to do, that you did not as a community then try to develop a policy on services, that you just had a proliferation of different kind of services, not necessarily based on need. And I believe that certificate of need really does help to focus and help to keep and contain costs of healthcare. But in 1997, there was a successful attempt, as Senator Gay mentioned. And I remember that there were two senators in particular who were against certificate of need, and they kind of came from divergent places in the body and managed to agree on this issue. And so the one thing that apparently everybody came together on at that time, the hospitals and care facilities and so forth, was that long-term care beds and rehab beds would not fall out of certificate of need, that we would continue to have certificate of need for those areas. And as Senator Gay said, it's worked fine up until this time. I really think that it would be a big mistake to get rid of certificate of need. And I hope that we can show you over the discussion, over the course of discussion, that there really will be some bad decisions made in this area. I'd like to talk just a little bit about the number of beds that we're talking about here, generally speaking. And some people think it might be inefficient to add just a small number of beds at one time, that would be according to the provisions here. But let me mention that economies of scale don't fit in a rehab setting once a unit is created, because neither the patient load nor the staff is available for large bed increases. This is a very comprehensive, complex service. First of all, the number of patients that qualify for rehab care have declined significantly since the federal government changed the qualifying criteria several years ago. Second, it is generally only cost-effective to increase beds incrementally because of the difficulty in providing qualified therapists and staffing. And what we should understand is what acute rehab actually is. It's specialized rehabilitation care, often used for stroke, brain injury, or spinal cord patients. The care includes an intense course of therapy on a continuum of care... [LB765]

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR SCHIMEK: ...to allow the patient the ability to live independently. Acute rehabilitation is different, is different from skilled nursing. While skilled nursing may include some rehabilitation, often orthopedic, like for a joint after surgery and so forth, the continuum of care is smaller and the level of care is not as complex. And with that, Mr. President, I will turn on my light again and stop there. Thank you very much. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Those wishing to speak, we have Senator Wightman, Hudkins, Aguilar, Johnson, Gay, Schimek, and Harms. Senator Wightman, you're recognized. [LB765]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I rise in support of both LB760...if I can read it from there...the legislative bill and the amendment. Usually, I'm a

Floor Debate  
March 12, 2008

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strong supporter of competition and free enterprise, but I think we get involved in medical services, such as we're talking here, and particularly rehabilitation, which is a very limited type of, and a very intense type of medical rehab and medical procedures. And we aren't best served by proliferating too much the number of beds that are available, because it soon makes it so that it's not economical for any particular facility to provide those services. So I think that it does make sense to have a certificate of need where it's assessed first as to what the needs of the state or community is with regard to rehab or whatever else we may have, before we determine whether funding is going to be available. And we have to keep in mind that there is substantial federal funding and state funding going into a lot of these facilities. And as a result it seems to me that the state has an interest in not causing too many or too high a number of beds in these facilities to exist so that it's not profitable for any facility. So with that, since Senator Schimek had her light on, I will yield the rest of my time to Senator Schimek. [LB765]

SENATOR LANGEMEIER: Senator Schimek, 3:10. [LB765]

SENATOR SCHIMEK: Thank you very much, Senator Wightman. I would like to try to respond to a few more questions that people might have. One would be, isn't there a need for more rehabilitation beds? And the answer is no. Last year, 2007, actually it's in 2006 data, there were 182 rehabilitation beds in Nebraska. Only 168 of those beds are actually staffed, have therapists and nurses available to care for patients in those beds. The capacity of individual hospitals ranges from 79 percent to 51 percent, and the capacity statewide is 58 percent. At least one hospital has hired a marketing firm to encourage referrals from across the state to increase this total bed capacity. Next question is, what happens if the numbers do increase? How can we take care of need if it arises quickly? And the CON allows for continual and moderate growth under the law as it existed from 1997 to 2006. Any hospital can get up to ten rehabilitation beds without CON approval, and can add to that number every two years. The law allows for measured growth while protecting centers of excellence to ensure that patients with the most critical needs are cared for. And a little bit later I would like to read for you some of the testimony from an institute...from a doctor who worked at an institute in Kansas and what happened to their rehab hospital down there. Why does there need to be a critical mass of patients in an acute rehabilitation unit? Because acute rehabilitation is specialty care with very specialized services. Madonna Rehabilitation Hospital... [LB765]

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR SCHIMEK: ...here in Lincoln is accredited in six of those very specialized areas; Immanuel is accredited for four. Those are the two main ones in Nebraska. This specialized care is provided to patients with strokes, brain injury, pediatric brain injuries, or car accidents, etcetera. Without a sufficient number of patients they cannot maintain such accreditation, talking about accreditation here. That becomes important

Floor Debate  
March 12, 2008

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and...became important in the past few years because of brain injuries to our soldiers in Iraq and Afghanistan. Many were able to be treated at home in Nebraska due to the efforts of General Lempke and because of the accredited care that was available here and in very few other places. I think the idea here is we need to preserve what we have and not allow such proliferation... [LB765]

SENATOR LANGEMEIER: Time. [LB765]

SENATOR SCHIMEK: Thank you. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Schimek, and thank you, Senator Wightman. Senator Hudkins, you're recognized. [LB765]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I find it rather interesting, if you look at the committee statement, that the people that are supporting...that testified in support of LB765 were those from Madonna Rehabilitation Hospital. And the ones that testified in opposition were those from Bryan-LGH. So is this a turf battle? Perhaps. I see the purpose of this bill is to limit the ability of acute care hospitals to expand bed capacity in two areas--skilled nursing and rehabilitation. Current law allows the expansion based on total bed capacity, and that's what this bill is trying to change. The proposed change would be based upon the total beds of an existing skilled or rehab unit. The Lincoln hospital has tried to expand from 20 to 30 beds. They won a lawsuit in district court allowing this expansion, but the case has been appealed and is now waiting to be heard in the Nebraska Supreme Court. Now what are some of the reasons why you might want to oppose this bill? The change in law, the proposed change, restricts and decreases acute care hospitals' ability to enhance and expand services and bed capacity based upon changes in the market. If you are only allowed a few beds over a few years you're not relating to the need. The market for rehabilitation services is expanding, and current facilities do not accept all of the patients referred to them. The Lincoln hospital has seen an increase in the number of patients needing rehabilitation services, especially in trauma, neuro, and stroke services. We have been at capacity, or they have been at capacity of their current 20-bed unit. This change would make it difficult to expand in a feasible manner, thus restricting those who could provide services to primarily one local provider. Greater Nebraska acute care hospitals would also be restricted, so it's not just a Lincoln problem. We received a letter from the hospital in Norfolk, from the vice president of mission services. It has to do with Faith Regional. And it says, the language of this bill has been introduced to change the status of this regulation. Currently, we have a demonstrated need for approximately 10 to 12 acute rehab beds at Faith Regional. This means that with our current seven beds, it will take us another ten years to adequately meet our existing patient need. In the meantime, patients from our area must be referred to other rehab facilities, even though these services could easily be provided in Norfolk in existing hospital facilities. We feel that the requirements proposed in this bill are problematic, particularly for hospitals who

Floor Debate  
March 12, 2008

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operate rehab beds outside the Lincoln and Omaha area, and we would urge you to consider opposing this bill. Going back to the history of the lawsuit, in September of 2006, the Lincoln hospital filed suit in Lancaster County District Court for a declaratory judgment and injunction relief,... [LB765]

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR HUDKINS: ...requesting that the court apply the plain language of the statute, total bed capacity equalling the total licensing beds. And that's exactly what happened. In that lawsuit the wording of number of beds was upheld as to the total number of beds, not the number of beds in that one particular area. In the absence of a stay of the court's order, Bryan was permitted to proceed to convert and open the ten beds. Now that decision has been appealed and it will be heard in the Supreme Court. I think I'm out of time, so I will talk more later. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. Senator Aguilar, you're recognized. [LB765]

SENATOR AGUILAR: Thank you, Mr. President and members. I'm going to take the same side you just heard, because I'm very concerned of what we're doing here. In Grand Island we have the St. Francis hospital and their capacity is ten beds. We serve very much the same size population in our area as what can be considered the size of Lincoln, easily 100,000 or plus. You know, and to restrict ourselves and say that we're only going to be allowed to expand one bed in a two-year period, I think is ludicrous. I think we need to do more than that. We're limited in a time where we stress more and more community-based services. And to me this moves away from it. And I've heard the same thing Senator Hudkins commented on--this is nothing more than a turf war between Bryan and Madonna. Same thing that...same numbers I can apply to...from Grand Island would be the same in Hastings at Mary Lanning. They could only expand one bed in two years; Good Samaritan in Kearney, one bed in two years. You know, we have a very large service area out there, and I don't want to see us do something that's going to restrict our ability to service. We have qualified staff and technicians out there that can do the same thing they can do in the big city. And I urge you not to support this. And if I have some time left Senator Hudkins would like to use, she may have it. [LB765]

SENATOR ERDMAN PRESIDING

SENATOR ERDMAN: Senator Hudkins, you have 3:40. [LB765]

SENATOR HUDKINS: Thank you, Mr. President, and thank you, Senator Aguilar. I would continue going back to the certificate of need history. In 1997, the certificate of need bill was passed and that provided for an increase of rehab beds of 10 percent of total bed capacity, or 10 beds, whichever is less, over a two-year period. And you just

Floor Debate  
March 12, 2008

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heard Senator Aguilar say how this could, in effect, would, in effect, harm the expansion of any beds in smaller hospitals throughout the state. On April 13 the Health and Human Services determined that Bryan could only increase their rehab beds by 2, not 10 as the statute reads. So Bryan Hospital filed suit and asked that the total bed capacity be used. So that's where we are now. Bryan Hospital did do what the law allowed them to do and now that is wanting to be changed. Why would one hospital or a rehab facility reject a patient? Total admissions to this one Lincoln hospital are 20,000 plus a year, 30 percent of admissions need post discharge care. This equates to 6,000 post acute service referral a year; that's 500 a month. Conservatively, this hospital refers 40 to 50 percent of its patients, through the patients' choice, to the rehab facility in Lincoln. This is for all types of service--skilled nursing, rehab, long-term acute care, and so forth. This equates to 200 to 250 referrals a month that are rejected by this rehab facility, 100 and 125 a month...I'm sorry 200 to 250 referrals of which half are rejected, so that brings us to the 100 to 125. Why would one facility reject a patient being referred from another facility? Well, there are several reasons. One of them is... [LB765]

SENATOR ERDMAN: One minute. [LB765]

SENATOR HUDKINS: ...no payer source. These facilities never or rarely take no-pay patients or charity patients. The Lincoln hospital has 9 to 10 percent as no-pay or charity patients. Who's going to take care of these people if where they are referred to will not accept them? Also the patient's medical history is too complex; they have respiratory problems, they're too large a patient, they have too many medications, they have psychological problems. these might be reasons for rejection of the referral. And social issues: There's family dynamics that the one place doesn't want to deal with; there's patient behavior and other factors. We can also factor in facilities who may not accept patients after 12 noon on any given day. [LB765]

SENATOR ERDMAN: Time. [LB765]

SENATOR HUDKINS: Thank you, Mr... [LB765]

SENATOR ERDMAN: Thank you, Senator Hudkins and Senator Aguilar. (Visitors introduced.) Continuing on with discussion to AM1755, those senators wishing to speak are Johnson, Gay, Schimek, Harms, Wallman, Engel, Flood, Avery, and Hudkins. Senator Johnson. [LB765]

SENATOR JOHNSON: Thank you, Mr. President. Members of the body, I think we all think that competition is good. Virtually everywhere we go society is better served where there is open competition. However, it is good except when the duel that is going on kills off each other. That's what we are facing in this bill. I guess I smell a rat here when I see that we now have several of the smaller hospitals raising concerns about what this bill might do. There was not a single small hospital that showed up to testify at the hearing.

Floor Debate  
March 12, 2008

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What we're really talking about here is quality, and I would say the above average or the superior quality that can be provided with only top-quality staff. There are essentially only two places in Nebraska where this is the case, one in Lincoln and one in Omaha. In order to be able to afford this top-quality staff, it requires approximately a minimum of 40 to 50 patients at one time or an ongoing time to justify all of this top-quality staff for these very, very difficult patients, those with head injuries, spinal injuries, and so on. We are not, we are not talking about the person who's broken his hip, had a knee operation, or something like this. This are the...the worst of the injuries that we're talking about that need extraordinary services. If we have these top services you have to have a critical mass. The statistics are this: There are about 50 of these people in Lincoln. If you divide it between two services I get 25. If you have two services of 25, you just cannot have the staff that justifies the top quality that we're having. This top-quality staff results in top-quality accreditation. There are people that recognize this in other states and actually come to these two facilities for this top-quality care. This bill is the result of a problem here in Lincoln, let there be no doubt about that. I think it is incumbent that we preserve this. But, as Senator Aguilar and Senator Hudkins have pointed out, we cannot do this at the expense of the rehab services around the state of Nebraska. As I said before, none of these hospitals to my recollection, and this is at a time when I wasn't feeling good post op, but I do not recall... [LB765]

SENATOR ERDMAN: One minute. [LB765]

SENATOR JOHNSON: ...that there was a single smaller hospital from outstate Nebraska that showed up. However, nonetheless, if there is a problem there, we certainly are willing to work with them to correct these problems because these are two different and distinct entities we're talking about. With that, thank you. [LB765]

SENATOR ERDMAN: Thank you, Senator Johnson. Senator Gay, you're recognized, followed by Senator Schimek. [LB765]

SENATOR GAY: Thank you, Mr. President. I was remiss earlier in my opening comments. I wanted to thank Senator Fulton who prioritized this bill. But anyway, I overlooked him, and I didn't mean to. But I truly appreciate that. And Senator Schimek is also cosponsor, is doing a good job of explaining why we need this, the difference between acute and skilled, as Senator Johnson just alluded to. But a couple of comments I just wanted to touch base with what I'm hearing and just for further clarification, I suppose, is when we talk about these acute, the number of acute patients, we're talking a very limited number. And I have 2.7 percent nationally of discharges need acute rehabilitation services based on Medicare's most recent data, 2.7 percent. So I handed out another sheet, then, that shows our acute rehab beds. And it also shows some of the hospitals we're talking about on the previous chart, where they're at. And if you look under the licensed occupancy rate, where they're at is...the percentages...we're in the 50s, so we're not really quite overloading these hospitals with

Floor Debate  
March 12, 2008

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patients. And we shouldn't be, and that's the whole idea of this. This is a clarification and there is differences here. The reason why, it's a clarification of what the law was, what was intended. And we will see what happens. But I think it's important in the future that we clarify that. That's also why the amendment, the committee amendment, separated the two between long-term care beds and rehab beds, so we don't have further confusion or turf battles. Because when you look at competition in the healthcare industry, I'm the first one...I don't want to limit competition either. But healthcare is not exactly competitive when you're looking at...it doesn't always lead to lower charges. Because what we're looking here the providers, lots of times, control the supply of who's coming in, hey, stay here, go to our hospital, do this. And I'm not saying they're doing anything wrong. It's just that we've got to be very careful though on what qualifies as a patient, and Senator Johnson alluded to that. The quality, if we water down the quality and we're not accredited, then we're going to lose dollars. And not only that, we're going to lose the good quality institutions that we're trying to build up. So the options of growing in the future is a planned growth. So if I have a smaller hospital and I know I'm going to grow in the future, remember, you still can go through the certificate of need process if you need to go beyond the beds you might need. So if your 10 percent is one or two beds you can go through the process. Now I've heard from other senators, and I would be the first to admit we don't like going through the process through Health and Human Services because it's kind of a hassle. Well, and I'm sure it is and, you know, we can do the best to help them through that process. But there's a reason we have the process, and that is again what the debate is about. This is about controlling our costs of what we're paying out and controlling the supply. So in a way it is, but we're paying the bills. I mean we get...a lot of the patients we're paying the bills on this. So just wanted to kind of get on that. The quality and I talked about that and you're hearing some about that. But I just think as we go into this if you do look at this acute rehab beds, that's from the Health and Human Services report. In the past, when we had talked about this...so... [LB765]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR GAY: ...I'm reading through some of the testimony, and it does clearly say with the exception of these and the reasons why that we wanted these exceptions back then. So like I say, this...when I first arose, this is a clarification of what has been in place for ten years. Now you're hearing some things that say, well...and I'd be the first to admit if we can improve this to encourage some of the outstate, of course, the long drive...we want to have these facilities in rural, Greater Nebraska, of course. And I don't want to do anything to harm that at all. But we also...fiscally we need to be responsible of how we're doing this, because if we dilute the quality and increase the quantity we're going to find ourselves with a lot of just average, average rehab hospitals. And Senator Schimek alluded to General Lempke and his talk about the quality of care we have right

Floor Debate  
March 12, 2008

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here compared to anyone right now around the country. And he brought those soldiers here with brain injuries to Lincoln, to one of the hospitals, and that's fine. Also the Health and Human Services Committee... [LB765]

SENATOR LANGEMEIER: Time. [LB765]

SENATOR GAY: Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay. Those wishing to speak we have Senator Schimek, Harms, Wallman, Engel, Flood, Avery, Hudkins, and others. Senator Schimek, you're recognized. [LB765]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I would just like to read a letter to you or parts of a letter to you from someone from Kansas who wrote to the Chair of the Health and Human Services Committee, and I think it really brings home what we're talking about here. This doctor was a medical director at the Rehab Institute of Kansas City from 1993 to 1999, and it was located in Kansas City, Missouri which has a certificate of need program. And it allowed for the reassignment of beds from acute to rehab without necessarily having to go through the entire process. And then additionally, due to the unique geographic characteristics of Kansas City, more than half of the geographic catchment area lay in Kansas, which had no certificate of need process. So as a result, acute rehab bed capacity was allowed to expand, and the facilities that previously referred their patients to the Rehab Institute of Kansas City were no longer doing that. And I will quote from him now. It says, as a result of this expansion the institute witnessed a gradual decline in its average daily census and was unable to support the infrastructure needed to meet the needs of the most complex patients referred to us. It eventually was forced to close its inpatient program. The loss of a specialty program for people with complex neurological conditions such as spinal cord injury or brain injury, and the dilution of those patients to numerous small rehab units has resulted in a loss of the ability to adequately rehabilitate these patients in the Kansas City area. Sadly, since our community does not now meet the needs of these patients, they must be referred to rehabilitation hospitals in other states, a significant financial and emotional burden for patients and their families. The state of Nebraska is fortunate to have Madonna Rehabilitation Hospital. Madonna's long history of specialty program development and their CARF accreditation in the areas of brain injury, spinal cord injury, and pediatrics has made it the program of choice for many of these patients. I would strongly urge you to consider our experience in Kansas City as you evaluate Nebraska's rehabilitation certificate of need process. I think that says it about as well as anybody can and puts it in human terms. And I would give the rest of my time to Senator Gay, if he should so choose. Senator Gay, would you like the rest of my time? [LB765]

SENATOR LANGEMEIER: Senator Gay, 1:45. [LB765]

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Floor Debate  
March 12, 2008

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SENATOR GAY: Thank you, Senator Schimek. As I was ending, you know, one thing we're looking at there's a bill right now that will be coming before you, LB738 was amended into the health bill. And it's a traumatic brain injury, brain injury registry because this is so complex that we...there's not enough information of how to do this, so we're creating a registry through the department. So it is complex. And if you're, you know, to understand all the different...what's skilled, nonskilled, acute, but it's just a unique skill set that people bring and hospitals bring that...well, it is that. And if we dilute the quality and quantity, and we don't have accredited hospitals much like some of the ones we have now, then it will hurt. So I think in a way it hurts your constituencies in there. If you got a good program going now, you don't want somebody in your backyard doing the same thing and competing, first of all,... [LB765 LB738]

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR GAY: ...for those skilled doctors, which as we all know, we've been working hard to get labor in the healthcare industry in Greater Nebraska. We're doing all sorts of things to increase that. So that's why, like I say, I don't think this is necessarily that we're stifling any competition. We're...quality control and cost control is what we're looking at here with this bill. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay and Senator Schimek. Mr. Clerk, items for the record? [LB765]

ASSISTANT CLERK: Mr. President, one announcement. The Committee on Revenue will have an Executive Session at 2:30 this afternoon in Room 2022. [LB765]

SENATOR LANGEMEIER: Thank you. Those wishing to speak we have Senator Harms, Wallman, Engel, Flood, Avery, Hudkins, Fulton, and others. Senator Harms, you're recognized. [LB765]

SENATOR HARMS: Thank you, Mr. President. Senator Johnson, would you yield just for one question, please? [LB765]

SENATOR LANGEMEIER: Senator Johnson, would you yield to a question? [LB765]

SENATOR JOHNSON: Yes, sir. [LB765]

SENATOR HARMS: In your comments you talked about quality and making sure that we have good doctors and everything put together. When was the last time you were in the hospital at Regional West, Scottsbluff, Nebraska? [LB765]

SENATOR JOHNSON: Probably about two years ago. [LB765]

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Floor Debate  
March 12, 2008

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SENATOR HARMS: Okay, thank you. [LB765]

SENATOR JOHNSON: Excellent facility. [LB765]

SENATOR HARMS: Thank you. Senator Gay, would you yield to some questions, please? [LB765]

SENATOR LANGEMEIER: Senator Gay, would you yield to a question? [LB765]

SENATOR GAY: Yes, I would. [LB765]

SENATOR HARMS: Since you're carrying this bill, and I agree with making sure that we have quality and that we have the best doctors possible. When was the last time or have you been at the Regional West? [LB765]

SENATOR GAY: I have not to this date, sir. [LB765]

SENATOR HARMS: Okay, thank you. I guess that's my point that I'm trying to come to grips with. Because of where we're located, if you take the map and go back to the second page of the map, you take a look at where Scottsbluff Regional West is located, there isn't anybody...there's no one close to us. I mean, that is the only hope for a lot of people. And to say that there isn't quality there, unless you have taken the time to go to Regional West, look at the hospital, talk to the doctors, review the process that they use, I don't think we can make this determination that it's not quality, that in fact I think it actually hurts us. And could you yield to another question, Senator Gay, please? Is this issue that we have between Madonna and Bryan, is this what has created this issue? [LB765]

SENATOR GAY: Senator Harms, this was the issue that brought this to a head. Yeah, it has changed the...Senator, one thing. That's what brought this to a head. And I don't want to use all your time, but in no way alluding to the lack of quality out at the Regional West, because I've heard some great things. I've had lunch with them and they've testified before the committee many times. And I'm excited to go see it, quite honestly. Thank you. [LB765]

SENATOR HARMS: Yeah, it is a great hospital. And my point here is that, in visiting with them, I think they're offended by the fact that because of this issue between two other hospitals, it now draws in their hospital and some other rural hospitals. And to be lumped in and saying that we are not a quality hospital, that we don't have the appropriate doctors, we can't deal with some of the issues, you know, when you look at where we're located, quite honestly, if there is a really serious issue that this hospital cannot take care of, I would tell you now they're probably not going to come east. The

Floor Debate  
March 12, 2008

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services for this region go into Colorado, to Denver, Ft. Collins. I mean that's what would happen. And so my point here is that I think it's very important. I've talked with the people at the hospital, and they have some concerns about this and would like to make sure that as we look at this that we have a fair opportunity to address this issue, and also would like to make sure that we have a chance to not exclude some of the rural hospitals with their growth. They feel like they're going to be limited with their growth. And to be honest with you, we haven't found...we haven't had a good experience with Health and Human Services. I'm sorry, that's a pretty good excuse for me because things some times go in there and don't come out, and that's their very point, that they've not had good experiences there. And they don't want to have to be limited. They don't want another level of bureaucracy in regard to this particular issue. Now I think this could be resolved pretty easily by simply amending this bill to include metro versus Class I's. And I think that would free us up a little bit so that the rural hospitals still have a chance to grow and don't have to go through the bureaucracy. But I think before we become real critical of any other hospital, I'd sure like to know the criteria that we use and I'd like to know... [LB765]

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR HARMS: ...whether we've been to the hospital and whether or not we've spent time talking to the doctors, and we see the process that takes place and how important it is to our growth, our overall development. Most...in most communities in rural America hospital is critical and makes a big difference sometimes whether people relocate or don't relocate. And I will tell you that I'm very proud of what I see in Regional West. It's the biggest single employer we have out there. It has services all over that region and even into Wyoming. It's well known. It's got great doctors. So I guess at this point I would like to make sure that we leave it open for us to be able to resolve this issue. And if not, I will make some amendments on Select File, if it gets that far. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Wallman, you are recognized. [LB765]

SENATOR WALLMAN: Thank you, Mr. President. Will Senator Harms yield to a question? [LB765]

SENATOR LANGEMEIER: Senator Harms, would you yield? [LB765]

SENATOR HARMS: Yes, I would. [LB765]

SENATOR WALLMAN: Do you have any idea, I know this is putting you on the spot, of how many brain injuries or spinal injuries you have in your region? [LB765]

Floor Debate  
March 12, 2008

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SENATOR HARMS: No, but I can get that data for you. [LB765]

SENATOR WALLMAN: Okay. [LB765]

SENATOR HARMS: I can tell you what kind of data. They've got it all; I just didn't ask for it. [LB765]

SENATOR WALLMAN: Thank you. [LB765]

SENATOR HARMS: You're welcome. [LB765]

SENATOR WALLMAN: I have to agree, most people think competition is better. But you get the critical care, brain injury, spinal injury. I've had...I've been in these hospitals and Madonna does a good job. And you know, if this is a turf war--maybe it is--but turf wars sometimes you overbuild. You know, I'm going to overbuild you, I'm going to build here, I'm going to build there, I'm going to take your business. And quite frankly, that's how come I think...like the Heart Institute and them got started in Lincoln. You charge too much and then the doctors see what the hospitals charge, and then this and this. We have issues with a lot of things in healthcare. But I think basically Nebraska does have good healthcare, whether it be Scottsbluff, or whether it be Lincoln, or whether it be Omaha, whether it be Beatrice. But how much more can we afford? And the federal government, the CMS sets up the rates, which we all know. But we have to have some kind of break on this thing, I think, you know, if you will. And so I would thank Senator Gay and Senator Schimek for bringing this to the forefront, because it's not easy to deal with issues like healthcare. And everybody wants the best healthcare they can have, and sometimes we have to travel a few miles to get it. And that's the way it is. And thank you, Mr. President...Madam President. [LB765]

SENATOR FISCHER PRESIDING

SENATOR FISCHER: Thank you, Senator Wallman. Senator Engel, you are recognized. [LB765]

SENATOR ENGEL: Madam President, members of the body, I too was here in 1997 when they got rid of the certificate of need in the state of Nebraska. And at that point in time, I think, if we look back I probably voted against that because where I live, I live up right across the river from Sioux City, Iowa. We had two functioning hospitals. Now that's not...we're not...we're beyond...a little broader than just critical need up there. But we did have a great heart section; in fact, they just started up when I had my surgery up there. And the other hospital had a great cancer facility and so forth. And it worked out fine because they weren't competing with each other on those. But then when they got rid of the certificate of need in Iowa, well then they both decided they had to have the full gamut of everything. And then, of course, they expanded, expanded, expanded,

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

Floor Debate  
March 12, 2008

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which is...you know, and we've got good facilities up there--not a problem with that. But the only thing is...and so I'm not against certificate of need at all, but I do have a couple questions for Senator Gay, if he happens to be available. One is, in reading this handout from you... [LB765]

SENATOR FISCHER: Senator Gay, would you yield to a question? [LB765]

SENATOR ENGEL: Would you please? I'm sorry. [LB765]

SENATOR GAY: I will. [LB765]

SENATOR ENGEL: I guess I just assumed you were available. I'm sorry. I'll wait for you next time. But this handout, acute rehab beds, in reading this, because you answered my question earlier, because I thought well if...like in Scottsbluff or, you know, where they just have 18 beds and they can only add 10 percent every two years, that's only 1 extra bed, you know. So that's not very much. And then also in handling these critical care patients it's very staff and equipment intensive. So sometimes if you add a bed or two...I mean, in some cases you have to add more staff and so forth, too. So for a smaller hospital I see where that could hurt them. But the only thing is what you explained to me, and I want to verify that, is like take Scottsbluff. I just happen to have my finger on that. There's 8...they have licensed bed capacity of 18, and right now they're only using 54.3 percent of that capacity. So that's what you're telling me. So they're utilizing ten beds now and they do have eight available, is that what you're telling...is that what this is telling me? [LB765]

SENATOR GAY: Yes, Senator. Just real quick thought, let me just...yeah. If you look 18, the capacity is 54.3 percent. Now one thing if they go through...earlier it was mentioned if they go through the process, the process is still in place to get more beds. Now it may not be easy, but within 60 days the department has to get back in written form to whoever wants to expand. So there is a process still in place. This is just clarifying the process. So you can expand in an area. Let's say you want to do that. And they'll get back with you in 60 days with a written yes, no, you need the beds or you don't. [LB765]

SENATOR ENGEL: Okay, now also do I understand that they can automatically add 10 percent every two years without going through the certificate; is that correct? [LB765]

SENATOR GAY: That's correct. [LB765]

SENATOR ENGEL: And so if they want to go beyond that, they have to apply to the Department of Health and Human Services? [LB765]

SENATOR GAY: That's correct. So in that case... [LB765]

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

Floor Debate  
March 12, 2008

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SENATOR ENGEL: So hopefully... [LB765]

SENATOR GAY: ...I assume, you know, you're not going to put 1.8 beds, so 2 beds, let's say. [LB765]

SENATOR ENGEL: Okay. [LB765]

SENATOR GAY: But yeah, you'd go through the process then. [LB765]

SENATOR ENGEL: I know in the past it's been nothing but a problem because of...but they're overhauling Health and Human Services now, so hopefully that service will improve. So thank you. I think you answered my questions. [LB765]

SENATOR GAY: Thank you, Senator. [LB765]

SENATOR FISCHER: Thank you, Senator Engel and Senator Gay. Senator Flood, you are recognized. [LB765]

SPEAKER FLOOD: Thank you, Madam President, members. I started out this morning very hesitant about LB765. I've had a chance to talk to the officials at Faith Regional Health Services in Norfolk. We have six acute rehab beds. Those beds, I think, when you look at it are a little different than the ones at Madonna. Madonna is a very specialized acute rehab center in Omaha, or in Lincoln. I'm willing to vote to advance LB765 to Select File. And I would ask, Madam President, if Senator Gay would yield to a question. [LB765]

SENATOR FISCHER: Senator Gay, would you yield? [LB765]

SENATOR GAY: Yes, I would. [LB765]

SPEAKER FLOOD: Senator Gay, I appreciate you're willingness to work with the concerns of those of us in Norfolk and other rural communities. What process to you envision employing between now and Select File, should this bill advance, to work out some of the concerns that have been raised by hospitals like Faith Regional? [LB765]

SENATOR GAY: Yeah, thank you, Senator Flood. Well, what I...of course, any questions that any member has can come, and let's address those. But if there has to be a forum in there for a regional hospital that's, you know, let's say 50 miles...I'm just putting this out here, within 50 miles or something like that, I'm not expert in this, per se, but we would go visit and see if there's something that would assure the rural communities. Because we're in no way out to harm any communities or current facilities. But controlling costs and all of that, we'd look and come up with some kind of

Floor Debate  
March 12, 2008

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amendment, if we need it, to address any concerns that you may have. And I'm always willing to talk to anybody along the way. During the hearing there was little opposition. Thank you. [LB765]

SPEAKER FLOOD: Well, I appreciate that. I appreciate your leadership and your willingness to work. And I trust the process that you're going to use to get us to Select File. And that's the reason I'm going to vote to advance both the committee amendment and LB765. And I would add this: When you live 120 miles or two hours from Omaha or Lincoln and you've got these acute rehab beds, when it's appropriate for the patient, it is so much nicer for somebody from Columbus, or Norfolk, or Platte Center, or Madison to be able to visit their loved one at the Norfolk hospital and not have to relocate the family to a town two hours away and make those trips and pay that gas and the hotel room. We have six beds, which isn't overkill for an area of about 100,000 plus people, but it is necessary. And the ability for Faith Regional to grow is important to me and to the citizens that I represent. And I am going to vote to advance this bill, and I'm going to work between now and Select to make sure we find an agreeable amendment. Thank you, Madam President. [LB765]

SENATOR FISCHER: Thank you, Senator Flood. And thank you, Senator Gay. Senator Avery, you are recognized. [LB765]

SENATOR AVERY: Thank you, Madam President. I am not sure how I'm going to vote on this. I have been in contact with Madonna, and I've been in contact with Bryan. Both of those facilities are excellent facilities, and both of them are in or near my district. But I do have some questions and some concerns. I think we have to recognize that Bryan has a special function in the community because many of its patients are indigent patients, and they are generally not accepted or not wanted by other facilities. They're often brought by ambulance or they're flown in for emergency care by life flight, often with very severe, devastating injuries. They're not able to return home directly because of problems of independence, of mobility, disease management, self-care, and things of that sort. So for the majority of their patients Bryan-LGH Medical Center provides the sole option for acute inpatient rehabilitation, especially for these non-funded patients. Senator Hudkins actually enumerated some startling statistics, I think. She pointed out that about 40 to 50 percent of Bryan's referrals are requested to go to Madonna. That's an excellent facility; that's a good place for them. But what happens is that so many of them get turned down for whatever reason. I don't know what the reasons are. But I am told that a great number of them are turned down, as much as 40 to 50 percent of them are rejected. So that raises a really serious issue for me, and that is, what happens to these 1,200 to 1,500 rejected referrals per year? Where do these patients go? Hopefully, they find a place. If Madonna rejects them, my guess is that Quality Living in Omaha would also reject them. Do they go to Kansas City? I don't know. Perhaps Senator Johnson would be able to address that. In fact, I would ask him to yield, if he will, for that question. [LB765]

Floor Debate  
March 12, 2008

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SENATOR FISCHER: Senator Johnson, would you yield? [LB765]

SENATOR JOHNSON: Yes. [LB765]

SENATOR AVERY: Do you know...have any idea what happens to patients who are rejected, particularly these indigent patients who may not have the means to fund their care? [LB765]

SENATOR JOHNSON: No, sir, Senator Avery. And as we've talking in the past, that one of the problems is, and it certainly is becoming somewhat true here in Lincoln as well, is that with the advent of the specialty hospitals it isn't just these people that are the concern, but the specialty hospitals certainly take a higher percentage of those that have insurance and can pay and so on, and then unfortunately leave general hospitals, like Lincoln General, Bryan, and St. E's with those with less ability to pay. It's a universal problem throughout the United States. [LB765]

SENATOR AVERY: Thank you, Senator Johnson. Well, I know this, that the rehab beds at Bryan tend to be full,... [LB765]

SENATOR FISCHER: One minute. [LB765]

SENATOR AVERY: ...and that in the rest of the state, I believe, the occupancy rate is somewhere around 58 percent. I do believe that Bryan will get the ten beds that it wants because I think they will prevail in their court case. They've already prevailed once. One thing that I do note is that back in 2002 and 2003 Bryan was able to expand its bed capacity in acute rehab from 10 to 20, and that was under the current law. And there was no objection raised at that time that I know of. So I'm a little bit concerned about the timing of this. Why is there interest in increasing to 30 beds now such an issue that it requires legislation? I am prepared to keep my mind open because I think, in general, I support... [LB765]

SENATOR FISCHER: Time. [LB765]

SENATOR AVERY: ...certificates of need. Thank you, Madam President. [LB765]

SENATOR FISCHER: Thank you, Senator Avery. Senator Hudkins, you are recognized. [LB765]

SENATOR HUDKINS: Thank you, Madam President and members of the body. If you have on your desk a handout from Senator Gay talks about acute rehab beds, if you have that, I would ask that you pull it up because I'm going to be referring to it in just a minute. But I would like to give you the definition of rehabilitation hospital defined. And

Floor Debate  
March 12, 2008

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this is in Section 71-427. A rehabilitation hospital means a hospital that provides an integrated program of medical and other services for the rehabilitation of disabled persons. So a rehab hospital is a classification by Medicare. An acute care hospital includes ICU unit, progressive nursing services, and general, and medical, and surgical. A rehab hospital is one...or rehab facility is one that the patient can withstand three hours of physical therapy a day, and a skilled nursing home is one that is one hour of physical therapy a day. I talked to one of the people involved in this lawsuit and he said that Bryan is a rehab facility. They handle trauma patients and the rehab after that. They handle hip, knee. And, Senator Johnson, those are rehab cases. They also handle neuro, brain damages and stroke problems. They do not handle spinal. They have just decided they did not have the desire nor the capabilities to handle spinal cord cases at Bryan, nor do they handle children under ten. So Bryan-LGH is in fact an acute care hospital that also contains a rehab facility. We should ask ourselves the following question: How does this bill improve patient care and serve the citizens of Nebraska? One of the biggest challenges hospitals have to face is the ability to produce a safe destination and discharge for their patients. The goal is to move them to the next level of service that they need to the destination that they request at the appropriate time. A discharge plan is developed for every patient within 24 hours of admission. The discharge plan determines, in consultation with the attending physician, the progress of the patient during the hospital stay and the progress of the patient after he or she leaves the hospital. With over 20,000 inpatient admissions a year, 30 percent plus of patients need some kind of post acute care service. The biggest challenge is for hospitals to get patients out of the hospital, first of all, to the facility of their choice, second to an appropriate facility, and third in a timely manner. The patients are asked where they would like to go. If they are rejected by that facility, then the hospital must seek the next best alternative. The facilities that are requested to take these patients have the ability say no, they don't want the patient. Why would they say that? And for some of you, I said this earlier, others weren't paying attention, hopefully we'll get some more information to you,... [LB765]

SENATOR FISCHER: One minute. [LB765]

SENATOR HUDKINS: ...the no-payer source, over 50 percent of Bryan's rehab patients are either no pay, Medicaid, or Medicare. Our case management department has had cases where the department has called over 50, 5-0, facilities looking for placement for one patient. And it's very common to call three to ten facilities for every patient before finding one that will accept them. So the hospitals are trying to address the ongoing and challenging needs of the market. We're being...they are being rejected by existing facilities. They're using the existing law to expand the services. And the certificate of need, why would you want to go through that very expensive process for one or two beds? I'll talk more later. Thank you, Madam President. [LB765]

SENATOR FISCHER: Thank you, Senator Hudkins. Senator Dierks, you are

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

Floor Debate  
March 12, 2008

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recognized. Senator Dierks. Senator Dierks, you are recognized to speak. The Chair recognizes the Speaker for an announcement. [LB765]

SPEAKER FLOOD: Thank you, Madam President, members. A quick announcement as the floor awaits Senator Dierks's arrival. With regard to the budget I want to make the following announcement very clear. We will take up the budget next Monday. At 1:30 p.m. the budget will begin. I will not be scheduling LB249, which was advanced from the Appropriations Committee as a part of the budget for this year. I will be scheduling LB988 following consideration of the budget bills that are set to begin next Monday at 1:30. Accordingly, your financial status that will show up on tomorrow's agenda, as attached, will show LB249 as a component of the budget as advanced to the floor by the Appropriations Committee. It is also referenced in the pink booklet that will be distributed to the members. On Monday's agenda you will see a different General Fund financial status that lists LB249 as not applicable. I want to repeat, LB249 will not be considered in the budget package this year. Secondly, we will not take up the death penalty repeal bill next week. We will take it up at 10:00 a.m. the following week, the week after next. I will have more announcements tomorrow regarding late nights, scheduling of bills, and the remainder of the session. Thank you, Madam President. [LB765]

SENATOR FISCHER: Thank you, Mr. Speaker. Senator Johnson, you are recognized. [LB765]

SENATOR JOHNSON: Madam President, I'm not going to take a lot of time here. But one of the things is that would caution Senator Hudkins that the book that she was quoting from really was talking about apples and oranges. What we're talking here is a special group of people that require the maximum amount of care in their rehabilitation. This is what we're talking about. Senator Harms listed or talked about the quality of his facility, and it is superb. It just is a great facility with great staff. One of the things that when they have one of these people that we're talking about, they put that person on the helicopter and go to a wonderful rehab center, like the one we're talking about in Denver. I can tell you that we put people on our helicopter and fly them to Denver, Omaha, Lincoln, or Kansas City. These are special patients requiring special care; that's what we're talking about. We're not just talking run-of-the-mill rehab. These are special people requiring special care, and we like them to have the accreditation that goes along with this, and that's what we're trying to accomplish. Let me assure you that Senator Gay and I, and I believe the rest of our committee, will do our best to satisfy the concerns of the Norfolks, the Scottsbluffs, and the rest of these hospitals that have raised these concerns. We would ask that you advance this bill to the next level, and we will work with all concerned and certainly this means with addressing Senator Hudkins' concerns as well. [LB765]

SENATOR FISCHER: Thank you, Senator Johnson. Senator Erdman, you are

Floor Debate  
March 12, 2008

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recognized to speak. [LB765]

SENATOR ERDMAN: Madam President, members of the Legislature, I rise in support of LB765 and the committee amendment. And I am from western Nebraska, and I do appreciate their input, Senator Harms. But in all candor, I sent them an e-mail on January 23, and I got a response on March 7. Better late than never. And I think the committee is willing and interested in being a part of a solution that addresses the concerns. Senator Harms and I had an opportunity, before the beginning of this session, to actually meet with the individuals at Regional West about some of their concerns. And I shared at that point, and so did Senator Harms, to please contact us if you have any concerns. If you look at the committee statement, the Hospital Association themselves didn't testify on the bill. So I think when Senator Johnson gets up and says there's a rat here, I think there may be. But the other side of this is maybe the Hospital Association was divided and they couldn't take a position. If that was the case, they still should have testified in neutral and said, hey, we have folks on both sides of this. Let's back up to why we're here. In 1997 this law was passed. Since then the department has interpreted it exactly the way that it is drafted in this amendment. This is it; this is the common practice today. How was it possible that Scottsbluff got 18 acute regional beds under the current practice? If it's so restrictive, how did that happen? I don't...I mean, it's lost on me, to be candid with you. If there's a lack of clarity on what's being attempted here, I think that needs to be addressed. If we need to clarify what we're talking about, we're talking about rehabilitation beds and who that applies to and who it doesn't apply to. I think that's all essential for us to ensure that this language is clear. And if it's not clear, I think Senator Gay, Senator Johnson, the legal counsel of the committee, and others are willing to work through that. But what we're essentially doing here is restoring the previous interpretation of the law. We have that right as the lawmaking body, as the public policy...those that set the public policy for our state to do that when a court interprets a section of law different than what it was previously interpreted to be. So we have the opportunity to respond, and LB765 does that. And there is a turf battle. It's not new to this topic or to this Legislature, even this session. We'll probably have more this week. But the reality is, is that what we are doing today is trying to restore a previous interpretation. And if it was so hard for those entities to operate over the past ten years, then how come we haven't heard any of that in our testimony? How come we didn't hear any of that at the hearing? I would like to know. Because what we're doing here, again, is reflecting previous practice, which we again, as lawmakers, have the ability to do when a court interprets a statute different than what was intended or what was practice. That's our opportunity. The lawsuit did change the interpretation. And we can wait, or we can go ahead now. And depending upon whether or not you're supporting Bryan-LGH or Madonna or whoever else, you probably would like one path or another. But the certificate of need process is still in place in the bill as it is in law. The question is how it's interpreted. And if there needs to be additional work done, again that offer stands, and I'm glad at least that we have some that are willing to finally speak up, even though they were given multiple opportunities prior to this point. I think that's essential to

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

Floor Debate  
March 12, 2008

---

this process. We want to make sure that we make the best policy we possibly can. But if it was that essential, and if it was that much of a big deal, why didn't we hear this before now? And why, when people were given an opportunity to speak, they were silent? Just the questions that I have to add to this discussion as it continues on. And I do think... [LB765]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR ERDMAN: ...this bill should be advanced. And I do think the folks should sit down, between General File and Select File, to get a clear understanding of what the intent is, to get a clear understanding of what the law intends to apply to, and to figure out how to make that reality happen. Because if you look at the occupation rates, 58 percent, 51 percent, 55 percent, Senator Johnson is right--you drop that number in half in Lincoln, and you potentially have other impacts throughout the state. But the reality is, is that we have an opportunity to clarify the law. That can be done between General and Select, and I'm hoping that the people take seriously this process and they involve themselves in it, instead of throwing stones from the outside. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Louden, you're recognized. [LB765]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I guess the reason I rise mostly for questions about the whole process. I would like to know, if someone can tell me, if the reason this has come to a head is because they've had a lawsuit and there's been some different interpretations of the law. So consequently now we're in here trying to either do what the court interpreted or where we went with the thing. My problem is, is what effect it will have on some of our facilities in western Nebraska. We have the Regional West out there, and that really is the only one that has any rehabilitation of acute care whatsoever. And as Dr. Johnson has mentioned, or Senator Johnson, when someone is in need of real serious rehabilitation they're usually flown to, I think, the Craig institute in Denver. And when you look at the percentage here of the 54 and all of that, I've had family members in that rehab center. And usually it's a short-term deal, the one in Scottsbluff. They usually put them in there for a length of time. Lot of times it's governed by the insurance. Lot of insurance will only pay for so many days in there. But it depends on the victim. If they're stroke victims or something like that, this is something that when you look at the map of Scottsbluff and see all the wide open country in between, there's a lot of those people that after they've recovered from some of those illnesses or whatever cannot go home for a 100 miles away from a hospital, so they go into the rehab center. And the doctors usually recommend it for a length of time so they can get to where they can be a little bit more mobile and be able

Floor Debate  
March 12, 2008

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to take care of themselves. So when you look at that percentage that really to me doesn't mean anything, because they're circulating those people through there on a regular basis. There usually always has to be about a certain amount of empty beds in there because people are coming through there all the time. So I have no problem with the percentage. But I do have a concern that we may be passing some legislation that will affect on how Regional West operates out there. I was told once that it probably wouldn't have any effect on them because, are they building anything? And my answer was, I think they have a permanent crane sitting on top of that Regional West Hospital. I've been around that thing for I know over 40 years, and I've never seen a time yet when there wasn't a crane up there building something. And I can't count the number of entrances to that hospital on one hand over the years that I've been in and out of there. I've been around Regional West a great deal over the years. So they're continually building. And as Senator Harms pointed out, you look where we are in eastern Nebraska, a lot of the healthcare out of Scottsbluff does go to Ft. Collins, goes to Loveland, Colorado. In fact, Regional West bought into the facility on what they call the Health...what is it? The Healthcare of the Rockies or something like that. But they built a huge new, brand new hospital there in Loveland, Colorado. And different healthcare facilities in the states surrounding there bought into that thing at a certain percentage. And of course some of their acute patients go to that hospital for healthcare, some of the acute heart patients and that sort of thing. So most stuff does go west out of Scottsbluff. Very little of it in the northern part of the Nebraska, and it isn't on the map here, but Rapid City isn't put on the map that you have on the piece of paper. A lot of that all goes to Rapid City. And, of course, these other beds in the Chadron area, they have to have some type of rehab beds that they can do something with, if there are people there for a short period of time before they can find the correct facilities for them. So I think we have to be very careful... [LB765]

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR LOUDEN: ...with the legislation. And I'm willing to listen to Senator Johnson and Senator Gay on the fact that they will try to do something with this by Select File. I do not wish to support a bill that will do anything to hinder Regional West out in western Nebraska. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Louden. Senator Karpisek, you're recognized. [LB765]

SENATOR KARPSEK: Thank you, Mr. President. I'd like to yield my time to Senator Schimek. [LB765]

SENATOR LANGEMEIER: Senator Schimek, 4:55. [LB765]

SENATOR SCHIMEK: Thank you, Mr. President, and thank you, Senator Karpisek. I

Floor Debate  
March 12, 2008

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asked if I could have a little bit more time because I think we need to clear up just a few things yet. First of all, I want you to know that I have received information from the lobby that 66 percent of Madonna Rehabilitation Hospital's patients in the acute rehab portion are indigent, Medicaid, or Medicare. So they do take care of a significant number of indigent patients. Secondly, I want to perhaps clarify the statement that there are patients that are being referred to Madonna by Bryan-LGH that are not being granted entrance. And I should make a clarification here. I don't think this is about which hospital you like, or which hospital is in your district, or anything like that because I have to tell you up front, Bryan-LGH West is in my district, and I think it's an excellent hospital. My husband and I have been there many times (laugh), I'm afraid to tell you. But I don't think this is about their general kinds of services. I think this is something very specialized. There has been an allegation made that 6,000 patients discharging from Bryan-LGH are referred to post-acute services on an annual basis. You've got to be careful what you're talking about. We're talking about acute rehabilitation services. And the fact sheet that I've been presented said that 540 patients discharging from Bryan-LGH could, could require acute rehab services on an annual basis, and that is based on national guidelines. Secondly, it's been alleged that there are 1,000 to 1,500 Bryan-LGH referrals to Madonna that are rejected annually. And I want to say this next statement very clearly. No qualifying acute rehabilitation referrals were rejected by Madonna in the past 12 months. There was one patient who could not be admitted on the day requested by Bryan-LGH. Now remember, we're talking about acute rehab beds here. We're not talking about skilled nursing beds or any other kind of beds at all. We're just talking about this one little very specialized area, and I think that's what Senator Johnson meant when he said we don't want to confuse the apples and oranges here. We're just talking about apples; we're not talking about oranges also. Finally, I guess I would like to say that the 30-bed, Bryan-LGH acute rehab program is required to accommodate Bryan-LGH referrals. And based on their Medicare cost reports, average length of stay is 10.5 days; 16 acute rehab beds are required to accommodate those patients. So I guess I would encourage you to keep listening to the debate. I would encourage us... [LB765]

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR SCHIMEK: ...to adopt the committee amendment, to advance the bill to Select File, and to keep talking about how we might accommodate needs of hospitals in different parts of the state, and talk about whether those needs are already being met based on the number of beds that they may already have. So with that, Mr. President, I thank you all very much. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Schimek and Senator Karpisek. Senator Hudkins, you are recognized. [LB765]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I apologize,

Floor Debate  
March 12, 2008

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I was out getting some information. We are talking about apples; we are not talking about apples and oranges. There are three levels of care. The first one is long-term acute care, commonly called LTAC. I would call it long-term acute care, and that is people who are on ventilators. They have to be nursed back to health before they can even be considered to be discharged to a rehab center. A rehab center, as I said before, is a facility where the patient is healthy enough to tolerate three hours of physical therapy a day. And the third level of care is skilled nursing, where they can tolerate one hour of physical therapy a day, hopefully building up to where they can be discharged. Lincoln General...Bryan-LGH has 445 beds total. The district court said they were allowed to have these ten additional beds. Now do they have 545 patients? No. They go between 350 and 400 simply because they don't have the staff. In the whole state we have 218 rehabilitation beds, statewide. That's our capacity; that's all we can handle. But as we have said, there are more patients than that that need the care. You look at the one form that I asked you to pull up earlier and it shows 51 percent occupancy, or 79 percent, or 55 percent. Well, that doesn't tell you the whole story because in a hospital acute care, rehab, skilled nursing, you're not going to have your beds full 24/7. You're probably not going to admit someone, if you don't have to, over the weekend, over a holiday, after noon on Friday. And if you do move one patient out of a bed, you don't wheel one out and wheel another one in. It takes time for that room to be cleaned and disinfected and readied for the next patient. What we're talking about in this bill is the rehabilitation beds. We're not talking about the long-term acute care. There is a difference. The long-term acute care is there because of programs and staff, the skills that they have. It is not because of licensure. Senator Johnson talked about these extreme, very special cases. Most of the hospitals are not competing in the LTAC; that is the problem. Unfortunately, we are having all of these areas brought in and confused. We're not talking about all of the areas. We are talking about rehab facilities. I've said before... [LB765]

SENATOR LANGEMEIER: One minute. [LB765]

SENATOR HUDKINS: ...that the rehab facilities, some of them do not accept patients for whatever the reason. I have never said and I will never say that Madonna is not a good facility--it is. What we're asking is that other hospitals are allowed to have the rehabilitation beds that they need that the court has ruled that they may have. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. Seeing no other lights on, Senator Gay, you are recognized to close on the committee amendment, AM1755. [LB765]

SENATOR GAY: Thank you, Mr. President. On the amendment, like I say, this is a clarification of what we're trying to do. We talked a lot about rehab, but this also deals with long-term care facilities and clarifying language. So I'd encourage you...we had a

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

Floor Debate  
March 12, 2008

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good discussion on the amendment and the overall bill. But on the amendment, to close on that, this is a clarification of...so we don't run into more arguments down the road. This will clarify the language of what we thought the original statute meant to implement. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay. You have heard the closing on AM1755, the committee amendment offered by Health and Human Services Committee to LB765. All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB765]

CLERK: 33 ayes, 2 nays, Mr. President, on adoption of committee amendments. [LB765]

SENATOR LANGEMEIER: The committee amendments, AM1755, are adopted. Mr. Clerk, we...oh, scratch that. The floor is open for discussion on LB765, the bill itself. Seeing no lights on, Senator Gay, you are recognized to close on LB765. [LB765]

SENATOR GAY: Thank you, Mr. President. As I said before, I think we had a good discussion today. And, of course, we are concerned. You're concerned about the quality of what's being offered in your area, and so are we. You've heard from people who know a lot more about this issue than me. I would never have brought something to limit competition. That's just...that's not what this does. Again, this is quality standards, and there is some excellent quality. We want to make sure those quality standards are available in every part of the state, and this assures the quality standard. But also we must be sure that somebody just doesn't pop one next to another perfectly good functioning unit and go from there. We learned a little bit about...and it is confusing between acute care and skilled care and some other things when it comes to rehab services. It's complex, so thanks for bearing with us today on that. But like I say, this clarifies language on two fronts. And we didn't talk a lot about the long-term care end of things, but that's important as well. This clarifies the language. As you heard earlier, I'm willing to work with anybody that has concerns on this. Let's get to those concerns; we'll bring them to the table. If there's amendments that we need to do to help clarify this or to ease someone's concerns to make this a better bill, more than happy to do that. Senator Johnson and I and every member of the committee in no way wants to harm or hinder any of the hospitals, the great hospitals that we have in this state. So with that, I would encourage you to support the bill. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay. You have heard the closing on LB765. The question before the body is, shall LB765 be adopted? All those in favor vote yea; all those opposed vote nay. Has everyone voted that wishes to? Record, Mr. Clerk. [LB765]

CLERK: 31 ayes, 3 nays, Mr. President, on the advancement of the bill. [LB765]

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

Floor Debate  
March 12, 2008

---

SENATOR LANGEMEIER: LB765 does advance. Mr. Clerk, items for the record. [LB765]

CLERK: Thank you, Mr. President. New resolutions, LR276 by Senator Pirsch calling for an interim study; LR277 by Senator Fulton, that will be laid over. That's all that I have, Mr. President. (Legislative Journal pages 929-930.) [LR276 LR277]

SENATOR LANGEMEIER: Thank you. In continuing with the agenda, under General File, LB889. [LB889]

CLERK: LB889 by Senator Flood. (Read title.) Introduced on January 11 of this year, at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. There are committee amendments, Mr. President. (AM2043, Legislative Journal page 707.) [LB889]

SENATOR LANGEMEIER: Senator Flood, you are recognized to open on LB889. [LB889]

SPEAKER FLOOD: Thank you, Mr. President, members. LB889 would allow political subdivisions to utilize, in addition to the more traditional design, bid, build method, two additional construction project delivery methods, those being design-build, and construction management at risk. A project delivery method simply describes how a construction project goes from idea to reality. Under current law, only school districts have the authority to enter into these other project delivery methods. By way of background, commercial construction industry, it has changed a lot in the last ten years. Because of escalating construction costs and demand for compressed time schedules, the construction industry has developed alternative methods of project delivery. These methods are being used effectively to shorten schedules and control construction costs by increasing collaboration between the owner, the designer, and the builder. With the older design, bid, build method it was not uncommon for an entity to obtain funding for a project, have the architectural team complete the project design, put it out for bidding, and only then find out it was over budget. In order to salvage the project rash, cost-cutting changes had to be made. I'm bringing this bill today because community colleges across this state want to be able to use these alternative delivery methods. State colleges want to use these alternative delivery methods. The University of Nebraska currently uses these methods, as do school districts across the state of Nebraska. These new methods allow for a more harmonious process by bringing design and construction professionals to the table together, early on. I would encourage you to support LB889, and I will let Senator Aguilar explain the committee amendments, and I do support them. Thank you, Mr. President. [LB889]

SENATOR LANGEMEIER: Thank you, Senator Flood. As the Clerk has stated, there

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

Floor Debate  
March 12, 2008

---

are amendments offered by the Government, Military and Veterans Affairs Committee. Senator Aguilar, as Chair of that committee, you are recognized to open on the committee amendments. [LB889]

SENATOR AGUILAR: Thank you, Mr. President and members. The committee amendment makes several changes to the bill. The amendment narrows which political subdivisions are authorized to use the act to counties, cities, villages, school districts, community colleges, and state colleges. The amendment also prohibits political subdivisions from using design-build, or construction management at risk contracts for road, street, highway, water, wastewater, utility, or sewer construction projects, except that a city of the metropolitan class may use such contracts for the purpose of complying with state or federal requirements to control or minimize overflows from combined sewers. At the public hearing, the city of Omaha testified that they would like to have the opportunity to use design-build, or construction management at risk contracts to complete a sewer project. Finally, the amendment requires at least a 2/3 affirmative vote of a governing body of a political subdivision to adopt a resolution selecting the design-build or construction management at risk contract delivery system. The current act requires an affirmative vote of at least 75 percent. The bill advanced from our committee on an 8-0 vote. I urge your support of the committee amendment, as well as the underlying legislation. Thank you, Mr. President. [LB889]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the opening on LB889 and the committee amendment, AM2043. The floor is now open for discussion. Seeing no lights on, Senator Aguilar, you're recognized to close on the committee amendment. Senator Aguilar waives closing. The question before the body is, shall AM2043 be adopted to LB889? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB889]

CLERK: 34 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB889]

SENATOR STUTHMAN: AM2043 is adopted. We return now to discussion on LB889, the bill itself. Seeing no...Senator Stuthman, you are recognized. [LB889]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to engage in a discussion with Senator Aguilar, if I may, please. [LB889]

SENATOR LANGEMEIER: Senator Aguilar, will you yield to questions from Senator Stuthman? Senator Aguilar, would you yield to questions from Senator Stuthman? [LB889]

SENATOR AGUILAR: Yes, I will. [LB889]

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

Floor Debate  
March 12, 2008

---

SENATOR STUTHMAN: Senator Aguilar, thank you. I notice on the committee statement there was one opponent, and it was the Association of General Contractors. Do you recall what their opposition was on it or why would they...why were they not supportive of this bill? And maybe I can direct the question...I will direct the question to Speaker Flood. Thanks, Senator Aguilar. [LB889]

SENATOR AGUILAR: Okay. [LB889]

SENATOR LANGEMEIER: Senator Flood, would you yield to the question? [LB889]

SPEAKER FLOOD: Yes, I will. And Senator Stuthman, they were actually in...they testified in a neutral capacity. They are satisfied with the committee amendment, and they have now changed their position to that of supporting the bill. [LB889]

SENATOR STUTHMAN: Okay. Thank you. Thank you, Senator Flood. So that was my only concern of the general contractors, and I wanted to know the reasoning behind that. So thank you. [LB889]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Seeing no other lights on, Senator Flood, you're recognized to close. Senator Flood waives closing. The question before the body is, shall LB889 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB889]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of the bill. [LB889]

SENATOR LANGEMEIER: LB889 does advance. Mr. Clerk, LB958. [LB889 LB958]

CLERK: LB958, a bill introduced by Senator Ashford. (Read title.) Introduced in January of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM1964, Legislative Journal page 649.) [LB958]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Ashford, you are recognized to open on LB958. [LB958]

SENATOR ASHFORD: Thank you, Mr. President and members. Let me, first of all, tell you that there are committee amendments to LB958 and then there are amendments to the committee amendments, which have been filed, and where I hope we will be is at the amendments to the committee amendments. So what I'm going to do is introduce the ideas behind the bill as it would be if it were amended by the amendments to the committee amendments, rather than go through the three-step process, because the relevant discussion, in my view, is on the amendments to the committee amendments. Let me start out by saying that it appears that the amendments to the committee

Floor Debate  
March 12, 2008

---

amendments have the...at least the support of a number of groups who have had differing views on this issue, to say the least, over the years, and that would include some of the...the National Rifle Association on one side and some of the police groups on the other side, who have in many respects taken different positions or had different positions on guns ownership and gun use issues over the years. And certainly in my experience, going back 20 years with this issue, this has been one of the issues, much like the stem cell issue and others, where because of positional politics, much of which went on outside of the body and...but certainly influenced this body, I don't believe that we as a state or probably we as a nation have been able to deal holistically with the issue of gun violence. The politics has subsumed, if you will, the rational debate. And I know and I must apologize to my colleagues for all of the notes and letters that they've received on this measure over the last month or so, but my sense is, is that only when an issue gets to that degree, when people outside of this body are focused on an issue on one side or another, it's in my view only then when we can actually make progress. So with that little introduction, I'm going to just give you a description of where I believe we are at with this legislation. Generally, gun violence is an issue that is crying out for solutions, and all sides of the issue must be able to work together to come to and reach a sensible solution. LB958, as is...hopefully will be amended by the committee amendments and the amendments thereto, is an effort to reach common ground in recognizing the right to bear arms, but also recognizing that all sides to this contentious issue have something to add to the solution. With this in mind, it is my intention to focus on the reality of gun violence that is plaguing innocent men, women and children at an alarming rate. We should not be lured into the misconception in this state that Nebraska is somehow removed from the constant stream of tragic gun deaths that often receive little media attention, as many of us have become numbed to some degree to the onslaught of gun violence. According to the Nebraska Crime Commission, Nebraska had 1,033 crimes in 2006 involving guns, including murders, robberies, and aggravated assaults. But they do not keep statistics on the type of arms utilized during the commission of these crimes. These crimes resulted in 30 deaths and countless injuries. Further, we as a body would be naive to believe that gun homicides occur only in Omaha. During 2006, the last year with statistics available from the Crime Commission, Nebraska witnessed gun homicides in several Nebraska cities, including Lincoln and Grand Island and others. As I have continued to strive to be for a solution which is the best solution for all of us, I have come to the conclusion that whatever we decide to introduce in this state should be designed to address the Nebraska problem that Nebraskans are comfortable with, and that the solutions are Nebraska solutions that Nebraskans are comfortable with. As one can easily imagine, I have and we all have received a great deal of outside input on this bill from many people across the state. During these discussions the question would often be posed to me, why don't we do a better job of enforcing our current laws? I took this question to heart and gave it much thought. After extensive research on gun violence in our state, I came to the conclusion that part of the gun violence solution is indeed, better, smarter enforcement of current laws, as well as other measures. Obviously, the answer to any problem needs to be

Floor Debate  
March 12, 2008

---

based on accurate, in-depth information regarding gun violence and gun crime. Alarming, however, what I have discovered is that the availability, quality and quantity of information is poor and unsatisfactory. To quote one of our legislative research analysts, relevant data is sparse or nonexistent. The most credible statistics and thoughtful, critical analyses demonstrate to us that it may be impossible to draw sound conclusions about the number of lost or stolen guns, for example, actually used to commit crimes. To get information pertaining to the number of firearms reported lost or stolen, for example, you must call local law enforcement officials, you must get statistics and compare those to statistics from the Crime Commission, the Centers for Disease Control, the Federal Bureau of Investigation, ATF, and others. I find that the overall lack of information and coordination between law enforcement agencies operating in the state, whether state or federal or local, is troubling. LB958, as hopefully amended, directs the Nebraska Commission on...the Nebraska Crime Commission to study gun violence in our state and, in a sense, become a repository of information regarding this issue. And because gun violence is a complex and a multifaceted problem, LB958 directs the Crime Commission to carry out a comprehensive study that will include a thorough examination of firearm-related injuries and deaths, illegal firearm sales, illegal gun trafficking, laws providing access to mental health records for persons seeking to purchase handguns, gun safety and training, enforcement and sentencing for firearm felonies, federal referral for the prosecution of firearm felonies, background checks performed on gun buyers prior to purchase, and other obstacles related to the sharing among all levels of government regarding violent crime involving firearms in this state. The Crime Commission would be charged with submitting a report of their findings to the Legislature by January 1 of next year and would further be required every two years to detail specific administrative, enforcement and statutory changes that are believed to be needed to help reduce gun violence in our state. Examples of applicable policy changes would include improving...could include improving and streamlining information shared by law enforcement agencies; possible changes to the criminal background check process for gun buyers; possible future legislation that would require gun dealers to record and maintain the sales of firearms sold in their store; a requirement compelling gun dealers to report records of gun sales to the state; and a required duty to report lost or stolen firearms and other possible initiatives. Six states in the country currently require gun owners to report the loss or theft of a firearm. Failure to report the loss or theft of a firearm carries varying penalties in each jurisdiction. The amendments to LB958 would direct the state, Nebraska State Patrol, to implement a hot line for members of the public to report the loss or theft of a firearm. It is important to stress that the failure to report the loss or theft of a firearm will not result in any criminal penalty. Additional, any individual who comes forward with information regarding a lost or stolen firearm... [LB958]

SENATOR LANGEMEIER: One minute. [LB958]

SENATOR ASHFORD: ...would not be prosecuted for any crime associated with the

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

Floor Debate  
March 12, 2008

---

failure to properly register the firearm. It is my hope that this voluntary measure and the implementation of this hot line will prompt our citizens to encourage a greater willingness and prompt our citizens to share information with law enforcement. The failure to report lost or stolen weapons is a big issue in our state. In 2006, over approximately 1,000 guns that were confiscated at crime scenes in the state, only 50 of those guns were reported stolen, and that's an unrealistic number. It's much more than that, in the opinion of law enforcement. With that, I will wait for the amendment, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. As the Clerk has stated, there are committee amendments offered by the Judiciary Committee. Senator Ashford, as Chair of that committee, you are recognized to open on AM1964. [LB958]

SENATOR ASHFORD: Thank you, Mr. President. Let me just proceed. Although LB958, as amended, does not provide compulsory reporting through the threat of a criminal penalty, this provision will allow us to finally begin to gather some information on both the quantity and type of stolen and lost guns in circulation throughout the state. This information is vital to such agencies as the Nebraska State Patrol, which I quote, and I quote a letter from Colonel Tuma, that law enforcement officers that identify and retrieve stolen guns are able to further investigations, identify suspects or investigatory leads, perform ballistic testing, trace the history of the weapon and return it to the rightful owner, if known. Simply put, reporting stolen weapons helps law enforcement solve crime. As I noted earlier, I in no way support unrealistic and undue restrictions and burdens on law-abiding gun owners. The issue is that we enlist law-abiding gun owners, in my view, in the campaign against gun violence, and it is that concept, the concept of enlisting those that are law-abiding citizens that own guns, that buy guns, that treat firearms with respect, that are law-abiding citizens, enlisting them in the solution is critical to stemming the tide of gun violence in Nebraska. Consequently, I have inserted language in LB958 that would repeal the Nebraska handgun purchase permit system and replace it with proof of personal identification and the National Instant Criminal Background Check System, or NICS system, that is required by the federal government for the purchase and transfer of firearms by federally licensed firearm dealers. The National Instant Criminal Background Check System is a national system, originally brought about by the federal Brady Act, that checks available records on persons who may be disqualified from receiving firearms based on criminal history or mental illness. Under federal law, mental illness is described by the following: a person adjudicated mental defective or involuntarily committed to a mental institution or incompetent to handle his or her own affairs, including dispositions to criminal charges pertaining to found...or found not guilty by reason of insanity or found incompetent to stand trial. Let me just try to tell you where we are in this permit to purchase system, members. Years ago, in 1991, after many years...well, actually, two to three years of debate, we passed a law that required every gun owner that purchased a handgun to have a permit to purchase. And I've handed out that permit to purchase, a copy of a handgun purchase

Floor Debate  
March 12, 2008

---

certificate and, as you can see, it's a rather simple little certificate without a photograph or any other identifying information other than the person's name and a number and birth date. This effort, which was passed after quite a bit of consternation and tough debate, was an effort to try to stem the tide of handguns getting into the hands of persons with mental issues and criminal backgrounds. At the time I said...and when the bill passed, I said that if we could put into place a background check system that would check the purchase of every firearm at the time of purchase, that the need for this permit to purchase system would no longer be there. And I'm here to tell you that I'm willing, and I think it should happen, that the permit to purchase system should go away. The instant check system is much more comprehensive. It was nonexistent in 1991. It is much more comprehensive today than it has been over the...in the last several years. Mental health records are checked. Mental health and criminal records are checked on a nationwide basis. Today in Nebraska, if you go in to buy a handgun--and approximately 85 percent of crimes involving guns are committed with handguns--if you go in to buy a handgun, you can buy a handgun with a permit to purchase. It is not...there is not now done a criminal background check utilizing the federal NICS system. Accordingly, there's not a background check done in each handgun purchase. With this bill, if it is...and the amendments, if they are adopted by this body, every handgun purchase will be checked, and it will be checked for mental issues and criminal background check issues. And I've sent around the form to you that has the questions that must be asked and answered before you purchase a handgun in Nebraska or a long gun. So in effect we will have a uniform system, if this passes, for long guns, assault weapons, handguns, semiautomatic weapons. Whatever they are, there will be a background check on every firearm. Now let me tell you that that is the issue that I addressed with the NRA over the last couple days, and the NRA has indicated to me that that removal of the permit to purchase system would allow them to remove any opposition that they have to this bill. I was looking up at that chandelier and if I'm wrong, that chandelier will be coming down on my head within the next few seconds. (Laugh) But I don't believe I've ever had the support of the NRA on anything so it's breathtaking, in some regard. But I appreciate the effort of the National Rifle Association and, most importantly, Nebraska groups that have worked with me over the last couple of weeks on this bill because they did work with me, and they are willing to try and they're willing to help. And I can tell you that removing the permit to purchase requirement does not leave our state less safe. In my view, it leaves the state much more safe because no longer will we have an inconsistent system where shotguns and long guns and semiautomatic weapons that are not handguns can be purchased only with a background check on each individual purchase, but now all firearms will have the same instant check done by federally licensed gun dealers. And let me just address that for a second. Most sales that occur within this state, not all, but most sales that are not between private individuals occur between federally licensed gun dealers and buyers. Gun shows, which has been identified as an issue by gun control groups as a source of unregulated gun sales, for the most part are...sales that occur at these guns shows occur between federally licensed gun dealers and purchasers. I am convinced,

Floor Debate  
March 12, 2008

---

members, after talking to sporting groups, to others that are very...by law enforcement people, by others, that we are safer with this permit to purchase system (sic). It's a uniform system. We are safer with this system than we are with the permit to purchase system that was my bill 18 years ago or 17 years ago. So I would urge the body to take a look at some of the handouts that deal with this permit to purchase system and deal with the change that would occur with the federal system. I would also mention that within the last several months the Congress passed and the President signed legislation that will enhance the mental health record check done under the federal system. And God knows, in our state we have been confronted with violent crime involving issues of mental health and it is imperative that Nebraska be up to speed and up to date on that issue, and that we make it certain that persons who purchase handguns, purchase long guns, purchase whatever kind of firearm it is have that sort of check done so that we can help protect our citizens and help law enforcement protect our fellow citizens. We do a few other clean-up things in the bill that deal with mental health records. We've asked the Department of Health and Human Services, and they certainly support this idea that we keep mental health commitment records for ten years rather than five years. And, in fact, I believe they already do that. [LB958]

SENATOR LANGEMEIER: One minute. [LB958]

SENATOR ASHFORD: And that what would happen would...what happens is those mental health records and the criminal record records are transmitted to the State Patrol and then transmitted to the federal system, so that when a background check occurs up-to-date state records are available to the gun dealer to make sure that the person who is in front of them purchasing a firearm is able to do so legally. Members, I would certainly urge that we adopt the committee amendments, AM1964, and then hopefully adopt the amendments to the committee amendments; that we bring Nebraska into the twenty-first century to ensure the safety of its citizens, and that we take a holistic look, a comprehensive look at gun violence, not singling out any one aspect of the problem but bringing people together. And by doing so we can remove the positional politics that I think has impeded our ability as a state,... [LB958]

SENATOR LANGEMEIER: Time. [LB958]

SENATOR ASHFORD: ...as a nation to address this issue. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening on LB958 and AM1964, the committee amendments. The floor is now open for discussion. Those wishing to speak are Senator Christensen and Loudon. Senator Christensen. [LB958]

SENATOR CHRISTENSEN: Thank you, Mr. President. I just wanted to speak a little bit

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

Floor Debate  
March 12, 2008

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to the...about the NRA. They have removed their opposition, provided that Section 69-2403 is removed. That is the obsolete language that Senator Ashford was talking about that become obsolete basically clear back in 1998, once the federal insta-check system come in. And so I just wanted to update, because I know everybody has had a lot of e-mails and stuff over the past and there had been major opposition, and I just wanted to again support Senator Ashford in his comments that...and thank him for his work on this, that they have removed all their opposition, with this section gone. Thank you. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator Louden, you're recognized. [LB958]

SENATOR LOUDEN: Yes, thank you, Mr. President and members. I would ask if Senator Ashford would yield for questions, if he would. [LB958]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB958]

SENATOR ASHFORD: Yes. Thank you. [LB958]

SENATOR LOUDEN: Well, Senator Ashford, first of all, if you adopt AM1964, that would take the place of the original bill. Is that correct? [LB958]

SENATOR ASHFORD: That's correct. I think I misstated the situation and you picked it up, Senator Louden. I think what has to happen here is we have to vote down the amendments because the... [LB958]

SENATOR LOUDEN: Okay. Then you got to vote it down first and then adopt your... [LB958]

SENATOR ASHFORD: Yeah. And I... [LB958]

SENATOR LOUDEN: Okay. [LB958]

SENATOR ASHFORD: ...I thought we had filed them as amendments to the committee amendments, but in fact it's an amendment to the bill. [LB958]

SENATOR LOUDEN: Okay. Now I understand what you're doing. Then I guess then actually what your AM2235 would actually be the bill, wouldn't it? That would be the next amendment. [LB958]

SENATOR ASHFORD: The bill with the change in the permit system is AM2235. That's correct. [LB958]

Floor Debate  
March 12, 2008

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SENATOR LOUDEN: Yeah. And then that is making...is setting up more of a Commission on Law Enforcement to do all this recipe of stuff that you have to do in here? [LB958]

SENATOR ASHFORD: That's in there, and also the permit to purchase change is in there as well. [LB958]

SENATOR LOUDEN: Yeah. And then that would change it where you would then have to have a permit to buy long guns or any kind of a gun whatsoever. You'd have to have a permit to buy one in Nebraska? [LB958]

SENATOR ASHFORD: No, you wouldn't have to have a permit, and I'm sorry if I was unclear. You would simply...you would go through the criminal background check at the point of purchase. The permit system that we have in place would go away and so you would have a permit...you would not have a permit, but you would fill out the federal form and there would be a background check. As there is done now with shotguns and long guns, it would now apply to handguns, and I'm sorry if I didn't make that clear. [LB958]

SENATOR LOUDEN: Okay. Then how would I go about purchasing a handgun? Then I would have to go to my county sheriff and get a permit or go through this process? How would I do that? [LB958]

SENATOR ASHFORD: No, you wouldn't have to go to the county sheriff anymore. That's done away with, with the amendments to the bill that we'll be getting to. That's done away with. What you would do is you'd go to your licensed federal gun dealer or a person with a federal license. You would buy the gun and they would do a...in the process, they'd do the same background check that they do today for...in Nebraska for...by calling this federal system. They do it on the phone. It's an 800 number. It usually takes just a few minutes or less and then you would purchase the gun. You would not need to go to your sheriff. Like today you have the permit is for three years, but you would not have to go to the sheriff. You would not have to get a permit. You would simply purchase the gun and go through the background check at the point of purchase. [LB958]

SENATOR LOUDEN: Then what would you give for identification then at the...when you proceeded to go to your federal gun dealer? I mean, would you give just a Social Security number or do you have to give a driver's license or is that listed in there? I think there's a list of passports and everything else. Then any one of those would be sufficient to... [LB958]

SENATOR ASHFORD: Yes. It's in the federal form. There's a federal form that I've handed out and it would...there's a driver's license and other identifying...I believe a

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

Floor Debate  
March 12, 2008

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driver's license, I believe a passport is one of the... [LB958]

SENATOR LOUDEN: There was a whole recipe,... [LB958]

SENATOR ASHFORD: Yeah. [LB958]

SENATOR LOUDEN: ...a list of things, I think, in the bill someplace in there that I thought I saw about that. And then that would be how you would purchase a gun at the present time. [LB958]

SENATOR ASHFORD: If this passes, that's how you purchase a long gun today, and this bill, if amended, would include handguns in that check. [LB958]

SENATOR LOUDEN: Okay. [LB958]

SENATOR ASHFORD: So now handguns are purchased with a permit. Now, if we pass this bill with the amendments, they'll be purchased with the federal form and the check. [LB958]

SENATOR LOUDEN: But in order to purchase a gun you would have to do it through some federally licensed dealer, I guess. [LB958]

SENATOR ASHFORD: Well, you can buy it through a private purchase. I mean that...there's nothing in the bill that restricts your ability to buy a gun from your friend or neighbor or whatever. But this would be...this would be a purchase that would occur... [LB958]

SENATOR LANGEMEIER: One minute. [LB958]

SENATOR ASHFORD: ...at a gun store or Scheels... [LB958]

SENATOR LOUDEN: Okay. [LB958]

SENATOR ASHFORD: ...or someplace like that. [LB958]

SENATOR LOUDEN: Yeah. Now if we still have time, what my concern is, most of these guns that cause a lot of trouble for people are guns that are bought, like you say, from across the garbage can or something like that. That would...there would be no control over that. In this bill, there's no way of controlling that. Is that correct? [LB958]

SENATOR ASHFORD: Well, there's no control here because law-abiding citizens are not the problem, and you're right, there's no control for that. Hopefully, the Crime Commission will investigate how these guns get out on the street and then the

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

Floor Debate  
March 12, 2008

---

Legislature can deal with that issue in legislation in the future. But no, this is simply removing the permit to purchase requirement and substituting a transactional... [LB958]

SENATOR LOUDEN: Okay. One last question: Who finances this commission? How is it financed? [LB958]

SENATOR ASHFORD: Well, it's part of the Crime Commission. It exists already. And so we would be asking the Crime Commission to do a study of this issue as they do other crime issues. [LB958]

SENATOR LOUDEN: Okay, that was what I was wondering. It's going to be the Crime Commission. [LB958]

SENATOR LANGEMEIER: Time. [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR LOUDEN: Okay. Thank you. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Louden. Senator Ashford, you are recognized. [LB958]

SENATOR ASHFORD: And I apologize, Mr. President, for confusing myself and others. It would be necessary to...and maybe that helped others by confusing myself, but AM1964 would need to be voted down, and then we'll go to the amendment to the bill. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Senator Erdman, you are recognized, followed by Senator Nelson. [LB958]

SENATOR ERDMAN: Mr. President, members of the Legislature, I have given Senator Ashford a copy of an amendment that will come up when AM2235 is offered, and I believe, at least from my perspective, it's designed to be at least clarifying to the responsibilities in his underlying amendment. I recognize we're not on it now, but I would like to ask Senator Ashford a couple questions, if I may. [LB958]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR ERDMAN: Senator Ashford, this may save you time on the next amendment and since we're here, we'll ask. The responsibilities of the Crime Commission under your next amendment would be that they would recommend specific administrative,

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

Floor Debate  
March 12, 2008

---

enforcement or statutory changes. Are you aware if that's an existing responsibility of the Crime Commission or do they have similar authorities now? [LB958]

SENATOR ASHFORD: I think we've given them an added responsibility here. [LB958]

SENATOR ERDMAN: Senator... [LB958]

SENATOR ASHFORD: And I understand your amendment is to strike that language and, quite frankly, I don't...that's not material to me. What's important is they do the study and then we have the information. [LB958]

SENATOR ERDMAN: And I think that's my goal as well, Senator Ashford. As I read your amendment, it does about four things, the upcoming amendment. It creates the responsibility for the Crime Commission to do this study, which includes a lot of the same issues that are redundant on the top of page 2, as far as what they'll report on, and so it's designed to just be clarifying that they're going to do a study and give us a report. I think that it's appropriate, if they're going to give us a report, that then those that receive the report, members of the Legislature, make the decision about what they would recommend as statutory changes. I don't know that we want to get the Crime Commission in the business of doing that. And I visited with Senator Pirsch in trying to get some information about what they currently do, but my amendment would simply state that they'll issue a written report to the Legislature with its findings, instead of issue a written report to the Legislature recommending specific administrative, enforcement, statutory, all of those additional responsibilities. And so I just wanted to make sure you're aware of that amendment. I also want to get a sense of where we are with the commission. They currently catalog or gather similar information but not to the level that you're interested in. Is there a cost to the state or to the commission to do that? And then secondary, which is again on the next amendment, not this one, the hot line for the State Patrol, does that have a fiscal impact to the state or is that something that they're currently doing? [LB958]

SENATOR ASHFORD: We won't have a fiscal note until Select File, but my guess is it's not significant, in my discussions with the State Patrol. On the issue of what additional work the Crime Commission will have to do, my discussions with the Governor's Office on this issue would indicate that it is not unusual or outside of the norm for the Crime Commission to do studies such as this, and that they have access to the Policy Research Office, for example, and others to help put this together. So I'm certainly not...I don't...my sense is that this is not a significant fiscal issue for the body. [LB958]

SENATOR ERDMAN: Okay. Thank you, Senator Ashford. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Nelson, you're recognized. [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR NELSON: Thank you, Mr. President. Will Senator Ashford yield to a couple of questions? [LB958]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR NELSON: I appreciate your putting out this form on the criminal background. Just so I understand this, this is in existence right now... [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR NELSON: ...here in the state of Nebraska. [LB958]

SENATOR ASHFORD: Correct. [LB958]

SENATOR NELSON: And that if I were to go out and buy a shotgun or a long gun of any sort, then I would have to fill out this form. [LB958]

SENATOR ASHFORD: That's correct. [LB958]

SENATOR NELSON: All right. And you've got a yes and then a bunch of noes here, which means that whoever filled this out is certainly probably going to be approved, but... [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR NELSON: ...what if there are some questions about my background? Are mental illnesses included in this, for instance? [LB958]

SENATOR ASHFORD: Yes. There's a question on mental illness and then the federal system is being updated on...with the passage of this recent federal legislation, to try to update the federal records as well on mental health. [LB958]

SENATOR NELSON: And on the basis of some of the negatives here, there might be a determination by somebody that I can't buy the guns. Is that correct? [LB958]

SENATOR ASHFORD: That's correct. [LB958]

SENATOR NELSON: And that means I have not yet purchased the gun, it's been held... [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR ASHFORD: That's correct. [LB958]

SENATOR NELSON: ...until the criminal background. [LB958]

SENATOR ASHFORD: That's correct. [LB958]

SENATOR NELSON: Okay. How do handguns now get brought into this? Is that mentioned in your amendment... [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR NELSON: ...or just... [LB958]

SENATOR ASHFORD: Well, basically what we do, what we do in the...which this is not...it's not before us unfortunately. I kind of jumped ahead of myself. [LB958]

SENATOR NELSON: All right. [LB958]

SENATOR ASHFORD: But the amendment would remove from the statutes the permit to purchase law, which requires a permit to...that one gets by going to the sheriff and gets a permit. The permit is good for three years. So, for example, if someone had been convicted of a crime within that three-year period of time, it would not show up. They would go in to purchase a gun with the permit. The permit, as you can see by looking at the copy, has very little identification on it other than a name, and they would purchase the handgun under that system. If we remove that statutory guide or the rule, what would happen is we would revert to the federal law which requires a background check for handgun purchases utilizing this form and then the call-in number thing. [LB958]

SENATOR NELSON: So it's the fact that we've had this special permit arrangement in our statutes... [LB958]

SENATOR ASHFORD: Right. [LB958]

SENATOR NELSON: ...that has exempted us from the criminal as far as handguns are concerned. [LB958]

SENATOR ASHFORD: That's exactly what...that's exactly what the situation is. [LB958]

SENATOR NELSON: All right. Thank you. Just one comment on page 2 here, Section 2, where it talks about implementing a hot line. [LB958]

SENATOR ASHFORD: Yes. [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR NELSON: On line 11 it says an individual reporting the loss or theft of a firearm, goes on to say would not be charged as a result of such reporting, you know, if there was improper registration... [LB958]

SENATOR ASHFORD: Right. [LB958]

SENATOR NELSON: ...or something like that. Well, it occurs to me that someone other than the owner could report that it had been lost. [LB958]

SENATOR ASHFORD: And that...that's right. [LB958]

SENATOR NELSON: Yeah, and I don't think that this covers the owner here. I think that's what the intent is, as well as the person reporting, but... [LB958]

SENATOR ASHFORD: Well, and we can look at that before Select File, but the idea of having a hot line is that it can be anonymous and we just...I think the idea is we want it to be...the information to be provided to the State Patrol so that that information can go to local law enforcement and they can check on it. But...and you're right, there are registration laws like in Omaha,... [LB958]

SENATOR NELSON: Right. [LB958]

SENATOR ASHFORD: ...which would might stop someone from reporting the gun stolen if it wasn't registered. So this particular change would relieve them of any liability for reporting the gun stolen. [LB958]

SENATOR NELSON: Well, if it's an anonymous person reporting, my concern is that the language, as I read it here, and I can read it more carefully, is that it doesn't absolve the owner if it turns out that he or she is not... [LB958]

SENATOR LANGEMEIER: One minute. [LB958]

SENATOR NELSON: ...properly registered. [LB958]

SENATOR ASHFORD: And I'd be happy to look at that, Senator Nelson. [LB958]

SENATOR NELSON: All right. [LB958]

SENATOR ASHFORD: That's not the intent, though. [LB958]

SENATOR NELSON: I understand. Yeah, all right. [LB958]

SENATOR ASHFORD: Thanks. [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR NELSON: Thank you, Senator Ashford. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Seeing no other lights on, Senator Ashford, you are recognized to close on the committee amendments, AM1964. [LB958]

SENATOR ASHFORD: Just very briefly, again, I would ask that we...if you would go along with me here and hopefully support LB958. The way to do it would be to vote down AM1964, the Judiciary Committee amendments, and then we can move to the...what we've been discussing, which is the amendment to the bill. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on AM1964, offered to LB958. The question before the body is, shall AM1964 be adopted? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB958]

CLERK: 0 ayes, 31 nays on the committee amendments, Mr. President. [LB958]

SENATOR LANGEMEIER: The committee amendments are not adopted. Mr. Clerk, for a motion. [LB958]

CLERK: Senator Ashford would move to amend with AM2235. (Legislative Journal page 863.) [LB958]

SENATOR LANGEMEIER: Senator Ashford, you are recognized to open on AM2235. [LB958]

SENATOR ASHFORD: Thank you, Mr. President and members. We are at the amendment then that would become the bill, the amendment that we have been discussing, and just to very briefly really summarize why am I doing this, why are we here, we're here because I believe, and have believed for a number of years, that what has caused the inability of legislatures and Congresses to deal with gun violence for many years has been really the positional politics on this issue; that those individuals who focus primarily on Second Amendment rights on one side and those individuals who would feel that additional restrictions on gun ownership is the appropriate response to gun violence, I think we really need to break through those positional...that positional politics and start bringing experts together, people together who care deeply about our state and about our citizens and about safety. Gun violence is something we can talk about. Gun violence is something we can talk about without implying that somehow the Second Amendment doesn't exist or that the right to bear arms does not exist. I believe, as we have...as hopefully we will do with the issue on research, that if we break down the positional politics and find a middle ground and a way to move forward, that we can

Floor Debate  
March 12, 2008

---

address, as a state with a Nebraska solution, how to deal with gun violence. We can't deny it exists. We can suggest that it's not any worse than a knife or a baseball bat or a car or a drunk driver. I understand all those arguments. I understand all those arguments. But the problem is now is that we need to dig deeper than that. We need to get into the issue. We need to understand it and we need to be safe, and the way to be safe is for people who care deeply, no matter what side of the issue they're on. And I was very gratified, by the way, in talking to my friend who owns Guns Unlimited and we talked about this, and he said, I more than anybody else, Tommy Nichols, I more than anybody else want to solve this problem. I more than anybody else want to make sure that the person that comes in my store to buy a gun is a law-abiding citizen and that the gun I sell doesn't end up on the street. I mean we're not dealing...we're dealing with law-abiding citizens to a great extent here. We're talking about regulating, to some extent with this instant check, people who are not going to commit crimes. In a sense, it's a small price that we pay for those that are not law abiding, who do get guns illegally, who go out and kill people, who go out...who have mental issues and go out and destroy the lives and families of many, many people. Those aren't law-abiding citizens that do that and I fully understand that. But I am absolutely convinced that if we as a state work together through the Crime Commission, which is an established agency of state government with good people and smart people on these issues, that we can address in a responsible manner going forward the issue of gun violence. We can talk about it without insulting those who care deeply about the right to bear arms. I believe we can do that, and I believe we can do that in the center. I believe we can do that from the center, and that's where we need to be and that's where the citizens and the voters want us to be. Finally, let me just go over this one more time. The permit to purchase system came into effect in 1991. It was a bill that I introduced a couple of years before that. There was much discussion, much debate. I traveled around the state. I remember going out to North Platte, Senator. I went out to North Platte and spoke to a group of NRA people out in North Platte and "Buffalo Bill" showed up along with 250 other people. And there was one supporter that I had for the bill in the room and it was...I was on the Appropriations Committee at the time and it was someone associated with the extension service of the university and they wanted to get their appropriation so he...when I said anybody support this bill, 1 hand out of the 250 went up. So I understand the deeply held convictions of people in this state who care deeply about their right to bear arms, but that permit to purchase law, for when it was passed and for much of the time that it's been in effect, has worked okay. But at the time that bill passed--and actually the NRA endorsed the bill when it finally passed--at the time that bill passed I said on the floor that if we had an instant check system that worked that could check every transaction, that we should get rid of the permit to purchase system, that it was unnecessary state regulation. I'm here today to tell you that we can do that, that we have an instant check system that does work. We have an instant check system that checks for mental issues, that checks for criminal background, that makes sure that only law-abiding citizens, as much as possible, are receiving the right that they have, which is to purchase firearms. All firearms, handguns, whatever kind of firearm you want

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

Floor Debate  
March 12, 2008

---

to purchase in this state, you can do so by going through this system. And I would strongly urge the adoption of AM2235. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Mr. Clerk, for a motion. [LB958]

CLERK: Senator Erdman would move to amend Senator Ashford's amendment with FA205. (Legislative Journal pages 930-931.) [LB958]

SENATOR LANGEMEIER: Senator Erdman, you are recognized to open on FA205. [LB958]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I welcome the accommodation or the courtesy of those that have generally supported LB955 in its previous form. I think the opportunity to have a good conversation with respect to those that actually support the second amendment is a welcome part on this floor, and I thank Senator Ashford for his comments. FA205 would make the following change to his amendment. Currently, under AM2235, the Crime Commission shall issue a report, including recommending specific administrative, enforcement or statutory changes to the law based on its findings. I think that's unnecessary. I've shared that with Senator Ashford. So what I have done is written the language to say that, based on their efforts in studying the items that Senator Ashford has listed on page 1, that they will issue a written report to the Legislature with its findings. It will be up to the members of the Legislature or the public at large then to make a determination about what changes should be made. But I am not comfortable putting a statutory requirement of asking the Crime Commission to make these changes, because that's our job. The commission shall still issue the written report to the Legislature no later than January 1, and it will update that report every two years thereafter, which is the existing language of Senator Ashford's amendment. Specifically with AM2235, it does four things. And I think it's somewhat problematic to do it this way, but I think it's essential that the public be aware that LB958 with the amendment is substantially different than the bill that came out of committee. And even at this moment we're still getting e-mails saying that they believe and they've been told that the NRA does not support the bill. They're here. They're saying that they are. I think there's a great responsibility of Senator Ashford and others to ensure that the public is aware that the amendments to LB958 are not the previous amendments and actually do have the support of others that were previously opposed to it. But here's what the bill does essentially. First provision is it requires the Crime Commission to study gun violence; second, it creates a hot line at the State Patrol; third, it eliminates the handgun purchase permit law; and fourth, it extends the time line in which an individual that has a mental health history can have their records accessed for the purposes of receiving a permit or purchasing a gun. That extension is from five years to ten. So there are four provisions, as I read the amendment, that are currently before us that would replace the entire contents of LB958. My amendment is designed

Floor Debate  
March 12, 2008

---

to clarify the responsibilities of the Crime Commission. I believe Senator Ashford is accepting of those changes, and would yield the remaining time to Senator Ashford for him to comment. [LB958]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB958]

SENATOR ASHFORD: Yeah, thank you, Senator Erdman. And thank you for summarizing the bill. What you've just stated is the bill really, and I do have no objection to the amendment. I think the guts of the Crime Commission study is the study. The Legislature can do with the study what it wishes. It can propose...this Legislature can deal with future legislation as it wishes. What's important to me is that we have a dialogue between groups that in the past maybe have been at odds, disparate groups. People on all sides of the issue can come together on solutions. And I'm certain, after talking to many groups who originally opposed LB958, that they are gratified by the opportunity to do this and I have...and I do believe that they will; that all citizens of the state care deeply about this issue and want to find solutions and that really is the intent and motivation behind coming together hopefully with AM2235. And I certainly have no objection. I don't think the amendment, FA205, in any way impedes that ability of the Crime Commission to come up with good data. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening on FA205. The floor is now open for discussion. Those wishing to speak, we have Senator Pirsch, Ashford, and Lautenbaugh. Senator Pirsch, you're recognized. [LB958]

SENATOR PIRSCH: Thank you very much, Mr. President, members of the body. I just was wondering if Senator Ashford might yield to a quick question. [LB958]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB958]

SENATOR ASHFORD: Yep. [LB958]

SENATOR PIRSCH: Thanks very much. With respect to those, and I'm talking about the amendment now that would seek to replace the original green copy of the bill, LB958, this being AM2235, on page 1 it...and speaking toward what you had referred to, the guts of the bill, which are kind of the subject areas or topics that you'd want the Nebraska Crime Commission to address with respect to their examination, at some point in Section 1 on line 4 it says, well...line 3 and 4 and 5, it says, "The Nebraska Commission on Law Enforcement and Criminal Justice shall examine firearm-related violence in Nebraska," which would seem to me to infer that what we're looking at here is where guns are used in a violent manner or used to shoot individuals or individuals shooting themselves. Is...and then certain elements, though, underneath in lines...well, in lines 7 through...and I think they're subsection (a) through (k), really go on to state what those particulars are that we want the Crime Commission to take a look at, and

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

Floor Debate  
March 12, 2008

---

that's lines 7 through 21, just to be clear. Certain element...certain of those subsections, though, would suggest...deal with, say, subsection (f) firearm safety. [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR PIRSCH: I guess how much...and in subsection (a) it says firearm-related injuries and deaths. Is the intention here, the legislative intent, to have the Crime Commission look at ones where we're traditionally thinking of as individuals shooting each other or themselves, or is the idea behind this also to have the Crime Commission look at areas where gun accidents occur where people accidentally shoot themselves through carelessness, or is it both? I mean, are both intended or is one a major focus, one a minor focus? [LB958]

SENATOR ASHFORD: I think the focus is on solutions. The problem is the violence of a firearm being used in a crime, the violence of a firearm being used. I suspect, I guess, in an accidental situation where the ones that...the situations that are the most glaring to me are the children that accidentally obtain a firearm and happen to...and it's happened in Nebraska as it has everywhere else, get a firearm and a shoot a friend that's in the house, that sort of thing. I think being able to inform the public about trigger locks, to inform the public about the need to keep guns locked up when they're not being used, I think that goes to the issue not only of accidental shooting, Senator Pirsch, but also to the issue of stolen weapons. If a gun is locked up, it won't be stolen. And you know, I don't want to talk about Von Maur, but that gun was available and it was taken; it wasn't...by Mr. Hawkins. I'm not suggesting that that's a reason for this bill, but I think it deals with all aspects of gun violence, whether by accident or by crime. But I do feel that I want to acknowledge here, if I might, Senator Pirsch, to answer your question, that most gun violence... [LB958]

SENATOR LANGEMEIER: One minute. [LB958]

SENATOR ASHFORD: ...occurs when guns are used in a criminal act, and those criminal acts are, for the most part, committed by persons that are not law-abiding. And so I think a part of the study has to look at how these guns are trafficked. So I don't...I'm not trying to be totally inclusive here, but... [LB958]

SENATOR PIRSCH: Oh sure. Yeah. Well, no, I appreciate...so I was just trying to garner from the use of the word "violent" if you're trying to be all "encapsulating" with acts of accidents included within that. [LB958]

SENATOR ASHFORD: Well, if an accidental shooting is a violent act... [LB958]

SENATOR PIRSCH: Okay. [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR ASHFORD: ...even if it's not an intentional criminal act. [LB958]

SENATOR PIRSCH: Sure. Sure. Well, I thank you for that, clarifying that in my mind. So thank you. [LB958]

SENATOR ASHFORD: Thank you. Thank you, Senator Pirsch. [LB958]

SENATOR PIRSCH: Yep. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Seeing no lights on, Senator Erdman, you are recognized to close on FA205. [LB958]

SENATOR ERDMAN: Thank you, Mr. President and members. Again, FA205 is designed to narrow the scope of the report of the commission while still preserving the study that Senator Ashford has in his amendment. Senator Ashford has suggested and agreed to it. I would encourage your support of FA205. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the closing on FA205, offered to AM2235. The question before the body is, shall FA205 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB958]

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of Senator Erdman's amendment to Senator Ashford's amendment. [LB958]

SENATOR LANGEMEIER: FA205 is adopted. We return now to discussion on AM2235, the amendment. The floor is now open. Senator Pirsch, you're recognized. [LB958]

SENATOR PIRSCH: Thank you very much, Mr. President. And I was wondering if...we kind of ran out of time. I wonder if Senator Ashford might yield for a question or two. [LB958]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR PIRSCH: Thank you for that explanation. With respect again to the amendment that shall become the bill, AM2235, I direct your attention to page 2 of such amendment, Section 2. It is with respect, I believe, to the part of the bill that would create generally...I think seeks to encourage reporting of lost or stolen handguns by creating a, I guess, an amnesty saying that an individual reporting the loss or theft of a firearm, and then it delineates two situations where if you report that loss and you won't

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

Floor Debate  
March 12, 2008

---

be charged with two specific types of crimes. And I guess the question is, are there other types of crimes that may... [LB958]

SENATOR ASHFORD: Be absolved? [LB958]

SENATOR PIRSCH: Oh, I'm sorry, and I'll let you...well, first of all, just I'd ask for your...you know, if you want to explain just the underlying precept behind that, if you would. [LB958]

SENATOR ASHFORD: Okay. In the original bill, LB958, there was a requirement that people report stolen guns and there was a penalty provision, Senator Pirsch, in the original bill. And we removed that because I'm convinced that in talking to the State Patrol and gun groups, people who deal with large membership groups and the state's sportsmen's groups, the National Rifle Association, whoever it is, that working with the State Patrol we can get the word out that we'd like people to please report stolen firearms so law enforcement can sort of connect the dots with those guns. And so it's my...I removed the penalty provision and really just because I felt that we could give it a try here to see if...and I think people will report those firearms if they're stolen, if the word gets out that that's something law enforcement would like them to do. And we're absolving them from any liability related to the nonregistration, Senator Pirsch. It doesn't absolve them from liability or criminal liability for using the gun, for example, in a crime. It just...it limits it to the nonregistration of the firearm offense, if there is one applicable. [LB958]

SENATOR PIRSCH: Okay. Thank you very much. If there's anything else, if you'd like to use the balance of my time to comment on the bill,... [LB958]

SENATOR ASHFORD: No. Thank you, Senator Pirsch. And I did get a question from Senator Lautenbaugh, just for the record. The question was a good one; is, does the permit...or, I'm sorry, the background check legislation was originally part of the Brady legislation that was passed by Congress. The waiting period part of that, the five-day or seven-day, five-day waiting period, is not the law, federal law. What happens here is that normally in almost...in most cases the background check can be completed in a few minutes or even seconds. If the check does not come back within three days, which is rare but it could happen, the gun dealer makes the decision on whether to sell the gun. Most gun dealers that I've talked to, and I've not talked to hundreds but the few that I've talked to, say they will not sell a gun to someone when they don't have a background check completed. But that's the extent of the federal law on that issue. Thank you, Senator Pirsch. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Senator Hansen, you're recognized. [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Would Senator Ashford be willing to... [LB958]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB958]

SENATOR ASHFORD: Yeah, and I'm sorry I mentioned North Platte. I actually had... [LB958]

SENATOR HANSEN: No, that's fine. [LB958]

SENATOR ASHFORD: ...I had a great time there. It was just... [LB958]

SENATOR HANSEN: No, that's fine. We...Buffalo Bill was a great person himself, and Charlie Evans was a great... [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR HANSEN: ...person too. I'd like to go to...must be Section 4. [LB958]

SENATOR ASHFORD: Um-hum. [LB958]

SENATOR HANSEN: It's on page 7 of the amendment. [LB958]

SENATOR ASHFORD: Okay. [LB958]

SENATOR HANSEN: Where it talks about HHS must keep in the database for ten years previously. Why ten years? Why not 15? Why not five? [LB958]

SENATOR ASHFORD: Well, ten is the federal guideline under the...what...with the passage of this new federal legislation this year in Congress, they are effectively funding states to keep these health records, mental health records, up to ten years. And they're providing grants to states to enhance their mental health recordkeeping. It's really to be consistent with the federal law. It could be 15, but 10 is the number that really came out of the federal discussion. [LB958]

SENATOR HANSEN: Okay. May I call your attention to the over-the-counter firearms transaction record part one that you handed out... [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR HANSEN: ...the handout for...that you fill out when you do buy a gun? [LB958]

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

Floor Debate  
March 12, 2008

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SENATOR ASHFORD: Yep. [LB958]

SENATOR HANSEN: Question 12, subsection (f) I guess or number (f) anyway, that says: Have you ever been adjudicated mentally defective? [LB958]

SENATOR ASHFORD: Right. Correct. [LB958]

SENATOR HANSEN: Why not...why not go... [LB958]

SENATOR ASHFORD: Well,... [LB958]

SENATOR HANSEN: ...forever rather than ten years? Ten years is... [LB958]

SENATOR ASHFORD: And...and... [LB958]

SENATOR HANSEN: ...I don't think that's going to cut it. [LB958]

SENATOR ASHFORD: Not enough maybe, yeah. [LB958]

SENATOR HANSEN: And why have that different than the application? [LB958]

SENATOR ASHFORD: Good question, and this mental health issue is a difficult one because it's not as clear-cut as criminal records, obviously. So I'll look at that between now and Select File and find out why the ten years is the critical time, at least why it was mentioned as the time that they'd like the records kept for. But I agree with you. I mean it...there isn't a whole lot of logic to it, but I...that's the number that came out of the federal system. But I will...I'll look at it and maybe it should be longer. [LB958]

SENATOR HANSEN: Okay. I think we need to be consistent and I think the application would probably be the better choice. And then just above that is question (e): Are you an unlawful user or addict of marijuana, depressant, stimulant? If I've never been picked up I can say no. [LB958]

SENATOR ASHFORD: You can lie on the form. [LB958]

SENATOR HANSEN: Really? Thank you. Also, I guess on the first page of the amendment, we're asking this Crime Commission to do their job. [LB958]

SENATOR ASHFORD: Yes. [LB958]

SENATOR HANSEN: We're asking the Crime Commission to report to the Legislature. Why don't we just ask the Crime Commission for a report without putting it in the statute? [LB958]

Floor Debate  
March 12, 2008

---

SENATOR ASHFORD: Well,...and I'll tell you why I did it this way, Senator, and this is a...I think there needs to be a discussion about gun violence; and I think there needs to be a discussion about gun violence without just regressing into a battle about whether the right to bear arms, how that relates to the gun control groups on the one side and the NRA on the other side. I think we ought to get rid of all that. I think what we ought to do is we ought to talk about gun violence with the understanding that people have deeply held beliefs on the issue. But we ought to be able to talk about gun violence and the crimes that emanate from gun violence, and I think it's a special case. It's a special situation because of the...of what's happened in our state and in our communities. That's why I think it needs to be singled out. I'm not suggesting, Senator Hansen, by putting this in there that there's any remedy that's going to work, and I'm not saying that we should... [LB958]

SENATOR LANGEMEIER: One minute. [LB958]

SENATOR ASHFORD: ...ban guns or whatever it is. I'm not suggesting that. I'm just saying we ought to have a discussion and that gun violence ought to be elevated as a topic, not as a means of taking rights away but as a discussion about what the remedy should be. And that's why I put it into statute or I'm requesting that the Legislature consider putting it in statute. That's why. [LB958]

SENATOR HANSEN: Okay. One other question: The Crime Commission, and I'm not familiar with the makeup of the Crime Commission, is there anyone from the Fraternal Order of Police sitting on the Crime Commission? [LB958]

SENATOR ASHFORD: Not necessarily, but in the original...in the amendment, no, but the Crime Commission does have the...and I think they should and include people, police officers, people, gun groups, others. It's the Governor, the Attorney General, and then there's a commission, Senator Hansen, that sits. They're appointed by the Governor, approved by the Legislature. But I think to get a thorough study we are going to have to include law enforcement, we're going to have to include sportsmen's groups. [LB958]

SENATOR LANGEMEIER: Time. Senator Hansen, your light is next so you can continue. [LB958]

SENATOR HANSEN: Could we continue this conversation with Senator Ashford? Okay. My question is that we have a handout, and you also handed that out today, too, from the Fraternal Order of Police that we're in favor of LB958 as written. And I think it said they were in favor of the amendment, too, the AM1964 amendment. Is that correct? [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR ASHFORD: Well, I've talked to them this afternoon, Senator Hansen. They're in favor of the amendment. [LB958]

SENATOR HANSEN: Of which amendment, AM1964 or this one? [LB958]

SENATOR ASHFORD: I mean AM2235. [LB958]

SENATOR HANSEN: Okay. I think I had some correspondence with them that they were in favor of the AM1964 amendment, too, maybe last week or maybe two weeks ago. [LB958]

SENATOR ASHFORD: I guess they just like all my amendments, Senator Hansen. I don't know but... [LB958]

SENATOR HANSEN: Okay. (Laugh) The question would be, in Section 1, that with folk from the Fraternal Order of Police sitting on the Crime Commission and the...and in Section 1 it says the examination shall include but not limited to the following issues, and then we list all the issues. So if we know we have someone on there that doesn't like law-abiding citizens owning firearms, why should I support this amendment? [LB958]

SENATOR ASHFORD: Well, I think you'll get...what I'm trying to do is get around...transcend that. I think we need to stop having the debate about...we have the right to bear arms in this country and it's a tradition and we need to stop worrying about that. We need to...we can worry about it. We can worry about it if those rights are taken away or if you feel those rights are taken away. Then sure, you could worry about it. But I want to...I want someone to look at the data. I want to find out, you know, what guns are being used; how do these firearms...how do these firearms get into the hands of criminals; how are they trafficked; why aren't...you know, why is it important that law enforcement have evidence, you know, find out that guns are reported stolen; why is all that important? So that we can make the people aware voluntarily that it's important to be aware of the issue and that...and give law enforcement the tools they need to apprehend criminals, not to apprehend law-abiding citizens. I think that debate is over, Senator Hansen. The debate about the right to bear arms is over. People have the right to bear arms in this state. There's no question in this country. We passed it in the Nebraska Constitution. It's in the U.S. Constitution; will be interpreted with the Supreme Court. So I don't think we want to include...I'm not sure the police in Omaha are...I'll guarantee that a lot of police officers in Omaha I know that are fervent admirers of the Second Amendment, so I don't think you're really getting someone against the Second Amendment if you bring a police officer on to that commission. [LB958]

SENATOR HANSEN: Just a moment ago you said in this reply to my question was that you wanted to know what types of guns were used in the commission of crimes. [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR ASHFORD: Right. [LB958]

SENATOR HANSEN: Now the floor amendment that Senator Erdman just had did away with that section of your amendment. [LB958]

SENATOR ASHFORD: Well, I think the report can... [LB958]

SENATOR HANSEN: So now are we going to say to the Crime Commission we want to know this plus, shall include but not limited to, and then put that back in the question to the Crime Commission? [LB958]

SENATOR ASHFORD: No, I think...I think what kind of guns are used in commission of a crime is relevant information. What I'm saying is any information about a crime involving a gun is relevant--it's relevant. It has nothing to do with the right to bear arms. This has to do with the crime that's being committed with a firearm. The problem is...the issue is, in my view, the issue is that when a crime is committed with a firearm by someone who has mal intent, someone who wants to hurt somebody else, using a firearm can be very, very destructive. That doesn't mean guns are bad. It doesn't mean law-abiding citizens shouldn't have guns. But it does mean that we ought to be cautious and we ought to make sure that people know about the need to keep their guns locked up, they ought to know about gun safety courses, they ought to know what gun safety courses are available out there. I'm not talking about something that's going to take away rights in here, I don't believe. I don't mean to and I don't...and it shouldn't be interpreted that way. [LB958]

SENATOR HANSEN: Okay. That was my point. Thank you very much. [LB958]

SENATOR ASHFORD: Thanks, Senator Hansen. [LB958]

SENATOR HANSEN: Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Seeing no other lights on, Senator Ashford, you're recognized to close on AM2235. [LB958]

SENATOR ASHFORD: Thank you, Mr. President. And I appreciate those questions from Senator Hansen. And I know it's late in the afternoon and there are other things to do and think about, and this issue has not been as contentious as it might have been, I guess. But...and when there's no, you know, slamming of books down and throwing, running around. But to me, to me, it's more important to have this Legislature at least say to the citizens, we know you're concerned about gun violence. Mr. President, could I have a gavel? [LB958]

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

Floor Debate  
March 12, 2008

---

SENATOR LANGEMEIER: (Gavel) Members, please keep the (inaudible) down. [LB958]

SENATOR ASHFORD: Doesn't get any better than this. I need some quiet. So the...I just want to make sure that the citizens out there understand that we do...that we are hearing them that they are concerned about this issue, that they want their state government to take a look at it. But I'm also very well aware that there are numbers of citizens out there that don't want their right to bear arms taken away or infringed. And I understand that. I'm 58 years old. I've been through this for 20 years. I know darn well what they want and what they don't want. But it doesn't mean we can't talk about this in a rational way. And as I sit here, I know Senator Aguilar had left for awhile, thinking maybe the chandelier would fall near me and hit him, but now he's back so I must be right that the National Rifle Association is not opposed to this bill. But I hope, more importantly than that--I hope the citizens will look at this, if it should pass, as an opportunity for our state to do great things in the area of trying to stem violence, crime, and that we ought to send a message to people out there that if you're going to get a gun and use it illegally, we're not going to sit back and let that happen and we're not going to take it lightly. So with that, Mr. President, members, thank you for this opportunity and this discussion. Thank you for all those who have, from all sides of this issue, have been willing to support us on this now as we've come to AM2235. I'd urge the adoption of this amendment and the advancement of the bill. Thank you. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on AM2235, offered to LB958. The question before the body is, shall AM2235 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? [LB958]

SENATOR ASHFORD: President... [LB958]

SENATOR LANGEMEIER: Senator Ashford, for... [LB958]

SENATOR ASHFORD: No, nothing. I was... [LB958]

SENATOR LANGEMEIER: That's what I thought. Mr. Clerk, please record. [LB958]

CLERK: 26 ayes, 5 nays, Mr. President, on the adoption of Senator Ashford's amendment. [LB958]

SENATOR LANGEMEIER: AM2235 is adopted. We return now to discussion on LB958, the bill itself. Senator Stuthman, you're recognized. [LB958]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. During the past several weeks, I had received hundreds of phone calls, hundreds of people that

Floor Debate  
March 12, 2008

---

were members of the NRA. They asked me, you know, to oppose the bill. I gave them my word that I will oppose LB958. One hour ago on my e-mail, NRA does not support LB958 or its amendments. I visited with a lobbyist. They said the NRA is neutral at this time, and that is the word that I have been given to me. So the main concern that I have is that I have committed and talked to hundreds of constituents of mine and promised them that I would vote against this, and that's where I'm going to be. And I'm telling you that right now, that I cannot support this bill, mainly because of the fact that I haven't got information, haven't got a real statement and a commitment from the NRA or from its members that they've been informed that the NRA does now have a neutral position on this. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Ashford, you're recognized. [LB958]

SENATOR ASHFORD: It's still up there, Senator Stuthman, the...yeah. Are you still here, by the way? (Laughter) I thought your term was up. I...(laughter). Let me...let me, for the record, let me just try to explain that. I have had many discussions with many people, including the NRA. Several days ago the NRA came to me and we had this discussion about the permit to purchase, and I reminded them that I had said many years ago that the permit to purchase ought to go when the instant check came into effect. The instant check is in effect; it works. The NRA said that we will support this bill, to me. The position that I understand they are taking is that they do not...they have withdrawn their opposition to this bill. I don't know what else to tell you. I mean, I wouldn't be here telling you this if it was not that way. But I...and I don't know, this is not about the NRA. I know to a certain extent it is, Senator Stuthman, and I know they've sent out a lot of cards, but I have listened to them and I've listened to police officers. I've listened to many, many groups on this issue over the last several weeks. I didn't, unfortunately, I have Senator Lathrop fronting for me on this one, but (laugh) had I, we might have gotten a more definitive answer from the NRA. But I'm confident, Senator Stuthman, that your constituents will see this as a positive...as positive. And if by Select File they decide to oppose this bill for whatever reason, then don't vote for it. But I think it's clearly an effort to address the issue in a way that does not offend the right to bear arms in the Second Amendment, the Nebraska Constitution, and most importantly, it takes away a state regulatory requirement that is vehemently opposed by the National Rifle Association because it is an inconsistent, nonuniform regulation for the purchase of handguns. So I would just unequivocally represent that the National Rifle Association, though I don't speak for them, has indicated to me certainly that they don't oppose the bill, that they have removed any objection they have to the bill. Whether or not they're going to put me on the front page as the poster boy for the NRA, I doubt that very much because they would have to change a lot. But in any event, I would urge, again, would urge the advancement of this bill. I think we've addressed the concerns of gun rights groups. I've tried to acknowledge those here today. And I would urge the advancement of the bill. Thank you. [LB958]

Floor Debate  
March 12, 2008

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SENATOR LANGEMEIER: Thank you, Senator Ashford. Senator Friend, you're recognized. [LB958]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I was going to turn my light off again. I'm sure there are some that wish that I had. I think in about three minutes I'm going to wish that I had. Look, one of the things that's difficult here for me, and I think Senator Ashford would probably agree, is that if we're confused--the conversations I've already had out on the floor with several members--if we're confused in here to a degree, can you imagine what the public would be like right now if they were watching this? Here's my stance. I understand exactly, at least I feel like, because of his descriptions and his ideas about this legislation, how important it is to him and others in this body, the idea behind LB958 now. I think I've got a good grasp of that. The difficulty I have is that I was sitting in front of Judiciary Committee with a bill, I think it was my first year in the Legislature, and one senator, and I'll let you guess at the end of this who it was, said to me, Senator Friend,...(laughter). Have you guessed yet? (Laughter) Senator Friend, have you heard the idea that tough cases make bad law? And I said, well, you know, I think I heard that once, but I'm sure you're going to explain it to me, and he says, yes, I will. He went through this and explained to me why my legislation was probably not very effective. The legislation didn't go anywhere and to this day I think I kind of feel like I understand why. I know why. I think that there's some import to LB958 now, after we've amended it, but I get the gut feeling that it could be a situation where...you could make the argument where it's a tough-cases-make-bad-law type of theory. I'm not positive about that, but I get that feeling. And that's why I have a gut sense that tells me that LB958 will not accomplish the type of things that ideologically or theoretically or philosophically even that we want it to accomplish. In 2003, the Centers for Disease Control, and it's fairly famous, came out with a report and bans on specific firearms or ammunition, restrictions on firearm acquisition, child access prevention laws, waiting periods for firearm acquisition, firearm registration and licensing of owners, shall issue, even concealed weapon carry laws, zero tolerance laws for firearms in schools. Do you know what these nine scientists came up with? Nothing. They go, it's inconclusive. We don't know if any of these laws have worked over the years, and we don't know if they ever will. And Senator Ashford made a good point. Maybe it's because of data. Maybe that's what we need here. I would argue that I don't think so. I would argue, to the best of my ability, that I don't know that we're ever going to come up with solutions to problems like the things that occurred close to my house in Omaha. And I don't know that any bill like this, and I apologize, I have issues with it just like everybody else in the city did, and I don't know that LB958 solves those problems. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Friend. Senator Chambers, you are recognized. [LB958]

Floor Debate  
March 12, 2008

---

SENATOR CHAMBERS: Mr. President, members of the Legislature, ordinarily if a discussion developed on the floor about guns, I would talk about my objection to the ready, easy accessibility of guns for young black men, and it's going to get to young Latino men in Omaha, as is the case all over the country. When we had the assistant or deputy agent in charge of the FBI before the Judiciary Committee, I raised these issues with him and much of what I raised as issues he conceded. This discussion does not provide a framework with which...within which I can express the concerns that I have. If I express them it would be only for the purpose of informing those who are watching, because I know there is no sympathy on this floor for the issues that I raise. I know there is no concern about the welfare and the interests of the black community of which I'm a part, which I represent, of which I will be a part of until I die. There are only two things I have to do in this world. One is to be black and the other is to die. I will be black forever. Maybe that second one may have a question about it, but others are hoping that it's true, too, and that it will come to pass quickly. This bill, if I were to compare it to anything by way of an analogy, would be a piece of Swiss cheese. If I were the one offering this bill and working with the NRA, here's what I'd say now, and I've always wanted to be a dramatist. I would do like Marlon Brando and I'd tear my shirt off. I'd say: I talked to you; I begged you; I trusted you. You told me to give up point one and I gave it up; you said give up point two and I gave you point two; you did it through points two through ten. And I asked you, what more do you want? And if I give you all you want, what will you give me? And with a cold, steely stare, the representative of the NRA said, I will support what you do. Then I come out on the floor and I say the NRA told me they'll support it. And then a minion of the NRA stands up and says the NRA told me they are neutral. Then I would say, but I thought they made me think they supported it. This has been so funny to me, literally, but I don't want to stand on the floor and laugh at something about which people have affected so much seriousness about. People discuss this bill and aspects of it as though they were talking about something. This bill is zero, minus zero, times zero, divided by zero, which means zero. A young black man named Billy Preston, who has died, sang a song: Nothing from nothing leaves nothing. That's it. And when you see the NRA and Senator Ashford agreeing on something, we invoke the Loran Schmit principle: It doesn't say anything, it doesn't do anything, it doesn't help anybody, it doesn't hurt anybody, it doesn't cost anything. The lion has lain down with the lamb, and the way that happened without the lamb running away or the lion consuming the lamb is that both of them are in that posture in the shop of the taxidermist. All life has departed and now I hope Senator Ashford does not shed any tears, outwardly or inwardly, because he had nada, zilch, zero, nothing. You all think I'll get an award for that performance? [LB958]

SENATOR LANGEMEIER: Time. [LB958]

SENATOR CHAMBERS: You know that it's true. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Ashford, you're

Floor Debate  
March 12, 2008

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recognized. [LB958]

SENATOR ASHFORD: There any other lights on? [LB958]

SENATOR LANGEMEIER: There are. [LB958]

SENATOR ASHFORD: How many? How many lights? [LB958]

SENATOR LANGEMEIER: Two others. [LB958]

SENATOR ASHFORD: I'll just waive. [LB958]

SENATOR LANGEMEIER: Senator Kruse, you are recognized. [LB958]

SENATOR KRUSE: Thank you, Mr. President and colleagues. It's interesting when we start pecking at things with doubts, and especially unspecified doubts, and that's what I'm hearing now--well, really should we; and, I'm not quite sure, why not? It's time for us to do something. I hear in this the question of whether this will take us to the promised land. Well, promised land is something I'm an expert on and, I'll tell you, it won't take us to the promised land. That's not what we're about. The question is, are you on the road? And we need to be on the road. Thank you. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Chambers, you're recognized. [LB958]

SENATOR CHAMBERS: Mr. President, I'm in a zone now and everybody on this floor knows that I am telling the truth. It appeared to me that people were seeing how much flaying Senator Ashford could endure. Senator Ashford made the mistake of believing that he was negotiating, if you can call it that, with an outfit which never has dealt with politicians in good faith. It has bullied them, it has intimidated them, it has lied to them and has forced them to knuckle under and swallow spit. And when the representative of the NRA was before the Judiciary Committee, I let him know what I think of his organization. They've got all the guns, but I have no fear. But I listened here today and I thought it was an organization of the NRA. That's what I heard: NRA said we can do this. Well, are you sure the NRA gave us permission? Well, I'm pretty sure; they told me. And then somebody is going to say this is not about the NRA? The NRA owns this Legislature, except me. They own the members of this Legislature and it is shameful. You know why I didn't speak in support of the bill? Because it's nothing. The example I try to give, Senator Harms, when I really want to show how weak something is, I say it's weaker than soup made from the shadow of a malnourished pigeon. It's weaker than that. What do you have? I could not go to my community and say I spoke for something like that and am proud that it was done. There was a shooting that took place one block from where I live, less than a block if you mark it from the end of my backyard, which is

Floor Debate  
March 12, 2008

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on the alley, to the next street over, and a young man who was trying to do something with his life was killed. Some of us have family members who have been shot, and we take all of this very seriously. But when it's addressed in the way that this bill does and the way the Legislature discussed it, it is a farce. That's what it is. But you ought to give Senator Ashford his bill. You all made him prostrate himself before you. He tried to concede everything that you wrested from him. You don't have to replicate the cruelty of the NRA. He's like the bumblebee that you have put inside the jar. He's confined. But don't go a step further and take tweezers and pull off those wings one at a time, then take needles and stick them through the eyes. You don't have to do that. The NRA has won. None of you need feel that you have forsaken your master. The NRA reigns and rules supreme. You could put those three letters across the front of this Chamber, and that would be one of the most honest things that had been done here. [LB958]

SENATOR LANGEMEIER: One minute. [LB958]

SENATOR CHAMBERS: Prayers don't mean anything. Promises don't mean anything. When I was studying Spanish many years ago, there was a character in a play. His name was Segismundo, and his line, and I really liked it: La vida es sueño y los sueños sueños son--life is a dream and dreams are but dreams. Senator Ashford brought his dream here. You all dashed it; you turned it to ashes. What will you gain by making him grovel, trying to humiliate him? Is that what the NRA has in mind to do to show what happens to anybody who dares try, even in a little way, to do something about one of the most serious problems confronting this society? I'm going to give Senator Ashford a sympathy vote. [LB958]

SENATOR LANGEMEIER: Time. [LB958]

SENATOR CHAMBERS: Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Nantkes, you are recognized. [LB958]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. I was hoping that Senator Ashford would yield to a question, please. [LB958]

SENATOR LANGEMEIER: Senator Ashford, will you yield? [LB958]

SENATOR ASHFORD: Sure. [LB958]

SENATOR NANTKES: Thank you, Senator Ashford. Senator Ashford, as you know, I represent the great city of Lincoln, and the city of Lincoln's legal department recently wanted some clarification in regards to this legislation. There's some related city ordinances on the books and, basically, they're just trying to figure out if your intent

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

Floor Debate  
March 12, 2008

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would be to have this law preempt any of those city ordinances that exist. [LB958]

SENATOR ASHFORD: No, this...all this does is it removes the statewide permit to purchase system and substitutes the transactional federal system. [LB958]

SENATOR NANTKES: Thank you, Senator Ashford. I appreciate that. Thank you, Mr. President. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. Seeing no other lights on, Senator Ashford, you are recognized to close on LB958. [LB958]

SENATOR ASHFORD: Thank you, Mr. President. Very briefly in summary, I think we're here because we do have an obligation to address this issue, and there are two polar, opposite ways of dealing with it. Senator Friend quotes studies, and there are many studies on all sides of this issue and I will tell you that's one of the problems, is that we don't have accurate information in the state. We need it, and data is powerful, information is powerful. And with information we can address these issues directly, and without information we can't. And in the discussion today or as the discussion about this issue progresses, on the federal level we hear a great deal about the fact that jurisdictions aren't able to talk to each other, provide information to each other about the issue of guns and trafficking of guns and tracing of guns used in a crime. This is the kind of information that is valuable. But will it solve the problem? No, it won't solve the problem. But if we can make inroads into the problem, especially in Senator Chambers' district where young people are coerced into carrying weapons, I would suggest in many respects, because I've seen it happen and I've seen the results of it, not like Senator Chambers has seen and I'm not...would never be presumptuous enough to say that. But on one side we have that...Senator Friend's comments, and I don't know how Senator Friend is going to vote on the bill, but there really is nothing we can do, let's just lay off this issue. On the other side of the coin is really, I think I'm...it would be appropriate to say, Senator Chambers' position that guns in a civilized, democratic society only cause pain and harm and death, and that we should not have them. We should not have handguns; we should not have assault weapons; we should not have any of those kinds of destructive weapons. So in the middle is where the solution is, and I don't have a better solution today other than to suggest to you that we take a hard look at crimes involving firearms. We must do it. We have an obligation to do it, I believe. We have an obligation to the families who have been victims of these crimes. And I wish, Senator Chambers, I could do more to address some of your concerns. And I wish, Senator Friend, I could just say, you know, this is really not a big deal. It's not a big deal; anything we do is really not going to make any difference. I think it will make a difference because we do address issues in this state when we're given the opportunity, and I think we'll address this one. But let me just finally say this. You know, I sat on this floor for two years trying to get a permit to purchase system passed in Nebraska, and I did go to North Platte, and I did go to Alliance, and I did go to Hastings, and I talked to

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

Floor Debate  
March 12, 2008

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people who were opposed to me vehemently--how could I dare say that you had to have a permit to buy a handgun; how could you say that; how could you even suggest that we do that; it's a violation of our rights. But you know what? They said that to me but they were good to me, and they were people that I enjoyed meeting with and being with because Nebraskans aren't of evil intent. They don't want gun violence. They don't want criminals to have guns and use them inappropriately. So I learned a lot by doing that, but it took two years to get this permit to purchase system passed and it was a lot of work. We had a lot of opposition from just about everybody. And I heard many remarks similar to what Senator Friend said--well, this isn't going to do any good. Well, gun groups across the state liked the permit to purchase system because they believe they have a right, because they're law-abiding citizens, to have guns, and people that have violated the law don't have that right. And the permit guarantees, at least to some extent, that they will be able to get guns... [LB958]

SENATOR LANGEMEIER: One minute. [LB958]

SENATOR ASHFORD: ...and the criminals will not. Now we've got a better system and I sat in 1991 in this body, in that chair, and I said to the Legislature, if we have an instant check system in place, let's change it and go with the instant check system. It's a transaction-by-transaction system. It's uniform throughout the country. And that's why I'm here. I'm not here because the NRA made a deal with me. I said to them I'd be willing to do that. I said I would do it 20 years ago and now we're doing it. It makes us safer. It makes it clear to the citizens of this state that if they go in to buy a handgun they've got to be law-abiding, they've got not to have significant mental health issues. We're going to be safer when we pass this bill, we're going to be...if we pass this bill, and we're going to be safer in a way that does not violate the constitution of this state or the Constitution of the United States. And with that, Mr. President, I would urge that we advance this bill to Select File. Thank you for your time. [LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on LB958. The question before the body is, shall LB958 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Senator Ashford, for what purpose do you rise? [LB958]

SENATOR ASHFORD: Could I have a call of the house and do a roll call vote in regular order? [LB958]

SENATOR LANGEMEIER: There has been a request for a call of the house. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB958]

CLERK: 34 ayes, 0 nays, Mr. President, to place the house under call. [LB958]

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

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March 12, 2008

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SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Pedersen, Raikes, Avery, and Cornett, the house is under call. Please return to the Chamber and record your presence. Senator Cornett and Senator Pedersen, the house is under call. Please return to the Chamber. Do you wish to proceed? There has been a request for a roll call vote in regular order. Mr. Clerk, please call the roll. Well, the question is, shall LB958 advance? Mr. Clerk, please call the roll. [LB958]

CLERK: (Roll call vote taken, Legislative Journal page 931.) 25 ayes, 13 nays, Mr. President, on the advancement. [LB958]

SENATOR LANGEMEIER: LB958 does advance. With that, I raise the call. Mr. Clerk, items for the record. [LB958]

CLERK: Mr. President, amendments: Senator Chambers to LB280A; Senator Kopplin to LB880. And a new A bill. (Read LB1048A by title for the first time, Legislative Journal pages 932-935.) [LB280A LB880 LB1048A]

Mr. President, I have a priority motion. Senator Fulton would move to adjourn until Thursday morning, March 13, at 9:00 a.m.

SENATOR LANGEMEIER: You have heard the motion to adjourn until Thursday morning at 9:00 a.m. The question is, shall we adjourn? All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned.