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Floor Debate
March 17, 2008

[LB151 LB245 LB572 LB593 LB609 LB653 LB710 LB724 LB726A LB726 LB727 LB728
LB754 LB764 LB775 LB784 LB789 LB798 LB805 LB821 LB838 LB845 LB846 LB846A
LB848 LB850 LB853 LB865 LB893 LB895 LB902 LB904 LB926 LB947 LB958 LB959
LB960 LB961 LB972 LB973 LB988 LB993 LB1004 LB1011 LB1014A LB1016 LB1019
LB1045 LB1048A LB1048 LB1065 LB1067 LB1083 LB1094A LB1094 LB1103 LB1108
LB1130 LB1131 LB1132 LB1145 LB1157 LB1162 LR261 LR262 LR263 LR264 LR265
LR266]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this, the forty-second day of the One Hundredth Legislature, Second Session. Our chaplain for today is Reverend Randall Knuth, from Hope Lutheran Church, South Sioux City, Nebraska, Senator Engel's district. Please rise.

PASTOR KNUTH: (Prayer offered.)

SENATOR LANGEMEIER: Thank you. I call to order the forty-second 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: I have no corrections, Mr. President.

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

CLERK: Mr. President, your Committee on Enrollment and Review reports LB958 to Select File; LB151, LB724, LB726, LB726A, LB947, LB850, LB805, LB1004, LB754, LB893, LB865, LB728, LB775, LB848, LB1011, LB821, LB845, LB904, LB798, LB764, LB789, LB902, LB1067, LB838, LB1045, LB593, LB727, LB1145, LB1162, LB972, LB993, LB1103, LB710, LB1048, LB1048A, LB572, and LB1108, those all reported to Select File, some of which have Enrollment and Review amendments attached. And that's all that I had, Mr. President. (Legislative Journal pages 965-971.) [LB958 LB151 LB724 LB726 LB726A LB947 LB850 LB805 LB1004 LB754 LB893 LB865 LB728 LB775 LB848 LB1011 LB821 LB845 LB904 LB798 LB764 LB789 LB902 LB1067 LB838 LB1045 LB593 LB727 LB1145 LB1162 LB972 LB993 LB1103 LB710 LB1048 LB1048A LB572 LB1108]

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

Floor Debate
March 17, 2008

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, Select File 2008 Senator priority bills, LB1094. [LB1094]

CLERK: LB1094. Senator McGill, I have Enrollment and Review amendments, first of all. (ER8187, Legislative Journal page 955.) [LB1094]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB1094]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1094]

SENATOR LANGEMEIER: You have heard the motion on the E&R amendments. All those in favor say aye. All those opposed say nay. They are adopted. Mr. Clerk. [LB1094]

CLERK: Senator Louden would move to amend with AM2318. (Legislative Journal page 938.) [LB1094]

SENATOR LANGEMEIER: Senator Louden, you are recognized to open on AM2318. [LB1094]

SENATOR LOUDEN: Thank you, Mr. President, members of the body. The Revisor's Office contacted me about introducing this amendment on their behalf. The amendment simply allows the Revisors to do what needs to be done with LB1094. It's mostly just a technical amendment to move the numbers around to something that they thought couldn't be done in E&R, so this is why they asked me to introduce this amendment. I would ask that you advance this amendment. Thank you, Mr. President. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the opening on AM2318 to LB1094. The floor is now open for discussion. Seeing no lights on, Senator Louden, you are recognized to close. Senator Louden waives closing. The question before the body is, shall AM2318 be adopted to LB1094? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1094]

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Louden's amendment. [LB1094]

SENATOR LANGEMEIER: AM2318 is adopted. Mr. Clerk, for a motion. [LB1094]

CLERK: Senator Christensen would move to amend, AM2325. (Legislative Journal page 961.) [LB1094]

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

Floor Debate
March 17, 2008

SENATOR LANGEMEIER: Senator Christensen, you are recognized to open on AM2325. [LB1094]

SENATOR CHRISTENSEN: Thank you, Mr. President and fellow senators. There's just two simple corrections here. One was original LB1132 in the same manner as giving the county treasurers the authorization to collect the occupation tax in the same manner as property tax--just a clerical change they asked for. The other one rolled in here was LB1131, which is just giving the county treasurers the right to collect the occupation tax, and that's as simple as it is--just two clerical cleanups to add to the bill for the peace of mind, and actually it was asked for by NACO just to have it clean cut so treasurers knew what they were doing. Thank you. [LB1094 LB1132 LB1131]

SENATOR LANGEMEIER: Thank you, Senator Christensen. You have heard the opening on AM2325. The floor is now open for discussion. Seeing no lights on, Senator Christensen, you're recognized to close. Senator Christensen waives closing. The question before the body is, shall AM2325 be adopted to LB1094? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1094]

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Christensen's amendment. [LB1094]

SENATOR LANGEMEIER: AM2325 is adopted. Mr. Clerk. [LB1094]

CLERK: Mr. President, Senator Carlson would move to amend, AM2365. (Legislative Journal page 972.) [LB1094]

SENATOR LANGEMEIER: Senator Carlson, you are recognized to open on AM2365. [LB1094]

SENATOR CARLSON: Mr. President, members of the Legislature, AM2365 is to clarify that the negotiations for the purchase of surface water were actually made by Republican River Basin coalition versus the three individual NRDs, and this clarifying language gives authority to release the Water Cash Fund money to the Republican River Basin coalition for the obligations made by the bill. I would ask for your support of this amendment. [LB1094]

SENATOR LANGEMEIER: Thank you, Senator Carlson. You have heard the opening on AM2365. The floor is now open for discussion. Seeing no lights on, Senator Carlson, you're recognized to close. He waives closing. The question before the body is, shall AM2365 be adopted to LB1094? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1094]

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

Floor Debate
March 17, 2008

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Carlson's amendment. [LB1094]

SENATOR LANGEMEIER: AM2365 is adopted. Mr. Clerk. [LB1094]

CLERK: Nothing further on the bill, Mr. President. [LB1094]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB1094]

SENATOR MCGILL: Mr. President, I move LB1094 to E&R for engrossing. [LB1094]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB1094 does advance. (Doctor of the day and visitor introduced.) Continuing with the agenda on Select File, LB1094A. Mr. Clerk. [LB1094]

CLERK: Senator McGill, I have no amendments to LB1094A. [LB1094A]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB1094A]

SENATOR MCGILL: Mr. President, I move LB1094A to E&R for engrossing. [LB1094A]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. LB1094A does advance. Mr. Clerk, Select File 2008 priority bills, LB1157. [LB1094A]

CLERK: LB1157. Senator, I have Enrollment and Review amendments, first of all. (ER8178, Legislative Journal page 818.) [LB1157]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB1157]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1157]

SENATOR LANGEMEIER: You have heard the motion on the E&R amendments. All those in favor say aye. All those opposed say nay. They are adopted. Mr. Clerk. [LB1157]

CLERK: First amendment, Senator Harms, AM2169. (Legislative Journal page 799.) [LB1157]

SENATOR LANGEMEIER: Senator Harms, you are recognized to open on AM2169. [LB1157]

SENATOR HARMS: Thank you, Mr. President, colleagues. This is just a little bit of a

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

Floor Debate
March 17, 2008

correction that I would like to make. On page 3, line 17, we insert the State Department of Education. If you look at that, they're not included at all in receiving the report and the findings of the study, and they need to be because they're going to have to handle those particular issues. Then on page 4, line 10, it had three to five. I've asked that to be stricken to put five and to include one teacher and one administrator, and the reason for this is, I think that we need to have input from the educational arena, from the teachers, so that we can at least have some discussion and open involvement with our teaching staff, as well as administrative staff who have to really deal with this assessment in this amendment. So I would ask that you at least understand why we're trying to do that. And I'm going to actually withdraw this amendment, and the reason I'm going to withdraw this amendment, Mr. President, it is included in another amendment as one total amendment, and I think it's probably a better way to go. It's all wrapped up into one neat package, so I would like to withdraw this at this time, please. [LB1157]

SENATOR LANGEMEIER: AM2169 is withdrawn. Mr. Clerk. [LB1157]

CLERK: Mr. President, the next amendment I have, Senator Raikes, AM2356. (Legislative Journal pages 972-973.) [LB1157]

SENATOR LANGEMEIER: Senator Raikes, you're recognized to open on AM2356. [LB1157]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. I want to thank Senator Harms for both introducing his amendment and then also withdrawing it. The introduction, I think, illustrates an important point, and the point of what this amendment, the one you're now looking at, does and that is an effort to both do some technical corrections that are needed and also to do some accommodation. Senator Harms mentioned that one of the issues raised was that there should be teachers, or teacher representation and administrator representation on the technical advisory committee. I think that's a good suggestion, so that's in this amendment, as well. It also would require the state board's assessment plan to be submitted to the Department of Education as well as to the Governor and the Legislature. This amendment also addresses some other more technical, I would call them, ...well, substantive and technical. Senator Howard requested an amendment to allow the State Fair Board and the Department of Education to make accommodations for special...excuse me, the State Board of Education, not the State Fair Board, to make accommodations for special education students on statewide assessments. The language is permissive so as to allow the State Board and the Department of Education to develop appropriate accommodations for such students. Such accommodations are allowed under the No Child Left Behind regulations. It was also necessary in a technical nature to strike a reference to the Legislature in the duties of the technical advisory committee. The committee would advise the executive branch and reports would be available to the Legislature. The Legislature would still confirm the appointments, as previously

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

Floor Debate
March 17, 2008

discussed. In order not to rule out an expedited development of math and science assessments, this amendment would say that such tests are developed no later than 2010-2011 and 2011-2012 respectively, and finally, the amendment also ensures that the reporting of mathematics achievement results in 2009-2010, if a statewide...it assures the reporting of those results in 2009-2010, if a statewide assessment is not yet available. This would allow school districts to report mathematics results in the same manner as they did in 2008-2009. So again, this amendment is an effort to accommodate and also to address some somewhat technical, but also somewhat substantive issues that have been raised. With that, I'll urge the adoption of this amendment. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Raikes. You have heard the opening on...Senator Raikes, it's my understanding that you want to withdraw this and substitute it? [LB1157]

SENATOR RAIKES: I would, Mr. President. If that's permissible, I would like to substitute AM2366. (Legislative Journal page 973.) [LB1157]

SENATOR LANGEMEIER: Seeing no objections, so moved. Mr. Clerk, for a motion. [LB1157]

CLERK: AM2366, Senator. [LB1157]

SENATOR LANGEMEIER: Senator Raikes, you are recognized to open on AM2366. [LB1157]

SENATOR RAIKES: Thank you, Mr. President and members. I ask your condolences here on this substitution. This revised amendment or substitute amendment, AM2366, adds one more technical change. It refers to an assessment instrument rather than just an assessment. It is technical. I would tell you, this was an issue raised with us just before the Legislature convened this morning by the department, and again, I hope this is indicative of our efforts to deal directly and forthrightly with the department in their concern about the language and to ensure that they understand what is here, and that it will be implemented. So this amendment is the one I just described, plus that one technical change. And again, I would ask for your support of it. Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Raikes. You have now heard the opening on AM2366. The floor is now open for discussion. Those wishing to speak, we have Senator Raikes, Nantkes, and Howard. Senator Raikes, you're recognized. Senator Raikes waives his time. Senator Nantkes, you're recognized. [LB1157]

SENATOR NANTKES: Good morning. Thank you, Mr. President. Good morning, colleagues and happy St. Patrick's Day to all of you and all of those watching at home

Floor Debate
March 17, 2008

and in the greater part of this building. And Senator Raikes, I want to be clear as I begin my comments this morning that they're not intended to throw a wrench in the works, the hard work that the Education Committee has conducted in terms of formulating this policy in relation to school assessment. But I do want to note for the record and for the dialogue, as we move forward, many of you know that my mom, Stephanie Nantkes, is a teacher and has been for 30 years. So I've seen firsthand growing up how our state educational policy affects those on the front lines, affects teachers, affects kids. And I'm so fortunate to have her expertise when trying to work through issues like this. In addition, I meet pretty frequently with a group of teachers in my district--at least once a month, if not more, and they have some grave concerns about this legislation. Again, I know the Education Committee has been working with different interests within the education community to try and address and work out some of the concerns that they have, to make this more palatable as a policy. But from a broader perspective, I do just want to kind of start talking about what many of you are hearing from your teachers back home, as well. It seems to the teacher on the front lines that we're continually asking them to do more and more and more with less and less resources. And in some ways, they're a victim of their own success. They've continued to go above and beyond what we've asked them, and we can see it in our students' performance on tests, and to see how Nebraska consistently has high student performance. Yet we continue to rank in the very, very low areas in terms of what we do to support our teachers, in terms of professional pay and other things. So I think as we move forward and we look at these issues involving assessment and what we asking teachers to do each day, we have to also look at the resource issue. If we're going to look at obligation and responsibility, we have to fairly look at the resource issue, as well. I see those issues in tandem, and I hope that we all keep them in mind as we move forward. With that, thank you, Mr. President. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. Senator Howard, you are recognized. [LB1157]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I rise to support the inclusion of one administrator and teacher. No one is more of an expert on the educational needs of Nebraska's children than those who teach in Nebraska. I also rise to thank Senator Raikes for including my amendment which addresses testing issues for students with special needs. Also, I want to say a thank you to Matt on Senator Raikes's staff, who worked closely with the federal government to place the correct wording in this amendment, and I urge you to support this. Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Erdman, you are recognized. [LB1157]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. I'm (laugh)...I'm not going to use this to talk about something else. Actually, I'll talk about

Floor Debate
March 17, 2008

LB1157, and if Senator Raikes would yield to some questions, I would appreciate it.
[LB1157]

SENATOR LANGEMEIER: Senator Raikes, will you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR ERDMAN: Senator Raikes, as I understand the process, and during General File on LB1157, I was baby-sitting that other project that you and I are working on with the State Fair. LB1157 comes prior to the full implementation of LB653 from last year; is that correct? [LB1157 LB653]

SENATOR RAIKES: Yes, that is correct. It is a, if you will, a mid-course set of revisions or adjustments. [LB1157]

SENATOR ERDMAN: And the general push behind LB1157 is the need or the ability to take the existing tests that we have and make them make sense for reporting or purposes that, outside those districts people can obtain? In other words, we would be able to say, schools in one part of the state are doing the same or as well against another part of the state, or there's some consistency or conformity between the tests that are being provided, as opposed to what we have now, and that is, one district can have their test and another district can have a completely different test, but still be compliant with the current requirement under STARS. [LB1157]

SENATOR RAIKES: That's correct, and you certainly identified one significant area that these tests may be used in, that is, deciding,...you know, people in a given school district may be interested in the question, well, how are we doing in academic achievement compared to another district? But certainly there are a whole lot of other questions that might be addressed, but at any rate, you're on the right track. [LB1157]

SENATOR ERDMAN: The second part, and maybe as big of a driving factor is, as I visited with Senator Adams and others, the ability to comply with the federal requirements under No Child Left Behind, which are essential for the state to either receive federal funding or for other federal reasons for reporting requirements, and if LB1157 or an effort by the department being made under the current system is not done, then the local school districts may have an additional responsibility to comply with that federal requirement--their portfolios, their methodologies would have to be verified by the department, maybe at a greater extent than what they currently are being verified at, to ensure compliance with No Child Left Behind, or we do LB1157. [LB1157]

SENATOR RAIKES: Correct, Senator, and I think that the only thing I'd argue with in your statement is "if." If LB1157 doesn't happen and the department chooses to require statewide tests in only three grades, and doubles up on that testing with the STARS

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

Floor Debate
March 17, 2008

assessments, the burden placed on school districts or the state, somehow or another, would definitely be there to assure that every one of those tests is valid and reliable, not only between districts or compared to state standards, but also compared to the statewide test. I think there's little doubt but what that burden would be simply enormous. [LB1157]

SENATOR ERDMAN: Are there school districts currently in the state that are doing more than they're required to do under STARS? [LB1157]

SENATOR RAIKES: That's a good question. No doubt the answer is yes. It also raises the issue that STARS--again, the acronym for the Statewide...or the testing system we're now using is really...there is nothing consistent across the state about it. In one place it's basically a statewide test administered at the district level. In some other instances it's basically a statewide test offered by a coalition, I've heard up to 40 different school districts. You have a few instances where... [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR RAIKES: ...where each individual district develops the test. But it varies tremendously across the state, in terms of its application. [LB1157]

SENATOR ERDMAN: And under No Child Left Behind, we are not obligated as a state to adopt a statewide testing scheme. We're obligated to be able to meet the requirements of No Child Left Behind however we would develop that system. So we can comply under STARS, but may have a different compliance requirement, either for the schools or the state, but simply passing LB1157 and creating a statewide test doesn't necessarily ensure compliance, because there's still a lot of the same things you would have to do; it's just the difference of how many tests you may have to verify or account for the methodology. [LB1157]

SENATOR RAIKES: Well, you know, I don't think I can argue with what you said, except that if there is some incompetent way in which LB1157 and the statewide tests are administered... [LB1157]

SENATOR LANGEMEIER: Time. Thank you, Senator Erdman. Senator Fulton, you are recognized. [LB1157]

SENATOR FULTON: Thank you, Mr. President. I have a similar question, I guess. More than anything I want to get this into the record. It has to do with No Child Left Behind. Would Senator Raikes yield? [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

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

Floor Debate
March 17, 2008

SENATOR RAIKES: Yes. [LB1157]

SENATOR FULTON: Okay, Senator. We talked about this a little bit off the mike on General File, and I'd like to get this on the mike, just because I think it might be something that we have to deal with in the next couple of years. Let me put forward my concern, and then I'd like to have you explain how my concern isn't warranted, if that's possible. The bill itself doesn't refer to No Child Left Behind with any specificity; is that correct? [LB1157]

SENATOR RAIKES: Yes, yes. [LB1157]

SENATOR FULTON: There's not a specific mention? [LB1157]

SENATOR RAIKES: And that's consistent with our usual practice in that regard. [LB1157]

SENATOR FULTON: Okay. I still have some concern, and I was contacted by a number of teachers, and I've also looked into the bill as it relates to No Child Left Behind. The terminology and intent seems to be generated by that policy which has been put forward in No Child Left Behind, at least it seems that way to me. In the event that the upcoming president, whatever administration we have after the presidential election, decides that No Child Left Behind is bad policy and doesn't fund those provisions that are required presently, would we as an Appropriations Committee and as a Legislature in forward years be faced with replacing whatever funding we could be getting at the federal level to implement the provisions of LB1157? [LB1157]

SENATOR RAIKES: Senator, I think that whenever you look at the possibility of any federal program being discontinued, and if you want to continue in an ongoing basis what was done under that federal program, you face that issue. In this particular case, I would argue that what we're doing in terms of...or what we would be doing, in terms of statewide accountability, academic accountability under LB1157, is a lot less expensive than what it would be if we tried to continue our current procedures and program. So yeah, I think the scenario you're laying out is No Child Left Behind is repealed or some such thing, the federal money that comes to the state as a result of the assessment portion of that, \$4.5 million roughly, would quit coming to the state, so is there a possibility that the state would be called upon to replace that funding. And again my answer is, I think the LB1157 approach makes the general procedures for statewide assessment much less expensive and much more economically feasible, less of a burden on the state and individual school districts, than would be the case if we continue the...or tried to continue the current system. [LB1157]

SENATOR FULTON: Okay. Thank you, Senator Raikes. Thank you, Mr. President. [LB1157]

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

Floor Debate
March 17, 2008

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Erdman, you're recognized. [LB1157]

SENATOR ERDMAN: Mr. President, if I can continue with Senator Raikes. [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR ERDMAN: Senator Raikes, the next (laugh) line of logic, if you can call it that. We have in place a program that was designed and created by the Legislature for Nebraska because the Legislature felt at the time that it created STARS that that was the right public policy for Nebraska. We are somewhat now in a little different dynamic, where we're using STARS to comply with a federal program, but essentially the rationale behind doing LB1157 may be somewhat different. Now the question is, is LB1157 a response to federal requirements under No Child Left Behind, or is it a response to what the Legislature previously passed under STARS to make it more meaningful? [LB1157]

SENATOR RAIKES: Thank you for that question, Senator, because the fact is, the Legislature never did endorse STARS. STARS was something that was created inconsistently, with the intent of the Legislature. It has been, in a sense, a renegade effort all of these years. I would call your attention to the Legislative Performance Audit report for verification of that. The STARS system, with all the locally based assessments, no statewide test was never either in the language, in my opinion, or certainly in the intent of the Legislature. So LB653 last year and LB1157 has been a two-step effort, if you will, to address that issue. And on the broader issue of, well, are we really concerned about statewide assessment for Nebraska student or are we concerned with No Child Left Behind? The answer is very strongly the former. We, when we began on LB653 last year, as far as we knew--we've later been advised differently--but as far as we knew, the STARS system as it was concocted at that point, would comply with No Child Left Behind. So we were interested in, how do we better grasp and better get a handle on academic performance in the state? And that continues to be our effort in that regard. No Child Left Behind certainly comes up because it is a substantial amount of money, and you run the risk with the system we have now or others, I guess, that you're going to lose that funding. I will also tell you--and I think I started to get this at the end of my other--our confidence is that if LB1157 is adopted, that Nebraska will quickly move to the approved status under No Child Left Behind. [LB1157 LB653]

SENATOR ERDMAN: Let me take you a step back. If the Legislature had not passed the legislation that would have authorized STARS, would it have ever been able to be

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

Floor Debate
March 17, 2008

done through the department independent? [LB1157]

SENATOR RAIKES: Again, Senator, as far as I'm concerned, it never did pass anything that authorizes STARS. [LB1157]

SENATOR ERDMAN: So the assessment testing that's in the law now came after the department began STARS? [LB1157]

SENATOR RAIKES: The practice that's in law...that's in place now is not consistent with the statute, either before LB653 or after LB653. [LB1157 LB653]

SENATOR ERDMAN: And I think that's my point. Are we arguing over the interpretation of the statute and what the Legislature intended, or the application of the law as the department is pursuing it, or has pursued it, up till LB653, and potentially LB1157? I don't believe that the department could have gone forward with any version of STARS, however they want to interpret it,... [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR ERDMAN: ...without some authority from the Legislature to do that, or could they? [LB1157]

SENATOR RAIKES: My answer to you is, they did. [LB1157]

SENATOR ERDMAN: Okay. Fundamentally, the ability to comply with No Child Left Behind isn't behind stating in statute that you have a statewide test. Would you not have the same requirements of methodology and portfolio and assessments at the state level that you currently have in Nebraska locally? Aren't we transferring the authority...simply passing LB1157, as I understand it, doesn't make us in compliance or approved. We would still have to have the data to support whatever test would be implemented within the state of Nebraska for the verification under No Child Left Behind. [LB1157]

SENATOR RAIKES: You're exactly right. The statewide tests have to pass the validity and reliability requirements of No Child Left Behind. I would argue to you, we would want that anyway, as a state. We don't want tests that are inadequate in whatever respect. So that would certainly have to be the case. [LB1157]

SENATOR RAIKES: Time. Thank you, Senator Erdman. Those wishing to speak, we have Senator Engel, Raikes, Harms, Hansen, and Senator Erdman. Senator Engel, you are recognized. [LB1157]

SENATOR ENGEL: Mr. President, members of the body, I support this bill, but I do have some questions for Senator Raikes. I know before I heard from a lot of teachers in

Floor Debate
March 17, 2008

my school district saying that, of all the time it took to comply with the testing requirements, it took so much time out of their teaching, and they just didn't have time to teach. Now in reading the article from Doug Christensen, the Department of Education...I mean, the Commissioner of Education, he mentioned this is going to take more time. This new system will take more time than the old time. That's one question. The other is, as far as I'm concerned, as far as state testing--and like I say, I was on the school board, but I'm not an educator; we have educators here in the body who are very proficient in that. But the thing is, if you're going to school...oh, let's take Loomis, Nebraska, for instance, or you go to school in Lincoln, Nebraska, and you want to enter the University of Nebraska or any place of higher education, you're going to need the same background. So I'd like to ask Senator Raikes if he would comment on the first one, as far as the time restraint...it's going to take out of the teaching time with the teachers, whether this takes more or less, and secondly, as far as where all these kids are on the same level across the state. I know local testing is fine, but this probably varies as far as now people test locally. I just need a little more clarification on that. So Senator Raikes, would you respond, please? [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes, I would. Thank you, Senator, for the opportunity. First, in terms of time required by teachers, actually, a big effort in LB1157 is to reduce the time requirement upon teachers. Without it, what you're promised from the department is a doubling up of both STARS and statewide assessment efforts. And keep in mind now, a key time consumer of STARS is the requirement that you have to make locally based assessments suitable for statewide assessment purposes. This is where you get into all the time requirement or portfolios development and all that sort of thing. We're not, with LB1157, and should not eliminate locally based assessments. They're critical to effective teaching, and they ought to be allowed in however manner that school districts, teachers, want to have them. LB1157 does that. I reduces the time burden on teachers by basically saying the state is going to be responsible for doing the...developing the tests that are for statewide accountability purposes. Local school districts can do what they feel is most appropriate for their situation, in terms of administering locally based assessments. They will not have to go through all the rigmarole that's required to try to make those locally based assessments suitable for statewide assessment. And Senator, I forgot your second question. [LB1157]

SENATOR ENGEL: Well, what I was mentioning, as far as this time, and thank you for your answer there, because I've heard...before I heard it takes too time. Now I'm hearing from others too much time this time. And I thought that was the crux of this whole thing is give them more time to do what they're in the classroom for, is to teach and not spend all their time in testing. And the second one, as far as Loomis--I referred to Loomis. I just picked that out of the hat because it's a rural area, and would you go to school in Loomis or go to school in Lincoln, you should be on the same page when you

Floor Debate
March 17, 2008

go on for higher...to higher ed. And I just wanted you to comment on that, as far as will this help that situation, where they will be basically equally prepared when they go on to higher ed? [LB1157]

SENATOR RAIKES: Well, if you're talking about statewide comparability, this would certainly enhance that, because right now,... [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR RAIKES: ...with every school district doing something different, there can't be any statewide comparability, and to say that the only purpose of something like this is to do a ranking of school districts across the state is ridiculous. Certainly that would not be the entire or even a significant part of the purpose. But it does provide, it has the potential to provide important information about how different groups of students are performing in different school districts, such that educators who are interested can use those results to figure out what programs work best under which circumstances. You need to have comparable academic results some way, in order to really tell if the program I'm using in my district is working as well or better than the one that you're using your district. [LB1157]

SENATOR LANGEMEIER: Time. [LB1157]

SENATOR RAIKES: Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Raikes, you're recognized. Senator Raikes, it's your time. You are recognized. [LB1157]

SENATOR RAIKES: Thank you, Mr. President and members. This...I think to maybe try to summarize just a bit here. This is a follow-up piece of proposed legislation to LB653. And LB653, along with this, makes a significant change in our state policy regarding assessment. We do, in fact, bring about a situation whereby we are going to have statewide tests, we're going to do statewide accountability at the state level, we're going to put that responsibility on the state rather than on local school districts, without in any way limiting the ability and authority of a local school district to do what they want regarding locally based assessments or whatever other professional development or teaching techniques they may decide that they want to use. So that's the important thing. LB1157, in my view, is aimed at, probably foremost, lifting the burden on teachers so that they can do in the classroom what they are trained and interested in doing; that is, spending time educating students. The requirement placed upon them to develop statewide accountability measures in the local classroom is lifted. They are certainly allowed to continue whatever practices they now have in place that they wish to continue. But they're not required to do it. I will just mention quickly that one of the arguments has been that LB1157 would reduce local control. I will tell you: My

Floor Debate
March 17, 2008

perception is exactly the opposite. Without LB1157, the department is given the option to...not the option but the authority to control local districts. It's basically an opportunity for the department to place their thumb on the backs of teachers and administrators in local districts. LB1157, at least in terms of academic accountability, would eliminate that departmental intervention. It would say that the school district is required to administer the statewide test, but they're not otherwise required to do statewide accountability. So again, LB1157 is a significant change. Wherever you have significant change, you have angst, you have concerns raised. I will tell you that I think, as maybe is usually the case, a lot of the concerns that are raised, I think, are completely unfounded, I think particularly those that would suggest that LB1157 is more onerous for teachers and administrators at the local level, when in fact my firm belief, and I think the committee's intention is, that it is much less so. So again, I urge your support. Thank you. [LB1157 LB653]

SENATOR LANGEMEIER: Thank you, Senator Raikes. Those wishing to speak, we have Senator Harms, Hansen, Erdman, Kopplin, Christensen. Senator Harms, you're recognized. [LB1157]

SENATOR HARMS: Thank you, Mr. President and colleagues. I wonder if Senator Raikes would yield for a couple of questions? [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR HARMS: You know, when we went through the last session we talked about this. We talked about tests, and we talked about assessment, tests and assessment. What's the difference, in your views, between tests and assessment? You're using that simultaneously, does it mean the same in what you're talking about? [LB1157]

SENATOR RAIKES: Well, Senator, I think the usual interpretation is that assessment is somewhat a broader term than test. Assessment instrument is probably something that is more analogous to tests in terms of meaning. [LB1157]

SENATOR HARMS: Okay. I'd like to talk a little bit about formative and summative. [LB1157]

SENATOR RAIKES: Okay. [LB1157]

SENATOR HARMS: And do these terms refer to tests, or do they refer to data that comes from the test, or do they refer to how the information from the test is used? Because we talked a lot...you talked a lot about that in the earlier debate, last week. And I'd kind of like clarification of this and how you view formative and summative and

Floor Debate
March 17, 2008

what it actually means here? [LB1157]

SENATOR RAIKES: Senator, I think one way to distinguish the two, and I think it's an important distinction, is the use of the results. A formative assessment, in my view, is an assessment that is a part of the feedback loop. You as a teacher create and administer tests in the local classroom, in your classroom to determine whether or not your students are keeping up with you. In some instances those tests may be used as a...well for lack of a better term, an achievement mark or grade determining. But by and large it's a way...it's a teaching technique. It's something you use to make sure that your students are brought along with you in your effort to cover materials. A summative assessment, on the other hand, its function is at some point to say, okay, how well have we done? What is the level of achievement for a group of students in a particular subject area? So there is an absolute need, in my view, for both. Locally based or formative assessments, I think, are absolutely a critical part of an effective teaching program and effective classroom program. On the other hand, I would argue as strenuously that summative assessments should be a part of our statewide accountability. And I would also argue that really, you know, we have as a...in Nebraska we have strong support for public schools which is absolutely important and appropriate. But basically the deal is this, we are willing to support our schools financially, strongly, and otherwise strongly. But the return part of the deal is that we need evidence of financial accountability by school districts and academic accountability by school districts. [LB1157]

SENATOR HARMS: Okay. Senator, I'd like to ask you another question that deals with summative and formative. Are the tests contemplated in LB1157, are they going to summative or formative? [LB1157]

SENATOR RAIKES: The statewide tests would perform the function of summative tests. They would be a test that would benchmark students either for a classroom, or for a building, or for a district in terms of performance of students, academic achievement of students on a... [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR HARMS: Okay. In regard to that then there will be a lot of data available. And my biggest concern about it is, how are we going to control the use of that data, and how will that data fit in so that the public just doesn't pick on a school that might have students who come from poor income families and this sort of thing which may not score well? How are we going to compare...how are we going to handle and control the data that takes place so that schools aren't put at risk and people aren't moving their children out of the school because they're not scoring well, because they have a certain group of students that come from maybe poor families, or that just doesn't have the background or have the help at home to move forward? So how will we control that

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

Floor Debate
March 17, 2008

data, and how will it be used? What are your thoughts? [LB1157]

SENATOR RAIKES: I think I understand your concern and it's a valid one. We have a...we are in the process of developing, nearing completion of a statewide student information database. The information that's collected would be put in that database... [LB1157]

SENATOR LANGEMEIER: Time. [LB1157]

SENATOR RAIKES: Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Harms. (Visitors introduced.) Returning to floor discussion on AM2366 offered to LB1157, those wishing to speak, we have Senators Hansen, Erdman, Kopplin, Christensen, and Harms. Senator Hansen, you're recognized. [LB1157]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I'd like to pass around a little bit of the conversation so if Senator Adams would yield to some questions. [LB1157]

SENATOR LANGEMEIER: Senator Adams, would you yield? [LB1157]

SENATOR ADAMS: Yes. [LB1157]

SENATOR HANSEN: Thank you, Senator Adams. I talked to several teachers this past weekend while I was at home. And either they're for or against it, there's no middle ground. And they certainly expressed to me that they don't need statewide assessment if STARS is going to continue. I drive a pickup back and forth to North Platte because I don't know what the weather is going to be. And this morning they have eight inches of snow out there, so I had to bring a four-wheel drive pickup in case I had to go home, I guess. But that pickup gets to Lincoln on a half a tank of gas. It shows 50 percent full when I get down here. But then when I go home I can't get home on that other...on the second half tank of gas. So can you do the math for me? What percentage of schools, if we have statewide assessments and it goes through, LB1157 goes through as it is, what percentage of schools will be in the top half? [LB1157]

SENATOR ADAMS: I suppose you could say 50-50 (laugh), half of them are going to be there. [LB1157]

SENATOR HANSEN: I think that would probably be the right answer, too. We've talked about what STARS does and doesn't do this morning. I have some questions about, I guess, it comes back to probably economic development. And I don't know if you want to throw that into this conversation, but I would. How do people looking at a community

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

Floor Debate
March 17, 2008

now use STARS, or do they use STARS? Is there an access to STARS where someone is looking and trying to compare a school to school using STARS? [LB1157]

SENATOR ADAMS: Well, I would think that it would be probably a relatively small number of folks but...if I understand your question. So I was thinking about moving to North Platte, and one of the things I want to do is to evaluate the schools that I may be bringing my children to. And one of the things I might look at are the assessment results. Now I can look at North Platte's assessment results, they're published, they're available through the state or through the website at North Platte. And I could look at them and I could look at the numbers and make a judgment. The problem I might have is the assessment device that was used by the North Platte public schools was developed by them. And maybe the other town I'm looking at is Lexington, and they developed their assessment tool. And maybe I'm looking at Gothenburg, and they developed their assessment tool. We're really not comparing apples to apples. [LB1157]

SENATOR HANSEN: This is under STARS then? [LB1157]

SENATOR ADAMS: Under...that's correct. [LB1157]

SENATOR HANSEN: Okay. Can you explain the same scenario...I'm real concerned about Senator Carlson's LB609 getting people from out of state coming to Nebraska, they just don't know where they want to come, but they're going to look at the schools. Under LB1157, explain the same scenario, if you would. What's the availability of people looking at that, comparing school to school? Why would somebody in my district, or why would someone want to move to my district if we have five school districts and they get to choose which area they live in? [LB1157 LB609]

SENATOR ADAMS: Well, one of the things they may do, if we have a statewide assessment then, if I'm familiar with that methodology, I understand that the students at North Platte, the students at Lexington, the students in Gothenburg have been assessed in the same manner. And I have a better comfort when I look at the results from those schools to say, well, you know what, Gothenburg actually did better in certain areas than North Platte. And if that's an area that's important to me, maybe where that's where I decide to go to school. At least we are closer to comparing apples to apples. [LB1157]

SENATOR HANSEN: Since none of us have ever seen a report from LB1157, the statewide assessment,... [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR HANSEN: ...would it be...would they be graded A, B, C, D, or would they...would there be that breakdown to see if one school teaches science better than

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

Floor Debate
March 17, 2008

another school? [LB1157]

SENATOR ADAMS: Well, you know, one of the fears that I think people have, and it may be a legitimate one, is that we're...if we go to statewide assessment we'll be making comparisons, we're going to compare one school up against another. My guess is it's unavoidable. As a matter of fact, it's happening right now under the STARS system. You can open up the Omaha World-Herald when the report...the state report card is there with all of the area school districts, you can open up the North Platte paper, area school districts and look at how schools are doing. The problem there is we're really not comparing the same assessment methods from school to school, even though the results are reported there. [LB1157]

SENATOR HANSEN: Okay, thank you, Senator Adams. Thank you, Mr. President. That's all I have for now. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Senator Erdman, you're recognized. [LB1157]

SENATOR ERDMAN: Thank you, Mr. President. Would Senator Raikes continue to yield? [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR ERDMAN: Senator Raikes, just to kind of follow-up on my last line of questions then, LB1157 would replace the existing battery of tests, if you will, that schools are currently doing. As I understand it there are two scenarios in which a school district may be compelled to comply with the existing practice. One is an interpretation by some that what the Legislature authorized initially in assessments is STARS, which you have said is not. And secondly, if there are requirements at the Department of Education currently that require school districts to comply with STARS, would they have to continue to comply with those under LB1157? Because as I understand it, as we've had this conversation, it's not a matter of statute but a matter of accreditation that effects the ability for a school district, or the requirement for a school district to comply with STARS. Is that accreditation requirement still in statute if LB1157 passes? And if not, then is it accurate to say that this would be the only statutorily required exam that districts would have to comply with? [LB1157]

SENATOR RAIKES: That's a critically important point. With LB1157 the statutory or the accreditation requirement for schools to be forced to use...to develop local assessments for statewide accountability purposes would be eliminated. Now there are other testing requirements that are in statute. For example, you may have noticed that every school

Floor Debate
March 17, 2008

district now administers a norm referenced test. It's a test of their choosing, but it's a norm reference test. So there is that sort of a test. That would be a testing requirement that would remain in place in addition to...in addition to the...what would be the statewide test. The other thing I'll quickly mention is that school districts would certainly not be prohibited in any manner from continuing or using whatever variation of locally based assessments they're now using. They just could no longer be required to do the work that's necessary, do the extra burden that's necessary to somehow make those compatible or useful for statewide accountability. [LB1157]

SENATOR ERDMAN: Okay. Thank you, Senator Raikes. Members, as I understand the amendment before us, AM2366, is a technical amendment that adds some clarification that Senator Harms and others have worked on that probably needs to be adopted. I...my concern with LB1157, I appreciate the responsiveness of Senator Raikes, is that still at this point, for whatever reason, and whether it's orchestrated by parties, or representatives within the department, or whether it's from organizations, there still seems to be a disconnect about what we're doing. There was a disconnect in LB653, I think there's somewhat of a disconnect, but I think this conversation at least helps to build a record as to what it is that's being proposed under LB1157. You can't ignore the fact that what we're doing today is correcting or attempting to correct an issue of interpretation. The department has interpreted the statute one way, the Legislature has come back, through the Performance Audit Committee and others, and said, no, it should be interpreted this way. Again, it's not necessarily what we do, but how we do it. And I'm still interested in the discussion later this morning about some of the other issues that may come up. I'm going to support this amendment; I believe it's important to make the bill in the technical form, or to make these technical changes. Fundamentally, however, it comes down to a thought process or a philosophy. If the state of Nebraska were not required or were not potentially being compelled to comply with some federal requirement, would we do this? I don't know. It's hard to actually step away from this scenario and answer that question because it's the reality. We are being... [LB1157 LB653]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR ERDMAN: ...asked as a part of this philosophy or this policy decision to adopt a change or a further enhancement of LB653 from last year, which again may be technically correct in the statute, but is being driven in some part by the policy in Washington, D.C. I believe firmly that education is the right of the states. I have great reservations about making it easier for people in Washington, D.C. to effect the public policy, specifically the educational curriculum of states and of specifically our school districts. I'm not interested in requiring more duties and paperwork and things from school districts. And I hear from Senator Raikes, we're trying to actually make it more logical under this. For some reason that message isn't getting out. And I'm assuming we'll hear more of that, but I look forward to the continued discussion this morning.

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

Floor Debate
March 17, 2008

Thank you, Mr. President. [LB1157 LB653]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Kopplin, you're recognized. [LB1157]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. I really wasn't going to get into this discussion today. We're going to need to pass this amendment. We probably need to pass this bill. I'm still hearing from teachers, some very dear friends of teachers wanting to know what is it that I'm doing because am I taking a wrong approach here? So I think maybe I do want to say a few things. First of all, I think a lot of minds are already made up. You can look around the floor and see that the interest maybe isn't really there. They're ready to vote. That's okay. I can buy that, I am, too. But I hear the statements, well, nobody ever authorized STARS. And I think maybe Senator Erdman was right, it's a matter of interpretation. But I'm kind of looking at it this way, if it was never authorized, it sure had a whole lot of years to operate that we should have done something then a long time ago. So I'm not so sure that it couldn't be interpreted by the state department that they did indeed have the Legislature's blessing to continue on what they started to do. That said, I will repeat again the disagreements between the department and the Legislature or members of the Legislature has to end, it's not good for public education in Nebraska. I hear a lot of words this morning about we've got to be in compliance with No Child Left Behind. Well, deep down I'm saying, why? But that's beside the point. Our statewide testing plan is going to do nothing for No Child Left Behind because I heard both Senator Adams and Senator Raikes say these would be criterion referenced tests, they would not be norm referenced tests. If they're not norm referenced tests, there is not a percentage that you can say, oh look, that school scored 78 percent. What you can look at is, say, oh, 100 questions, the kids in that school got 78 of them right, the kids in this school got 65 of them right, got to be a big difference in the quality of education. That's not true and we all know that. We have an amendment on here about special education students, and it has to be there. But it also says, well, we've got to develop an instrument for special education students. What does that mean? A written test? Come on, it's not going to happen. We have to have Senator Harms's amendment in here which is his, I agree with him 100 percent. Some of this has to be moved back to the Department of Education, and we have to get Nebraska teachers and administrators involved in this test. To give a statewide test we're going to be able to answer questions based on how many students got this one right. How are you going to report that? The average number, the average score for your school district is this, and then make comparisons school to school? I think if anybody from economic development that makes a decision based on a list of scores... [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR KOPPLIN: ...is probably going to fail in their business because they haven't

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

Floor Debate
March 17, 2008

done what they needed to do, and that was to go see for themselves what that school is doing. We need to pass this legislation. I know I'm disappointing some dear friend teachers, but this has to pass because it's been going on too long. We can live with a statewide test. We can live with a statewide criterion referenced test where we can look and see, okay, how many kids got question one right? If less than half did, either it's a lousy question, or we have to change our curriculum. We can do that all the way through. I don't know how the papers will report it. I think they'll probably have to use an average score for a school system, and then you can make whatever judgments you want about it. But you know deep down you haven't changed anything. Teachers are still going to have to give their own tests, because they are the ones that are in charge of the kids,... [LB1157]

SENATOR LANGEMEIER: Time. [LB1157]

SENATOR KOPPLIN: ...and they need to know where...thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Kopplin. Those wishing to speak, we have Christensen, Harms, Wallman. Senator Christensen, you're recognized. [LB1157]

SENATOR CHRISTENSEN: Thank you, Mr. President. I basically support this amendment, but I still have questions understanding the need of the bill. And I'm going to go back a little bit to discussions last year on LB653. And I'm going to be asking Senator Adams some questions here. Would he yield? [LB1157 LB653]

SENATOR LANGEMEIER: Senator Adams, would you yield? [LB1157]

SENATOR ADAMS: Yes. [LB1157]

SENATOR CHRISTENSEN: I'm going to read a little bit of last year's discussion first, and then ask the question. Senator Adams speaking: now I think we'd be incorrect to picture the state of Nebraska development paper, pencil test that every fourth grader or eighth grader or every eleventh grader is going to take, that would be wrong. It's not what we're doing in writing. Instead you pick out standard in writing one of the things that you want to be able to do and test that. And then maybe down the road you pick out a different standard and you test that. It can be done in a lot of different ways, and the language of this amendment still allows the State Department of Education, ESUs, and teachers, I believe, the latitude to develop these assessments. As we go into the new testing in LB1157, Senator, is this still going to give them the latitude of doing their own testing, or now we are direct, one test? [LB1157]

SENATOR ADAMS: It...they still have the latitude, Senator. Granted, a criterion referenced test or a statewide test that would be developed would replace what we're doing right now with STARS. However, as Senator Raikes pointed out, continuing to

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

Floor Debate
March 17, 2008

use local assessments and teachers that continue to do formative assessment on a day to day, week to week basis could still go on and probably will. The different would be if they're not reporting those results then they're now also having to do the portfolio where required in order to comply with No Child Left Behind. [LB1157]

SENATOR CHRISTENSEN: So if they continued with their same tests and done the reporting, would that fulfill No Child Left Behind? [LB1157]

SENATOR ADAMS: Could you repeat that question, please. [LB1157]

SENATOR CHRISTENSEN: If the teachers had to report on the tests they are doing, would that fulfill No Child Left Behind and not have to go to this state assessment? [LB1157]

SENATOR ADAMS: Well, and that's, in essence, what's going on right now. Teachers have been reporting their STARS results to the state. The state then uses that to try to be in compliance with the federal mandate. And it...there have been issues with the feds. That doesn't mean that Nebraska has been out of compliance. But using the method that we have, it's...it's...we've had to go to extra lengths with the federal Department of Education in order to justify what we're doing. And we have some new barricades now that the fed has provided for us. [LB1157]

SENATOR CHRISTENSEN: Also last year I was...I quoted, did I hear you correctly, you said there's just another...there's...this is just another test being set up, but they can continue using the ones they choose. And then you said, yes, yes, continuing what their doing; let them emphasize this for the record we are not creating new tests. But now we are creating a series of new tests, correct? [LB1157]

SENATOR ADAMS: That's correct. [LB1157]

SENATOR CHRISTENSEN: And explain to me exactly why we need all these tests and all these grades tested? [LB1157]

SENATOR ADAMS: Well, the reason that the different grades have to be tested is to be in compliance with No Child Left Behind, and that would be one of the changes. Even if we stayed with the language that was in LB653, my understanding would be that we'd have to go in to amend it to include these additional grades for that requirement. What I would hope that we're really trying to do with this is to reduce... [LB1157 LB653]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR ADAMS: ...the amount of work that teachers have had to go through with STARS. Admittedly, there has been value in the work that they've done. But it's been an

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

Floor Debate
March 17, 2008

awful lot of work. And as we revise the standards, which we're in the process of doing, and try to meet the federal guidelines, it's going to take considerably more work on the part of teachers. [LB1157]

SENATOR CHRISTENSEN: I'll quite for now, thanks. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator Harms, you're recognized. [LB1157]

SENATOR HARMS: Thank you, Mr. President and colleagues. I'd like to ask Senator Raikes a couple more questions, if I might. [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR HARMS: I'd like to finish our conversation, if we could, Senator Raikes, about the data and the use of the data and what we think might very well happen in regard to the different student populations that are going to occur and are occurring in our school system. Do you recall the question that we... [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR ADAMS: Okay. [LB1157]

SENATOR RAIKES: And you raised...you raised the issues, is this...is this information going to get either in the wrong hands or the hands of people that are going to use it in a damaging, destructive sort of a way? What I will tell you is that the information would be accumulated in the student information, or the statewide student information database. This was a provision that was included in LB653. That is a secure database available to or available to people at the control of the department, interestingly. And I think the department has been among those who have said, oh gosh, this information is going to get misused, and so on and so forth. I would just say that to a large extent whether or not the information is available is...depends upon the rules and regulations regarding access made by the department. And I hope that they are rules, and I'm confident they will be, that we'll protect the information for the appropriate uses. But I will tell you this, I think that information offers a gold mine of useful educational results that can be made available to teachers, administrators, and so on throughout the state. And to some extent the question or the concern that's been raised, and I know it's not just been raised by you, it's by others, what you're saying is, oh my gosh, rather than run the risk that somebody will make a wrong decision, we ought to just stick our heads in the sand and not get the information at all. I think that is drastically the wrong decision. We need to know how our students are doing, we need to gather the

Floor Debate
March 17, 2008

information, we need to use the information. [LB1157 LB653]

SENATOR HARMS: Well, thank you very much. I'm not saying stick our heads in the sand. I'm just asking, because that's not the way I work or the way I think, never have when I was in the educational arena. I'm just asking what your thoughts might very well be in regard to that issue, because I think it's going to be a topic that somewhere along the line someone is going to be left to discuss. I also want to ask another question, if I can. With...LB1157 has been advanced as an accountability bill. What accountability decisions do you see be being made and what are the consequences of those? We've talked about accountability, so could you help identify for me what that really means and what you anticipate, because you probably have a better handle on this than I do? [LB1157]

SENATOR RAIKES: I'll try, Senator. And certainly my hope would be that the main use of the accountability information would be by educators themselves, would be looking at the issue of...we have a particular demographic of students in our school district, they also are in school districts B, C, and D. The program we offer in our district has produced these sorts of academic achievement; in the other districts they're either better or worse. Is there something we can learn from these other districts so that we can improve the academic achievement of those particular demographic groups? I think that's where the real potential for the usefulness of this is. [LB1157]

SENATOR HARMS: Well, I agree with that. Thank you. I have one other question I want to follow up on that deals with accountability. How do you see us monitoring and evaluating this accountability system that's outlined in LB1157? [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR HARMS: How do you see us actually monitoring that? [LB1157]

SENATOR RAIKES: Well, certainly the department, under LB1157, plays a very important role. They would be responsible to the development of statewide assessments, they would be responsible for collecting the information in the student information database, they would be responsible for determining what reports on academic accountability are made available. And I would say that would be...they would certainly play a critical role. Certainly the Legislature can step in at any particular time and say, we need this information, or we need clarification of this information, we want to know about the progress in a particular academic area as a state, would you provide us that information? I think all of those things are possibilities. And keep in mind now that those are all brand... [LB1157]

SENATOR LANGEMEIER: Time. [LB1157]

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

Floor Debate
March 17, 2008

SENATOR RAIKES: ...new possibilities under LB1157. Thank you. [LB1157]

SENATOR HARMS: Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Wallman, you are recognized. [LB1157]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I appreciated what Senator Kopplin said, reference according to Norm. And I got a teacher of the year award here that says, STARS works good, Susan Ratzlaff. Standing ovation in New York City. If we had things, and we have according to federal guidelines, and I heard more work for teachers, develop a new plan. The teachers, listen to the teachers, folks. The teachers teach the kids, not administrators, not principals, the teachers. If the teachers were really unhappy with the STARS bill or whatever it is, they'd tell us. And so granted, I'm for the teachers, but they teach our kids and whether they be university, public school, elementary, private, or home school. So more testing, you change a test. I heard more work for the teachers to change a test. What's that going to take away from the children? Are they going to have meetings after school, more work for the teachers? Sure. So that bothers me a little bit. And I cannot support LB1157 at all. Thank you, Mr. President. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Christensen, you're recognized. [LB1157]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Raikes yield, please? [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR CHRISTENSEN: Back on the debate of LB653 again, Senator Stuthman was speaking and said the State Board of Education shall recommend national assessment instruments for purpose of national comparisons. Is it going to be the practice, as in the past, where the schools can pick the instrument they want to use as national assessment is concerned, or is it going to be defined? Would you call this very defined now, this new test under LB1157, or is it still... [LB1157 LB653]

SENATOR RAIKES: Senator, I think, if I'm not mistaken, I think what you're referring to is a question about whether or not the requirement for school districts to pick a norm reference test and administer that norm reference test would continue. And the answer is yes, it would. Now the test we're talking about are criterion reference tests. [LB1157]

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

Floor Debate
March 17, 2008

SENATOR CHRISTENSEN: Okay. I'm sorry, I forgot to read your remarks after that, but you picked right up. Also I wanted to ask questions, if...with the tests under LB1157, basically we'd be able to evaluate an inner city school with Imperial or Chase County, correct? [LB1157]

SENATOR RAIKES: Yes, the results...what you're asking, the academic results say for fifth grade students in math could be compared between Chase County and Bellevue, for example. [LB1157]

SENATOR CHRISTENSEN: Okay. I guess the point I want to make I think we need to listen to this. Is it really a reflection upon the school, or a reflection upon the environment? Let's look, what's going to happen in these two different schools if you have two parents working versus a family with one parent? One's going to have a lot more attention, and you could have a series of kids that aren't going to test well because they're not learning as fast because they don't have the home environment. And that's not really a reflection upon the parents or the school but upon the environment that they're in. And so I actually see this as a hindrance. [LB1157]

SENATOR RAIKES: Senator, I obviously would take a different position. And what you're talking about really it depends on how you try to use these results. And to some extent let me just ask you this, suppose you have in a given district students for whatever demographic that are experiencing family...a home situation that's not conducive or whatever, are you better off to hide from that? Are you better off to say, we don't know about it? Now certainly you don't go the next step. Once you know, you don't go the next step to say, well, we're going to declare this a disaster area and this one paradise. You do not do that. But at least you have some information that gives you results that you can rely upon that...about the academic achievement in those different situations. [LB1157]

SENATOR CHRISTENSEN: Well, I think it's different because we already know, the teachers have identified, we have these problems. But now you're exposing it out to make the school look bad and make the teachers look bad, where really it's a family situation. So I'm not sure comparing these schools can always be a benefit, because it's more dependent upon what's happening in the community and the development of these families. [LB1157]

SENATOR RAIKES: Well, Senator, and different people will have different opinions on the value of those sorts of comparisons, you know. But I will tell you that certainly it's up to the...a lot of people will tell you, well, I can make that comparison right now, I'm going to make the comparison, I don't really have information that can be... [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

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

Floor Debate
March 17, 2008

SENATOR RAIKES: ...relied upon to make it, but I'm going to do it anyway. You get that phenomenon. So an answer to that is well, gosh, if you're going to make the comparison, why don't we base it on something that is realistic and tangible and that sort of thing. [LB1157]

SENATOR CHRISTENSEN: So will these be able to assess and evaluate comments so teachers can say, yeah, I have this many broken families, I have this many migrant workers, things this way, or are we just looking at how they result in the test and that's our comparison? I just don't think that's good. [LB1157]

SENATOR RAIKES: Well, let me respond. Certainly you may well have a situation where a teacher is dealing with students that you describe. How are my students doing compared to similarly situated students in other districts? Can I learn something by what's being done in another district? That is an important question that this would give you an answer to. It has nothing to do with denigrating or otherwise... [LB1157]

SENATOR LANGEMEIER: Time. [LB1157]

SENATOR RAIKES: Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator Harms, you're recognized, followed by Christensen, and White. [LB1157]

SENATOR HARMS: Thank you, Mr. President and colleagues. That was a little shocking. I'd like to ask Senator Raikes a couple more questions, if I might. [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR HARMS: Senator Raikes, is LB1157 a diagnostic test? And does it show the strengths and the weaknesses of a child? [LB1157]

SENATOR RAIKES: Probably, I suppose different people could answer that in different ways, Senator. It could be described as a benchmark. In terms of a test that records the progress, the academic progress, if you will, of an individual student, we would keep individual scores, so it could be used in that manner. You know, I would say that it, you know, there are some instances you can imagine where that would be a very productive use of the result. There are instances you could imagine where they wouldn't be productive and that you might instead say, well, I want to look at the average results for a demographic group rather than individual students. So I think that depends a bit on the imagination of the person using the data. [LB1157]

Floor Debate
March 17, 2008

SENATOR HARMS: Okay. One other question, Senator Raikes, I'd like to ask. In regard to the fiscal note, as I reviewed the fiscal note in regard to the funding, does this fiscal note include design, printing, distribution, scoring, tabulations, public scores? What does this...what does the fiscal note actually include? We're not going to end up, all of a sudden, having a bill come forward next year for emergency funding to be able to actually grade these, design them? I mean, what does that all include? [LB1157]

SENATOR RAIKES: The...my understanding of the fiscal note, Senator, is that it includes all of those things. So the answer is, no, we will not be getting a fiscal note or an enhanced fiscal note next year to add a bunch of money to do various things. [LB1157]

SENATOR HARMS: Thank you very much, Senator. And thank you, Mr. President. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Christensen, you're recognized. [LB1157]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Raikes yield again, please? [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR CHRISTENSEN: Senator Raikes, how is this going to work with schools like Chase County that may have a lot of migrant workers? Okay, we could have a lot of them in the spring and fall, and a lot less during the winter. So depending upon the time that you done these test, we could have a swing in the results we're going to get in our school's performance as well as how are these migrant kids going to be tested? Some of them aren't going to speak our language, so is there going to be tested in their language? How is this all going to work? [LB1157]

SENATOR RAIKES: Well, Senator, those are...those are important questions of measuring academic progress. And Chase County is one district that deals with that demographic, but you have a number of others, as you know, in the state that do as well. I think one of the critical things for the effective use of the data will be to appropriately characterize students. So certainly a demographic classification, whether the student is an ELL student, whether the student is a poverty student, that kind of thing, will be very important. I think as we go along and learn not only how to use the data, but what questions we want answered and how we answer, we can do some additional characterization of those students that will give us better results. But basically the answer to your question is we've got a group of...my answer to your question is

Floor Debate
March 17, 2008

we've got a group of students in Chase County, for example, that fit the description that you put out. Okay, we've got maybe a group in District A, or District B, or District C that does so similarly. How do the ones in Chase County compare in academic performance to the ones in those other districts? It's really not relevant for any useful purpose to say, okay, the average score for the district in some particular academic measure compares to an average score in another district that serves none of these students. And I don't think people, frankly, are going to waste time on doing that sort of thing. You know, if they do, they probably do it now, so that's the way it is. But the real gain, the real advantage is that we can begin to look carefully at what programs work effectively in serving these students. On the average academic performance in Chase County has exceeded the performance in these other districts. Why? Maybe other districts would like to adopt programs that are in Chase County in order to experience the same results. [LB1157]

SENATOR CHRISTENSEN: Thank you, Senator. You know, my whole concern in this line of questioning has been the fact that we could, unintended consequences, "unintended" point at teachers or certain schools not doing their job and not being seen as the quality educators that they are. And that's the line of my questioning and concern with this new change in system. If there is an additional set of rules and criteria to the side that lists the concerns that Senator Raikes and I just discussed about the number of migrant workers, or single parent families, or two-parent families working and things this way could change the scores on how our teachers, administrators, and our schools as a whole look if we don't have some additional criteria other than those scores. Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator White, you're recognized. [LB1157]

SENATOR WHITE: Thank you, Mr. President. I have a couple of concerns, generally, with testing that I'd like to express. And perhaps then if either Senator Adams or Senator Raikes would care to, they can comment. Generally speaking, children do not start out equally. And to hold our teachers responsible for where these children end up at the end of the year, through testing, seems to me to be fundamentally unfair to the teachers. One of the questions that often comes up to my mind is, why our best teachers don't want to work in the areas where the students are often facing the greatest challenges? I'm afraid that could be compounded. What I would like to see us do, if we move to a statewide system of testing, is to account for the nature and extent of the growth that a student learned or incurred during the year rather than the end point. I think that would reward and encourage teachers, hopefully, to work with students who most need their help, and would not discourage those who do work in those areas. Senator Raikes, if you would yield to a couple of questions? [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

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

Floor Debate
March 17, 2008

SENATOR RAIKES: Yes. [LB1157]

SENATOR WHITE: Senator, one of the concerns that I have is, as we also hear a movement to move towards merit pay of different kinds, is whether it will be wedded to a testing method that will favor certain areas? I mean, children who come out of intact homes with books in the home, engaged parents, stable home life, fed every night, fed every morning, demonstrably do better than children coming out of poverty and broken homes, do they not? [LB1157]

SENATOR RAIKES: Yes. And I wholeheartedly agree with the comments you made earlier that the critically important thing is how much academic progress is made, and that's what we need to move to, to get a handle on it. [LB1157]

SENATOR WHITE: Can we do anything to encourage the Department of Education to be sensitive to these kinds of concerns? And there are so many, I mean for example, the student who's moved four times during the course of a year, does he land on the lap of the last teacher in their testing results, things like that? Is there anything the Legislature can do to make sure that the system we set up encourages and informs teachers rather than frightens and punishes? [LB1157]

SENATOR RAIKES: Well, I think so. As you know, Senator, your...you know, there's an issue of how much detail you put in state statute versus regulation. But I think this sort of discussion, that will end up as a part of the transcript, is very helpful in this regard. And I hopefully, for my part, have made the points maybe less eloquently than you, that I do think that the critical thing that we gain with this sort of a system is the opportunity to actually measure progress, not to compare school districts, for example, when they're in grossly different situations. That's really not very useful information. What is useful is how much progress, academic progress a particular group of students has made. That ought to be what we're focusing on. And LB1157 provides the tools such that we can get that done, in my opinion. [LB1157]

SENATOR WHITE: Thank you, so much. I yield the rest of my time to Senator Raikes, should he wish it. [LB1157]

SENATOR LANGEMEIER: Senator Raikes, 1:20. [LB1157]

SENATOR RAIKES: Thank you, Mr. President. Thank you, Senator White. I'll mention just quickly one, in follow-up, Senator Erdman mentioned, well, if we're starting all over again would we do this? In fact in 1999 we did decide, as a Legislature, to do statewide tests. In my opinion, that decision was clear. It was not carried out. I would also tell you that as we continue on with this discussion and get into the budget discussion later,... [LB1157]

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

Floor Debate
March 17, 2008

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR RAIKES: ...it is critically important, given the importance of K-12 funding in the state budget, that we demand not only financial accountability by school districts, but we also demand academic accountability. And we need to demand that academic accountability in such a way that, as Senator White said, these results can be useful for addressing the important education questions that we need to address. Thank you, Mr. President. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Raikes and Senator White. Senator Carlson, you're recognized. [LB1157]

SENATOR CARLSON: Mr. President and members of the Legislature, I want to make a few comments concerning this bill, and they may be even repeats of what's been said before, but that seems to be the nature of how we do things around here, and so I'll take that risk. Senator Raikes or Senator Adams may or may not want to comment after I've spoken a little bit. I have a background in evaluation and measurement. I taught those areas. I also have a coaching background and a coach is evaluated with every game. And so I believe in assessment and believe in measuring progress. Now I'm told by the Department of Education that 78 percent of our high school students take the ACT test. And in states where 70 percent or more take the test we rank number one. And overall, including the other states where a lower percentage takes the test, we rank number four. Nebraska has the highest percentage of high school graduates in the nation. I'm told that in NAEP, which addresses reading, math, and science assessment, that we are always in the top ten in the nation. Now somebody has to be 50th, somebody has to be 40th, somebody has to be 30th, and 20th, and we are always in the top 10. I'm told that 78 percent of our students take the ACT test, and we only exclude 4 percent of the students. And this probably has to do with learning disabilities and such. And other states exclude far greater percentages. I'm told that Massachusetts excludes 18 percent of their students. But if we exclude 4 and 78 percent take the test, then that leaves 18 percent that are kind of unaccounted for in the state of Nebraska. Now I would wonder whether or not LB1157 helps address this 18 percent that's really left out of the ACT? We're in an enviable position academically. We don't want to slide. Will LB1157 help us rise, help us hold our own? But we do have another problem in Nebraska and that's teacher salaries. And in the time that I have in the Legislature, if I can have some kind of an impact on addressing that problem, I hope that many of you share that same concern. And with that, if there's time remaining, I would yield it to either Senator Adams or Senator Raikes, if they would like. Thank you, Mr. President. [LB1157]

SENATOR LANGEMEIER: Senator Raikes, do you wish the time? [LB1157]

SENATOR RAIKES: Thank you. [LB1157]

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

Floor Debate
March 17, 2008

SENATOR LANGEMEIER: 1:40. [LB1157]

SENATOR RAIKES: Thank you, Mr. President. Thank you, Senator Carlson. You mentioned 78 percent, or I think you said 78 percent of the students in the state take the ACT. Interestingly enough the state board recently decided not to record individual test scores in the student information database for the ACT. Now there may have been some reason for that, that I don't fully comprehend. But I think I agree with you that we need to use information. We don't need to throw away information for fear that somebody may use it incorrectly. We need to use the information. We need to glean from it what we can get. [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR RAIKES: You mentioned that, and I think you're exactly right, that we do not want to slide in terms of the academic performance of K-12 students in the state of Nebraska. I think our long-standing reputation is a strong one. We don't want that to be diminished. The one way you protect that, I would argue, is that you know where you are, and you know reliably whether or not you're holding your own, you're sliding, or you're increasing. LB1157 helps us get to that point where we know where we are and I think that's critically important. So with that, thank you, Senator, and thank you, Mr. President. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Raikes. Senator Ashford, you are recognized. [LB1157]

SENATOR ASHFORD: Thank you, Mr. President. I'm going to have...if I could, Senator Raikes, just very briefly... [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR ASHFORD: And maybe you've answered this, and I know we've discussed this in the committee a great deal. But these assessments that we're talking about, similar to the writing assessment that we do already for reading and math, involve the creation of standards or the development and application of standards that are developed within the...within our state or by people in our state. Can you just, just to close some loops here, explain to me how that would theoretically work when you're developing these tests in reading and math? [LB1157]

SENATOR RAIKES: Okay, I'll try, Senator. You're exactly right. In fact we've had statewide standards, academic standards since around 2000. LB653 required that those standards be updated or revised. And the statewide assessments that we're talking about in both LB653 and LB1157 would be based upon that revised set of standards.

Floor Debate
March 17, 2008

So it is a...it's a test that's based on standards that we've adopted in Nebraska. It would be a criterion reference test which would basically determine...or the results would show, among other things, how many students...or how many students are successful in proficiency according to those statewide standards that have been adopted. Our standards, by the way, are statewide standards. [LB1157 LB653]

SENATOR ASHFORD: Thank you, Senator Raikes. And if I might just to clarify for my own edification here as well. When these...this information from the statewide assessments would be available on a...on what level of data? What...if I might ask Senator Raikes another question, Mr. President. [LB1157]

SENATOR RAIKES: Actually, Senator, they would be recorded for individual students. Each student is...has an identifier in the statewide student information, plus some information that describes their situation--age, location, demographic group and so on. But the results would be recorded for each individual student. [LB1157]

SENATOR ASHFORD: Thanks, Mr. President. And I appreciate this discussion. This is a very interesting one. It's incredibly relevant to our community where the ability to make comparisons between students has been an issue. And as we...as this state moves forward in developing educational opportunity for all its citizens it's, in my view, essential that we know on some sort of comparison basis how our students are doing, and that the fear or the concern that somehow this is an effort to obviate the role of the teacher is just not correct. I think that we have, in the committee, and in this bill and in prior bills have taken the views of all educators into account. But what is important is that we...can I just...Senator Erdman, (laugh) never mind. That we...that we take into account how our students are doing and that we put into place and give to whomever--the school districts, the learning community in our city, the Department of Education, whomever it is accurate data that they will have to enable our state to progress. And certainly as Senator Raikes suggests, and I think he's accurate from everything I can tell in listening to the discussion on no child left behind... [LB1157]

SENATOR LANGEMEIER: One minute. [LB1157]

SENATOR ASHFORD: ...to get to the point where we are in full compliance. Let me just lastly say this, in my experience in working in high poverty areas in Omaha, one of the real crises for me was these young children, young students who are in crisis, as Senator Christensen suggests, because of some concerns about a family unit and whatever it is. It doesn't really matter. I mean we're obligated to educate all of our children and to give them as much educational opportunity as we can. And I think it is key and essential that we are able to identify issues involving individual learning opportunity of all of our students, no matter where they are in the state, at the earliest possible time, and to focus resources on them. And the learning gap, whatever it may be, and it's been defined as many things is real, and we need to address that. And I

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

Floor Debate
March 17, 2008

believe this assessment is certainly a step. Thank you, Mr. President. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Mr. Clerk, for an announcement. [LB1157]

CLERK: Mr. President, the General Affairs just had an Executive Session underneath the south balcony. (Laughter) [LB1157]

SENATOR LANGEMEIER: Thank you. Continuing the discussion on AM2366, Senator Pirsch, you're recognized. [LB1157]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I was wondering if Senator Raikes may yield to a question or two? [LB1157]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR PIRSCH: Thank you, Senator. With respect to a concern that was voiced not long ago here in the body, with I guess the idea of what the results of these assessments, what are done with the results of these assessments. I guess I'd like to have an understanding of the current structure of assessments that's in place right now, the STARS. And I think Senator...with respect to some of the comments that Senator White had made, those assessments, could you just briefly comment again how STARS operates, just kind of a one-liner or overview of who are tested and the general fields? [LB1157]

SENATOR RAIKES: Very quickly, Senator, at least in my view STARS covers the range from here to there. You have, for example in the case of Millard, a district wide, statewide test. You have a few districts, I can't name them for you, that do all of the individual classroom tests required by STARS as a district and everything in between. The common thing, though, is that there is, you know, no comparability or very little I would argue between school districts, maybe between school buildings, maybe not even between classrooms if the system is used kind of to its philosophical maximum. [LB1157]

SENATOR PIRSCH: Okay. Is...are...are comparisons attempted to be drawn right now with the information that our...that results from the current testing or assessment structure? Is that commonplace right now, or are people... [LB1157]

SENATOR RAIKES: I think there is. And I'm not familiar as I should be with how that's done, but I think that is. I think you find that there a reports in the newspapers about the proficiency levels reported for various school buildings using the different...or using

Floor Debate
March 17, 2008

STARS tests. I don't know that when you crossover between districts that they're really very meaningful because the tests don't test the same thing. [LB1157]

SENATOR PIRSCH: Yeah. And I appreciate the answer. I guess, that's the concern is that assessments, in general, or comparisons based on assessments between school districts are not necessarily helpful as apples to apples, way of determining, or measures of teaching effectiveness. And so I wonder though is that really an output of the uses of the results of the test? Or does that have something to do with actually how the test is...the assessments are structured, or the nature of the assessments? [LB1157]

SENATOR RAIKES: Well, it's a good question. And to some extent I think you could argue that the current arrangement is specifically in place to prevent any sort of comparable information. LB1157 certainly would not require it, but it would provide comparable results between students in the same districts or between students in different districts, which again hopefully would be used to further the educational program offered in either school district or in the state at large. [LB1157]

SENATOR PIRSCH: Very good. I'd yield the balance of my time to Senator Raikes, if he'd like to comment further. [LB1157]

SENATOR LANGEMEIER: One minute, Senator Raikes. [LB1157]

SENATOR RAIKES: Thank you, Senator Pirsch, and Mr. President. Again, I...I would simply say that this is a needed change in what we do in assessment. And I would...without this the burden on teachers in school districts is absolutely enormous. And so we need this. And I would urge you to support it. Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Raikes and Senator Pirsch. Seeing no other lights on, Senator Raikes, you're recognized to close on AM2366. [LB1157]

SENATOR RAIKES: Thank you, Mr. President and members. I want to especially thank you for the discussion. It's been a productive discussion. I think a number of issues that need to be raised have been raised. This again is an amendment that is both accommodating in terms of addressing some issues that have been brought up in the General File discussion, in addition makes some important technical changes. So with that, I would urge your support. Thank you. [LB1157]

SENATOR LANGEMEIER: Thank you, Senator Raikes. You have heard the closing on AM2366 offered to LB1157. The question before the body is, shall AM2366 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1157]

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

Floor Debate
March 17, 2008

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Raikes's amendment. [LB1157]

SENATOR LANGEMEIER: AM2366 is adopted. Mr. Clerk, items for the record. [LB1157]

CLERK: Mr. President, your Committee on Business and Labor, chaired by Senator Cornett, reports LB926 to General File; LB1016, General File with amendments; LB1019, General File with amendments. A series of amendments to be printed: Senator Louden, to LB1065; Senator Ashford, LB1014A; Senator Raikes, LB973; Senator Fischer, LB846; Senator Hudkins, LB853; Senator Dubas, LB1157; Senator Dierks, LB1157. (Legislative Journal pages 973-980.) [LB926 LB1016 LB1019 LB1065 LB1014A LB973 LB846 LB853 LB1157]

I have a priority motion, Mr. President. Senator Johnson would move to recess until 1:30 p.m.

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

RECESS

SENATOR FRIEND PRESIDING

SENATOR FRIEND: Good afternoon ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators please record your presence. Ladies and gentlemen we're about to reconvene. Members please record your presence. Mr. Clerk, please record.

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

SENATOR FRIEND: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have no items at this time, Mr. President.

SENATOR FRIEND: Thank you. And we will proceed to the first item on this afternoon's agenda. Mr. Clerk.

CLERK: Mr. President, LB961 was a bill introduced by Senator Flood at the request of the Governor. (Read title.) The bill was introduced on January 15 of this year, referred to the Appropriations Committee. The bill was advanced to General File. There are Appropriations Committee amendments pending, Mr. President. (AM2139, Legislative

Floor Debate
March 17, 2008

Journal page 918.) [LB961]

SENATOR FRIEND: Thank you, Mr. Clerk. Thank you, Mr. Clerk. Senator Heidemann, as Chair of the Appropriations Committee, you are recognized to open on the Appropriations Committee amendments. [LB961]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. LB961 was introduced by the Speaker at the request of the Governor. It's part of the Governor's mid-biennium budget recommendation. This bill contains all of the fund transfers. The committee amendment does become the bill. The amendment does not include transfers included in the original bill as introduced, specifically the \$75 million from the Cash Reserve to the Property Tax Cash Fund, and the \$15 million from the General Fund to the Road's Operations Fund. Section 2 of...deals with tobacco prevention and control, \$500,000 will be transferred out of that. Section 3 is the Health Care Cash Funds. There will be some transfers out of that to deal with some (inaudible) that the Appropriations Committee felt was appropriate. In fiscal '09, transfers increase to \$700,000 to deal with the Medicare...University of Nebraska Medical Center Cash Fund for the Nebraska Regional Poison Center control. In fiscal year '08, an additional \$250,000 is transferred on a one-time basis, this is to...appropriated to the Department of Health and Human Services for distribution to the federal qualified health centers for dental services, and also \$500,000 will be used for Medicare coverage for smoking cessation was also transferred out of this bill. I believe that's all that we have at this time. If there are any questions, I would sure like...sure would try to answer them. [LB961]

SENATOR FRIEND: Thank you, Senator Heidemann. Members of the Legislature, you've heard the opening on AM2139, the Appropriations Committee amendments to LB961. Mr. Clerk for an amendment. [LB961]

CLERK: Mr. President, Senator Heidemann and others would move to amend with AM2323. (Legislative Journal page 961.) [LB961]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Heidemann, again as Chair of the Appropriations Committee, you are recognized to open on AM2323. [LB961]

SENATOR HEIDEMANN: AM2323 removes Section 1 of the committee's amendment. What Section 1 did was allow for transfers from the Attorney General's State Settlement Cash Fund to the General Fund. Then we actually transferred \$600,000 to the General Fund. AM2323 takes that transfer provision out of the committee amendment. We originally were planning to use this transfer to pay for the cost of adding \$600,000 General Funds to the Attorney General's School Finance Litigation Program. That additional \$600,000 of General Fund is still included in the committee's amendment to the deficit bill. That doesn't go away. All we're doing here is keeping a straight General

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Transcriber's Office

Floor Debate
March 17, 2008

Fund cost. Thank you. [LB961]

SENATOR FRIEND: Thank you, Senator Heidemann. The floor is now open for discussion. Senator Heidemann, there are no senators wishing to speak, you are recognized to close on AM2323. Senator Heidemann waives closing. Members of the Legislature, you have...you've seen Senator Heidemann's waive of the closing. Question is, shall AM2323 be adopted to AM2139? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB961]

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of Senator Heidemann's amendment to the committee amendments. [LB961]

SENATOR FRIEND: AM2323 is adopted. [LB961]

CLERK: I have nothing further on the committee amendments at this time, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Mr. Clerk. Members of the Legislature, back to discussion of AM2139, the Appropriations Committee amendments. There are senators wishing to speak. Senator White, you are recognized. [LB961]

SENATOR WHITE: Thank you, Mr. President. I rise on this budget and have concern on a number of issues. I had earlier passed around a document outlining cash on hand in the various agencies. Today we were briefed at the Governor's on problems that persist at the Beatrice state home, and those problems today were blamed on lack of staffing. I note that just on the surface, and I understand some of it may be committed in different ways, in addition to our Cash Reserve Fund, the various cash accounts of the state contain over \$877 million. Now one of the problems that I have is that in the Business and Labor hearing meetings it was clearly stated that for several years at least, perhaps longer, the Legislature had authorized money for hiring bonuses to help attract and hold good people at the Beatrice state home, and that they had never used that money. As a result, a bunch of money has built up. Not only is that a problem with regard to the treatment of our residents at the...and fellow citizens at the Beatrice state home, it also becomes a budgetary matter. I note that this budget, for example, also proposes a gas tax increase. That is very difficult for me to defend in my district when I have families struggling desperately to keep their homes and to get enough money to drive to and from work. Well, it also becomes much more difficult when we read in the paper that, for example, the money to build the Heartland Expressway, when completed, has been sitting available for several years with a minimum matching amount. And inflation, according to the testimony in the Revenue Committee by Mr. Craig, the Department of Roads chairman, is that they are losing ground at a rate of 11 percent a year. So in other words, inflation has now eaten up a lot of the cash that actually was provided by

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

Floor Debate
March 17, 2008

the federal government and needed only matching funds to complete a very important stretch of highway, very important to the folks in the Panhandle, not to mention people moving through the state. So I'm looking at these kind of issues and then I see that Department of Roads has over \$120 million in its cash account. When I see agencies with the money refusing to carry out the mission with which they are charged, and then I see a total of \$877 million and I see a claim and a request for a tax increase, I am deeply troubled, Mr. President. So I look forward to this debate. I want to express at the outset my deep appreciation for the hard work of everyone on the Appropriations Committee, and I hope to learn through this how it is we can be facing a fiscal crisis when we have, by my rough guess, around \$1.4 billion in the peoples money in various bank accounts, at least ostensibly, not dedicated to any one particular purpose. Thank you, Mr. President and my fellow members of the Legislature. [LB961]

SENATOR FRIEND: Thank you, Senator White. Members, we are discussing AM2139, the Appropriations Committee amendments. Senator Schimek, you are recognized. Senator Schimek waives. Senator Fulton, you're...Senator Fulton waives. Senator Rogert, you are recognized. [LB961]

SENATOR ROGERT: Thank you, Mr. President, members of the body. First of all, I also want to thank the Appropriations Committee for their hard work on this budget. I have a few comments and a few statements and if you'd just bear with me for a little bit. My concerns also lie some of which within our cash funds we have laying around and with the process and with the folks we have in here and who's coming in, in the next year. Right now we have 20 people with less than two years of Appropriations experience or budgeting experience. And next year we'll have at least 35 of those 49 who will have less than three years here. And so I think this is a necessary discussion, and I think it's questions that need to be asked, and I think the process needs to be discovered for a lot of us on why things are the way they are, and what happens as we move through this budget process. As I look at some of these numbers and I look at some things such as the Cash Reserve Fund, it started in 1983 at 4.7 percent of the expected revenue for the year. It's been as low as 1 percent in 1995, and as high as 8.2 percent in 2005. Today we project it at 15.7 percent, with \$542 million, 15.7 percent of the projected revenues for the state. That has just doubled in the last two years. Today we have an estimated \$877 million in cash funds across the agencies in the state. For me, I don't have a history on these funds and a background of the percentages of what they've been maintaining at and percentages of the overall budgets of those agencies, the revenues, and how things are dedicated and promised across those agencies, but I want to find out and I think there are a lot of people here that need to. Eight hundred and seventy-seven million dollars is 25.4 percent of the expected revenue for the state next year. Combine with at the \$542 million Cash Reserve, we have \$1.4 billion, which is 41 percent of the revenue projected for next year laying in bank accounts for 2008. As I look across some of these balances I have questions such as, and I understand that some of these things are dedicated, but I want to know, and I want some discussion.

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

Floor Debate
March 17, 2008

The Department of Banking has \$21 million in cash, which is 3,215 percent of its annual budget. The Department of Insurance has \$44 million, which is 4,027 percent of its annual budget. The DMV, \$14 million; the State Electrical Board has \$1.3 million in cash; the Roads Department has \$126 million in cash, and I understand that needs to be that way because of some federal funds that move through there; the Work Comp Court has \$10.8 million, which is 2,297 percent of its budget; the Brand Inspection Committee has \$1 million at its disposal and I would like to understand that. I'm in agriculture, I understand that we've been producing wheat in the United States for as long as we've been in the United States, and we have a Wheat Development Board. The Wheat Development Board has \$1.1 million in cash laying around, which is 78 percent of its budget; the Department of Administrative Services has \$64 million; the Nebraska Department of Economic Development has \$44 million in cash, which is 70 percent of its budget, and they're asking for more money to be used in LB895, which I like the bill, but it's more money and they have a lot of money laying around; the Accountability and Disclosure Commission has almost \$1 million; the Corn Board has \$2 million, nearly, in cash laying around. I think there are many needs that were denied to us last year and we continue to seek funding for a lot of different programs. Mr. President, could I ask Senator Synowiecki a question, please? [LB961 LB895]

SENATOR FRIEND: Senator Synowiecki, will you yield to a question? [LB961]

SENATOR SYNOWIECKI: Yes, I will. Thank you, Senator Friend. [LB961]

SENATOR ROBERT: Senator Synowiecki, my question for you is if we send this budget on and whatever we send it to it's your budget, it's our budget, and it comes back with line-item vetoes, are we going to pass this budget, or can we expect support from the...the Appropriations Committee on those efforts? [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR SYNOWIECKI: Senator Rogert, you raise a lot of issues relative to cash funds. I'll turn my light on and hopefully be as responsive as I possibly can. But when we...my hope is...my hope is as we go through this process, and hopefully it will be a process that will include a dialogue, that in the end we become satisfied with our budget, the Legislature's budget, and that we're unified in that approach. I'm going to be honest, one of the most embarrassing times in my legislative career was during the veto overrides of last year. It was embarrassing what happened to the Legislature as an equal but separate branch of the government. So I think it behooves all of us to invest in this dialogue, to invest in this debate relative to the budget, but in the end, in the end it becomes our budget. We're charged constitutionally for appropriations for the running of our government. [LB961]

SENATOR FRIEND: Time. [LB961]

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

Floor Debate
March 17, 2008

SENATOR SYNOWIECKI: Thank you. [LB961]

SENATOR ROBERT: Thank you. [LB961]

SENATOR FRIEND: Thank you, Senator Synowiecki and Senator Rogert. Senator Kruse, you are recognized. [LB961]

SENATOR KRUSE: Thank you, Mr. President and colleagues. Appropriate information has been shared with us by Senator White. One of the concerns and one of the intentions of the Appropriations Committee down through the years is for transparency. There is so much information that it's very difficult to share all of it, but now we'll be talking a little bit about cash funds and it's appropriate that we do so. We look at cash funds all the time. We look for money there all the time. We review if the cash fund is appropriate to the budget and so on. There are several large amounts that are in this \$877 million, one is, the largest one is tuition dollars at the university and the colleges; that lays in that fund at the present time; it will be gone in two or three months. Road construction is another that has a seasonal balance. There are three blocks to using these cash funds and I just want the floor to understand that, listen very carefully, there are three things that prevent us from doing much about it. Rule number one, the March balance is not the end of May balance. The university has a lot of money on hand right now; at the end of May they will not have any money on hand. Number two, the statutes prevent the Legislature from transferring from most funds. We have about 400 accounts, I think, only 15 of those are really accessible to the Legislature. If you want to change that, you have to come in with a bill, and we can't do that at this point. And when we've done it, like in '02 when we were desperate, we did that, it was a one-time type of a thing where the legislation went away and went back to the original statute after we did it. And number three, that we need to be very sensitive to the source of the funds controls the use, in most funds. If it comes from hunting license fees, then to be fair the money that's received needs to benefit hunting and fishing and that type of a thing. If it's from professional license, many times we would use that cash fund to give scholarships for persons going into that profession. But the source of funds directs, becomes almost a designation for how those funds should be used. These are some of the things that we need to keep in mind as we look at these cash funds. It's a lot of money, but we have a large number of responsibilities. Most of these cash funds were set up by the Legislature, and in some cases were set up by an agency just to do their internal work. But they're all before us. There is transparency here and questions that you have to ask are certainly most appropriate. Thank you. [LB961]

SENATOR FRIEND: Thank you, Senator Kruse. Senator Harms, you are recognized. [LB961]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator White, would you

Floor Debate
March 17, 2008

yield, please? [LB961]

SENATOR FRIEND: Senator White, will you yield to a question? [LB961]

SENATOR WHITE: Certainly. [LB961]

SENATOR HARMS: Senator White, when you talked to the fiscal analyst in regard to the amount of money that we have on hand in cash, what kind of conversation did you have? And did you ask about whether or not any of that...those dollars could be used, or what understanding do you have about the cash on hand in these accounts? [LB961]

SENATOR WHITE: Well, what I did was asked him what was available. And if you look at the memo, the response is written. My initial efforts were to exclude federal and revolving funds, which are of course committed and we can't reappropriate federal funds, and also trust funds. Those are not included in this. But he also, and that's why I put it out, if you look in the second paragraph: as we discussed, these amounts are raw, unadjusted for any incumbrances, reserves, or legal obligations that would reduce the fund balance to an unobligated amount. So we don't know, the answer is we don't know what they are, Senator, and I was unable to obtain that information in the time period allowed. So at this point I think that's a question that, at least in my mind, remains unanswered, though we have done our best to exclude funds that clearly are obligated and could not be used. [LB961]

SENATOR HARMS: Well, thank you, Senator White. When you look at the budget itself and look at these cash funds, as Senator Kruse said, it's very clear that the majority of these we cannot touch, these are earmarked. And in order for us to address this issue, in order for us to deal with this issue we'll have to actually have a hearing to be able to change those. And I suppose under an emergency that might be able to be done. But right now it's not possible to be able to do that. As Senator Kruse said, there may be approximately 15 funds that we could take a look at that we might be able to shift to the General Fund. But that's about it. And so what I want to caution us about is that right now we're looking at the fact that we have a deficit of approximately \$60 million, could be a little less, could be a little more here. But what I want to caution you about is that you think we have a discussion today about what's appropriate. You wait until next year. We may be approximately over \$200 million short, and in the biennium well over \$400 million short. And quite honestly, when October comes and we hear the last discussion about what their projections are, I'm here to tell you, folks, being on the Appropriations Committee is not going to be fun next year, it's going to be very difficult. And if you think we're cutting now and we haven't been aggressive enough, wait until next year. All of our pet projects, whatever pet projects you have will be lucky if it's going to be funded at all. And that's what Cash Reserve is about. And if you touch the Cash Reserve today, that's just \$60-some million you're going to be short next year. And we could be \$260 million, or \$300 million short. When you look at the national economy, and I'm not an

Floor Debate
March 17, 2008

economist, but I'm smart enough to figure out that this economy is in serious, serious...it's in a serious position. And when you see the fifth largest investment bank go...almost go down, that ought to send us a signal here, that ought to send us a signal that tells you...that says to us, we need to be conservative, we need not touch reserve, because quite honestly I believe very strongly that we'll have to do that next year to keep government's doors open. And the last thing I want to hear on...in discussion here is that we're going to be talking about releasing staff. In California they let go...they have a worse situation than we do, they let go 200 teachers. [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR HARMS: So conditions around us are extremely poor. And I think we need to save every dollar, every penny that we have that we need so we can make sure, when we have this debate and this discussion next year, that we've got the cash to make government function, that we're meeting the services and the needs that the clients need to have. Yeah, it's going to be a little tough this year, but you haven't seen anything yet. The worst is yet to come. So I would be in hopes you'll keep that in mind, or hopes that we can find a solution to this. And, Senator White, if there's any chance at all in the future that we can take those funds and find a solution to that, then we ought to do it early. We ought to have a hearing for those funds. We ought to decide early that this is what we're going to do, not at the end, not at a time that we've already got this budget built. Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Harms. Members again we are discussing AM2139. Senators wishing to speak are Preister, Heidemann, Engel, White, Rogert, and others. Senator Preister. [LB961]

SENATOR PREISTER: Thank you, Honorable President, friends all. Senator White raises one issue. I would like to raise a second one, although I certainly give merit to the cash funds and would hope that there would be some good discussion there. My word is not meant to be one of anything other than constructive dialogue for the future of the process. I'm concerned of how things have unfolded and that maybe we have not followed our rules or our process. And with new people coming on board next year I think this is about as good a lesson today on this budget as all of the new people are going to have, because after this you're on your own, folks, and you'll be people instructing people with absolutely no experience in here. So I want to identify three things for you, three areas that I think have caused me to be concerned. I'm not trying to disparage anyone, but I have to use them as examples to make the point. The first one is our Rule 8, Section 7 talks about the General Fund financial status. There's a requirement that we have a sheet, and we've all got it on our agenda, the financial status. That's been complied with. A part of that financial status shall include data for the ensuing two years following the biennium budget period. And that data shall consist of projections of available balances, annual net receipts, annual expenditures based on

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

Floor Debate
March 17, 2008

the assessment of the Legislative Fiscal Analyst. Now it also states that prior to attaching the first financial status to the agenda, the data and the assumptions for the ensuing years beyond the budget biennium and methods for arriving at estimates shall be reviewed by the Chair and Vice Chair of the Appropriations and Revenue Committees, and shall be approved by a majority of the members of such committees. We did have a meeting between the two committees. The Revenue Committee did vote unanimously for one method; the Appropriations Committee had a split vote, and I assumed at that point we were going to get back together and have a way of reconciling that, and have a vote where we all came to some agreement, a true majority vote. That didn't happen. I raise that as an issue because I think rather than moving forward with a methodology that was not approved according to our rules, that seems to me to be a breakdown in our process. Either we changed the rules or we observe the rules. I think the rules that we have are in place so that they give us guidelines by which to operate. In this case, that may not be a big issue. But the fact that it raises the question of how closely are we following our own rules is important. I think a second area of concern that we need to be aware of in the future is cross jurisdiction between committees. An example of that, the Education Committee has responsibility and charge for educational issues. The Appropriations Committee has the responsibility for the budget and the appropriations process. Where they overlap the two committees need to have some dialogue and work out those differences. Neither committee can operate totally independently. In regards to TEEOSA and the state aid, although I don't serve on either committee, and again I will assume some responsibility for the things I'm laying out,... [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR PREISTER: ...anyway, I'm not trying to just cast blame, but it's my understanding that the Appropriations Committee made the budgeting decisions that affect budget policy for the Education Committee. If that's going to be done, I think it needs to be done in collaboration and that, I think, is important. And going to be more important in the future. A third area, if we look at the green sheet you will see on there that there is zero dollars in a number of columns. Essentially, there is nothing left for any A bills. The Appropriations Committee has sent the budget out, but left no room, not even a dollar, not even 50 cents, for anything that any of us would like to compete with everything else in the process. That is very unusual. Maybe it's been done before since I've been here... [LB961]

SENATOR FRIEND: Time. [LB961]

SENATOR PREISTER: ...but I don't recall it. [LB961]

SENATOR FRIEND: Thank you, Senator Preister. Senator Heidemann, you're recognized. [LB961]

Floor Debate
March 17, 2008

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I just wanted to touch a little bit on cash funds, and maybe then just a little bit on the General Fund financial status. A lot of these cash funds that we are talking about, they are obligated. If we would try to access some of these cash funds we would have to go in and make a statutory language change so that we could do that. I'm not saying that you couldn't do that, and not saying it hasn't been done in the past, but it's at times probably that needed very...needed to be because of trying times and they was actually just trying to make the state run from day to day. The other thing, I think, when we're looking at these cash funds is to think about would be if we did access them it would be a one-time access of money. So depending on what you wanted to do with the cash funds money, if it would be a one-time expenditure, it wouldn't be so bad. You would have to look at what you did with the cash funds. Did you put themselves in jeopardy themselves? But if you did access this money and used it for increased spending, ongoing spending, because this was a one-time access of money, then you would have to come to the conclusion, how are we going to continually fund these...this new spending that you would create. I like to consider a cash fund for a lot of these agencies and groups that we deal with as almost a checking account. They're running day to day operations. And sometimes, just like our checking account, depending on if we're paid biweekly or monthly, but if we're paid monthly there are some times our checking accounts look pretty good. Then as we go down the road and we're paying bills and the mortgage and everything else, it gets to be a little bit leaner. So it depends on when you take that snapshot in time exactly how these cash funds look. And I want to give you an example of the university cash funds, which is...I've been told is probably the biggest one. On March 3, 2008, these cash funds are higher than average due to tuition collection spike. Tuition is collected two times per year, beginning of the fall semester, and beginning of the spring. March 13, balances contained tuition collected for the spring semester, but which will be spent through the rest of the year until the fall semester collection. In addition, the university tries to maintain some cash balances for operating capital reserves, enough to cover 45 days of operations. This is exactly what you want them to do. You want them to have a healthy cash fund that they can go to so that when they need to access it they can. The UNL cash balances contain funds on deposit for Whittier, nanoscience and animal research, which equals \$9 million. LB1100 and LB605, fourth quarter debt service payments which have not been paid, will have to be paid, will exceed \$2 million. And also, the university designated cash funds are generally used to match 309 funds and other facility upgrades for maintenance type purposes. I think we need to be very careful when we're thinking about accessing cash funds. And I'm not saying in the past that we haven't done that, because this was prior to when I was here, in 2000, 2001, 2002, 2003, when times got very tough and literally they was looking for places to pay the bills, the day to day operations, we was that short of money. So as we look about...down the road, as things will get tough again, I think we need to be very careful about accessing cash funds like this right now, even if we can at all so that if we do need to access these, unfortunately, I would say down the

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

Floor Debate
March 17, 2008

road that they are still there... [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR HEIDEMANN: ...that we could do that. The other thing we talk about how bad off we are. If you would like, turn to your green sheet and on your financial status you're going to see this every day from this point on to see exactly where we're at. You want to know anything money wise, what's happening in the state, follow your green sheet. We show, if you go to line 31, and this current year, it would be the '08-09 year, we have a budget shortfall of \$58.5 million. That concerns me. But that doesn't concern me near as much when you follow on in the next biennium we have a budget shortfall predicted at \$378 million over that. And you start to talk about Cash Reserve money, where we're looking at I think it's \$400...I thought it was 89 million, but I think it says \$480 million in the year '08-... [LB961]

SENATOR FRIEND: Time. [LB961]

SENATOR HEIDEMANN: Thank you. [LB961]

SENATOR FRIEND: Thank you, Senator Heidemann. Members we're discussing AM2139. Senators wishing to speak are Engel, White, Rogert, Chambers, Nantkes, Fulton, Wightman, and Pirsch. Senator Engel, you're recognized. [LB961]

SENATOR ENGEL: Mr. President, members of the body, I've served on the Appropriations Committee ever since I've been in the Legislature. And I've been through a lot of these times when we've had the ups and we've had the downs. And, of course, the worst was in 2002 and that was very devastating. We've talked about that before. And the thing is at that point in time, we cut, cut, cut, and we...in fact we cut into essential services, and we cut into K-12 education, we cut into the university, higher education, our developmentally disabled who I've always been a champion of, we couldn't fund them property, and we're still working on that, and there are several essential services I felt that we had to cut, and they had to do with what we left for them. And then again, and the worst of all we had to raise taxes, that nasty word that people don't like to hear and I don't like it either, but we had to do the responsible thing because of the downturn. And then, if you've been reading at all what's happening now, we're on that...we're on that...on that cycle again. And if we can believe what we read in the papers, it's a little more drastic than we think it is. I think like another bank, a big bank failed, and someone passed around a note this morning, like Warren Buffett says, as far as some of these banks, you don't know who's naked until he drains the swamp. So they drained the lake and some of those people were out there doing things they probably shouldn't have done. But that's neither here nor there. We are on a downturn. And as far as this money we have in reserve, if you don't hang onto that and get you over this situation we're in now, you're going to have to do the same things we did, only

Floor Debate
March 17, 2008

worse, and that's very devastating. And if you've been here, you don't want to go through that. And we have been here. So if you just kind of read a little history, I think it will give you a little idea how you should proceed. But like many of these cash funds we've got in here, for instance now the Governor's Emergency Cash Fund, that's about \$1,200,000. Well, what that's used for when there's a flood or etcetera, etcetera, or a tornado, he has to delve into that. And I remember when there wasn't enough in there and we had to come up with some emergency funds for that. You've got the Environmental Trust Fund, \$25 million, and that's set up for environmental issues and so forth, and that's been tapped different times. And for...but all that is...it's...when that came into being that's from the lottery fund, it is only for cleaning up all the dumps. And once that was done, it went back into the...for the environment, etcetera. And that's been tapped for other things. But that is what that's is supposed to be used for, that's what it should be used for, and that's how it was sold to the people. Then you've got other funds, Ethanol Productive Incentive Fund, EPIF, \$9,162,000 is the obligation we have, and that's a cash fund. In fact we...that's been underfunded before and we've had to come in and get other funds to supplement that because of promises that we made. So what I'm saying is I think once the facts get out to everybody you might have a little better understanding of all these funds that you see here. It looks like a lot of money, excess money that we're...that some people would call a slush fund. Well, they are not slush funds. Those are funds that are obligated and they're obligated for a reason. And like our Chairman said, in order to tap any of these funds it would take a hearing, a statute, etcetera. So I think, just like your Job Training Funds, now someone, I think Senator Rogert mentioned about we have \$2,154,000 left in that, and they asked for another \$12 million. And so the thing is that those funds are already obligated. They're not just sitting there to give them another slush fund. So most of these funds that you're seeing here, and State Building Renewal Assessment, well there's another thing, there's other funds, those are obligated. So the thing is this looks good. I mean it's a lot of money, you know. And like our Chairman said,... [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR ENGEL: ...you know when you get paid the first of the month, you have this check, say it's a...our checks say it's \$1,000. Boy we got all...and that's all surplus money. Well, if you're paying any bills out of that it's surplus until you pay your bills, then you wind up with a deficit. So that's why you have to be careful with what this figure says as of March 13. With that, I return the rest of my time to the Chair. Thank you. [LB961]

SENATOR FRIEND: Thank you, Senator Engel. Senator White, you are recognized. [LB961]

SENATOR WHITE: Thank you, Mr. President. I'd like to make a series of observations, then I would ask Senator Heidemann if he'd be kind enough to answer a couple

Floor Debate
March 17, 2008

questions. First observation is while it may be true that it is not always easy to transfer money from one fund to another, certainly we can restrict the amount of new money we give to an agency if we believe there is an excess of money in its cash fund. That is not a transfer, it's just an intelligent appropriation of available resources. We have not yet appropriated money to the various agencies, and that's one of the reasons why I very much wanted the cash funds available to all senators. Second, with regard to what is and is not restricted, I do not know that these are in fact restricted. And one thing I have learned in the law and now in government, what you don't know will come up and bite you in the rear if you're not careful. I don't think it's safe, nor is it reasonable when we're talking about \$877 million to assume they are in fact earmarked, or what they are earmarked for, or given the agencies decisions that they are earmarked, whether that agency is making appropriate choices that we in the body support and want to continue to fund. Therefore it is not enough just to say, well, a lot of these monies, or maybe all of them, or most of them are earmarked. That seems to me that we really are not doing our job with respect to the people of this state. I was elected to get property tax relief. One of the things that disappeared, like the morning fog, was property tax relief this year. And to see it go away without at least making a good faith inquiry as to where the money is being held does not seem reasonable, nor does it seem responsible. Now I would like, during the course of this, to have an item by item discussion of the cash funds with a statement of what is in fact earmarked and restricted, and what purposes that is earmarked and restricted for and, forgive me for being cynical, whether or not that evidence is based on an affidavit or not in a wink from a bureaucrat who wants to protect his or her turf. Finally, it is my understanding that we regularly do in fact sweep money from one fund to the other in the course of the Appropriations business. For example, and I may be wrong and I'd certainly be pleased to be corrected, but was not \$12 million swept from the homestead exemption fund this year and back into the General Fund and not redevoted to elderly care? Senator Heidemann, would you yield for a question please, sir? [LB961]

SENATOR FRIEND: Senator Heidemann, will you yield? [LB961]

SENATOR HEIDEMANN: Yes. [LB961]

SENATOR WHITE: Was money taken from the homestead exemption fund, from this year's budget, and moved into the General Fund and reappropriated? [LB961]

SENATOR HEIDEMANN: That is not...there is no homestead exemption fund. I think it's...it's just an appropriation. [LB961]

SENATOR WHITE: Okay. Well, the money that was intended to be appropriated last year for homestead exemptions, was that reappropriated for a purpose other than that by the committee? [LB961]

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Floor Debate
March 17, 2008

SENATOR HEIDEMANN: It wasn't reappropriated, it was put back into the General Fund because those...was not recognized, they was not going to be needed at that time. [LB961]

SENATOR WHITE: Okay. Well, in other words, you effected a transfer of money that had been appropriated last year for one purpose to another inside of the budgetary process. And that was what, \$12 million approximately, sir? Is that correct? [LB961]

SENATOR HEIDEMANN: I think it's \$7 million. [LB961]

SENATOR WHITE: Okay, \$7 million? And that \$7 million did not go back to care for the aging, did it? [LB961]

SENATOR HEIDEMANN: We funded what the statute called for and there was some unrecognized, wasn't savings, but it was unrecognized needs that weren't there. And that time, because that was General Fund money, then it goes back into the General Fund. [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR WHITE: Senator Heidemann, this year will you vote to override vetoes of this budget? [LB961]

SENATOR HEIDEMANN: You know, the budget is an unfolding process. And when we get to the end of this process and you ask me that question, I would be a whole lot more at ease answering that question. But at this time, it would be very hard for me to commit to something that I don't know what I'm committing to. [LB961]

SENATOR WHITE: Thank you. I would yield the rest of my time to...well, then let me phrase. But didn't you last year, Senator, make that commitment? Didn't all members of the Appropriations Committee agree to support the budget, no matter what... [LB961]

SENATOR HEIDEMANN: Not that... [LB961]

SENATOR WHITE: ...and including any vetoes? [LB961]

SENATOR HEIDEMANN: I am not aware of that by any means. [LB961]

SENATOR WHITE: Thank you, Mr. President. Thank you, Senator Heidemann. [LB961]

SENATOR FRIEND: Thank you, Senator White and Senator Heidemann. Senator Rogert, you're recognized. [LB961]

Floor Debate
March 17, 2008

SENATOR ROBERT: Thank you, Mr. President. I also want to thank Senators Kruse, Harms, Engel, Heidemann for further explaining some more of these things as we move through this process. And I think the discussion is well at hand and we're going to come out with some more of the facts as Senator Engel alluded to. And that is the reason for this discussion, at least from my point of view, for today. To me it's a matter of we are a body that is a victim of term limits and a bunch of new people. And as we move through some of these types of processes it becomes, in my mind it's the Fiscal Office, legal counsel, agency staff versus elected officials who actually is here to set the budget and make things work. And I think we need to get down to the nitty-gritty and all of us understand what all these accounts do, what all these agencies need money for. We ask the Appropriations Committee to listen during the hearings and understand what the money is needed for and come back to us with the recommendations, which they have done. It's a great job that they've done for us today. I agree that one of the things that we may need to do or we may need to look at doing is if some of these cash funds, and if some of these agencies are building up monies over a process of time, I don't know that they are, I think we need to discover further that they are. Maybe it is a possibility of reducing their appropriation as we move forward, maybe it's not...maybe it's not necessary. But I think some agencies need to be looked at a little harder and least be made known that we are watching them, and it's not just a bank account that's run awry. Last year we were denied state funding for several different things in several different areas--providers for developmental disabilities, foster care providers, expenditures to the aging. Our teachers have dropped in pay in 43 out of 50 in the United States. We have people asking for tax breaks. We have high taxes in this state...military retirements, property taxes, rainy day forecasts. I understand we have a poor fiscal forecast coming before us. Fortunately, I think we are a state that seems to be further isolated from some of the other places in the country. Senator Harms talked about releasing staff. I often wonder if maybe that isn't (laugh) one of the overall things we should look at is releasing staff. We have an opportunity to reduce government spending and an obligation, and possible maybe the fact that we have too much staff, we have too big of a government. These are the types of things I want to go through and look into, you know, as we move through this process. We have so many of these cash accounts. I have ten pages of these things. Are they all active? Do they continue to move? Do we continue to fund them? Do they pick up speed? Do they continue to gain more budget, more funding as we go through the years? I don't know, but I want to look at those things. And I agree that it is kind of a little late for getting into these things as we get towards the budgeting process, some of this information just came to us. And some of us are just getting on board. So it's going to be a multiple year process, in my opinion. And I think the discussion has gone well. And I'll stop there for the time. Thanks, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Rogert. Senator Chambers, you are recognized. [LB961]

Floor Debate
March 17, 2008

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I think this is going to be one of the most valuable discussions that we will have had this session. It is necessary, essential, and it's very heartening to me that what we might call new people brought it up. They are becoming aware of the fact that the reality is upon us now and the whole thing is going to be in their hands. I just hope that they remember that the Legislature, as an institution, is an independent and separate branch of government. It is not beholding to the Governor, it is not beholding to the judiciary. This branch has often sold itself cheap. And I think I'm detecting a different attitude from the one that prevailed so much of the time that I was here. I would always be standing up trying to chide my colleagues, cajole them, ridicule them, mock them, taunt them about not standing up and using the legitimate power, authority, and exercising the prerogatives that we have as the legislative branch. This branch is different from the other two. In my way of thinking, not just because I'm a part of it, it's the most important. The Legislature creates the laws. The judiciary interprets the laws. The executive executes or carries out the laws. But it starts with the Legislature. Unlike a two-house body, money bills originate here. The hand that feeds is the hand that controls. The hand that controls the purse controls the government. And it's time, way past time, that members of the Legislature begin to think institutionally. I have views about individual portions of the budget which will conflict with those of my colleagues, I'm sure. But once the budget is decided on and we vote it through, that is our document. We formulate and set policy through the budgeting process. The "bible" says, where there is no vision, the people perish. You can easily get locked up and lost in tiny minutiae of the budget. But we have to look beyond those small things and adopt that global or world vision and view that carries us beyond this session and next session to where we think this state ought to be. And once we've made a determination of where it ought to be, we start to formulate and implement policies that will take it there. I still see an over involvement by the Governor's Office in what we do. I see members who are protective of the Governor. I started to ask Senator Gay, how did you get in the Legislature? You didn't get elected. And he'd tell me, here's what Senator Gay would tell me, so what, Senator Chambers, anybody can get elected to the Legislature. I'm in the Legislature and I didn't get elected, see? And he'd a had me, but instead he'd have gotten defensive, and he'd of shriveled up, and he wouldn't have done what we could do. I want my colleagues to be sharp, I want them to think on their feet, and I want them to defend and protect the Legislature. Not everything that we want are we going to get. I have been on the canvas, Senator Friend, more times than anybody... [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR CHAMBERS: ...and not just the soles of my feet, I referred to Senator Friend one time as canvasback, that's his name when he and I contest. But if it's me versus the Legislature, I am canvasback. I get kicked around so much I feel great empathy for a soccer ball. But nevertheless, we continue to push forward. And I'm pleased that the discussion started on the first bill of the budget process and that senators are asking the

Floor Debate
March 17, 2008

right kind of questions. Even if something appears to be what we all ought to know and understand if we don't ask the questions, force the discussion, and even some old dogs may be shown a new trick or two. Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Chambers. Senator Nantkes, you are recognized. [LB961]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon colleagues. I just wanted to point out as a point of clarification actually as we begin our budget debate quite a few members have asked me off the mike, in reviewing the committee statement, to explain my vote in opposition to the advancement of these bills. And I just wanted to be clear with everybody that I'm listed as a no vote on the committee's advancement of our budget bills, and that was in relation to a procedural issue surrounding the budget that has since been resolved. To be clear, I am in full support of the Appropriations Committee budget. I fully support my committee and I salute our Chair for his steady leadership. Colleagues, it's an exciting time to be a member of the Appropriations Committee. We are kind of back in our committee room doing some sometimes seemingly mysterious work, but really just digging in to the minutiae of a variety of different agency requests while everyone else is busy under their jurisdictional committees. And so when the budget comes up we have a chance to really come onto the floor and engage with our colleagues in an exciting way, I think. And to be clear here, I think that the points that Senator White and some others have brought up today in relation to our budget process are particularly instructive in the post term limits era, and helping us all to get a better understanding of where we are in terms of our budget, and where we are in terms of our overall economic forecast for the short-term and for the long-term. And sometimes the isolation of the Appropriations Committee may be a detriment to this dialogue. In effect, we may not do a good enough job in promoting some of these important dialogues earlier in the process. And so again, I want to thank Senator White for bringing forward some of this information to provoke a broader dialogue which I think will be instructive as we move forward. But to be clear and to echo some of the comments from the Chair and other members of the Appropriations Committee, you know, as we dig into the minutiae of agency requests, and the different budget proposals that are brought before our committee, I think if you are standing there next to us or seated there in the room with us you would see that there isn't a great deal of information that is secreted or hidden away. But in fact it is a very transparent process. And, you know, as we move forward there is no great smoking gun to be uncovered in terms of solving our budget woes. These are painstaking decisions made over the course of many months in terms of trying to provide a budget to this body that's fiscally responsible in terms of our short-term and long-term needs. And, of course, we'd be happy to work with any member to try and identify some flexibility within the current budget structure, if it exists to address critical needs. But I think after spending two years digging through the budget, it's pretty clear that there is not quite as much flexibility as people might like to think that there is. And at the end of the day we work

Floor Debate
March 17, 2008

really, really diligently to fund basic core services that are critical to the ongoing functions of government and try to do our best to accommodate individual senator's requests and to fold them into the larger budget process as well. But again, I thank Senator White for helping us to better explain the Appropriations process as we move forward. But again, to echo some of my colleagues on the committee, want to caution members that there, you know, are very limited and finite solutions that we can uncover when trying to craft a budget which is... [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR NANTKES: ...critically important to our state's operations. And any solutions, any suggestions related to that to help us stay fiscally conservative, to stave off tax increases or cuts to critical human services down the road is greatly appreciated. And working in partnership, I know that we can accomplish that. I think that the Appropriations Committee has given you a responsible and a sound budget as we move forward. And I'm proud of this budget and I'm proud of our committee. And with that, thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Nantkes. Members we are discussing AM2139, Appropriations Committee amendments to LB961. Senators wishing to speak: Senator Fulton, Wightman, Erdman, Stuthman, Preister, Synowiecki, Chambers, and Harms. Senator Fulton. [LB961]

SENATOR FULTON: Thank you, Mr. President. It hasn't been said on the microphone, and some day people will go back and look into the record and it should be said that there's a lot of green out here on the floor today for those of you reading along. I want to comment a little bit about the budget, as I've learned it now as a sophomore senator. There is an awful lot to learn, and recognizing that next year we won't have a lot of experience here in the body, it's important that others glean as much experience as possible. I want to explain something about the budget that I didn't understand at first, but understanding it now I can understand why it's important to scrutinize the budget. Let's say, for instance, there's an agency or a specific program that's coming in to ask for, and I'm just going to choose a number rather than using the generic X, I'll choose a number so that it can embody what I'm trying to get across. Let's say that an agency or a program comes in and asks for a \$10 increase. And it could be whatever, that's...obviously we're using bigger numbers when we talk about the state budget, but let's say they ask for a \$10 increase. We in Nebraska have a biennial budget, so we set a budget for two years at a time. So last year if someone came to us asking for a \$10 increase, one would think that's \$10, and we can make that decision and be over with it. The reality is the way government works, the way this budget works if someone is asking for a \$10 increase, we have to first determine whether or not that increase is for one year or if it's for the budget period, i.e., the biennium. Usually it's for the biennium. And so what was once ostensibly a \$10 increase, actually is a \$30 commitment. Now

Floor Debate
March 17, 2008

why is that? They're asking for a \$10 increase in the biennium, usually it means they want \$10 in year one, and then \$10 more in year two. In year one we spend \$10, in year two that continues. So there's \$10 in year one, and \$10 in year two. And then there's the increase in year two, which is also \$10, it's \$30. So what ostensibly seems like a \$10 commitment is actually a \$30 commitment in the way our budget is structured in Nebraska. So bear that in mind. That being the case, you can understand when you have hundreds of programs, hundreds of legitimate requests coming before you, you have to ask questions because you're not only make a commitment for this year, you're also making a commitment for the biennium. And you're also sometimes, in fact most of the time making a commitment for 10 or 15 years down the road. If you go back into history and look at how the state budget has behaved, it doesn't shrink, it always grows. I mentioned there's a lot of green out here on the floor. Think of budget like a Chia pet and it keeps growing, so you got to be careful how many Chia pets you get, otherwise you're going to be overrun with little Chia pets. That's what happens to the budget. And so to that end we scrutinize and we ask questions. I'll tie this back to the question on cash fund because this is part of the questioning that I do and that members, my colleagues on the committee do. We'll have before us several line-items that represent the specific requests that we are entertaining at the time. It will be broken out into General Funds, or cash funds, or revolving funds, or federal funds. And so we have before us what kind of request is to be entertained. We do ask questions: well, why can't they use their cash fund authority, or, are we going to be able to leverage federal funds for this particular program? Medicaid is a good example. For each of the different agencies, each of the different programs within that agency we go through line by line... [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR FULTON: ...and these are the types of questions that we are asking. Now I understand that one can look at a particular snapshot of the cash funds that are available to us. But recognize also that that is just a snapshot and that chances are one or all members of the Appropriations Committee have inquired into that particular cash fund authority, or that particular cash fund balance. It's possible we may have missed something, and if that's the case then we would love to have something pointed out. So with regard to the cash fund discussion we're having today, recognize that we do scrutinize this budget. And if there is an item of specificity that's brought forward then we can address it specifically. But speaking generally, we try to keep spending in check because spending now means spending into the future, and that therefore informs us such that we should scrutinize the budget and that we have done. So thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Fulton. Senator Wightman, you are recognized. [LB961]

Floor Debate
March 17, 2008

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I, too, would say that the questions raised by Senator White and by Senator Rogert are legitimate questions. The dialogue is certainly beneficial, I think, to this entire body, and particularly where there are 22 of us that are serving, 2 of those, I guess, previously, so 20 of us that are new to this Legislature within the last year and a half. With regard to the cash funds, I can tell you they are reviewed annually. They're reviewed, first of all, by the Governor and are included in his preliminary budget that is forwarded to the Legislature in a briefing session. They are certainly reviewed again by the members of the Appropriations Committee as we go through these budgets. They're reviewed by the fiscal analysts. So they are reviewed a great deal before this budget comes onto the floor. Quite often the Appropriations Committee changes either a recommendation, we decide to support something by General Funds that the Governor may have suggested would come out of cash funds. Sometimes we ourselves will approve a budget item on a preliminary basis and have that come out of cash funds. So that has been reviewed a great deal by the time this budget reaches the floor. Many of the funds that we're looking at will be spent by the agencies during the year. Some of them are front-end loaded. For example, one of the things with the university budget is that all of the tuition has just come in and would show up in that cash account. I can't give you the exact dollar on that, but that has been reviewed with our fiscal analysts. Some others are licensing fee and are set aside for a particular use within a particular agency. A few of the agricultural budgets, the Corn Board, Soybean Board, many of the others are actually a checkoff and are promotion funds for that particular agency. So there are a variety of uses of these funds. I also would call to your attention that during 2001-2002, when we went through some of the same hard times it appears we may be headed for now, we used about...had a shortfall, I believe, of about \$265 million each of those years, which is an interesting figure because the two years combined would be almost exactly the amount of the cash reserve that we have right now. And I realize here we're talking about cash funds. And I told you what some of the uses of those cash funds are. I had my staff come up with a top ten, now we're not looking at agencies, we're looking at particular programs out of the budgets. Road operations is the first one, it's \$112 million, that constitutes about one...between one-seventh and one-eighth of the total amount in the cash funds. And that money is not available to pull out, because under the Highway Cash Fund and the Highway Reserve Fund, those funds are set aside for road purposes. University of Nebraska has \$85 million, again I mentioned the fact that some of this money has just come in fairly recently on tuition. There will not be a major income revenue from tuition probably until September. [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR WIGHTMAN: So as you go down the list, property tax credit is a big one, \$55 million; and you go down the list and the top ten out of all these seven pages that Senator White has distributed, and we're not looking at agency budgets now, we're looking at programs, and the top ten programs constitute about \$420 million, so almost

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

Floor Debate
March 17, 2008

half of that, \$877 million that Senator White is suggesting could be used is in ten items. And many of these others, as I say, are the result of licensure fees, checkoff fees, and various other committed funds. With that, I may address the group later. But I do support the budget bills. I think they are responsible budgets and we would ask for your support. Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Wightman. Members, we are discussing AM2139, Appropriations Committee amendments to LB961. Senator Erdman, you're recognized. [LB961]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I appreciate the information as well. As somebody who's not new to the budget discussion, I appreciate it when others take interest as well. I'm wondering just out loud, however, what the solution is. And I'd like to ask Senator White a question, if I may. [LB961]

SENATOR FRIEND: Senator White, will you yield? [LB961]

SENATOR WHITE: Yes. [LB961]

SENATOR ERDMAN: Senator White, is your intent to pursue amendments, or just discussions at this point regarding these cash fund balances? [LB961]

SENATOR WHITE: At this point, it's just to pursue discussions so I understand it. Senator Erdman, I'll tell you one of the deep questions, especially after Senator Wightman and others have mentioned, I'd like somebody to stand up and say, okay, fun day, there's \$1.8 million in it, \$1.7 million are earmarked for these purposes and here's why we can't mess with it, but there's \$100,000 free. I would rather than assume that they're locked in and also what they're assumed for, I'd just like some information. [LB961]

SENATOR ERDMAN: And just one follow-up, if I might, Senator White. The letter that you or the...I believe it's an e-mail with the attached cash funds was received to you by...from Mike Calvert on March 13, almost a week ago. Had you had any conversations similar to those to the fiscal staff after receiving it? [LB961]

SENATOR WHITE: Actually, March 13 was Thursday night. And I got it some time on Friday that I opened it up. And I have not had any conversations with the fiscal staff, other than they had indicated that, you know, there may be earmarked funds in here. And that's what I thought would be most appropriate for the conversation. Let's look at the funding of these agencies. Let's find out how the Department of Roads, out of that \$120 million, how much really is earmarked that can't be spent for other purposes? Where...and since the federal money is not in here, was there the \$4 million that I

Floor Debate
March 17, 2008

understood was the money we needed to contribute to complete the Heartland Expressway, was that in our budget? Did the Department of Roads not spend it? And why, if we got 11 percent annual inflation, didn't they spend it? Because if that's the pattern over the last three years, now that federal grant is worth two-thirds of what it was, so we got to come up with more money. I have another deep issue with...very concerned with Health and Human Services. We specifically authorized money for retention bonuses and hiring bonuses to improve the staffing at the Beatrice state home. They told us we haven't been authorized, we can't use it, or we're not using it. Now we got a Department of Justice investigation because people have been hurt down there and they blame it on lack of staff. I mean, I want to know where that...why that money wasn't used. I want to know exactly why it wasn't used and how many people got hurt. And if it's not being used, why are we stuffing more money into that budget? [LB961]

SENATOR ERDMAN: Thank you, Senator White. And I think those are appropriate. I do realize that it was received late. I see the language now it was Thursday evening. I think some of your concerns are valid. I candidly think they're misplaced on this bill, but I think it's a part of this process to set us up for a later discussion. I think that's fine. But from the standpoint of where we're going or what we're doing, I think it's great to identify what problems appear to be out there. I was just interested in knowing if there was a perceived remedy or if there was something else. I think it's healthy. I've had conversations with the Fiscal Office in the past, with members of the Appropriations Committee, either on the floor, or privately. But I will say that regardless of whether or not you're new to this process, whether you're new to the Legislature, whether or not some of us are going to be here or not you're capable of determining the budget when we're gone. And I don't know how many times I keep hearing this, that somehow because those of us that are here are not going to be here, that you're going to be somehow left wandering aimlessly. And you're not. [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR ERDMAN: Those of you that are here are capable, the people of your district thought so, and I think by being here, at least for the last two years for some of you, I concur. And so part of this, I think, is helpful, but I think the part that's not helpful is somehow assuming that you would have been incapable of doing this when some of us are gone. The fact is that when I was here, in my third year I believe, I rewrote the state budget on the floor of the Legislature. Do your homework, examine the studies, look at the Appropriations Committee's report, look at the Governor's report and you can figure out how to do it. Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Erdman. Senator Preister, you are recognized. [LB961]

Floor Debate
March 17, 2008

SENATOR PREISTER: Thank you, Mr. Speaker, friends all. I appreciated the discussion and I'm glad that we're having it. I appreciate the things that were raised. When I first spoke I raised issues and concerns about process. And I've been asked to reiterate what I was essentially saying. I will finish, after I do that, what I had started, because I didn't have quite enough time to do it. My message is just like Senator Erdman just said, we have the abilities, each of us does, and the people that are coming next year will have those same abilities. My caution was to respect the process. We have rules, we have a process established. And if we don't pay attention to those, if we don't follow them then order tends to break down. I think we need to be certain that when we are in all of our committees that those committees function and function as they are designed. And where there are rules in place to guide their smooth operation we need to follow those rules. Sometimes that means taking additional time. But when you don't do it, you don't respect the process. And perhaps I'm lamenting a little bit but, as somebody who has been here a while, I do appreciate the process, I do appreciate the challenge of it sometimes. But we need to respect and follow the process. And if it doesn't meet the needs, then change the process. But let's not just ignore rules or ignore what we have done in the past because of good reasoning. If there isn't good reasoning or the reasoning has changed, then we certainly should be flexible enough to change. That's my point. I wanted to raise the red flag. Say, folks, things didn't happen as I think our specific rules lay out, and I hope that the rules aren't starting to breakdown now, and when there are people who have not read and understand them as well here in the future that they will erode more. My caution was pay attention to the rules, follow the rules, or change the rules and particularly when it comes to the budget, particularly when it comes to the amount of money that you will be...we are appropriating and those tax dollars that we are spending. Having said that, I'll go back to where I was speaking the first time, and that was on the green sheet, the copy that you have of our financial status, that we will have...others will have next year and in succeeding years that outline the full status of where we are. On this particular one I note something that I don't recall seeing in a previous budget, and that is a lot of zeros when it comes to General File, Select File, and other items, including vetoes and some other mainline bills. Normally, there is some allowance made for bills that we still have before us. If we have no allowance it means in effect that everything we have done this session that has a bill attached to it is null and void unless it's someplace else in the budget, null and void. So are all of our committees and us individually just spinning our wheels, going through the motions now when those A bills that are attached to some of them are not budgeted and they're not going to be approved and nothing else happens? [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR PREISTER: Nothing is listed as the amount that's for all of those things collectively. We're not going to do all of them, we don't have the money to do all of them. We have to prioritize and we have to see what competes and what rises to the top and what we choose to do. But at least we need, as individual members, the

Floor Debate
March 17, 2008

opportunity to have them there to compete. And right now I don't see the opportunity for them to compete and that concerns me about the budget process. So my whole message is let's keep the process true, let's work it down the path of the budget, but let's make sure that we can make those choices collectively rather than whether it's TEEOSA, whether it's the formula that I talked about earlier, or whether it's our own individual bills, we need to all be part of the process. And I respect the Appropriations Committee, but I don't see where that respect for all of us is reflected in the budget with nothing budgeted... [LB961]

SENATOR FRIEND: Time. [LB961]

SENATOR PREISTER: ...for those A bills. [LB961]

SENATOR FRIEND: Thank you, Senator Preister. Senator Harms, you are recognized. Senator Harms, you are recognized to speak. [LB961]

SENATOR HARMS: Thank you, Mr. President, colleagues. Sorry about that. I want to just comment a little bit on Senator Rogert and Senator White's discussion. And particularly Senator Rogert kind of caught my attention in regard to some of his comments. And I think the important thing here is to understand that as we look into the future and we begin to look at how we're going to deal with the issues of shortfall of revenue, whether it's this year, next year, or in the future, as that sum gets greater, the one thing that we lack here and one thing that really bothers me when we start talking about staffing and all those sort of things is the simple fact that Nebraska does not have a long-range plan. We have no idea what direction the state is going. And until we finally decide what we want this state to be, we need to go into a long-range plan. We need to have this discussion in a planning process, not at the end of a 60-day session, not at the end of 90 days. We need to bring people, we need to bring someone in here to help this Legislature do some long-range planning for the future. If we're going to be competitive in a new world global economy, quite frankly, we have to make some changes. And I don't think on this floor can we anymore have a discussion about tax relief or streamlining government until we actually understand what our expenditures truly are and how we can trim those expenditures back. And you can't trim expenditures back unless you know where you want to go, what you want to do, and what you want to become. We lack a direction in this state, we lack a plan in this state, and I don't think we can continue to have this. And if we don't have this, in the future as times become more difficult, and if the loss of revenue continues, which I believe it's going to for a short period of time, we are really going to struggle here. And I think what Senator Rogert has said is exactly correct. And I think we need to begin to look at this direction, we need to decide what we want our state to be, and then begin to streamline government and to know exactly what we want to be. A plan is simply a map. It doesn't mean you can't change it, it doesn't mean it's in cement, but at least you have some idea of where we're going, what we're doing, and we can look back and say we've

Floor Debate
March 17, 2008

accomplished this. But you can't streamline government, you can't do these sort of things without first understanding exactly what we want this state to be. Things have changed so rapidly, colleagues, that we're not becoming competitive in a new global world economy. The things we discussed about students today and assessment, that's what that's all about is to make our children competitive. But the state has to be competitive, it has to know the direction that it's going to go. And I believe very strongly that unless we do that, the discussions in this Chamber will be heated in the future because of the problems and the answers we're going to be looking for are going to be much more difficult. So I hope you'll keep that in mind. And I hope you'll start to address the issue that we need to understand as a Legislature, probably more than ever in the past. When you have 15 or 16 new people coming in on this floor next year, we need to have a direction. And I think we're going to struggle with that until we finally start to address the issue. And I hear conversations that we need to streamline government. It scares me. I don't think streamlining bothers me, but I don't know where we're going. And if we streamline it, how do we know we got there if we don't know where we're going? That's my point here. And I think I would really urge you to keep that in mind. And I think it's a direction that I think we're going to have to take in the future. Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Harms. Senator Gay, you are recognized. [LB961]

SENATOR GAY: Thank you, Mr. President. Senator Harms led right into where I wanted to go, so I thank him as well. I just handed out a summary of the 2008-2009 General Fund budget that we received when Senator Heidemann had his update. And it shows kind of where all our money is going when you look at agency operations, state aid to individuals, state aid to local government. But I thought it was a nice snapshot of where we are on the amount, when you look at the percent of the total budget, where our priorities seem to lie here. I just threw that out for discussion. We're having a good discussion. And I hear senators talking about do we need to maybe downsizing employees and some of those things. And I...you know, some of these...we need to be looking for some positive win-win solutions here, not just to point out the problems, but to go fix some of these problems and find creative ways. So Senator Harms is talking, I agree. I think whenever you're looking at some kind of proposal and you want to come you need to include, you know, how is that going to work on Revenue or Appropriations or whatever it may be in your particular committee for the long-term good of the budget. And if you have a priority then let's fit it in there because there will be things, we heard about Beatrice today, and there's major issues that need to be worked on there. And we need to get together and work on those issues. They may require funding issues, but we need to kind of come together a little bit. We're losing a lot of history here in the next year and some knowledge, as Senator Preister is bringing up, and Senator Chambers and others. So it's important, I think, that we have this discussion. It sounds like we're having more of a discussion of how the budget process works, I guess, than particulars

Floor Debate
March 17, 2008

in the budget. But I would say if you look at some of the major spending here between the university, Health and Human Services, Medicaid is 16.7 percent of our total budget and going up, state aid to schools 25 percent, local...look at total General Fund aid to local governments. You know, when that's all added up that's 36 percent of our budget. So there's not a lot of leeway here to work with. There are a lot of good causes, but how are we going to find ideas that go out and need to be creative ideas to say, hey, instead of just spending more money, how are we going to be more effective. So those are the kind of things I'm excited about. I've talked to others and many of us believe that. There are some positive ways to get these things done. But I thought that was...this was an appropriate time to hand this out, just to make sure...and also I'd be remiss, I think we all appreciate what the Appropriations Committee has done as we talk. That is a tough job to be in there and trying to keep people happy and come back with a budget that we can all live with, and more importantly that taxpayers can actually live with, because that's ultimately, when we leave this place you got to go back home. And they're saying, hey, where did you spend my money? And I think when we look at these situations as we prioritize them this was a good sheet to look at. And in there, there are subsections and divisions and all these things. But I think it pretty much narrows it down to here is where our money goes. And if we're going to add more to it...late last year we added \$52 million to school funding, did that in the last ten days of the Legislature. So there is money being spent. It comes back, if you're spending something today, it's going to get in that fund, and it's hard to get rid of. So I'd just say as we're having a general discussion, and that's what this is right now, because I haven't heard any specifics to the budget, but as long as we're having a general discussion, I'd encourage my colleagues, especially those returning, to come back with a win-win situation instead of a different view of it--here's my little position of what's happening in the budget, and that's all I'm concerned with. We got to be concerned with issues... [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR GAY: ...that may not be of a great concern to you, personally, but in the overall budget, of course, we need to be involved. And I think we're all, as we gain experience and knowledge, we'll be able to do that. So I'm confident that we will be able to do that. So I think we're having a good discussion. I just wanted to add that to the body and to the discussion. Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Gay. Senator White, you are recognized. [LB961]

SENATOR WHITE: Thank you, Mr. President. I would ask and put it as an open question to any member of the Revenue or of the Appropriations Committee. Can anybody right now stand up and tell me on any of the line-items of any of the substantial amounts, what amounts are encumbered and for what? And what are free? Can anybody right now, and we're talking almost \$900 million. Just stand up and say, okay,

Floor Debate
March 17, 2008

out of the \$120 million in roads, all of it is earmarked for these projects, or there's percent available, or Department of Insurance, or any of those, so I can start getting a grip on whether we're overfunding some agencies at the same time we're underfunding others. I find it particularly difficult that the committee brought forward a budget bill that left no money at all for A bills that we could compete for. But we have, apparently, well we have actually, hundreds of millions of dollars sitting in cash accounts for agencies that I'm not sure there's been an exhaustive investigation into whether they need those monies. And with all due respect, those agencies were not elected to make the decisions on priorities, we were. And therefore, when we have a bill that is as severe as this bill in terms of no money at all for senators and A bills, it seems only appropriate that we be certain the agencies have been examined very carefully. So at this time I have an open question for anybody on Appropriations who would like to stand up and explain to me what is or is not encumbered in any one of those line-items. And if they can't do it now, which I can surely appreciate if they cannot, will they be able to do so later on in the debate, or certainly by the time we move this to Select? Hearing no response, Mr. President, I take that as a no, they can't answer. Therefore... [LB961]

SENATOR FRIEND: Senator Heidemann, would you like to yield to a question from Senator White, or Senator Nantkes? [LB961]

SENATOR HEIDEMANN: Senator Nantkes was going to take this one and she had stood up, and if she would want to? [LB961]

SENATOR FRIEND: Senator Nantkes, will you yield? [LB961]

SENATOR NANTKES: I will. Thank you, Mr. President. And Senator White, I was listening to some of your dialogue, and I guess that basically you're asking any member of the Appropriations Committee to get up at this point in time and give you, with exact specificity, what level of cash funds are encumbered as of March 17, 2008, within each of the discrete cash funds from that handout that you've passed out this morning? [LB961]

SENATOR WHITE: Actually, Senator, I'd be satisfied for any one level, any one line-item, and even an approximate amount, you know, let's call it "horse shoes" amount within, you know, a percentage. Just let me get a sense, so for example, if we look at, you know--I don't know which one you're most comfortable with--enhanced wireless, has \$13,655,243.89 in it. How much of that is encumbered, how much isn't, where did it come from, and what are we supposed to be using it for? [LB961]

SENATOR NANTKES: Well, Senator White, I'm not an expert on that program. I can tell you that program has a variety of phases. They're moving into Phase 2 on that, and I don't know exactly what their landmarks and their benchmarks are, in terms of progress on that. But your question was in regards to any one line-item. For example, when you

Floor Debate
March 17, 2008

look at the Department of Roads' cash funds, I think it's important to know that...
[LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR NANTKES: ...what that really does cover is nothing but basic maintenance. We're looking at salaries and benefits for the department. That's not devoted to specific infrastructure needs. When you look at the University of Nebraska's cash funds, I think Senator Kruse did a great job laying out exactly how those funds are encumbered at this moment in time. And again, I think all of this provokes a good dialogue as we figure out how to craft a...how to advance a sound budget in the remainder of our session, but I think that the question that you ask may not take into account the context that these agencies and these programs operate within, and I think asking for an arbitrary sort of accounting at this moment in time does nothing to prove your larger point about trying to work together to find flexibility and additional resources within the budget, so that we can move forward. [LB961]

SENATOR FRIEND: Time. [LB961]

SENATOR WHITE: Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator White and Senator Nantkes. Senator White, that was your third time on this amendment, too, by the way. Senator Kruse, you are recognized. [LB961]

SENATOR KRUSE: Thank you, Mr. President and colleagues. These are points of good discussion, and I would like to respond to them, part of it to what Senator White is raising about funds, but first I would like to speak to the question which he raised about A bill money, and Senator Preister raised the same question. The committee did clearly set aside money for A bills. Let me repeat that--I hope everybody understands. We set aside money for A bills. If you will turn to the green page, the current status that's part of the agenda today, on line 31 you will see a deficit of \$58.5 million. That is waiting, as we have mentioned before, for LB988. LB988 has a plus factor of \$66.5 million. If we pass that, there will be \$8 million in the A bill fund. As we were dealing with it, we were dealing with a lesser amount, but again, for the same reason, recertifying TEEOSA, and we had just under \$4 million. They have \$4 million more, which would be appropriate. In other words, in summary, there's \$8 million there for A bills or for other purposes that the floor would decide. In terms of these various funds, we looked at each of them at the time they came before us and do understand that timing makes a lot of difference, the amount of money in reserve from tuitions changes as it goes month by month. The amount of money in Roads changes. But in that we seek from our fiscal officers, who are very good at this, finding out how is it going to end up at the year, what's the new amount for the new year, and is there carryover, how does that relate. So each of these

Floor Debate
March 17, 2008

funds have been under review by our staff and most of them by us individually. Thank you, Mr. President. [LB961 LB988]

SENATOR FRIEND: Thank you, Senator Kruse. Senator Rogert, you're recognized. Senator Rogert, this is your third time. Senator Rogert waives. Senator Wightman, you are recognized. Senator Wightman waives. Senator Pirsch. Senator Pirsch waives. Members of the Legislature, we are discussing AM2139, the Appropriations Committee amendment. Senators wishing to speak at this moment are Nantkes, Fulton, Schimek, Wallman, and Nelson. Senator Nantkes, you are recognized. [LB961]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. And we got cut off a little bit earlier, but I did want to continue on some of the issues that we were having a dialogue with Senator White about. And in relation to some of the issues that he's brought forth this afternoon, claiming that somehow or another the Appropriations Committee has acted in violation of historical precedent or practice in leaving a certain dollar figure available for floor action within their budget, and I just wanted to address that issue a little bit more so. If you look, members, carefully at the green book, this fluorescent green book which contains the Appropriations Committee preliminary report, and then you compare that to the pink booklet, which is the Appropriations Committee budget recommendations, I think that you can see that the Appropriations Committee made great efforts to, in fact, carve out a certain portion of General Funds for undetermined, unspecified floor actions, as Senator White is discussing. However, I want to remind my colleagues that the intervening factor in between that preliminary report and the final report was that we were faced--and Senator White knows very well, as a member of the Revenue Committee--with a forecast, that the forecasting board for Nebraska got together and that dramatically changed our expectations and our actual calculations, in terms of receipts in the short term and the long term and gave us all a very, very stark wake-up call in terms of our overall budgetary picture and in terms of our overall economic position for the state. So I think that when Senator White makes the claim that somehow or another the Appropriations Committee has acted inappropriately in not carving out money for unspecified floor items, that we all have to be conscious of the time frame that we're working with in here, and we all have to be conscious of the dramatic economic factors that we're dealing with here. And again, I welcome this dialogue and am so fortunate to have people like Senator White who are here in this body trying to find solutions to address some of these issues. And you know, if we can get to a point where we can find additional resources to help fund some of these needs, I'm happy to look at that. But again, I'm just not sure if the context that some of these questions are being asked in really helps us to find those solutions. So with that, thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator Nantkes. Senator Schimek, you are recognized. [LB961]

Floor Debate
March 17, 2008

SENATOR SCHIMEK: Thank you, Mr. President and members. Before I give my time to someone, I'd just like to say I've heard these same questions and these same arguments for so many years. And remember last year when we talked about tax cuts and returning money to the taxpayers? And some of us said on this floor, be careful what you do this year because down the line you may run short. And I don't mean that as an "I told you so" kind of comment. I mean it as, every time we make a decision in here, it can have long-term impacts, and because...or in spite of the fact, perhaps I should say, that some of us aren't going to be here long, or some of you aren't even going to be here very long in the whole scheme of things, we still need to keep the long-term impacts in mind when we're making decisions. With that, Mr. President, that's probably a little bit different twist on this whole discussion, but it needs to be kept in mind. I'd like to give the rest of my time to Senator White, if I might. [LB961]

SENATOR FRIEND: Senator White, 3 minutes and 40 seconds. [LB961]

SENATOR WHITE: Thank you very much, Senator, Mr. President. I appreciate the courtesy, Senator Schimek. Senator Nantkes indicates that at this stage it's not helpful to ask these questions. I respectfully submit to you, then at what stage and when? This is the first opportunity I or any other senator not on the Appropriations Committee would have at all to have any kind of input, questions, or any thoughts at all on the budgetary process. Certainly Senator Nantkes is not suggesting that we who are not on the Appropriations Committee should have no further involvement in the process and must just defer. I cannot believe that's what she intended, and I do not mean this to disrupt the committee process--just the opposite. I very much want to understand it. With regard to what the committee had proposed and then what came out on the floor, I note that yes, the forecast changed things, but I also note that we're in a context now where literally the proposed budget strips all of the increased school aid under TEEOSA to come in...or that's the next bill up. We are in a very tough situation in terms of making decisions about this budget, about new spending, about other items. If we do not ask questions now, then why were we elected? Certainly a respectful question to members of the committee about things they considered, about what they thought might be helpful, why they chose to fund something, why they did not look into something, why they chose not to fund something, is nothing other than hopefully good legislation done in the best efforts. I appreciate Senator Nantkes' thoughts, and I do want to support the committee. They have a brutal, hard job that I think is, certainly like all of us, overworked and underpaid, but perhaps more for them than anyone. Nevertheless, when we are looking dead at no money for...increased money for school aid, and that's how we're getting into balance, and no money for A bills, and this is the very first opportunity--it's not like this is Final Reading or even Select File--I mean, we would have no opportunity to participate at all. So not only do I have questions, but I'm trying hard to listen to the answers, and I urge other senators to ask questions, too, because clearly, they will have insights that I do not have, and I'm hoping to take advantage of my last chance... [LB961]

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

Floor Debate
March 17, 2008

SENATOR FRIEND: One minute. [LB961]

SENATOR WHITE: ...to literally learn from the senators who have been here a long time and understand the process far better than I, so that I can do a better job next year during the budgetary process. Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator White. Senator Wallman, you are recognized. [LB961]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I too have a little concern. I'd like to ask Senator Wightman a question. [LB961]

SENATOR FRIEND: Senator Wightman, will you yield? [LB961]

SENATOR WIGHTMAN: Yes, I will. [LB961]

SENATOR WALLMAN: In regards to the Roads Department, I hear we don't have any more money for new roads, as such. But have we still had the same employees in the Roads Department, as far as engineers and staff as we had five years ago? [LB961]

SENATOR WIGHTMAN: Well, I don't know that I can answer that. I assume we have many of the same ones that we had five years ago, but I'm sure there have been new personnel and probably some that have left. [LB961]

SENATOR WALLMAN: Thank you. I talked to a contractor who is in Grand Island, and he said we had 17 state cars there. I don't know if we did or not. But I know there's room. We can cut budget issues and appropriations. I appreciate what they do. And so I know we can save money. Farmers save money, businesspeople. I'd turn the rest of my time to Senator White. [LB961]

SENATOR FRIEND: Senator White, 3 minutes and 50 seconds. [LB961]

SENATOR WHITE: Thank you, Senator Wallman, Mr. President. Would Senator Heidemann yield to a question or two? [LB961]

SENATOR FRIEND: Senator Heidemann, will you yield? [LB961]

SENATOR HEIDEMANN: Yes. [LB961]

SENATOR WHITE: Thank you, Senator Heidemann. As we stand now, Senator, is this budget out of balance, this proposed budget? [LB961]

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

Floor Debate
March 17, 2008

SENATOR HEIDEMANN: Yes. [LB961]

SENATOR WHITE: And how much is it out of balance? [LB961]

SENATOR HEIDEMANN: The green sheet shows us on line 31, we're out of balance by \$58,569,369 in the '08-09 year. [LB961]

SENATOR WHITE: Okay. Given that out of balance, do you think it is reasonable we start looking at agency cash funds to see if some of that money could be recaptured in a way? [LB961]

SENATOR HEIDEMANN: I think a couple of days ago, it was during last week, the Speaker had indicated that there will be an Education bill that's following, LB988. And depending on what happens with LB988, that could change line 31 substantially. [LB961 LB988]

SENATOR WHITE: Yes. The next bill proposes \$70 million in additional TEEOSA; is that correct, roughly? [LB961]

SENATOR HEIDEMANN: I'm not tracking what you're saying there on that. [LB961]

SENATOR WHITE: Yeah, LB988, the Education bill. That has approximately \$70 million in additional state aid to schools; is that correct? [LB961 LB988]

SENATOR HEIDEMANN: I think...somebody said at the present time it's \$66.5 million. I don't know if the final version of LB988 is out yet and what it's going to do to us financially. [LB961 LB988]

SENATOR WHITE: So...but in order to balance this budget, if we rely only on that Education bill, we're going to slash probably 80 to 90 percent of that proposed aid in order to balance the budget, if we don't look to other sources; isn't that true? [LB961]

SENATOR HEIDEMANN: Actually, I think it will take a 17 percent increase to a...on their proposal. I'm not quite for sure, about an 8 or 9 percent. It will take \$132 million down to maybe \$60 or \$70 million. [LB961]

SENATOR WHITE: Okay. And that may be the appropriate place we go, but if this budget moves forward at this point in time, we're not going to really have the opportunity to look at cash balances or hopefully other ideas, other than taking it away from education, where we can find the money to balance the budget; isn't that true? [LB961]

SENATOR HEIDEMANN: The other avenues that you would have would be a Cash Reserve Fund balance or to raise taxes, one or the other. [LB961]

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

Floor Debate
March 17, 2008

SENATOR WHITE: Well, and given the economic climate, raising taxes is really adverse to the economy and the Cash Fund balance we've been repeatedly warned we need for the years to come. So Senator, other than the Education bill and the proposal I brought forward,... [LB961]

SENATOR FRIEND: One minute. [LB961]

SENATOR WHITE: ...that we look at the cash balances of the various agencies, can you please advise the body of another idea or ideas, preferably, where we can find this money, so that we can balance the budget in the manner that is most consistent with the long-term good of the people of this state? [LB961]

SENATOR HEIDEMANN: I'm not saying that you couldn't access some money, but when we was getting at the end of our budgeting process and we looked at the amount of money that it was going to take so that we would not have an imbalance on the negative side, the only thing that we could come up with would be to address the cost of TEEOSA. And you could go from cash fund to cash fund--it could take you weeks if not months to try to find that kind of money. [LB961]

SENATOR WHITE: Thank you, Senator. So basically, what you're saying is, the only place you found a big pile of money so you could get the job done quickly was TEEOSA. And I have submitted to us that we can at least look at the cash funds, and I would tell you the future of our children are well worth it,... [LB961]

SENATOR FRIEND: Time. [LB961]

SENATOR WHITE: ...to take the time to look at those funds, instead of slashing education aid. Thank you, Mr. President. [LB961]

SENATOR FRIEND: Thank you, Senator White. Senator Heidemann, there are no further lights on. You are recognized to close on AM2139. [LB961]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I do appreciate the conversation that we had, and if nothing else, we've got the rest of the body more informed about what we do on Appropriations. It's not an easy job; it was tough enough last year when we left, over the two-year budget cycle, over \$400 million for the floor. It's not as easy this year. There was a lot of thoughtful discussion in Appropriations Committee as we brought this forth and presented this. It's not going to be an easy year this year, in my estimation, or it definitely won't be in the out year. AM2139 is the bill, and I appreciate your support. Thanks a lot. [LB961]

SENATOR FRIEND: Thank you, Senator Heidemann. Members of the Legislature,

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

Floor Debate
March 17, 2008

you've heard the closing on the Appropriations Committee amendments, AM2139. The question before the body is, shall AM2139 be adopted to LB961? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB961]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB961]

SENATOR FRIEND: AM2139, committee amendments, are adopted. [LB961]

CLERK: I have nothing further on the bill, Mr. President. [LB961]

SENATOR FRIEND: Back to discussion of LB961. Senator Heidemann, there are no senators wishing to speak. You are recognized to...Senator White, you are recognized. [LB961]

SENATOR WHITE: Thank you, Mr. President. Senator Heidemann, does LB961 contain a gas tax increase in it? [LB961]

SENATOR HEIDEMANN: No. [LB961]

SENATOR WHITE: So this budget does not have any increases in spending that would necessitate an increase in the gas tax rate that would be charged to people of the state of Nebraska; is that correct? [LB961]

SENATOR HEIDEMANN: That will be on...I think it's LB959. This is a funds transfer. [LB961 LB959]

SENATOR WHITE: Okay. Thank you, sir, and I appreciate your courtesy and I return my time to the Chair. [LB961]

SENATOR FRIEND: Thank you, Senator White. Senator Heidemann, there are no other senators wishing to speak. Senator Heidemann, you are recognized to close on LB961. [LB961]

SENATOR HEIDEMANN: As I have stated before, the committee amendment was the bill, so I appreciate the support on the committee amendment, and I'd appreciate your support on LB961. [LB961]

SENATOR FRIEND: Thank you, Senator Heidemann. Members, you have heard the closing on LB961. The question is, shall LB961 advance to E&R Initial? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB961]

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

Floor Debate
March 17, 2008

CLERK: 44 ayes, 0 nays, Mr. President, on the advancement of LB961. [LB961]

SENATOR FRIEND: LB961 does advance. Next item. [LB961]

CLERK: Mr. President, LB960, a bill introduced by the Speaker at the request of the Governor. (Read title.) The bill was introduced on January 15, referred to Appropriations. The bill was advanced to General File. There are Appropriations Committee amendments, Mr. President. (AM2138, Legislative Journal page 917.) [LB960]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Heidemann, as Chair of the Appropriations Committee, you are recognized to open on LB960 and the committee amendments to LB960. [LB960]

SENATOR HEIDEMANN: The following amendment will become the bill, so I'll just talk more at that time on the amendment. Thank you, Mr. President. [LB960]

SENATOR FRIEND: Thank you, Senator Heidemann. You are now recognized to open on AM2138. [LB960]

SENATOR HEIDEMANN: Salary and health issues are contained in LB960. Last year the budget included a placeholder for General Fund appropriations to cover the cost of salary settlements once the labor dispute was resolved. The placeholder appropriation was used to cover the salary costs from the resolution of the labor dispute and to cover costs related to pay for compression for the unrepresented employees in supervisory positions and within the classified pay system. LB960 also includes appropriations for higher than projected health insurance costs. The increased expenses in LB960 are dealing with the labor dispute that we dealt with last year but that was...actually came to a conclusion after the session was adjourned sine die. So we need to pass LB960 to deal with the resolution of the labor dispute. Thank you, Mr. President. [LB960]

SENATOR FRIEND: Thank you, Senator Heidemann. Members of the Legislature, you've heard the opening on AM2138, the Appropriations Committee amendments to LB960. The floor is open for discussion. Senator Heidemann, there are no senators wishing to speak. You are recognized to close on AM2138. Senator Heidemann waives closing. Members, the question is, shall AM2138 be adopted? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB960]

CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB960]

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

Floor Debate
March 17, 2008

SENATOR FRIEND: AM2138, committee amendments, are adopted. Back to discussion on LB960. Senator Heidemann, there are no senators wishing to speak. You are recognized to close on LB960. Senator Heidemann waives closing. The question is, shall LB960 advance to E&R Initial? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB960]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB960. [LB960]

SENATOR FRIEND: Thank you, Mr. Clerk. You have items for the record? [LB960]

CLERK: I do, Mr. President. Thank you. Enrollment and Review reports LB1094 and LB1094A as correctly engrossed. And I have an amendment to be printed: Senator Janssen to LB895. That's all that I had, Mr. President. (Legislative Journal pages 981-982.) [LB1094 LB1094A LB895]

SENATOR FRIEND: Thank you, Mr. Clerk. LB959. [LB959]

CLERK: LB959, a bill introduced by the Speaker at the request of the Governor. (Read title.) Introduced on January 15 of this year, referred to the Appropriations Committee. The bill was advanced to General File. There are Appropriations Committee amendments, Mr. President. (AM2145, Legislative Journal page 917.) [LB959]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Heidemann, you are recognized to open on LB959. [LB959]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. The committee amendment does become the bill, so I will talk more at that time on the committee amendment. Thank you. [LB959]

SENATOR FRIEND: Thank you, Senator Heidemann. Mr. Clerk, AM2145. [LB959]

CLERK: Yes, sir. [LB959]

SENATOR FRIEND: Thank you. Senator Heidemann, as Chair of the Appropriations Committee, you're recognized to open on AM2145, the Appropriations Committee amendments. [LB959]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. LB959 and the committee amendment is actually the mainline budget bill. This is where we spend probably 90 percent of our time dealing with agency to agency, program to program, and issue to issue. Some of the significant increases that I will run through you with very briefly that we dealt with as the Appropriations Committee...the thing that I think you need to remember the most is, when we adjourned sine die last year, there

Floor Debate
March 17, 2008

was very little money left over to deal with issues that was going to arise. I think there was \$5 million left for some deficit requests. The October forecast treated us very well, and we've seen a significant increase of revenues in the '08-09 year that we would be able to access, so things looked pretty good at that time. When December rolled around and we started getting data in from the schools, public schools, K-12 education, we realized that there was probably going to be a significant increase in the cost of TEEOSA. And when it was certified in February, we confirmed those problems that seemed to be arising, that it was going to be a significant increase, and actually over the period, I believe it's \$131 million, or \$132 or \$133 million in excess from the prior year. We had accounted for some of that already at sine die, and the February forecast had actually allowed us to go forward being able to fund that. What happened though in February, the February forecast took pretty much all the excess revenue that they had given us in October, and we was dealing with a significant imbalance on our financial status. So one of the things that we're dealing with is a significant increase in '08-09 that we hadn't anticipated at the end of sine die, and that's a \$52.8 million increase that we will deal with, one way or the other. I do want to state at this time, when we came to the end of our budgeting process and we wanted to try to balance our budget, we realized that the only way that we could probably do that is addressing the problem with TEEOSA, and we was going to incorporate that with a bill that was trailing our appropriations bills and try to address that. Looking back at that, maybe that wasn't the best avenue. We was a little bit overzealous to try to figure out what we could do with our unbalanced budget. There are some bills...there's an Education bill that's following that I think we'll look at very much, and if it passes, it will balance our budget. So there are things that are coming down the road. Whether we do LB988 or other bills or other actions, that if LB988 doesn't pass, there are ways that we can deal with our imbalance down the road. We will not at this time...we have a structural imbalance, though, on the negative side. So TEEOSA, aid to schools, certified level, was \$52.8 million. Another higher ticket item was the student information system that we funded for the universities and colleges. In our preliminary budget we had appropriated \$10 million, and when we finalized our budget and what we're presenting to the floor right now, we did \$20 million, we determined that this was going to be a need for the university system, and that it was going to have to be funded. If we didn't fund it, the only other place they could access money was probably through higher tuition. So we're recommending that the student information system for the university system and college systems be fully funded at \$20 million in the '07-08 years. We also put some behavioral health aid, which is just a reallocation of LB1083 money from the regional centers; Health and Human Services, at \$58 million; state employee health insurance, what we had talked about before, was \$2.6 million; rate equity increase for developmental disabilities. One of the things that happened after the salary dispute was resolved, that the workers in Beatrice got a pretty sizeable increase, and because of that, there was a rate equity on the disability providers, and to address that it would have took more than \$3 million, because of what we consider a little bit tougher times here in the state of Nebraska, we wanted to help them out but not to the extent that probably we would have liked, but we

Floor Debate
March 17, 2008

funded \$3 million more for the rate equity increase for developmental disability providers; behavioral health aid rate increases at \$1.7 million was another substantial. There are some other smaller funds that we did give somewhat of an increase in the '08-09 year. One of them was a \$250,000 increase to the community aging service funding, and various other smaller appropriations in the '08-09 year. Some significant reductions: Regional center reallocate to the behavioral health was \$5.8 million, which actually shows up on top then, though, and everything else was just some salary adjustments and some smaller items. As I stated before, there was a lot of work done on this. It wasn't an easy year in Appropriations. There was no doubt about that. We realized that because of the increased cost of TEEOSA and what the national economy was doing, by January we was already being fairly conservative, because we was waiting for the February forecast. And the February forecast pretty much came into line with what we thought and because of that, I will tell you time after time after time in Appropriations, when issues came up that cost money, we pretty much just said no. And I think it's the beginning of a process, trying to deal with what is going to happen to us, not only in the this year but the out biennium. There are going to be a lot of things that we will not be able to fund that probably not only it will be not nice. I could say there's needs out there that might even become unmet, but a whole lot of wants. So it wasn't an easy year in Appropriations. I do ask that you please support AM2145 to Appropriations bill LB959. Thank you. [LB959 LB988 LB1083]

SENATOR FRIEND: Thank you, Senator Heidemann. Members, you have heard the opening on AM2145, the Appropriations Committee amendments. There are senators wishing to speak. Senator Howard, you are recognized. [LB959]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Senator Heidemann, you and I talked a short time ago regarding the issue that is included apparently in this bill that addresses a gas tax increase. And you had asked me to hold my questions on that until it came up, which I was happy to do. If I may ask Senator Heidemann some questions. [LB959]

SENATOR FRIEND: Senator Heidemann, will you yield? [LB959]

SENATOR HEIDEMANN: Yes. [LB959]

SENATOR HOWARD: Thank you. Senator Heidemann, if you could explain this to me in very simple terms what this gas tax increase that is proposed is, and how it will affect the average person who pulls up to the pump. [LB959]

SENATOR HEIDEMANN: The average person--that's a good question. I don't know what the average gas usage is. It will affect it. I think it's 1.5 cents, I believe--1.2 cents per gallon. So if you pull up to the pump and you put ten gallons in, it's going to cost you 12 cents. [LB959]

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

Floor Debate
March 17, 2008

SENATOR HOWARD: Well, actually by the average person, I meant the average person going to work in the morning, or the average person who just wants to fill up their car. So ten gallons...I think the usual capacity for a tank is closer to 20, 25. So if you filled up your tank, what would this increase amount to? If you filled up your tank, what would this increase amount to? [LB959]

SENATOR HEIDEMANN: Depending upon what I was driving. If I was driving my pickup, which holds 35 gallons, it's going to cost you 50 cents. But usually cars, 16, 17 gallons, unless you drive an SUV, which I can't afford to drive, will take a little bit more. But cars usually hold, I think, 15, 16 gallons. [LB959]

SENATOR HOWARD: Okay. [LB959]

SENATOR HEIDEMANN: So it's going to cost you 20 cents, say, approximately. [LB959]

SENATOR HOWARD: Twenty cents more for the average, as near as we could figure it, just offhand. So this morning I heard that per barrel, the gas has gone up another...to 11...another \$11. It's increased again. It seems that every day it goes up a dollar. So there's always another increase in the tax, and every time I go past, every time I stop to fill up the tank, it's more. It's more expensive, and I'm very concerned about this. Even though it may only be 50 cents, that's 50 cents every time you stop and you fill that tank up, and that's going to cut into people's budgets, no matter how you look at it. It's here, and it's there. It's gasoline, it's mortgage, it's milk. It's everything you're paying for. And so I have some real concerns about this. I appreciate your explanation. I appreciate the work the Appropriations Committee does. I know that's not easy. I often think of it as all-afternoon math class. But I'm very, very concerned about what this will do just to the working person whose earning a minimum wage and trying to support a family. Thank you. [LB959]

SENATOR FRIEND: Thank you, Senator Howard. Senator Erdman. Senator Erdman, you are recognized. [LB959]

SENATOR ERDMAN: Mr. President, I believe I have an amendment coming up later. I'll waive at this time. [LB959]

SENATOR FRIEND: Thank you, Senator Erdman. Senator Rogert, you are recognized. [LB959]

SENATOR ROGERT: Thank you, Mr. President. Would Senator Heidemann yield to, or go into a discussion with me, please? [LB959]

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

Floor Debate
March 17, 2008

SENATOR HEIDEMANN: Yes. [LB959]

SENATOR FRIEND: Senator Heidemann, will you yield? [LB959]

SENATOR HEIDEMANN: Yes. [LB959]

SENATOR ROBERT: Senator, I also just had a couple of questions on the Department of Roads, the gas tax increase that's on there. Can you give me a brief description of was that an agency request? Was that a process that they, the committee looked into to try to raise some revenue? [LB959]

SENATOR HEIDEMANN: Actually, the agency didn't even come in this year, because they had no issues. They was before the Appropriations...the Transportation Committee in December to tell us their needs, but they did not come before the Appropriations. This is something that, as the Department of Roads agency came before us, we discussed, and there are some funding bills out there this year dealing with the Department of Roads. But when we looked at this agency and what they're dealing with, we come to the conclusion that the salary and health insurance increases alone would cost the department more than \$15 million. And if they don't get this little bump, then they're actually going to lose \$15 million more in construction costs or maintenance or whatever else they would use this for. One of the other things that came into our decisions is that the gas tax had been down to...up to 27 cents, and it had decreased by 4 cents, I believe it was. This actually takes it up 1.2 cents. So it wasn't like we was trying to get it back to 27 cents and get more road funding. We was just trying to get them back, to help pay for their wages, salary, and health insurance increases. [LB959]

SENATOR ROBERT: Okay. Is this a flat penny tax or is it a percentage tax, and is it included on all fuels, gasoline and diesel? [LB959]

SENATOR HEIDEMANN: It's included on the gasoline and diesel. It's an amount appropriated, and we would estimate that it would be 1.2 cents. I believe that's just an estimate, though. [LB959]

SENATOR ROBERT: That's the estimated? Okay. Thank you. Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER PRESIDING [LB959]

SENATOR LANGEMEIER: Thank you, Senator Robert. Mr. Clerk, for a motion. [LB959]

CLERK: Mr. President, Senator Erdman would move to amend the committee amendments, FA212. (Legislative Journal, page 982.) [LB959]

Floor Debate
March 17, 2008

SENATOR LANGEMEIER: Senator Erdman, you are recognized to open on FA212.
[LB959]

SENATOR ERDMAN: Mr. President, members of the Legislature, page 11, lines 1 through 8 contain Section 30 and Section 31. Those two sections deal with the funding of the Department of Roads Construction Fund, Program 569, and the appropriation of \$14,513,930 from the Highway Cash Fund to the Roads Operations Cash Fund. If you go to your Appropriations Committee budget recommendations packet, it's on page 27 and the top of page 28. It will explain to you why that money is in there. My amendment is offered, one, out of practicality and not out of politics--out of practicality, in that we have LB846 soon to follow this budget, on the agenda as well. If you read the A bill to LB846, there is similar language to the A bill to appropriate the funding necessary to facilitate Senator Fischer's gas tax increase in LB846. My thought is this: If we're going to do it, let's do that on LB846A; let's do that on that bill. Let's have a healthy conversation about what needs to happen there, and let's pass a budget that we can all support. Now that doesn't mean that there won't be other modifications that some would like to make to this mainline adjustment bill of LB959, but it narrowly directs our discussion on the issue of roads funding to LB846 and LB846 alone. Senator Heidemann is correct--that number of \$14,513,930 is generally to help facilitate the need for the Department of Roads to pay for staffing requirements--salary and health insurance increases in that area. In the event that we do not fund the Department of Roads with an equivalent amount, what that entails is, is that then they will begin to reduce the amount of funding available to build roads, or they'll have to reduce staff--one of those two. This money that's in the budget increases the gas tax 1.2 cents as a projection. And Senator Heidemann is correct, as he just explained to Senator Rogert--the numbers that began the budget last year were projections, and we set the Cash Fund at what we believe will be generated, and then therefore the variable tax follows to generate that revenue. And so if we authorize a certain amount of money in the Cash Fund and the money is not there, then the gas tax, the variable gas tax rate, can be increased to be able to make up that amount. That's how it works. Simply, what FA212 does is it would take this provision out of the budget and three bills down is LB846. We can then have a directed and candid conversation about roads within that budget. And it's my understanding from visiting with Senator Fischer, that depending upon the will of the body and what she chooses to do with her A bill may be impacted by what happens in the budget, or specifically these two sections. So what I'm offering you today is the chance to take the gas tax increase out of the budget so that we can support a budget, we can send it to the Governor, and we don't have to stand here as members of the Legislature, as we did last year, and have some of them say, well, we want that to go to the Governor so he can line-item it out, because we're not going to override the veto. If you're going to have to override a gas tax increase, you're going to have to do it on LB846. Why do you want to do it in two separate bills? It doesn't make sense to me. So what I'm offering you is the opportunity to pass a budget that doesn't include a gas tax increase, and again, we can focus specifically on this discussion, on

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

Floor Debate
March 17, 2008

LB846, and more specifically, on the A bill to LB846. That's all I'm offering. I'm not saying that if we take this out we don't do it. I'm simply saying that it's a more appropriate conversation to be held on Senator Fischer's priority bill, which the Speaker has scheduled for us, even on this agenda. Thank you, Mr. President. [LB959 LB846 LB846A]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the opening on FA212. There were a number of lights on before we went to that amendment. We will just proceed through them as they are. Those wishing to speak, we have Senator Schimek, White, Wightman, Nantkes, Friend, Heidemann, and Gay. Senator Schimek, you're recognized. [LB959]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. Is that on? Yes, thank you. What Senator Erdman is proposing may make some sense, but I'm not quite sure I follow what will happen if we take this out of the budget bill and then we work on Senator Fischer's bill, and Senator Fischer's bill comes in at a higher dollar amount. Senator Erdman, maybe I should ask you. [LB959]

SENATOR LANGEMEIER: Senator Erdman, would you yield? [LB959]

SENATOR ERDMAN: I will. [LB959]

SENATOR SCHIMEK: If we do this and then we take up Senator Fischer's bill, and Senator Fischer's bill increases the revenue, how does that impact this bill at all? [LB959]

SENATOR ERDMAN: Good question. Let me clarify. If you vote for FA212, then we have to amend the A bill to LB846. [LB959 LB846]

SENATOR SCHIMEK: With this specific amount? [LB959]

SENATOR ERDMAN: With this or with similar language,... [LB959]

SENATOR SCHIMEK: Okay. [LB959]

SENATOR ERDMAN: ...but it depends on what we would decide to do with Senator Fischer's bill, LB846. That bill, the actual bill, sets up a mechanism,... [LB959 LB846]

SENATOR SCHIMEK: Right. [LB959]

SENATOR ERDMAN: ...just like we have the variable gas tax now. She changes the way the variable gas tax is done through a wholesale tax, as well as some other provisions. The way that that actually gets carried out is the same way that the variable

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

Floor Debate
March 17, 2008

gas tax gets carried out now, and that is by appropriation or by authorization of a cash fund. So we would come back then on her bill, on the A bill specifically, and amend either this language or whatever we would decide on LB846 to fund the Department of Roads and construction funding, with that decision. So we would be focusing specifically on roads funding, on a roads funding bill, and not raising the gas tax, even though it's not specifically for roads--it's for staff, in her bill and not in the budget. So we would have to amend the A bill, regardless. [LB959 LB846]

SENATOR SCHIMEK: Okay, I appreciate that explanation, and what I'm trying to figure out--I had my light on, actually, to ask Senator Heidemann about LB988, and if I could,... [LB959 LB988]

SENATOR LANGEMEIER: Senator Heidemann, would you yield? [LB959]

SENATOR SCHIMEK: I think it may be related or not. Senator Heidemann. [LB959]

SENATOR HEIDEMANN: Yes. [LB959]

SENATOR SCHIMEK: May I ask, what if this body decides on LB988 to come in at a higher state aid amount than the Appropriations Committee was contemplating. What happens then? [LB959 LB988]

SENATOR HEIDEMANN: Higher amount, such as in higher reduction or higher appropriation? [LB959]

SENATOR SCHIMEK: A higher appropriation. [LB959]

SENATOR HEIDEMANN: Well, if it's a higher appropriation, you'll have a negative imbalance. [LB959]

SENATOR SCHIMEK: You'll have an aid imbalance? [LB959]

SENATOR HEIDEMANN: You will have a...no. You will have an imbalance on your sheet. If you look at your green sheet, it's going to take so much money to... [LB959]

SENATOR SCHIMEK: Okay. I understand that. Okay, then...so then what happens? Do the Appropriations Committee and the Education Committee sit down and try to discuss this, working out the differences? Or...and maybe I should be asking Senator Raikes this, because I think that bill is still in committee. And... [LB959]

SENATOR HEIDEMANN: Actually, LB988 is scheduled right behind this bill right here. [LB959 LB988]

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

Floor Debate
March 17, 2008

SENATOR SCHIMEK: Yes, but...well, I shouldn't say it's still in committee--still being worked on, perhaps. And Senator Raikes isn't here this afternoon. [LB959]

SENATOR HEIDEMANN: You'd best ask him questions on LB988 versus me, yes. [LB959 LB988]

SENATOR SCHIMEK: Okay. I guess...this is a strange kind of process this year, and I don't know that we've run into this kind of thing before necessarily, and I'm just wondering if there is a way... [LB959]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR SCHIMEK: ...to prevent these kinds of things from happening in the future. And actually, Senator Gay and I were talking about this awhile ago, that maybe there should be more committees working together on some of these issues, perhaps. It's kind of an awkward situation, but anyway, thank you for your responses. Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator White, you're recognized. [LB959]

SENATOR WHITE: Thank you, Mr. President. I rise in support of Senator Erdman's floor amendment, which is an unusual position for me (laughter), but I think makes perfect sense. Right now is, in my view, absolutely the wrong time to raise gas prices--OPEC and us--our hands in the public's pocket. I think it's a clean debate. We need to have a real debate about proper funding for roads. I think we also need to do it, though, in the context of whether the Roads Department is properly managed at this point in time, whether it's carrying out its mission, whether its priorities are straight, whether it's using its assets effectively, and especially whether it's leveraging available funds, federal funds, in an appropriate manner. All of that is best put into context, not in this budget bill, but in a single clean bill where we can take up a very critical and important issue to the whole state. Therefore, I will be voting in favor of Senator Erdman's amendment, and I am happy to yield the rest of my time to Senator Erdman, should he wish it. [LB959]

SENATOR LANGEMEIER: Senator Erdman, 3:50. [LB959]

SENATOR ERDMAN: Thank you, Senator White and members. Just so that we're clear...and as I understand this, I'm not asking you today to vote against whatever the committee would propose in roads funding for this area. I'm simply saying, let's have it in a greater context about the funding needs for the Department of Roads, which is in LB846. That's all I'm offering to you. By adopting this floor amendment, we take those two sections out of the budget, and we would come back with an amendment on her A

Floor Debate
March 17, 2008

bill to include whatever we would decide on the underlying bill, but recognize that unlike any other A bill, that's where the battle is held on LB846. The battle over LB846 and the gas tax increase is not in the underlying bill--it's in the A bill, because just like we're setting the cash fund appropriation under Program 569, if that number is up or down what the projections are, then that raises or lowers the gas tax. Under her bill, the A bill will do the same. Depending upon where you set that amount will determine what provisions of her new scheme are utilized. And I'm simply asking you to do that so that we have a discussion on LB846 about the needs of road funding and not try to tie it up into the state budget. Thank you, Mr. President. Thank you, Senator White. [LB959 LB846]

SENATOR LANGEMEIER: Thank you, Senator Erdman and Senator White. Those wishing to speak, we have Senators Wightman, Nantkes, Friend, Heidemann, Gay, and Kruse. Senator Wightman, you're recognized. [LB959]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I'm not exactly sure where I will vote on FA212, but I did want to put it in perspective, because Senator Howard had inquired with regard to what some of these taxes would run, and I think they decided that 1.2 cents would be under this particular proposal of LB959, and to give you some perspective because I think Senator White and I had some substantial discussion of this a year ago when he opposed the increase in the gasoline tax. And I certainly approach any of the tax increases with a great deal of concern. But to give everybody an idea of about what we're talking about, a 1.2 cent increase in gasoline tax, for somebody that drives 20,000, gets an average of 20 miles to the gallon, it will take 1,000 gallons of gas for the year, and at 1.2 cents would be \$12, would be the increased expenditure that he would have or she would have. I think we talked about somewhere between three or four cents, maybe as high as four on the increase, in the event Senator Fischer's LB846, if that's the number, passes. And at four cents, we'd probably be looking at about \$40 per year. I do think we should keep that in perspective as we consider both Senator Erdman's proposed amendment, FA212, and when we go on and consider Senator Fischer's funding bill, which would increase the sales tax. And just to put it in perspective a little bit, I checked with someone in the body here as to what a normal price would be on a carton of cigarettes, and that's about \$35. So somebody who is smoking a carton of cigarettes a week is spending almost as much for cigarettes as they would spend in the course of a year, even if Senator Fischer's bill passed, and about 3.5 times what it would be with the 1.2 cents that we're talking about being the probable increase to fund the dollar amount that we're looking at in LB959. Again, one carton of beer would...or three cases of beer would probably be equal to the entire gas tax increase that would be incurred in LB846. So I did want to put that in perspective. I thought it was in answer to Senator Howard's question and might answer some of her questions. Thank you, Mr. President. [LB959 LB846]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Nantkes, you're

Floor Debate
March 17, 2008

recognized. [LB959]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. Again, I want to thank Senator Erdman for bringing forward this amendment, because I think it does provide a wonderful discussion point within the broader context of our state budget, and also helps to prime the pump, so to speak--not to use a bad pun, in terms of the gas tax--but to help really bring along the dialogue in terms of some of the other legislative proposals we're going to be looking at this session, in terms of infrastructure financing, most notably under LB846, as advanced by Senator Fischer. And I really appreciate her leadership on this issue when we look at critical infrastructure financing and the serious and significant needs that we are facing as a state. To be clear, this budget item was not brought to us by the Department of Roads. This was a fiscal analyst that really our...the legislative fiscal analyst identified, letting us know what we needed to do, just to cover salary increases and health insurance increases for the next year. And we didn't even as a committee come to that full point of basic maintenance within the department's staff needs, but instead came in underneath that at about 3 percent. In terms of some of the rhetoric that has been utilized on this discrete point within the budget, I just want to be really clear as we move forward. Real leadership looks beyond the next election and looks beyond potential negative mailer in somebody's mailbox. We are here, and we're fortunate to be here for these four years from our first point of election, to make tough decisions and to do the right thing. We have to look bigger than just reelection, and let me be very clear: We...I'm telling you what you already know. We as a state have great needs in terms of our infrastructure and how we're going to finance that in the short-term and in the long-term, and if we don't step up to the plate and we don't advance real solutions to addressing those needs, what does that do to our economic development in Nebraska? What does that do to these good jobs that are provided, in terms of infrastructure construction? These are questions that I think really help us as we move forward and decide, as we stand at the crossroads, what is the appropriate thing to do in terms of a leadership perspective on these issues. And I challenge you to join with us in advancing this discrete portion of the larger budget as we move forward, particularly as we're unclear at this stage in debate what the ultimate fate of LB846 will or will not be. And if that does fail to advance, let me be clear--I'm very, very supportive of that legislation, but if that fails to advance, we fall further and further and further behind, in terms of our infrastructure needs in Nebraska. And that, my friends, is unacceptable. Instead, look realistically at what needs are, and at what solutions are available. This is a solution-oriented vote. This is not about tax increases in the next election; this is about moving forward to meet real needs and to fund core services. Thank you. [LB959 LB846]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. Senator Heidemann, you're recognized. [LB959]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. We

Floor Debate
March 17, 2008

did spend a lot of time talking about this and what we could do to help the Department of Roads. I do realize that there is a roads funding bill that is trailing a few bills down the...on the agenda, but I think it was our thought that if we could do this to help them out with some salary and some health insurance costs, that we could help them out just in case the bills that are...the roads funding bills that we will hear later on don't pass. We could do as Senator Erdman has so suggested, and we could have all that debate at that time, and if that's the body's will, then I guess that's where we can go. I believe the Appropriations Committee thought that this was the right thing, and I still think it's the right thing. And it's never easy to do this, because there will be, theoretically, a gas tax increase. Maybe sometimes we need to step back, as we look and see that before January the gas tax was 27 cents, and then it dropped down to 23, and we're taking back by a penny, 1.2 cents. So maybe we need to ask ourself, is it an increase, or are we just going back up between the 23 and the 27? Once again, I mean, you could have Senator Erdman's train of thought and we could have the general discussion on the roads funding bill that Senator Fischer has proposed before us, or we can do part of it here and if that roads funding bill isn't the will of the Legislature, we will help the Department of Roads out, to the tune of \$15 million. Sometimes people will ask me, what's the Governor going to do with this? I personally...I don't know. If you look at it, and we didn't try to do this, but if you look at it, this is \$15 million. And if you remember right, in the Governor's recommendation he give \$15 million to Roads out of General Fund. So we're giving them no more amount of money. We're giving them \$15 million; they're just accessing it in a different way. With that, I'll turn the rest of my time back to the Chair. Thank you. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Heidemann. Those wishing to speak, we have Senators Gay, Kruse, Raikes, and White. Senator Gay, you're recognized. [LB959]

SENATOR GAY: Thank you, Mr. President. On this amendment, if we're going to discuss a gas...basically move this amendment, discuss the funding on a bill we haven't even heard yet, and then earlier we talked...Senator White brought up the fact that in order to get the budget in order we have to pass LB988, is where the savings is going to come from. I just feel a little bit we're being boxed in, in several situations. We haven't even heard these bills yet, and now we're changing them around. There's amendments. I'm looking on my machine here, and there's two amendments already. One just placed today on LB988. So I don't even know what's in that bill yet, and we haven't even discussed it. Senator Fischer's bill deserves fair hearing, and on General File we will do that, but I'm not so sure that we move and we assume that that is going to pass or fail, or how this fits into the budget. So I'm not so sure that it's appropriate to be putting this amendment on right now. So I guess I just look at this thing, watching this process unfold. It's kind of understanding now, as we're doing this. But there may be good things in Senator Fischer's bill, and I want to discuss roads and those issues too, but maybe there are some of us who feel there's different ways to look at this roads and

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

Floor Debate
March 17, 2008

infrastructure funding, maybe a little bit more comprehensive review. I don't know what the answer is yet, but to go and place this onto that bill, that this has to be discussed in her bill, I don't think is fair to that bill or even to the budget bill. So...and all of a sudden now, too, did we make an assumption that we're going to get any savings, as Senator White mentioned, from the schools? I'm not so sure we can do that, either, because we haven't even heard that bill on General File. So we're making assumptions here in this budget that I find very interesting. So I wanted to put that out. Would Senator Heidemann yield to a question? [LB959 LB988]

SENATOR LANGEMEIER: Senator Heidemann, would you yield? [LB959]

SENATOR HEIDEMANN: Yes. [LB959]

SENATOR GAY: Thank you, Senator. Senator Heidemann, on this \$15 million, the \$14.8 million, what did you say it was going to be used for--just again? [LB959]

SENATOR HEIDEMANN: It's an increase of salary and health insurance costs for the Department of Roads for the '08-09 year. That's the justification, why we give them that amount of money. If they don't...if we don't do this, then they're going to have to access that and take it out of road construction. [LB959]

SENATOR GAY: So this...by removing this money, then, you're not getting funding for those two needs, and it would come from...where would it come from, then, in the Department of Roads? Where would they make up the money? [LB959]

SENATOR HEIDEMANN: Out of road construction. [LB959]

SENATOR GAY: Okay, so we're taking money directly from roads construction, and then now, \$15 million that we may want, and putting it onto another bill we haven't even heard yet. So I wonder...I don't see...I understand trying to put the topics together, but I'm not so sure that this is the way to do it. So I'm not going to support this amendment, and I'm going to listen to more debate on this, but I don't see how the two are fitting together. We can do whatever we want--I understand that. But I don't see how this funding, and putting it onto another bill, is going to be helpful at this stage of the game. Thank you, Mr. President. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Kruse, you're recognized. [LB959]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I will continue the conversation which Senator Gay has initiated here. I will not be voting for this amendment. That does not mean that I oppose what Senator Erdman is trying to do, but I feel that this particular item belongs in this bill rather than in the other bill. One reason

Floor Debate
March 17, 2008

for it is, as Senator Gay has already indicated, it's before us and the other one is not. But there's a more basic reason. I'd like for the floor to understand why we put that in there this year. It will help road construction by not taking money away from them, but that's not why we put it in there. We put in a figure for road construction in last year's budget, and it turned out to be an error, so we are correcting that figure. And I think we have the right to correct a figure that we put in. That figure last year was to produce a 27-cent gas tax, and in due respect to Senator Howard's question of whether we're trying to raise something, no, we're trying to correct and put it back to where it was. We agreed last year that 27 cents was the right figure. We thought we were putting in the amount of appropriation that would trigger that, and we were wrong. So we are adding that back in to get it back to what it ought to be. It clearly fits here, because it is correcting one of our last year's figures. I do not disagree with Senator Erdman that it could be attached to another bill, but at this point I would hope that when we get to that bill, we will be focusing on the particular strategy of that bill, which I will be supporting, in favor. But at this particular point, I think we should be looking at this item and see what we can do to correct a budget figure. Thank you. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Raikes, you are recognized. [LB959]

SENATOR RAIKES: Thank you, Mr. President, members. I support Senator Erdman's amendment. I think Senator Fischer has a bill in LB846, I believe it is, that is a good proposal, one that we need to take seriously, one that we need to consider along with a full discussion of funding requirements for the Department of Roads. I think it's entirely appropriate for us to, so to speak, put all the marbles there and to consider the whole question of roads funding along with that proposal. And I will tell you, from what I understand of the proposal, that it doesn't imply a particular level of roads funding. You could do her bill without changing the roads budget at all. But I think the discussion of that bill will provide us a good framework for deciding exactly how much is an appropriate addition, if any, to roads funding, and it also, should we adopt the bill, would provide a different mechanism than we now have for coming up with the money. She has in that bill an excise tax placed on wholesale fuel as a new source of revenue. So I think Senator Erdman's idea and amendment here is a good one. I don't think it makes a lot of sense for us to say, okay, we'll provide part of the funding for schools in this bill and then we'll provide another part of the funding for schools in that bill, and another part of the funding for schools in that bill, when we have an opportunity to say we're going to consider the issue all at once, make a decision as to what the appropriate level of funding is, and then do it. So again, I support this amendment. Thank you. [LB959 LB846]

SENATOR LANGEMEIER: Thank you, Senator Raikes. Senator White, you're recognized, followed by Senator Fischer. Senator White waives his time. Senator Fischer, you are recognized. [LB959]

Floor Debate
March 17, 2008

SENATOR FISCHER: Thank you, Mr. President and members. I do appreciate the discussion on LB846. We're a little early with it, but the Speaker identified highway funding as a major issue this session. Many of you last year asked that we look into highway funding and we did that, and that's when we came up with LB846. I would like to compliment the Appropriations Committee, because they were very open in their process. When we set the budget for the Department of Roads through the appropriations process, as you know, that determines what the gas tax will be. The Appropriations Committee this year, they were very open about that, and they said that this \$14 million is needed for salaries and it's needed for benefits. And that will mean an increase in the gas tax. They just didn't stick it in the budget with everything else. They made it clear that this money was needed, and this is what may happen. We all need to be aware of that. If that \$14 million is not funded through the gas tax, then that's \$14 million that will be lost in road maintenance and road construction. I don't have a list of the projects that I gave to each of you when we met in December, the list of the projects that your legislative district will not see because the funds are not there to build them. But if you look through that list, if you still happen to have it, and you see a project on your list that's \$14 million, if this is not passed in the Appropriations budget, you have just lost that project, probably for the third or fourth time you've lost that project. So I would like to compliment the Appropriations Committee for being open and being honest, and telling us and telling the public what could happen. And when I say, "what could happen," please remember: We saw the gas tax go down by four cents in January, and we had a prolonged debate last year on the budget when we were told by some members of this body that we were going to see the gas tax go up 1.8 cents, that we were going to see people have to pay 1.8 cents more at the pump. That didn't happen--that did not happen in January. We didn't see an increase in the price at the pump, and we certainly didn't...well, we did see it. I misspoke. All of you are looking at me. We did see an increase at the price at the pump, didn't we, Senator Howard? But it wasn't due to the gas tax, because the gas tax went down four cents, January. When I say that when I'm out in public--and I've been asked to speak on this a lot since June--I haven't had one person raise their hand and say, gee, I saw my price at the pump go down four cents, because nobody saw that. So when we talk about the Appropriations proposal, which I support and I do not support Senator Erdman's amendment, let's remember that, because this proposal for \$14 million could mean an increase in the gas tax. But hopefully, all of us in this Chamber... [LB959 LB846]

SENATOR LANGEMEIER: One minute. [LB959]

SENATOR FISCHER: ...have now realized--thank you, Mr. President. All of us in this Chamber have now realized that it's not a sure deal. An increase in the Department of Roads budget, which is cash funded...Senator White, I don't see him, but Senator White brought up about the Department of Roads budget with \$120-some million sitting there, well, folks, that's a pass-through. That's how it's funded. It's a cash-funded budget, and

Floor Debate
March 17, 2008

how we have the process of roads maintenance and roads construction in the state through the bid-letting and project development and then project construction, there's always some money left. A few months ago there was \$300 million in there. It changes. But please remember that with the appropriations budget with this increase, we're being honest about it, we're being open about it. This is how we fund the Department of Roads, which includes staff,... [LB959]

SENATOR LANGEMEIER: Time. [LB959]

SENATOR FISCHER: ...maintenance, and construction. Thank you. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Fischer. Seeing no other lights on, Senator Erdman, you're recognized to close on FA212. [LB959]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I recognize that at times the budgetary process is not simply one bill, and in fact for a lot of us--and I'm not going to take back the comments that I made earlier about how smart and talented a lot of you are that are going to be here after us--this is not uncommon for previous sessions. It's probably uncommon to a lot of you, because we've not had to do this. But I think Senator Raikes hit the nail on the head. We have bills that specifically address TEEOSA. That's LB988. That is not in this budget. It's passage or lack thereof affects the budget. Senator Fischer's bill, LB846, affects roads funding--all of it. Whether this is an adjustment or not is irrelevant. The fact is, is that we're going to have a global discussion. If you recall, we had a bill out here to make sure that every school district in the state hired the county attorney, and what do we do? Senator Raikes introduced the bill to put it in the state aid formula, and now that's part of a different discussion, but it's within a global context. That's all we're asking for here. The adoption of FA212 simply lets us have a global discussion on the funding of roads on LB846, and if that fails, if LB846 doesn't appear it has the support, we can still come back on Select File and amend this bill with whatever adjustments are needed, or we can still utilize Senator Fischer's bill in some other form. The interesting part about this is that the Appropriations Committee had the budget in their domain. The Revenue Committee had Senator Fischer's bill in their domain. The Appropriations Committee says, we're just doing what we're supposed to do. That's right, because they couldn't go over into the Revenue Committee's efforts and amend their bill that they were working on. We as members of the Legislature on the floor can do that, and alls I'm asking is that we vote for FA212, we come back on Senator Fischer's bill, LB846, just like we're going to do with the funding for K-12 in LB988, and say, this is where this discussion will be held. I don't know how much more clear I can be. It makes sense, again, to me, and evidently Senator Raikes, which has got to be a disturbance in the force, and there's probably a veil somewhere that's being torn in two that he and I agree on something, but if it makes sense to Senator Raikes and it was my idea, it can't be all bad. (Laughter) Well, strike that. Here's the other option I've got, just for procedural methods, and this isn't a threat.

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

Floor Debate
March 17, 2008

If this amendment fails, we can divide the committee amendment and vote on it again, because see, what I'm trying to do is to be patient and considerate of our process here, because dividing the committee amendment will take some time. But if I get 25 votes to adopt this, we can move on. If I don't get 25 votes to adopt this, then I can ask that the committee amendment be divided to take up these two sections separately, and then you have to get 25 votes to put it in the budget. This is a fight we don't have to have here today. If you adopt this amendment, we can have the discussion on Senator Fischer's bill, and in the event we don't agree or for some reason Senator Fischer's bill doesn't go anywhere, we can still come back on LB959. Mr. President, I'd ask for a call of the house, please. [LB959 LB988 LB846]

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. [LB959]

CLERK: 34 ayes, 0 nays, Mr. President, to place the house under call. [LB959]

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. Senator Avery, Senator Lautenbaugh, the house is under call. Please return and record your presence. All members are present or accounted for. Senator Erdman, how do you wish to proceed? [LB959]

SENATOR ERDMAN: Board vote. [LB959]

SENATOR LANGEMEIER: There has been a request for a board vote. The question before the body is, shall FA212 to adopted to AM2145? All those in favor vote yea; all those opposed vote nay. Senator Erdman, for what purpose do you rise? [LB959]

SENATOR ERDMAN: I'd request a roll call vote, regular order. [LB959]

SENATOR LANGEMEIER: There has been a request for a roll call vote in regular order. The question is, shall FA212 be adopted to AM2145? Mr. Clerk, please call the roll. [LB959]

CLERK: (Roll call vote taken, Legislative Journal page 983.) 20 ayes, 28 nays, Mr. President, on the amendment. [LB959]

SENATOR LANGEMEIER: FA212 is not adopted. With that, I raise the call. Mr. Clerk, next motion. [LB959]

CLERK: Mr. President, Senator White would move to amend the committee amendments with FA216. (Legislative Journal page 983.) [LB959]

Floor Debate
March 17, 2008

SENATOR LANGEMEIER: Senator White, you are recognized to open on FA216.
[LB959]

SENATOR WHITE: Thank you, Mr. President. My fellow legislators, this is a straightforward amendment. It would remove \$600,000 additional appropriation to the Attorney General's Office to fund continuing litigation against the Omaha Public School System. The litigation involved continues, even though Omaha Public School System indicated that they would take a standstill agreement--neither advance nor dismiss the litigation--to see if we as legislators could solve a problem. OPS has taken the position that funding under our current system is discriminatory against minorities by not providing to them the funding that is necessary under state and federal constitutions. The Attorney General at that time, believing that they had the upper hand, declined to do so and proceeded with the litigation. They now come to us in a time of fiscal crises and ask for an additional \$600,000, which is in addition to the money they've already spent and does not in any way include the potentially millions of dollars spent by OPS that could have gone to children, that instead have gone to attorneys. I would submit to you at this time that it is unnecessary. OPS has offered to stay this litigation. I have reason to believe that offer is still good. Nor do I believe the Attorney General is at a tactical advantage. The reason, publicly stated by the Governor and by the Attorney General when they declined to freeze the litigation in place was, we can win. A recent motion to dismiss was overruled in part by Judge Smith Camp, leaving the question as to whether existing statutes are, on their face, discriminatory against African-Americans. I see no advantage for the Attorney General. I see no advantage for the children, most importantly. And I think...people have suggested we find money, extra money, we tighten down. Here is certainly a clear way to do so. In addition, LB988, which is still to come, may yet solve the problem entirely, in which case we would have given \$600,000 to an agency for litigation that is mooted, meaning it no longer matters. But of course that money will disappear into the abyss that is the general cash accounts, and it will float out there like some ghost, but I'm sure it will be earmarked for something. And then, once again, we will have spent a bunch of the public's money unnecessarily. I suggest to you that in these times we not only talk about fiscal conservatism, we act like fiscal conservatives. There is no good reason for this litigation to move forward at this time. Those offers were made. We have an Attorney General's Office that decided they liked to fight and they wanted to continue the fight, and the devil take the consequences. Therefore, I ask your support for this amendment. Remove this \$600,000 from the budget. I know that generally we have an obligation to fund litigation deemed in the public interest, but that is not a blind credit card that we must just accept the charges for. We struggled mightily with this issue last year. We will finish that matter this year. We can solve this politically, and given our collective salaries, it won't cost anywhere near \$600,000. Thank you very much, and I hope you will vote for this amendment. [LB959 LB988]

Floor Debate
March 17, 2008

SENATOR ERDMAN PRESIDING [LB959]

SENATOR ERDMAN: Members, you've heard the opening on FA216 to the Appropriations Committee amendment. Those senators wishing to speak are as follows: Senator Wightman, Senator Chambers, Senator Raikes, and Senator Flood. Senator Wightman. [LB959]

SENATOR WIGHTMAN: Thank you, Mr. President. I rise to oppose FA216. To give you a little background as far as the Appropriations' consideration of this, it originally...the Attorney General's Office had requested a \$1.2 million increase in their litigation fund for this purpose. We as Appropriations Committee cut that back to \$600,000 and proposed to cash fund that from the cash settlement fund. We were then informed by the Attorney General's Office that this would not be a proper expenditure from that. We thought some of asking for an Attorney General's Opinion with regard to that, but thought maybe that had already been answered. So we didn't think that that would be particularly helpful, and so we did agree to cash fund it, or agree to make a general appropriation. We get down to a situation where we are really trying to cut off the funding for the Attorney General's Office. They and the administration have determined they should go forward with this suit. I do not believe that the Appropriations Committee should try to micromanage that case, which in effect, is what I suggest we would be doing if we did not fund it. Incidentally, the Governor did fund it and I think he originally funded it at \$1.2 million out of the General Fund. So I think that the Appropriations Committee has acted appropriately and responsibly with regard to this issue. I strongly believe that we should continue with our \$600,000 general appropriation for this purpose. I don't think we, as a body, are able to probably gauge that litigation sufficiently, nor do I think that's our job at this point. Certainly, there can be different opinions from the members of this body as to whether that litigation should go forward. And I assume there would be a number of different opinions if that were the situation. But I think it's an appropriate funding. And I would urge you to vote in opposition to FA216. Thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator Wightman. Senator Chambers, you're recognized, followed by Senator Flood. [LB959]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature, not only do I oppose this amendment, I'm offering one to give the full \$1.2 million, and I will tell you why. First of all, if I could convert the Attorney General into an article of athletic equipment, it would be a football. And I would kick him as far as my big foot could accomplish. But I have to transcend that. I'm a part of the state government. However the state wound up in this litigation, it's in the middle of the litigation. If I want to get the Attorney General, which I'll have my chance to do by way of discussion, I'm not going to get him in such a way that it hurts the interests of the state. I may not even agree with the position the state is taking. I'm not saying I do or don't. But once the litigation is underway the Attorney General's Office has the obligation to represent its client

Floor Debate
March 17, 2008

zealously. There is outside counsel. I know of one of the lawyers, he is very competent. No lawyer should have to do work and be told, if we run out of money then we will be able to pay you what we owe you next time around. The reason I'm going to ask for the \$1.2 million is to be sure that we have enough money to pay as we go along. This money is for a specific purpose. If the total amount is not used, the Attorney General or anybody in his office cannot use it for any other purpose. I would rather have a bit of the money carried over instead of saying \$600,000, and we wish, we hope, and those who engage in this, "Parson" Carlson, they will pray. The money, I think, may be due and owing. I cannot predict with certitude exactly what the legal costs are going to be. Were I not convinced that this is a legitimate expenditure I would not be carrying the amendment. I have to overcome a lot in my mind in order to offer anything to benefit the Office of the Attorney General. But there comes a point when we have to lay all of that aside. OPS has outspent the state probably \$4 to \$1. That lawsuit has become a cottage industry in and of itself for OPS's lawyers. They offer amended petitions. They have expanded the scope of their lawsuit recently. And as far as intentional discrimination all of my children went to OPS and all of them graduated. I'm extremely concerned about what is happening to black students, Latino students, Native American students, poor white students. And the state is not running the schools in OPS, OPS is, and our children are falling farther and farther behind. The schools are becoming increasingly segregated not because of what the state did, but because of what OPS has done, the way they draw their boundaries, the way they assign teachers. Those who are competent are allowed to select an assignment outside of the area where their experience is needed and OPS's administration goes along with it. Before they start pointing a finger at the state let them do everything in OPS that ought to be done. But in any case, this money is needed. You shouldn't change horses in midstream, "Parlson". I put parson and Carlson together. (Laughter) Maybe parcel would be the thing to do. [LB959]

SENATOR ERDMAN: One minute. [LB959]

SENATOR CHAMBERS: They have a joke about these viruses. And they were in the bloodstream of this donkey and the punch line was you shouldn't...or the horse, you shouldn't change streams in mid-horse. They were going to go from one bloodstream to the other. But the idea is this, the state should not be left hanging out to dry. So the first thing I hope we do is vote down Senator White's amendment. I don't think it's offered in malice, although (laugh) it very well could be. But I know that Senator White, as a lawyer, understands that there are costs to litigation and the state is at a point where it should not just roll over and concede everything to OPS. The battle is on. OPS is continuing to be provocative in some of what it's doing. And I suppose as long as the patrons of OPS accept the present school board and the superintendent that will happen. [LB959]

SENATOR ERDMAN: Time. [LB959]

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

Floor Debate
March 17, 2008

SENATOR CHAMBERS: Thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Flood, you're recognized, followed by Senator White. [LB959]

SPEAKER FLOOD: Thank you, Mr. President, members. I understand the frustration that Senator White has when looking at a tight state budget in his desire to trim some spending from our budget on a lawsuit. It's an unfortunate reality that the state gets sued often. And there's no hiding the fact that I am a serious mediation supporter, as is Senator Ashford, and Senator Lathrop and many others. But in regard to this school funding lawsuit, I think it's important to note that the state of Nebraska was sued based on the policies and the formula that was adopted by this Legislature. We were sued based on the policy that we set as a Legislature and the way that it ended up being implemented in the terms of who got what money in the state aid to schools formula. The executive branch has an obligation to defend the state of Nebraska from lawsuits, especially those that are...that target the policies that we develop in the Legislature. We were consulted at the time this stay was offered. I know that Senator Chambers was consulted, Senator Ashford, Senator Heidemann as Chairman of the Appropriations Committee, Senator Raikes and myself. After listening to the discussion, I believe that we were all united in the idea that the lawsuit should go forward. And, I guess, as part of that discussion I feel an obligation to stand up on the floor now and tell you that that did occur, this wasn't made, this decision to reject the idea of a stay wasn't made blindly. But at the end of the day it wasn't our decision anyway. The people of Nebraska elected an Attorney General and they elected a Governor. And those two gentlemen made the decision to go forward. There is a separation of powers and it was brought up earlier today. We make the policies in this state. We alone have the ability to make the policies and have the final say on what the law is in the state of Nebraska. The executive branch, as we all know, is charged with executing the policies of the state and implementing the direction of the Legislature. In this situation, the lawsuit focused and targeted itself on the policies developed by the Legislature and signed by the Governor. I do oppose Senator White's motion or his floor amendment, FA216, and will support Senator Chambers' amendment to be brought up either today or later. At the end of the day, even if we vote this FA216, even if we adopt it, there's still no reason that a law firm can't come back and file a state claim that we'll deal with years down the road. I really strongly believe that while well-intentioned and Senator White's efforts are certainly understood my myself, I do oppose the floor amendment. Thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator Flood. Senator White, you're recognized to speak, followed by Senator Raikes. [LB959]

SENATOR WHITE: Thank you, Mr. President. Alone on this floor I believe I have

Floor Debate
March 17, 2008

litigated civil rights claims, not one, not two, but many, many, many. I have stood up in courts attacking federal policies, state policies, defending civil rights. That has been probably the single largest part of my practice in my adult life. I do understand this litigation. I understand it very clearly. I also understand that 60 percent of the minority students in OPS don't really finish school. I understand that out of frustration, out of pain, out of worry, whatever reason, some people desperately wanted to change the fate of those children. And in order to try to get the funding they filed a suit. Senator Chambers is absolutely correct, our schools are becoming increasingly integrated. Personally, I find that...or segregated. Personally, I find that horrifying. I do not think we can have a peaceful, I do not think we can have a just society if we have different institutions, some for one color, some for another. The folks in OPS, to the extent they have contributed to this problem, will never get a free pass from me. I have put my entire professional life on the line opposing anything that would cause resegregation. On the other hand, I also do not put the state above scrutiny by the courts to see if we made a law that was a bad law. And then last year we took on the learning community. Like that or not, we grappled honorably and honestly with the problems of education, of minority status, of failure in school, and of failure to provide appropriate resources to all our children, no matter what their ethnic heritage, no matter what kind of family they came from, no matter what their economic history. In that context there was an offer in good faith by OPS to stop the spending on litigation. They had been roundly and repeatedly criticized, and properly so, that resources that could go to children were going to lawyers, and they made a historic offer. They said, freeze this at this point, let's find out what the Legislature can do and see, before we waste more assets that we need for our kids, let's see what they can do to solve the problem. That was rejected because the Attorney General believed and the Governor they could win. They just suffered a serious setback. Now we face the prospect, to balance the budget, of slashing aid to education, slashing it. And the question then I have, too, is this is a modest proposal to freeze the litigation, to stop it and the expenditure, to redevote resources, scarce resources, as we're going to have to discover when we debate the next bill. Instead of going to lawyers, send it to our children. Thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator White. Senator Chambers, you're recognized, followed by Senator Fulton. [LB959]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, if it please the court, I would like to engage Senator White in a little exchange. [LB959]

SENATOR ERDMAN: Senator White, would you yield to questions from Senator Chambers? [LB959]

SENATOR WHITE: Yes. Yes, I would. [LB959]

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

Floor Debate
March 17, 2008

SENATOR CHAMBERS: Senator White, you are a very accomplished attorney. I recognize that and I'm not saying that in any trifling manner. You are very good at what you do. But I think you realize that words that might be a term of art to a lawyer may not be the same to lay people. So I want us to discuss very briefly what you said about OPS's offer. [LB959]

SENATOR WHITE: Oh good. I thought you were going to go back to moral turpitude again, Senator. [LB959]

SENATOR CHAMBERS: Oh certainly not. (Laughter) It would be moral turpitude if I did that. [LB959]

SENATOR WHITE: Thank you. [LB959]

SENATOR CHAMBERS: When you said OPS offered to freeze the litigation, did they offer to dismiss their lawsuit? [LB959]

SENATOR WHITE: No. Dismiss it means...and the request was dismissal with prejudice, as I recall, from the Attorney General, which means you now give up, you can never go back, you can't refile, you can't raise this issue again. They said they would not do that. They did, however, say they'd freeze it, they'd take a stay where neither party would move forward to see if the Legislature could solve it. [LB959]

SENATOR CHAMBERS: But OPS was not satisfied to keep what OPS would have been receiving at the time of the stay rather than a dismissal was put in place. OPS still wanted to achieve what the lawsuit would have gone after, but by way of a legislative rather than a judicial methodology. Is that accurate or is that inaccurate? [LB959]

SENATOR WHITE: To the extent of my knowledge, it's accurate, Senator. What I would say to you is OPS, if you credit them in good faith, wanted to achieve was a constitutional appropriation or allocation of resources so that all children would have a fair shot at an education. [LB959]

SENATOR CHAMBERS: Thank you, Senator White. Members of the Legislature, here is OPS. OPS, where we have various frames of a movie, and OPS draws back its fist and then you have stop action. But this is not to stop the fight. When the camera starts again, that punch is thrown and hits the state in the mouth. OPS still wants to hit the state in the mouth. OPS has a battery of lawyers whom they have kept on the public dole, I would call it, for years. OPS may be the primary source of income of that law firm. They are not going to give up anything in the way of an advantage. If they thought it was to their advantage to stop the...let's say...use the term Senator White did, freeze the litigation where it is but not dismiss, they saw that as their advantage. They would have leverage to tell certain members of the Legislature and others, if you don't give us

Floor Debate
March 17, 2008

what we want, our lawsuit is still hanging out there and we will revive it and we'll go after you full bore. Some people may know the story of the "Sword of Damocles", it's been given in different ways. But this guy wanted to...he thought that the king had such an easy time of it, so he was given the opportunity to attend a sumptuous feast and could sit right next to the king. And he sat down and he felt very good, everybody looking at him, he thought. Their faces were turned toward him, but their eyes were looking at the ceiling. So he followed their eyes and he saw a sword suspended over his head, hanging by a thread. He did not touch a morsel. He sweated. He went into some kind of state of shock and they had to carry him away when the meal was finished. The purpose of that was to let this individual know that from the outside being king may look like it is very alluring, but when you actually sit on the throne there are things that you have to contend with, any one of which could take you away... [LB959]

SENATOR ERDMAN: One minute. [LB959]

SENATOR CHAMBERS: ...which could take you away without notice. So the OPS people wanted to suspend the "Sword of Damocles" over the state and have the state in that constant position of being unsure what is going to happen. Since the fight was started by OPS, OPS has continued to wage it. OPS, during all of this time while talking about discrimination, has not ceased the discriminatory practices that are maintained by OPS's administration. They are not fairly assigning teachers. The segregation, based on articles in the World-Herald, has grown worse. And they tried to say that my attempt to change the administration of OPS was going to segregate the schools. And I said to tell me I'm segregating schools that are already segregated would be like saying I can make water wetter. [LB959]

SENATOR ERDMAN: Time. [LB959]

SENATOR CHAMBERS: Thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Fulton, you're recognized to speak, followed by Senator Chambers and Senator White. [LB959]

SENATOR FULTON: Thank you, Mr. President. This actually, this discussion sheds a little bit of light, I think, on what the committee was going through when this particular issue was before us. And there came a point where upon reflection it seemed to me that I was making determinations of my own judgment on something over which my judgment does not properly have purview, and that is what the Attorney General has responsibility to do. And it's at that point where I felt uncomfortable determining the course of his action by setting a certain appropriation more or less than what was requested or what was deemed appropriate in order to allow him to continue. So I think that perhaps that's what is going on here. I wonder if Senator White would yield to a question? [LB959]

Floor Debate
March 17, 2008

SENATOR ERDMAN: Senator White, would you yield to a question from Senator Fulton? [LB959]

SENATOR WHITE: Certainly, sir. [LB959]

SENATOR FULTON: Senator White, in the first part of your turn to speak you talked a little bit about your experience,... [LB959]

SENATOR WHITE: Yes. [LB959]

SENATOR FULTON: ...bringing cases and whatnot. Why...I understand that that would be relevant because of your experience. But would you then be saying that's relevant because in your judgment the Attorney General was wrong? [LB959]

SENATOR WHITE: No. I think, Senator, what I am telling you is facts have proven that the Attorney General said they were going to win this. They had motions pending that would solve it. And in fact they lost an important part of that motion and the litigation continues. What I would tell you is I don't know what will happen, neither does the Attorney General. And I appreciated Speaker Flood's comments about the...and Senator Chambers about the "Sword of Damocles" hanging over our head or OPS's head. I would submit it hangs over our head. If OPS wins this lawsuit, then you will get to enjoy a really nice appropriations gift in terms of funding something that will come to Business and Labor. [LB959]

SENATOR FULTON: Senator, I'll ask then, would this floor amendment cause OPS's case against us to be stronger or weaker? [LB959]

SENATOR WHITE: This floor amendment would simply tell the Attorney General that when you have a political solution that we have made good faith efforts at and we have another bill that may solve it, do not be so fast to knock away a hand that seeks a truce. This is not a surrender nor is it a victory, it's simply a truce to see if we, you and I, Senator, are our colleagues can solve this problem politically. I have spent so much time doing so many lawsuits that increasingly I like almost any reasonable solution short of that, though I find myself in more and more lawsuits that require us to go to judgment. [LB959]

SENATOR FULTON: Okay, thank you, Senator White. I hope that we pay attention to what we are actually...when we are thinking about these appropriations. Something I learned early on is that the Appropriations Committee has the ability to influence large areas of policy, because a lot of what we do entails money. As I was thinking through this particular issue, as it was before the Appropriations Committee, I found myself making a judgment as to what should have been done or what he really needs in order

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

Floor Debate
March 17, 2008

to accomplish X, Y, or Z, when in fact X, Y, or Z falls under the purview of the Attorney General. So we, as a committee, deliberated this. We had differing opinions, and we settled on this figure \$600,000, and we felt it was appropriate. And my understanding, and I'm not positive about this so I'll have to go and find out, but my understanding was that the AG's Office thought that this would be adequate. I understand Senator Chambers is going to have another amendment so we'll be able to discover whether or not that was...\$600,000 was going to be adequate or not. But I just want to pay attention. When we're starting to make decisions over how a case ought to be tried or how the case ought to be... [LB959]

SENATOR ERDMAN: One minute. [LB959]

SENATOR FULTON: ...propogated, we're making decisions on things that we aren't supposed to be making decisions on. So there is a certain amount of trust. While there is a separation of powers, there's a certain amount of trust that we have to put in the people of Nebraska who have elected this Attorney General. So we've had this out in the Appropriations Committee, and therefore I will be against FA216. Thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator Fulton. Senator Chambers, you're recognized to speak. This will be your third time. You'll be followed by Senator White. [LB959]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. The first thing I'd like to do is yield Senator White a few seconds. [LB959]

SENATOR ERDMAN: Senator White, you may... [LB959]

SENATOR WHITE: Thank you, Mr. President and Senator Chambers. I misspoke. This case pends in front of Judge Lamberty in state court, not in federal court, though it raises both federal and state constitutional issues. Thank you for the courtesy, Senator Chambers, to correct that. [LB959]

SENATOR CHAMBERS: You're welcome. Members of the Legislature, I'm something like Richard Nixon going to China; this bothers the Attorney General, look, (makes smacking noise) take that. Now does that let you know how I feel about the Attorney General? (Laughter) Look at my complexion. And you've heard the complaints I made about the way black children and other children who are poor and of different derivation than Caucasian are being cheated in the schools. You think that I'm going to stand on this floor and support something which is going to help somebody personally that I don't particularly care for and hurt the children that I do care for? What we're looking at here is a lawsuit that OPS brought. Senator White has never indicated that OPS has anything in mind other than to win everything. If they carry it through to a decision and

Floor Debate
March 17, 2008

win, that's what happens with lawsuits. That's what the courts are for. You have two intransigent parties who cannot reach a resolution of a serious problem, so they take it to court. And the court being totally advised in the premises, as the court would say, renders a decision. One side wins, one side loses, and maybe each loses something and wins a little something. In other words, maybe neither side gets everything that it wants. But one side gets more than the other, so it may be proclaimed the winner. What we are deciding here is not the outcome of the lawsuit. We are not even deciding the merits of the lawsuit. We are deciding whether or not the entity whose job it is to defend the state is going to have the wherewithal to do that job. That's what we're deciding. If you wanted to write a document, would you like to have a typewriter, word processor, a pencil, or a pen, or something with which to make marks on the paper? If you're deprived of the paper and the writing instrument, you cannot do what you are required to do. The lawsuit is in progress. If you take away the money that is necessary to carry out the lawsuit then you guarantee that the state loses. All that I want to do, after we defeat Senator White's amendment, is put the money there which those whose job it is to carry on this litigation have told us, convinced me is needed. Remember this, if it is not spent for this purpose, it cannot be spent for any other purpose. The state is not creating a slush fund which can be dipped into and portions used for things other than that designated. This is for litigation. And I believe that the state ought to have the wherewithal. I believe as a Legislature... [LB959]

SENATOR ERDMAN: One minute. [LB959]

SENATOR CHAMBERS: ...behaving responsibly, in a deliberative manner, we have the obligation to provide the means to carry on this litigation. Maybe everybody here would hate lawyers, which I hope is not the case. Maybe everybody would feel that you should sit down and sing "Kumbaya" and solve every problem, which we know is not going to happen. So we have to be the realist. We have to be the pragmatist, we have to be those people who will look at reality and accept it the way it is and gear our conduct accordingly. So I hope we will defeat Senator White's amendment then adopt mine. Thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator White, you're recognized, followed by Senator Nelson. [LB959]

SENATOR WHITE: Thank you, Mr. President. Senator Lathrop was kind enough to point out that we can take this motion up again should we need to, after LB988 either passes or fails. At that point in time, and also given the fact that we have a tax increase in the underlying bill, which I will not be able to vote for, I will withdraw the motion. I thank the body for their courtesy and attention. I did not mean to waste time. But given the fact that the issue can be better addressed after we know what LB988's fate is, I would ask that we be free to take it up at that time, if necessary. [LB959 LB988]

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

Floor Debate
March 17, 2008

SENATOR ERDMAN: FA216 is withdrawn. Mr. Clerk, next motion. [LB959]

CLERK: Senator Chambers would move to amend with FA217, Mr. President. (FA217, Legislative Journal page 983.) [LB959]

SENATOR ERDMAN: Senator Chambers, you're recognized to open on FA217. [LB959]

SENATOR CHAMBERS: Mr. President, members of the Legislature, since this is my amendment, let me now put on my very diplomatic, tactful, statespersonship garment and say, come, let us reason together. What are we going to reason about? There is a problem confronting the state not of the state's creation. There is an office recognized in the constitution with the duty to defend the state when it is sued in any court for any reason. That office is the Office of the Attorney General, known as the Department of Justice. The state in fact has been sued. The stakes are extremely high and everybody acknowledges that. If the state loses, the stakes are very high dollarwise. If the state rolls over and gives into OPS, then without a fight OPS gets what it filed a lawsuit for. I was not consulted by anybody in OPS as to whether or not they should file this lawsuit, so I had nothing to say about whether it would be brought upon us. But once it was here, then the state has no choice other than to respond. That means a vigorous, zealous, competent defense. If I thought the lawyers, the outside counsel representing the state were gouging the state, were not doing their job, I would have been extremely critical of them. But I cannot bring any criticisms or find fault with the way they have proceeded. The state having been attacked, so to speak, is in a defensive posture. The state has to respond to what OPS does. OPS can call the shots. OPS can ask for additional discovery, as it's called. OPS can demand more and more documents from the state, as they do. They can continue to amend their filings, as they have done. That means that every time OPS swings, the state must either parry it or duck. What I am offering with my amendment is a doubling of the \$600,000 that the Appropriations Committee agreed to. The Department of Justice has requested \$1,200,000. I will not be here next session. What I would like to see done is to put enough money in place to carry this litigation until it has reached a conclusion. And if more money is needed, that bridge will be crossed when we get to it. But in no case do I want the state to run the risk of running out of money prematurely. The money, I will say again, cannot be spent for any other purpose. I do not believe that I have been lied to by the Attorney General in this instance, and I repeat, in this instance. I don't believe that outside counsel is being disingenuous, dishonest or incompetent in any manner. I think that the state, through the Attorney General's Office and the counsel representing the state, are handling this in the way that they should. The Legislature should appropriate this money. It's not going to break the bank. It's not going to break the budget and we will have plenty of opportunities to flay the Attorney General for his unwise, foolish and inaccurate statements that he made at an ill-conceived press conference, which you all's representative over there hijacked. When has a senator ever hijacked a Governor's

Floor Debate
March 17, 2008

press conference in the Governor's own hearing room? That does not happen. You see how much I care about this Legislature? I'm not going to let anybody mistreat you all. Now I might give you some tough love, as they call it. But from the outside the Legislature should not be amenable to attack, it should not be weakened by any efforts from the outside. I'm sure that if my colleagues will think deeply about what I'm presenting it will be agreed that we should make that money available. Now if you think that I've been lied to by the Department of Justice, vote against it. If you think that outside counsel is incompetent and ought not to have been hired or ought to be fired, vote against it. But if you have none of those substantive criticisms, you should vote for this amendment. Thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, you've heard the opening on FA217 to the Appropriations Committee amendments. Senator Nelson, followed by Senator Wightman. [LB959]

SENATOR NELSON: Thank you, Mr. President, colleagues. I have mixed emotions about this, but I thought I should tell you a little bit about what our thoughts were on the Appropriations Committee. Initially, the Attorney General asked for the \$1.2 million. And then we were advised that there had been an opportunity for a stay, and frankly the others and myself were a little bit taken aback that they had not taken advantage of that opportunity. But on reflection, as Senator Fulton said, we decided that we ought not substitute our judgment for that of the Attorney General. And it was important that they go ahead with the lawsuit, even though as a practicing attorney for close to 40 years, even though I don't do a lot of trial work, I get involved in controversy representing clients, and always welcome the chance for mediation or to sit down and discuss and see where changes could be made to the betterment of all parties concerned. The decision was made by the Attorney General to go ahead, so the parties went ahead with probably something like 20 depositions and that cost money. And they're still litigating. The Attorney General has to do the very best that he can. And I don't believe in micromanaging something of that sort. However, I do believe that if we can go part way in satisfying what the Attorney General needs and they are satisfied with that, then that's what we should do in light of our budget crunch right now. It's my understanding that the Attorney General is willing to go with \$600,000. They don't like it all that much, but they think it can be done. And I just want to tell you that if it turns out it's not enough money...and let me back up. There is certainly enough to take them through this next year. If it turns out that they still need more money, why I'm sure there will be another request when we reconvene here in January for us to consider. I don't think they're being harmed very much by the fact that we cut the amount in two. I think it was the judgment of the Appropriations Committee that that would adequately fund them. They, so far as I know, feel the same, even though they prefer to have more. And therefore I think that we should stay with the \$600,000 and approve that at this time and not increase it to \$1.2 million. Thank you, Mr. President. [LB959]

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

Floor Debate
March 17, 2008

SENATOR ERDMAN: Thank you, Senator Nelson. Senator Chambers, you're recognized to close on FA217. [LB959]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. I can appreciate Senator Nelson's comments and this is not just one of those clear-cut issues, one way or the other, and really reasonable people can differ, but I think I'm being more reasonable, not saying Senator Nelson is being less reasonable. He just has a different point of view from mine. Let me tell you all how I really feel, and I'll try to give an analogy to Senator Adams. Cindy, the lady who works in my office, has a tiny French poodle, toy poodle name Nicole. She weighs 4 pounds. You know what I feel like pushing this for the Attorney General's Office? I'm a lawyer, I'm the only lawyer in town and everybody is entitled to a defense. A drunk driver, while under the influence, ran over and killed little Nicole, and I have to defend him. But as a lawyer it's my job to provide a defense, even for somebody like him toward whom I have very unwarm feelings. This goes beyond what I personally may feel. Senator Nelson thinks the \$600,000 is enough. I've talked with the Attorney General's Office, Senator Nelson, so this is not one of the things that I just decided on my own to do because I know better than everybody else. I'm asking my colleagues to adopt this amendment. And I will ask for a call of the house, Mr. President, and I will accept a machine vote. [LB959]

SENATOR ERDMAN: Members, you've heard the closing on FA217. Question before the body is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB959]

CLERK: 29 ayes, 1 nay, Mr. President, to place the house under call. [LB959]

SENATOR ERDMAN: The house is under call. Will all unauthorized guests please leave the floor. Unexcused senators please report to the Chamber. The house is under call. Senator Fischer, would you please check in. Senator Johnson, Senator Engel, Senator Lathrop, Senator Schimek, Senator Kruse, Senator Pahls, Senator Carlson, and Senator Lautenbaugh, the house is under call. All members are present or accounted for. Senator Chambers has requested a machine vote. All those in favor of FA217 vote aye; all those opposed vote nay. Have all members voted who choose to? Roll call vote has been requested. Regular order, Senator Chambers? [LB959]

SENATOR CHAMBERS: Yes. [LB959]

SENATOR ERDMAN: In regular order. Mr. Clerk, please call the roll. [LB959]

CLERK: (Roll call vote taken, Legislative Journal page 984.) 15 ayes, 26 nays, Mr. President, on the amendment. [LB959]

SENATOR ERDMAN: The amendment is not adopted. I raise the call. Senator

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

Floor Debate
March 17, 2008

Heidemann, as chair of the Appropriations Committee, you're recognized to close on AM2145. [LB959]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. We've had some good discussion here today about several issues. I appreciate that as we learn more about the budget and the budgeting process. Committee AM2145 does become the bill. I appreciate your support. Thank you. [LB959]

SENATOR ERDMAN: Members, you're heard the closing on AM2145 to LB959. All those in favor vote aye; all those opposed vote nay. Have all members voted who chose to? Record please, Mr. Clerk. [LB959]

CLERK: 28 ayes, 3 nays, Mr. President, on adoption of committee amendments. [LB959]

SENATOR ERDMAN: The committee amendments are adopted. [LB959]

CLERK: I have nothing pending to the bill, Mr. President. [LB959]

SENATOR ERDMAN: Senator Raikes, you're recognized to speak on the advancement of LB959, followed by Senator Chambers. [LB959]

SENATOR RAIKES: Thank you, Mr. President, members. Senator Heidemann, if I could ask you a question or two? [LB959]

SENATOR ERDMAN: Senator Heidemann, would you yield to a question from Senator Raikes? [LB959]

SENATOR HEIDEMANN: Yes. [LB959]

SENATOR RAIKES: Senator Heidemann, you have...I'm looking at the green sheet attached to today's agenda. There's a box on there with a minus \$58,569,369. You see the same? Suppose...my question for you is this, suppose we ended the session and the number in that box was, say, minus \$10 million. Would we as a Legislature have violated either statute or constitutional obligation in that instance? [LB959]

SENATOR HEIDEMANN: We would be below the 3 percent minimum reserve. But I don't believe we have to meet that in the second year. I think we do in the first year, but not in the second. That would be the will, probably, of the Appropriations Committee though. [LB959]

SENATOR RAIKES: So, if I hear your answer, it is no, we would not be counter to any statutory obligation nor any constitutional obligation. And you did mention that the 3

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

Floor Debate
March 17, 2008

percent General Fund reserve is a budgeting requirement. So that is something the Legislature is bound by statute to honor in the budgeting process. But once the budget is completed, that's no longer a statutory obligation. Am I correct? [LB959]

SENATOR HEIDEMANN: That's the way I understand it, yes. [LB959]

SENATOR RAIKES: And so, for example, there is an obligation to have enough money at the end of the biennium to pay the bills, at least...you've got to have at least a zero cash balance. Is that true? [LB959]

SENATOR HEIDEMANN: Yes. [LB959]

SENATOR RAIKES: And so if you look at...right now the balance is something around \$200 million. Is that correct? [LB959]

SENATOR HEIDEMANN: That's the way I read it, yes. [LB959]

SENATOR RAIKES: Okay. On the other hand, if you go to the number immediately to the right, the minus \$378 million and something, there is no statutory obligation one way or another regarding that number. On the other hand, I think you would agree, that that's a clear signal that as we go to the next biennium there's going to be some...have to be some real work done to get the budget in balance. [LB959]

SENATOR HEIDEMANN: I think we're posturing for LB988, there's no doubt about that, yes. [LB959 LB988]

SENATOR RAIKES: No, not at all. (Laugh) Just some coincidental points. I would ask you, and I think you addressed this question earlier, the \$378...the minus \$378 million number, now there is a provision in rules that the Appropriations and Revenue Committees meet together to determine what procedure is going to be used, or in effect what that number is going to be. Can you tell me how you arrived or what procedure was used to arrive at that \$378 million? [LB959]

SENATOR HEIDEMANN: Since, I believe, and this some from memory, LFO, it's an LFO number, Legislative Fiscal Office uses historical revenue numbers. And they always take it back to the average, 5.2. So if you have a down year one year, they bring it up; if you have an up year, they bring it down. So this is an LFO number. [LB959]

SENATOR RAIKES: So if I recall the meeting we did have, the Revenue Committee, I believe, was in favor of a more conservative number than that. Is that true? [LB959]

SENATOR ERDMAN: One minute. [LB959]

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

Floor Debate
March 17, 2008

SENATOR HEIDEMANN: By conservative it would be...if (inaudible)... [LB959]

SENATOR RAIKES: If by conservative I mean it would have resulted in a larger negative number than what is there now. [LB959]

SENATOR HEIDEMANN: More closer to a global insight number, yes. It would make the out year look worse. [LB959]

SENATOR RAIKES: So it would probably have been close to a minus \$500 million. [LB959]

SENATOR HEIDEMANN: By memory, you'd probably be pretty close to right. [LB959]

SENATOR RAIKES: So to summarize my point, we may not need to worry statutorily about the minus 58 or whatever number is in that box, but we do definitely need to worry about what number looms out in that out biennium. [LB959]

SENATOR HEIDEMANN: Statutorily, you're right. Personally, for me, you're wrong though because I think we, as a body, need to take care not only in the...worry about the out years, but also this year also. [LB959]

SENATOR RAIKES: Well, but isn't one pretty much tied to the other? [LB959]

SENATOR ERDMAN: Time. [LB959]

SENATOR RAIKES: Thank you. [LB959]

SENATOR ERDMAN: Thank you, Senator Raikes and Senator Heidemann. Senator Chambers, you're recognized to speak. [LB959]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. I'd like to ask Senator Nelson a question or two. [LB959]

SENATOR ERDMAN: Senator Nelson, would you yield to questions from Senator Chambers? [LB959]

SENATOR NELSON: Certainly. [LB959]

SENATOR CHAMBERS: Senator Nelson, if I understood you correctly when we were discussing the amendment that I offered, you said, if the Department of Justice should run out of money before next year, they could make another request next year. Did I understand you correctly? [LB959]

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

Floor Debate
March 17, 2008

SENATOR NELSON: Yes, you did. [LB959]

SENATOR CHAMBERS: So then it's not that you think \$600,000 is an exorbitant amount of money to be expended by the state in this litigation? [LB959]

SENATOR NELSON: No, I don't think that's exorbitant. [LB959]

SENATOR CHAMBERS: Okay. Now let me ask you this question, suppose we put, instead of doubling that amount for this first year, put \$600,000 in for next year, then it's there for sure. And outside counsel, we know a claim, as some people said, could be filed, they shouldn't even be necessary. Might you look at that with a less jaundiced eye, then doubling the amount the first year? [LB959]

SENATOR NELSON: If I understand you, you're talking about adding another \$600,000 this year in this budget? [LB959]

SENATOR CHAMBERS: No, next year. [LB959]

SENATOR NELSON: Next year. [LB959]

SENATOR CHAMBERS: Where there is a zero for next year. [LB959]

SENATOR NELSON: And the question is again? [LB959]

SENATOR CHAMBERS: If I would put \$600,000 there, \$600,000 this year, then \$600,000 the next year? [LB959]

SENATOR NELSON: I would have no objection to that. [LB959]

SENATOR CHAMBERS: Okay, thank you. That's all that I would have. And here's what I'm trying to do, members of the Legislature, thank you, Senator Nelson, not give any money where it might not be needed. I won't do it here, but on Select File I will attempt to do that. Then we have on the record a clear statement that the state is going to have the money to pay whatever the legal costs are to maintain this litigation. Thank you, Mr. President. Thank you, Senator Nelson. [LB959]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator White, you're recognized to speak. [LB959]

SENATOR WHITE: Yes. Would Senator Heidemann yield to a question, please? [LB959]

SENATOR ERDMAN: Senator Heidemann, would you yield? [LB959]

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Transcriber's Office

Floor Debate
March 17, 2008

SENATOR HEIDEMANN: Yes. [LB959]

SENATOR WHITE: Senator Heidemann, I cannot vote for this bill at this point because it does include a gas tax increase. But last year, and in fairness to those who voted for it, then saw it vetoed, can you tell the ladies and gentlemen of the body what is the administration's position with regard to this tax increase? Will it be vetoed or will it be allowed to go, if it's passed? [LB959]

SENATOR HEIDEMANN: I would have no idea. I don't talk to the administration on things like that. [LB959]

SENATOR WHITE: Can you tell us what your position will be should it be vetoed? Will you vote to override that veto? [LB959]

SENATOR HEIDEMANN: I, personally, probably would. I don't know what the Appropriations Committee would do, but I think...I supported putting it in there, so I could see myself voting to override. [LB959]

SENATOR WHITE: Thank you, Senator Heidemann, I appreciate that. Though I will be voting against this, certainly I think members of the Legislature each have our own conscience, but last year we got used like a political football. And therefore I would urge you to reflect on what the likely fate of this is. And I thank you, Mr. President. [LB959]

SENATOR ERDMAN: Thank you, Senator Heidemann, as chair of the Appropriations Committee, you are recognized to close on the advancement of LB959. [LB959]

SENATOR HEIDEMANN: The committee amendment was the bill. We did pass the committee amendment, so I do ask for your support also on LB959. Thank you. [LB959]

SENATOR ERDMAN: Thank you, Senator Heidemann. Members, you've heard the closing on the advancement of LB959 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all members voted who choose to? Record please, Mr. Clerk. [LB959]

CLERK: 27 ayes, 10 nays, Mr. President, on the advancement of LB959. [LB959]

SENATOR ERDMAN: LB959 does advance. Mr. Clerk, items for the record? [LB959]

CLERK: Mr. President, your Committee on Judiciary, chaired by Senator Ashford, reports LB1130 to General File with committee amendments attached. I have amendments to be printed: Senator Johnson, to LB245; Senator Raikes, LB973; Senator Raikes, LB988; Senator Gay, LB988. I have a name add, Mr. President.

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Transcriber's Office

Floor Debate
March 17, 2008

Senator Howard would like to add her name to LB784. That's all that I have. (Legislative Journal pages 984-987.) [LB1130 LB988 LB973 LB245 LB784]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR261, LR262, LR263, LR264, LR265, and LR266. Mr. Clerk. [LR261 LR262 LR263 LR264 LR265 LR266]

CLERK: Mr. President, Senator Wallman would move to adjourn until Tuesday morning, March 18, at 9:00 a.m.

SPEAKER FLOOD: You've heard the motion to adjourn. You've heard the...you've heard the motion to adjourn. All those in favor of adjourning say yea. All those opposed say nay. We are adjourned.