

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

Floor Debate
May 20, 2009

[LB16A LB16 LB25 LB27A LB27 LB35A LB35 LB36 LB60 LB63 LB84 LB94 LB97A
LB97 LB113 LB122 LB129 LB131 LB133 LB137 LB152 LB155 LB163 LB175 LB208
LB209 LB218A LB238 LB241 LB274 LB278 LB285 LB288A LB288 LB294 LB299
LB302 LB313 LB339 LB343 LB347 LB348 LB358 LB360 LB372 LB389 LB392 LB394
LB412 LB422 LB432 LB434 LB441 LB445 LB446 LB447 LB450 LB488 LB489 LB498
LB500 LB501 LB503 LB524 LB528 LB531 LB533 LB537 LB540 LB561 LB562 LB587
LB598 LB603 LB604 LB626 LB627 LB630 LB631 LB658 LB669 LB675 LR242]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the eighty-second day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Zachary Anderson of the Conestoga Parish in Lincoln, guest today of Senator Campbell. Please rise.

PASTOR ANDERSON: (Prayer offered.)

SPEAKER FLOOD: Thank you, Pastor. I call to order the eighty-second day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

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

SPEAKER FLOOD: Thank you. Are there any messages, reports, or announcements? []

CLERK: Mr. President, your Committee on Health and Human Services reports LB25 to General File with committee amendments attached, signed by Senator Gay as Chair. That's all that I have. (Legislative Journal page 1609.) [LB25]

SPEAKER FLOOD: Thank you, Mr. Clerk. (Visitors and doctor of the day introduced.) Mr. Clerk, we now proceed to the first item on the agenda, Final Reading. Members, please find your seats. Mr. Clerk, the first bill on the agenda is LB155. The first vote we will take is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB155]

CLERK: 38 ayes, 0 nays, to dispense with the at-large reading, Mr. President. [LB155]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB155]

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

Floor Debate
May 20, 2009

CLERK: (Read title of LB155.) [LB155]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB155 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB155]

CLERK: (Record vote read, Legislative Journal page 1610.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB155]

SPEAKER FLOOD: LB155 passes. Mr. Clerk, we now proceed to LB392E. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB155 LB392]

CLERK: 46 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB392]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB392]

CLERK: (Read title of LB392.) [LB392]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB392E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB392]

CLERK: (Record vote read, Legislative Journal page 1611.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB392]

SPEAKER FLOOD: LB392E passes. Mr. Clerk, the next bill is LB358. [LB392 LB358]

CLERK: (Read LB358 on Final Reading.) [LB358]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB358 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB358]

CLERK: (Record vote read, Legislative Journal page 1612.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB358]

SPEAKER FLOOD: LB358 passes. Mr. Clerk, we now proceed to LB503 where the first vote will be to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB358 LB503]

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

Floor Debate
May 20, 2009

CLERK: 43 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB503]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB503]

CLERK: (Read title of LB503.) [LB503]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB503 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. Please record after we pass 3 minutes. Mr. Clerk, please record. [LB503]

CLERK: (Record vote read, Legislative Journal page 1613.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB503]

SPEAKER FLOOD: LB503 passes. Mr. Clerk, we now proceed to LB626. [LB503 LB626]

CLERK: (Read LB626 on Final Reading.) [LB626]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB626 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB626]

CLERK: (Record vote read, Legislative Journal page 1614.) 44 ayes, 2 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB626]

SPEAKER FLOOD: LB626 passes. Mr. Clerk, we now proceed to LB630E. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB626 LB630]

CLERK: 38 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB630]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB630]

CLERK: (Read title of LB630.) [LB630]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB630E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB630]

CLERK: (Record vote read, Legislative Journal page 1615.) 45 ayes, 0 nays, 2 present

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

Floor Debate
May 20, 2009

and not voting, 2 excused and not voting, Mr. President. [LB630]

SPEAKER FLOOD: LB630E passes with the emergency clause attached. Members, we now proceed to Final Reading, consent calendar. You'll note that the rules are listed on the agenda. We now proceed to the first bill on the agenda, LB27E. [LB630 LB27]

CLERK: (Read LB27 on Final Reading.) [LB27]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB27E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB27]

CLERK: (Record vote read, Legislative Journal pages 1615-1616.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB27]

SPEAKER FLOOD: LB27E passes with the emergency clause attached. Mr. Clerk, LB27AE. [LB27 LB27A]

CLERK: (Read LB27A on Final Reading.) [LB27A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB27AE pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB27A]

CLERK: (Record vote read, Legislative Journal page 1616.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB27A]

SPEAKER FLOOD: LB27AE passes with the emergency clause attached. Mr. Clerk, LB60. [LB27A LB60]

CLERK: (Read LB60 on Final Reading.) [LB60]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB60 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB60]

CLERK: (Record vote read, Legislative Journal page 1617.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB60]

SPEAKER FLOOD: LB60 passes. Mr. Clerk, LB84. [LB60 LB84]

CLERK: (Read LB84 on Final Reading.) [LB84]

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

Floor Debate
May 20, 2009

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB84 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB84]

CLERK: (Record vote read, Legislative Journal pages 1617-1618.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting. [LB84]

SPEAKER FLOOD: LB84 passes. Mr. Clerk, LB94E. [LB84 LB94]

CLERK: (Read LB94 on Final Reading.) [LB94]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB94E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB94]

CLERK: (Record vote read, Legislative Journal pages 1618-1619.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB94]

SPEAKER FLOOD: LB94E passes with the emergency clause attached. Mr. Clerk, LB113E. [LB94 LB113]

CLERK: (Read LB113 on Final Reading.) [LB113]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB113E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB113]

CLERK: (Record vote read, Legislative Journal pages 1619-1620.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB113]

SPEAKER FLOOD: LB113E passes with the emergency clause attached. Mr. Clerk, LB122. [LB113 LB122]

CLERK: (Read LB122 on Final Reading.) [LB122]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB122 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB122]

CLERK: (Record vote read, Legislative Journal page 1620.) 44 ayes, 0 nays, 3 present and not voting, 2 excused and not voting, Mr. President. [LB122]

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

Floor Debate
May 20, 2009

SPEAKER FLOOD: LB122 passes. Mr. Clerk, LB129. [LB122 LB129]

CLERK: (Read LB129 on Final Reading.) [LB129]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB129 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB129]

CLERK: (Record vote read, Legislative Journal page 1621.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB129]

SPEAKER FLOOD: LB129 passes. Mr. Clerk, we now proceed to LB131 where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB129 LB131]

CLERK: 44 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB131]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB131]

CLERK: (Read title of LB131.) [LB131]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB131 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB131]

CLERK: (Record vote read, Legislative Journal pages 1621-1622.) 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB131]

SPEAKER FLOOD: LB131 passes. Mr. Clerk, we now proceed to LB133. [LB131 LB133]

CLERK: (Read LB133 on Final Reading.) [LB133]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB133 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB133]

CLERK: (Record vote read, Legislative Journal pages 1622-1623.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB133]

SPEAKER FLOOD: LB133 passes. Mr. Clerk, we now proceed to LB137. [LB133 LB137]

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

Floor Debate
May 20, 2009

CLERK: (Read LB137 on Final Reading.) [LB137]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB137 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB137]

CLERK: (Record vote read, Legislative Journal page 1623.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB137]

SPEAKER FLOOD: LB137 passes. Mr. Clerk, LB152. [LB137 LB152]

CLERK: (Read LB152 on Final Reading.) [LB152]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB152 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB152]

CLERK: (Record vote read, Legislative Journal page 1624.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB152]

SPEAKER FLOOD: LB152 passes. Mr. Clerk, we now proceed to LB163. [LB152 LB163]

CLERK: (Read LB163 on Final Reading.) [LB163]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB163 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB163]

CLERK: (Record vote read, Legislative Journal pages 1624-1625.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB163]

SPEAKER FLOOD: LB163 passes. Mr. Clerk, we now proceed to LB175. [LB163 LB175]

CLERK: (Read LB175 on Final Reading.) [LB175]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB175 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB175]

CLERK: (Record vote read, Legislative Journal page 1625.) 45 ayes, 0 nays, 3 present

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

Floor Debate
May 20, 2009

and not voting, 1 excused and not voting, Mr. President. [LB175]

SPEAKER FLOOD: LB175 passes. Mr. Clerk, we now proceed to LB208. [LB175
LB208]

CLERK: (Read LB208 on Final Reading.) [LB208]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB208 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB208]

CLERK: (Record vote read, Legislative Journal page 1626.) 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB208]

SPEAKER FLOOD: LB208 passes. Mr. Clerk, we now proceed to LB209. [LB208
LB209]

ASSISTANT CLERK: (Read LB209 on Final Reading.) [LB209]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB209 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB209]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1626-1627.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB209]

SPEAKER FLOOD: LB209 passes. Mr. Clerk, we now proceed to LB238E. [LB209
LB238]

ASSISTANT CLERK: (Read LB238 on Final Reading.) [LB238]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB238E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB238]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1627-1628.) Vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB238]

SPEAKER FLOOD: LB238E passes with the emergency clause attached. Mr. Clerk, LB274. [LB238 LB274]

ASSISTANT CLERK: (Read LB274 on Final Reading.) [LB274]

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

Floor Debate
May 20, 2009

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB274 pass? All those in favor vote aye; all those opposed vote nay . Mr. Clerk, please record. [LB274]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1628.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB274]

SPEAKER FLOOD: LB274 passes. Mr. Clerk, LB278. [LB274 LB278]

ASSISTANT CLERK: (Read LB278 on Final Reading.) [LB278]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB278 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB278]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1629.) Vote is 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting, Mr. President. [LB278]

SPEAKER FLOOD: LB278 passes. Mr. Clerk, we now proceed to LB294. [LB278 LB294]

ASSISTANT CLERK: (Read LB294 on Final Reading.) [LB294]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB294 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB294]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1629-1630.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB294]

SPEAKER FLOOD: LB294 passes. Mr. Clerk, LB299. [LB294 LB299]

ASSISTANT CLERK: (Read LB299 on Final Reading.) [LB299]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB299 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB299]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1630.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB299]

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

Floor Debate
May 20, 2009

SPEAKER FLOOD: LB299 passes. Mr. Clerk, LB302E. [LB299 LB302]

ASSISTANT CLERK: (Read LB302 on Final Reading.) [LB302]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB302E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB302]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1631.) The vote is 48 ayes, 0 nays, 1 excused and not voting. [LB302]

SPEAKER FLOOD: LB302E passes with the emergency clause attached. Mr. Clerk, LB339. [LB302 LB339]

ASSISTANT CLERK: (Read LB339 on Final Reading.) [LB339]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB339 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB339]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1631-1632.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB339]

SPEAKER FLOOD: LB339 passes. Mr. Clerk, LB343. [LB339 LB343]

ASSISTANT CLERK: (Read LB343 on Final Reading.) [LB343]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB343 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB343]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1632.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB343]

SPEAKER FLOOD: LB343 passes. Mr. Clerk, we now proceed to LB347. [LB343 LB347]

ASSISTANT CLERK: (Read LB347 on Final Reading.) [LB347]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB347 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB347]

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

Floor Debate
May 20, 2009

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1633.) Vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB347]

SPEAKER FLOOD: Thank you, Mr. Clerk. LB347 passes. The Legislature will now stand at ease until 10:45 to give members an opportunity to stand up, stretch, use the facilities, if necessary. We will reconvene at 10:45 a.m., 10:45 a.m. [LB347]

EASE

SPEAKER FLOOD: Members, please find your seats. We now return to Final Reading. The Sergeant at Arms are instructed to find members and put them back in their seats so that we can begin. Members, please find your seats. We are on Final Reading. Mr. Clerk, the next bill on the agenda is LB348. [LB348]

ASSISTANT CLERK: (Read LB348 on Final Reading.) [LB348]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB348 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB348]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1634.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB348]

SPEAKER FLOOD: LB348 passes. Mr. Clerk, LB360. [LB348 LB360]

ASSISTANT CLERK: (Read LB360 on Final Reading.) [LB360]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB360 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB360]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1634-1635.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB360]

SPEAKER FLOOD: LB360 passes. Mr. Clerk, LB372. [LB360 LB372]

ASSISTANT CLERK: (Read LB372 on Final Reading.) [LB372]

SPEAKER FLOOD: All provisions of law having been complied with, the question is, shall LB372 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB372]

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

Floor Debate
May 20, 2009

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1635.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB372]

SPEAKER FLOOD: LB372 passes. Mr. Clerk, LB389E. [LB372 LB389]

ASSISTANT CLERK: (Read LB389 on Final Reading.) [LB389]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB389E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB389]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1636.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB389]

SPEAKER FLOOD: LB389E passes with the emergency clause attached. Mr. Clerk, LB394. [LB389 LB394]

ASSISTANT CLERK: (Read LB394 on Final Reading.) [LB394]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB394 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB394]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1636-1637.) Vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB394]

SPEAKER FLOOD: LB394 passes. (Visitors introduced.) Mr. Clerk, we now proceed to LB412. [LB394 LB412]

ASSISTANT CLERK: (Read LB412 on Final Reading.) [LB412]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB412 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB412]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1637-1638.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB412]

SPEAKER FLOOD: LB412 passes. Mr. Clerk, LB422. [LB412 LB422]

ASSISTANT CLERK: (Read LB422 on Final Reading.) [LB422]

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

Floor Debate
May 20, 2009

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB422 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB422]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1638.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB422]

SPEAKER FLOOD: LB422 passes. Mr. Clerk, we'll now proceed to LB432. [LB422 LB432]

ASSISTANT CLERK: (Read LB432 on Final Reading.) [LB432]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB432 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. Madam Clerk, please record. [LB432]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1638-1639.) Vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB432]

SPEAKER FLOOD: LB432 passes. Madam Clerk, LB434. [LB432 LB434]

ASSISTANT CLERK: (Read LB434 on Final Reading.) [LB434]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB434 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Madam Clerk, please record. [LB434]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1639-1640.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB434]

SPEAKER FLOOD: LB434 passes. Madam Clerk, LB441. [LB434 LB441]

ASSISTANT CLERK: (Read LB441 on Final Reading.) [LB441]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB441 pass? All those in favor vote aye; all those opposed vote nay. Madam Clerk, please record. [LB441]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1640.) Vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB441]

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

Floor Debate
May 20, 2009

SPEAKER FLOOD: LB441 passes. Madam Clerk, we now proceed to LB445. [LB441 LB445]

ASSISTANT CLERK: (Read LB445 on Final Reading.) [LB445]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB445 pass? All those in favor vote aye; all those opposed vote nay. Madam Clerk, please record. [LB445]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1641.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB445]

SPEAKER FLOOD: LB445 passes. Madam Clerk, we now proceed to LB446. [LB445 LB446]

ASSISTANT CLERK: (Read LB446 on Final Reading.) [LB446]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB446 pass? All those in favor vote aye; all those opposed vote nay. Madam Clerk, please record. [LB446]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1641-1642.) The vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB446]

SPEAKER FLOOD: LB446 passes. Madam Clerk, LB447. [LB446 LB447]

ASSISTANT CLERK: (Read LB447 on Final Reading.) [LB447]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB447 pass? All those in favor vote aye; all those opposed vote nay. Madam Clerk, please record. [LB447]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1642.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB447]

SPEAKER FLOOD: LB447 passes. Madam Clerk, we now proceed to LB450. [LB447 LB450]

ASSISTANT CLERK: (Read LB450 on Final Reading.) [LB450]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB450 pass? All those in favor vote aye; all those opposed vote nay. Madam Clerk, please record. [LB450]

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

Floor Debate
May 20, 2009

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1643.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB450]

SPEAKER FLOOD: LB450 passes. Madam Clerk, LB488. [LB450 LB488]

ASSISTANT CLERK: (Read LB488 on Final Reading.) [LB488]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB488 pass? All those in favor vote aye; all those opposed vote nay. Madam Clerk, please record. [LB488]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1643-1644.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB488]

SPEAKER FLOOD: LB488 passes. Madam Clerk, LB498E. [LB488 LB498]

ASSISTANT CLERK: (Read LB498 on Final Reading.) [LB498]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB498E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Madam Clerk, please record. [LB498]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1644-1645.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB498]

SPEAKER FLOOD: LB498E passes with the emergency clause attached. Madam Clerk, LB500. [LB498 LB500]

ASSISTANT CLERK: (Read LB500 on Final Reading.) [LB500]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB500 pass? All those in favor vote aye; all those opposed vote nay. Madam Clerk, please record. [LB500]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1645.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB500]

SPEAKER FLOOD: LB500 passes. Madam Clerk, LB501. [LB500 LB501]

ASSISTANT CLERK: (Read LB501 on Final Reading.) [LB501]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied

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

Floor Debate
May 20, 2009

with, the question is, shall LB501 pass? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk. [LB501]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1646.) The vote is 48 ayes, 0 nays, 1 excused and not voting. [LB501]

SPEAKER FLOOD: LB501 passes. Mr. Clerk, LB524. [LB501 LB524]

ASSISTANT CLERK: (Read LB524 on Final Reading.) [LB524]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB524 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB524]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1646-1647.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB524]

SPEAKER FLOOD: LB524 passes. Mr. Clerk, LB528. [LB524 LB528]

ASSISTANT CLERK: (Read LB528 on Final Reading.) [LB528]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB528 pass? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk. [LB528]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1647.) Vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB528]

SPEAKER FLOOD: LB528 passes. Mr. Clerk, LB531. [LB528 LB531]

ASSISTANT CLERK: (Read LB531 on Final Reading.) [LB531]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB531 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB531]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1648.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB531]

SPEAKER FLOOD: LB531 passes. (Visitors introduced.) Mr. Clerk, the next bill is LB533E. [LB531 LB533]

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

Floor Debate
May 20, 2009

ASSISTANT CLERK: (Read LB533 on Final Reading.) [LB533]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB533E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB533]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1648-1649.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB533]

SPEAKER FLOOD: LB533E passes with the emergency clause attached. (Visitors introduced.) Mr. Clerk, we now proceed to LB537. [LB533 LB537]

ASSISTANT CLERK: (Read LB537 on Final Reading.) [LB537]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB537 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB537]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1649.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB537]

SPEAKER FLOOD: LB537 passes. Mr. Clerk, we now proceed to LB540E. [LB537 LB540]

ASSISTANT CLERK: (Read LB540 on Final Reading.) [LB540]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB540E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB540]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1650.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB540]

SPEAKER FLOOD: LB540E does pass. LB562. [LB540 LB562]

ASSISTANT CLERK: (Read LB562 on Final Reading.) [LB562]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB562 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB562]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1650-1651.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB562]

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

Floor Debate
May 20, 2009

SPEAKER FLOOD: LB562 passes. Mr. Clerk, we now proceed to LB587. [LB562 LB587]

ASSISTANT CLERK: (Read LB587 on Final Reading.) [LB587]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB587 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB587]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1651.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB587]

SPEAKER FLOOD: LB587 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB155, LB392, LB358, LB503, LB626, LB630, LB27, LB27A, LB60, LB84, LB94, LB113, LB122, LB129, LB131, LB133, LB137, LB152, LB163, LB175, LB208, LB209, LB238, LB274, LB278, LB294, LB299, LB302, LB339, LB343, LB347, LB348, LB360, LB372, LB389, LB394, LB412, LB422, LB432, LB434, LB441, LB445, LB446, LB447, LB450, LB488, LB498, LB500, LB501, LB524, and LB528. Mr. Clerk, items for the record. [LB587 LB155 LB392 LB358 LB503 LB626 LB630 LB27 LB27A LB60 LB84 LB94 LB113 LB122 LB129 LB131 LB133 LB137 LB152 LB163 LB175 LB208 LB209 LB238 LB274 LB278 LB294 LB299 LB302 LB339 LB343 LB347 LB348 LB360 LB372 LB389 LB394 LB412 LB422 LB432 LB434 LB441 LB445 LB446 LB447 LB450 LB488 LB498 LB500 LB501 LB524 LB528]

ASSISTANT CLERK: Mr. President, a series of items: an explanation of vote from Senator Council (re LB392, LB358, and LB503); motion on LB218A from Senator Cornett; Committee on Enrollment and Review reports LB36 to Select File with E&R amendments. (Legislative Journal page 1652.) [LB392 LB358 LB503 LB218A LB36]

And a priority motion: Senator McGill would move to recess until 1:30 p.m. []

SPEAKER FLOOD: Members, you've heard the motion. All those in favor of recess until 1:30 this afternoon say aye. All those opposed say nay. We are in recess. (Gavel) []

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. Members, please check in. Mr. Clerk, please record. []

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

Floor Debate
May 20, 2009

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

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

CLERK: I have one, Mr. President. Bills read on Final Reading this morning were presented to the Governor as of 12:05 p.m. (Re LB155, LB392, LB358, LB503, LB626, LB630, LB27, LB27A, LB60, LB84, LB94, LB113, LB122, LB129, LB131, LB133, LB137, LB152, LB163, LB175, LB208, LB209, LB238, LB274, LB278, LB294, LB299, LB302, LB339, LB343, LB347, LB348, LB360, LB372, LB389, LB394, LB412, LB422, LB432, LB434, LB441, LB445, LB446, LB447, LB450, LB488, LB498, LB500, LB501, LB524, LB528.) That's all that I have. (Legislative Journal page 1653.) [LB155 LB392 LB358 LB503 LB626 LB630 LB27 LB27A LB60 LB84 LB94 LB113 LB122 LB129 LB131 LB133 LB137 LB152 LB163 LB175 LB208 LB209 LB238 LB274 LB278 LB294 LB299 LB302 LB339 LB343 LB347 LB348 LB360 LB372 LB389 LB394 LB412 LB422 LB432 LB434 LB441 LB445 LB446 LB447 LB450 LB488 LB498 LB500 LB501 LB524 LB528]

SENATOR FRIEND: Thank you, Mr. Clerk. We will proceed to the first item on this afternoon's agenda. Mr. Clerk. []

CLERK: Mr. President, LB675. Senator Nordquist, I have Enrollment and Review amendments, first of all. (ER8133, Legislative Journal page 1507.) [LB675]

SENATOR FRIEND: Senator Nordquist for a motion. [LB675]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB675. [LB675]

SENATOR FRIEND: Members, you have heard the motion. All those in favor please say aye. All those opposed say nay. The amendments are adopted. [LB675]

CLERK: Mr. President, Senator Nantkes would move to amend the bill with AM1484. (Legislative Journal page 1653.) [LB675]

SENATOR FRIEND: Senator Nantkes, you are recognized to open on AM1484. [LB675]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. I introduced AM1484 this afternoon, and I did make sure to give Senator Fulton a heads up about it. What this amendment does is quite simple. It exempts the viewing and simultaneous viewing requirements for women whose pregnancies are the result of rape or incest. With that, thank you, Mr. President. I would urge your adoption. [LB675]

SENATOR FRIEND: Thank you, Senator Nantkes. There are members wishing to speak. Senator Fulton, you are recognized. [LB675]

Floor Debate
May 20, 2009

SENATOR FULTON: Thank you, Mr. President, members of the body. With regard to AM1484, I oppose AM1484. To refresh everyone's memory, when we were on this bill before, last week, what I am willing to do is to address which agencies can be listed on this, oh, this...can be included on this list by the department that provides ultrasounds. And if those...and to require that those agencies that provide the ultrasounds have the ultrasounds provided by a registered nurse or an agent operating under the direction of a physician. And that's what I'd be okay with and we're still evidently working on that. I am not in favor of AM1484, and the rationale...I knew that this was coming. Senator Nantkes, to her credit, did let me know this was coming, but I knew that this was coming at about noon. One of the reasons I'd be opposed to AM1484 is because there's a redundancy within it. We specifically provide...and this was part of the back and forth with Senator Rogert in the beginning, with Senator Lathrop, but with the entire of the Judiciary Committee to construct this bill such that it can't be construed that the woman is being forced or coerced to look at an ultrasound image. And that's how the committee amendment came out, to structure it specifically such that she is not...so that she has a free choice to view or not to view. That already exists. If a woman chooses not to view, she can choose not to view under the committee amendment that we already adopted that was worked out in the Judiciary Committee. Maybe there will be members of the committee that will want to talk to this, but I'm opposed to AM1484 for that reason. Thank you, Mr. President. [LB675]

SENATOR FRIEND: Thank you, Senator Fulton. Senator Nantkes, you are recognized. [LB675]

SENATOR NANTKES: Thank you, Mr. President. Colleagues, Senator Fulton I think made his position on this issue quite clear, and in regards to the timing issue, as most of you know, I've been fairly involved in a very recent debate regarding the death penalty which has taken a great deal of my time and yours. I had no heads up that LB675 would be on the agenda today but for when I got to work this morning at about 8:30. And so we made a commitment during General File to work on issues that were brought forward. After the debate on General File, it had been pointed out to me by a constituent that there was no exception in the forced viewing or simultaneous viewing of an ultrasound prior to abortion for women who became pregnant as a result of rape or incest. I think it probably goes without saying, but if we must, we must, to discuss how painful and horrific rape and incest can be and is under all circumstances. So I would hope that, colleagues, please know there is not an ulterior motive to this amendment. It simply says women who become pregnant because of rape or incest should not be forced to view an ultrasound picture prior to receiving an abortion, period. I think that it's an extreme position to not have an exception for women who find themselves in these circumstances, at no fault of their own, because of rape and incest. It's horrific to imagine that we would subject them to additional burdens. And I would hope that you would consider this amendment, that is simple, straightforward, and humane, seriously

Floor Debate
May 20, 2009

because that's why I brought it. This is not an attempt to delay or to kill the bill. This is an attempt at being humane and resaying that women who have already undergone significant trauma, who have become pregnant as a result of rape or incest simply, simply do not have to be forced to view an ultrasound picture prior to their abortion. I think that's common sense, and I think that's humane. And I think it follows this state's public policy in regards to these issues. We make humane exceptions for women who are in these circumstances at no fault of their own because of rape or incest. This doesn't say that an ultrasound wouldn't be provided for other health instances to be addressed. That would happen. This applies only to the simultaneous viewing thereof. I think Senator Fulton's position in regards to this issue is extreme. This is a very narrow exception for a very narrow class of women who deserve to have a humane exception to this otherwise intrusive legislation. Thank you. [LB675]

SENATOR FRIEND: Thank you, Senator Nantkes. Senator White, you are recognized. [LB675]

SENATOR WHITE: Thank you, Mr. President. I would like to make the record very clear here. I don't think we should require any woman to view an ultrasound who is a victim of rape or incest. I just...we shouldn't do it. The damage that we could compound of someone who's been victimized already seems to me to be pretty evident. Nor do I understand this bill requires them to. Senator Fulton indicated in the first instance, if I understood him correctly, they would not be required to do that anyway. And perhaps this is one of those deals with just a few moments we could solve. Would Senator Fulton be kind enough to yield to a question? [LB675]

SENATOR FRIEND: Senator Fulton, will you yield to a question? [LB675]

SENATOR FULTON: Yes. [LB675]

SENATOR WHITE: Senator Fulton, do you understand your bill to in any way require a woman who is a victim of incest or of rape to view an ultrasound? [LB675]

SENATOR FULTON: No, Senator. That was, on my turn that was the point I was making. This bill is not...our bill, LB675, does not require a woman to view. In fact, it's spelled out specifically. It's on page 6 of the bill, lines 2 through 7. [LB675]

SENATOR WHITE: Okay. So, Senator, even if it is a belt and a suspenders, you would have then no objection, I assume, to making it clear that victims of rape and incest in no way are obligated to view an ultrasound since it does no material harm to your bill. Is that correct? [LB675]

SENATOR FULTON: Well, I...in terms of whether or not they're going to be required to view, that is already done in the bill. I... [LB675]

Floor Debate
May 20, 2009

SENATOR WHITE: I agree with that, Senator. And I do not deny you're right. I'm just asking so we can see where we have agreement. If it said victims of rape or incest need not...are not required to look at it, would that in any way harm the substance of your bill? [LB675]

SENATOR FULTON: I think that it would by way of policy and here's why. And this was part of what we talked about during the back and forth that occurred in the committee. In my view, there are two lives which we are able to advocate for. In fact, it's not just my view. That's something that I gleaned from the Supreme Court decisions, that there are two lives at work here. If we were to put forward within the statute...or actually I don't think we need to put forward in the statute that the resulting child or the resulting fetus, if we use that language, is the result of rape or incest. The child doesn't know how the child was born. And so I think that we can accomplish the same thing that is envisioned within this amendment without making that distinction by allowing the woman to have the free right to look or not to look. [LB675]

SENATOR WHITE: Senator... [LB675]

SENATOR FULTON: But that's where my concern is. [LB675]

SENATOR WHITE: Thank you. And my concern is this. This is such an emotionally fraught issue. I'd rather fight over substance than semantics. If it's not required in your bill but it gives comfort to Senator Nantkes and women who are concerned, the rape victim also is human and in a particularly vulnerable position, perhaps as devastatingly vulnerable as the fetus. And if we can give comfort to those folks without doing damage to the substance of the bill, I would hope you'd consider accepting the amendment, even though it's not the best drafting. Would Senator Nantkes yield to a question, please? [LB675]

SENATOR FRIEND: Senator Nantkes, will you yield to a question? [LB675]

SENATOR NANTKES: Yes, of course. [LB675]

SENATOR WHITE: Senator Nantkes, Senator Fulton has made the point that no woman is forced to look at any ultrasound. And I recognize, and I think Senator Fulton recognizes, the deeply vulnerable position women who are victims of incest or rape are in and that we must be extra careful because their psychological condition is necessarily fragile. [LB675]

SENATOR NANTKES: Absolutely. [LB675]

SENATOR FRIEND: One minute. [LB675]

Floor Debate
May 20, 2009

SENATOR WHITE: You could not go through that without it. Is there any way that we can accomplish your concerns to protect these particularly vulnerable women in conjunction with Senator Fulton's bill? Because I don't think we have an objection on substance. We have an objection on semantics. And Lord knows we have enough fights on substance. Is it possible you could find a compromise that on this narrow issue at least would alleviate your concerns? [LB675]

SENATOR NANTKES: Senator White, thank you for the question. I know we're short on time here. I think to be clear the amendment may...is the very, very least that women in this vulnerable position deserve to have an explicit protection for healthcare providers involved in this situation and for women in this situation to clearly know that this law does not apply in those narrow circumstances without harming any of the substantive provisions otherwise in Senator Fulton's legislation. If there is a more...if there is a better way to draft it, I'm happy to work with that. [LB675]

SENATOR FRIEND: Time. Thank you, Senator Nantkes and Senator White. Senator Karpisek, you are recognized. [LB675]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I've stayed off the mike on this whole debate on LB675, and I did vote for the passage on General File. I feel very conflicted on the whole bill because I don't know as a male that I can understand...I know I can't understand everything that the woman feels. I did feel that I had to stand on this amendment, though, and say that I agree with the amendment. Senator Nantkes said everything that I was going to say. These women have already been through a lot. They were put in a place that they did not want to be. They didn't get there voluntarily. They're going to carry these scars the rest of their lives. We have said that abortion is not an easy choice. It's a terribly hard choice. And I feel terribly for them, especially if they didn't get into this situation on any of their own doing. I will support AM1484. I think the bottom line again is that we want to have less abortions. We know that. Everyone wants to do that. And we want to not scar any more women than we have to. There's a lot of ways to go about it. We've already had that whole discussion, as we've said. But I think that this is one way to not inflict further damage on a woman that hasn't been put in this position by her own wanting to or anything that she can control. Thank you, Mr. President. [LB675]

SENATOR FRIEND: Thank you, Senator Karpisek. Senator McGill, you're recognized. [LB675]

SENATOR MCGILL: Mr. President, members of the body, I rise in support of at least the concept of what Senator Nantkes is doing. If we can work out language that's a little stronger or that's less problematic to Senator Fulton, then I think that would be, you know, beneficial to everybody so we can move forward on these amendments. I'm only

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

Floor Debate
May 20, 2009

going to take up about 30 seconds and just reiterate what I was saying yesterday because Senator...or not yesterday, but last week. Senator Fulton, you know, has said we don't need this amendment because a woman can already choose whether or not to look at the ultrasound image. Well, as I argued last week, right now under our current laws, a woman can already look at the ultrasound image if she wants to. That's why I don't think the bill is necessary in the first place. And, you know, in my mind Senator Fulton, you know, he wants to put something into law that I feel isn't going to do anything different than the status quo, but then he isn't willing to take this step to protect what is, in some cases, 12- or 13-year-old little girls who get impregnated either by their father, their uncle, or in some other case. So I do rise in support of this concept, especially if we can get some language worked out. Thank you, Mr. President. [LB675]

SENATOR FRIEND: Thank you, Senator McGill. Senator Haar, you're recognized. [LB675]

SENATOR HAAR: Mr. President, members of the body, I have a couple of questions on the main bill. Would Senator Fulton answer a few questions for me? [LB675]

SENATOR FRIEND: Senator Fulton, will you yield? [LB675]

SENATOR FULTON: Yes. [LB675]

SENATOR HAAR: Senator Fulton, tell me again from your bill, from LB675, what does it say about the mandatory placement of the screen? [LB675]

SENATOR FULTON: Well, why don't I just read from the bill. [LB675]

SENATOR HAAR: Yeah, how do you interpret that? [LB675]

SENATOR FULTON: Let's see. I believe we're on page 6, and I'm looking off of the E&R amendments right now, page 6, line 2, "Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images. The woman shall be informed that the ultrasound images will be displayed so that she is able to view them. Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images." We do not mandate where the images should be displayed, just that the woman may choose to view them or not view them. And when earlier there was a question that was asked earlier, as in last week there was a question that was asked, could you put the display directly in front of the woman and meet what my intention is with regard to this bill, and I don't believe that would be the case because a woman I think would be forced to view the ultrasound image then. [LB675]

SENATOR HAAR: Uh-huh. [LB675]

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

Floor Debate
May 20, 2009

SENATOR FULTON: I don't think many would argue with that. If it's plastered right in front of her, she's forced to, and that's not the intent. Well, could you put it behind her such that she couldn't view it? Well, I'd say no to that because then if she chose to view it, she would not be able to. [LB675]

SENATOR HAAR: Uh-huh. [LB675]

SENATOR FULTON: And so somewhere off to the side, which, incidentally, is how ultrasounds are conducted generally. [LB675]

SENATOR HAAR: Uh-huh. [LB675]

SENATOR FULTON: When a woman is choosing to bring a child to term, that's generally how an ultrasound is conducted anyway. She has the ability to view or not to view. She can turn her head and situate herself such that she can see the screen or she can remain forward and not see the screen. [LB675]

SENATOR HAAR: Okay. [LB675]

SENATOR FULTON: So that's by way of intention, but spelling it out thou shalt put it here or there or another, we...I, with the committee, decided that's not the way we should do it. We should simply say that she can...the woman may choose to view the ultrasound images or not view the ultrasound images. [LB675]

SENATOR HAAR: Okay. I don't know how many of you are old enough or remember the movie Clockwork Orange, but their solution for violence was to set somebody in a chair and strap them down and tape their eyes open so they have to watch these violent movies. And that was kind of my first impression of this bill. Obviously, that's not what you're asking for. But your intent is not to place it so that the woman must avert her eyes. Correct? Yes. [LB675]

SENATOR FULTON: That's correct. [LB675]

SENATOR HAAR: Okay. [LB675]

SENATOR FULTON: And in the original bill, that was the language. [LB675]

SENATOR HAAR: Okay. [LB675]

SENATOR FULTON: And that was not my intention, but when I...someone pointed it out to me, I took a look at it and said, yeah, I can see how it would be construed such that this is directly in front. And so that's why the committee and myself agreed to amend the

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

Floor Debate
May 20, 2009

original bill to the form of the committee amendment that we adopted last week. [LB675]

SENATOR HAAR: Okay. I'd also like to ask Senator Gloor a couple of questions, if I could. [LB675]

SENATOR FRIEND: Senator Gloor, would you yield to questions? [LB675]

SENATOR GLOOR: Yes, I will. [LB675]

SENATOR HAAR: We had some discussion off mike last week, and we were talking about how doctors, out of best practice or out of whatever, take a patient and sit them down and tell them what's going to happen. And you had made in your comments last week that abortion shouldn't be an exception to the rule. Is that kind of clarify what we talked about? [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR GLOOR: Yes. And I believe the term you're looking for is standard of care. My comment was anytime any of us goes to see a physician for a procedure part of the standard of care is sharing with that patient the results of the lab or the images that were taken. And to me, what is being talked about here is a continuation of what's considered a standard of care. Variations on that are, I consider to be, very bad medical practice. And so I've been very comfortable with this because it adheres to the standard of care that we expect for all other procedures in almost any clinic or hospital across the country. [LB675]

SENATOR HAAR: Thank you. I want to continue our discussion a little bit more after. [LB675]

SENATOR FRIEND: Thank you, Senator Haar, Senator Gloor, and Senator Fulton. Members, we are discussing AM1484, amendment to the E&R amendments. Senator Wightman, you are recognized. [LB675]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I have always said that I think there should be an exception on the woman's choice where there is rape and incest involved. And yet in reviewing Senator Fulton's bill and his last discussion of that, I'm not sure that that's necessary here, but I would ask Senator Fulton a question, if he would yield. [LB675]

SENATOR FRIEND: Senator Fulton, will you yield to a question from Senator Wightman? [LB675]

SENATOR FULTON: I would, yes. [LB675]

Floor Debate
May 20, 2009

SENATOR WIGHTMAN: Senator Fulton, I know you just had some discussion with Senator Haar with regard to the placement of that ultrasound and you said your thought was it would not be placed directly in front because that probably would be a violation of the woman's right. Is that correct? [LB675]

SENATOR FULTON: Yes, I think so. [LB675]

SENATOR WIGHTMAN: So...but you're also not saying that it would be displayed in back. It would be displayed somewhere where peripherally she could view it. Is that your understanding of the bill? [LB675]

SENATOR FULTON: That's the way I would envision, and we...not just me. This is something that we...this was actually much of what we talked about. It wasn't exclusively what we talked about with the committee, but that was the decision of myself and the committee that we construe it such that the woman can be free to choose to view or not to view. So I think that you can accomplish that by incorporating the standard practice of care, to utilize that terminology, that's already used for ultrasounds, which is off to the side peripherally, right. [LB675]

SENATOR WIGHTMAN: But your feeling is, with regard to this amendment, that it still should be viewed within...or should be shown within her view, whether it's peripherally or directly in front, so that she can see it without turning her head. Is that correct? [LB675]

SENATOR FULTON: I think that that is already accomplished in the amendment. And this actually was another thing that we talked about in the committee--the existence of fetal deformity--and would this construe an even more harsh psychological experience for the woman who's contemplating abortion. And without even getting into that, I recognize that, yes, probably would. But that's already addressed in the amendment. That's something that we hashed out within the committee to address both the concern that we're dealing with an unborn human life, but also the mother, who could be psychologically traumatized admittedly. But that's why she's given a choice. We make the presumption and, again, this is...I'm not inventing this. This is what existed in the Supreme Court language and what has existed going forward in society that the woman does have the right to choose to abort her pregnancy. Within that context, providing her informed consent must recognize her free volition to provide that consent, and that exists within the committee amendment we adopted such that this is redundant. In fact, this amendment, I think, is not just redundant, it starts to encroach upon a policy consideration that I have, and that is that the child doesn't know how the child was born. And so in advocating for the child and the mother, we do both, I believe, in the committee amendment, and the committee thought so too. So that's my position. [LB675]

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

Floor Debate
May 20, 2009

SENATOR WIGHTMAN: As of right now, I think you've convinced me that this is not an undue burden upon the mother or prospective mother, depending on which side of the aisle you're on maybe right now, but that it probably isn't an undue burden and that it probably is somewhat redundant, if not totally redundant in that there is no real obligation to view the ultrasound at any rate. So I right now, I'll listen to the debate, but probably will oppose AM1484 and support LB675. I will support LB675,... [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR WIGHTMAN: ...whether it is amended or isn't amended. Thank you, Mr. President. Thank you, Senator Fulton. [LB675]

SENATOR FRIEND: Thank you, Senator Wightman and Senator Fulton. Senator Council, you are recognized. [LB675]

SENATOR COUNCIL: Yes, thank you, Mr. President. I have sat and listened to the debate, but what I have principally done is look at the language of LB675 as it currently exists through the AM994. And on page 6, I mean this is what I think the concern is and the question of whether we're talking about redundancy or not. Under subparagraph (b) which appears...begins on line 4 of page 6, on the 6th line it says "The woman shall be informed that the ultrasound images will be displayed so that she is able to view them." So that places a mandate upon that provider, and I'm not even debating the issue of whether or not the procedure should be performed or not, but in the context of Senator Nantkes' amendment, we're talking about a victim of rape or incest. And under the language of the statute as it currently reads, that woman is going to be told because it's mandated that she be told that this ultrasound image is going to be displayed so that she is able to view it. View it means to me within my eyesight. And as I understand Senator Nantkes' amendment, her amendment is relieving that provider of, you know, providing that that option...and it's really not an option because I mean I've heard the debate and I've listened to the debate the other day, you know, the question of whether it's behind you, on the side of you, in front of you, the language says "so that she is able to view it." So that clearly means within my range of vision. And so it's on the side, in front, clearly I can't see things behind me, but it's...view means within my range of vision. And as I understand Senator Nantkes' amendment, all she's saying is that in the case of rape or incest the provider does not have to inform that woman that there's going to be an ultrasound being performed within your vision. And, Senator Nantkes, are you available to yield to a question? I don't think I have much time. [LB675]

SENATOR FRIEND: Senator Nantkes, will you yield? [LB675]

SENATOR NANTKES: Yes. [LB675]

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

Floor Debate
May 20, 2009

SENATOR COUNCIL: And I don't have a hard copy of your amendment. I just listened to your intro. Am I accurate in my understanding of what the intent of your amendment is? [LB675]

SENATOR NANTKES: Yes. And the amendment is simple. It says, "Ultrasound images shall not be displayed so that the woman is able to view them if the woman's pregnancy is the result of rape or incest." [LB675]

SENATOR COUNCIL: Yeah, and, you know, again, reasonable people on all of the matters we debate, reasonable people can differ as to the manner in which you arrive at the intent. But I don't view it as inconsistent. I don't view it as redundant because in the legislation as it currently exists, we're telling this provider that this woman has to be told that there's going to be an ultrasound that you can see. [LB675]

SENATOR NANTKES: Or choose not to see. [LB675]

SENATOR COUNCIL: But it's going to be within your view. [LB675]

SENATOR NANTKES: Yes. [LB675]

SENATOR COUNCIL: I mean that's what the language says. She has to be told... [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR NANTKES: Absolutely. The language in the original legislation as amended through the committee amendment puts the burden on the woman to choose whether or not to view a simultaneous image of the ultrasound prior to abortion. This says we will not require that viewing, that simultaneous viewing, we will not require a woman who is there because as a product of rape or incest to go through this same sort of procedure as women who are seeking elective abortion otherwise. [LB675]

SENATOR COUNCIL: Okay. And I appreciate that because the subparagraph immediately prior to that again, we're talking about a procedure that by statute is required to be performed at least one hour prior to the actual procedure. So for those reasons, I really don't think it harms the intent of Senator Fulton's legislation in the case of rape or incest. I think others have commented aptly on the fact that women... [LB675]

SENATOR FRIEND: Time. Thank you, Senator Council and Senator Nantkes. Mr. Clerk. [LB675]

CLERK: Mr. President, Senator White would move to amend Senator Nantkes' amendment with FA45. (Legislative Journal page 1653.) [LB675]

Floor Debate
May 20, 2009

SENATOR FRIEND: Senator White, you are recognized to open on FA45. [LB675]

SENATOR WHITE: Thank you, Mr. President. And I filed FA45 with Senator Nantkes' approval. It would add the following language to Senator Nantkes' amendment. It would change the period at the end of it to a comma and would say, "unless the woman asks to view the ultrasound image." Senator Council I think makes a good point. We cannot treat women who are victims of rape or incest and are pregnant in the same manner as a woman who becomes pregnant because of a volitional act, you can't, not unless we're barbarous. This amendment is in response to a good observation by Senator Carlson that we don't want to take away the right of a woman who finds herself pregnant because of rape or incest to view an ultrasound should she choose to. We need to make that clear. On the other hand, I cannot, if Senator Council's interpretation is correct, I cannot accept that we will unilaterally presumptively have women who are victims of rape or incest view ultrasounds of a child who is a child of a crime and of an act of violence. However, innocent that child is, it has a freighted message of misery for the woman who has been forced to endure the crime that brought that child into being. Okay? And I cannot, as much as I wish to support LB675, unless we are going to show basic humanity and decency to victims of violent, horrific crime, treat them with the sensitivity that they deserve that they, too, are a human being, that they, too, have dignity, that they, too, have a right to live, if we're not going to do that at the same time, I support Senator Fulton's purpose that the fetus in my eyes is a human being too. But we have to make room for both human beings. And I have to tell the floor right now I think if this amendment to Senator Nantkes' amendment is accepted, it does no underlying violence to the concept that all life is valuable, that a woman ought to have a right to see a fetus if she chooses to see it, which is the essence of Senator Fulton's bill. At the same time, it makes clear to every woman in this state that we are not going to compound your misery by forcing you, because you were a victim of a crime, to undergo a forced lecture, a forced viewing of something that can only be deeply painful, even for the women who accept the pregnancy and carry that child to term. That could be a deeply devastating wound, and I cannot be party to it. I don't know if any of you have had the misfortune to talk to women who have been victims of rape or incest, but if you have, call that memory to mind when you vote on this. We do need to protect the innocent unborn. I support it fully. We also need to protect the innocent born. And so I would urge you to accept the amendment, FA45, to AM1484. I have deep respect for Senator Fulton. I hope to be able to vote for his bill. I want to be able to vote for his bill. But I see nothing in AM1484 that really undermines the bill now. It reaffirms the right of every woman to see the image of an ultrasound of the fetus, of her child. It reaffirms that. But it treats that woman as a separate human being with her own rights and her own dignity as well. And that seems to me to be the bare minimum of a balance that we can strike if we are indeed a civilized society bent on protecting not only the unborn but the women who bear them. Thank you, Mr. President. [LB675]

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

Floor Debate
May 20, 2009

SENATOR FRIEND: Thank you, Senator White. Members, you have heard the opening on FA45 to AM1484. Senator White, your light was next. Senator White waives his opportunity to speak. Senator Christensen, you are recognized. [LB675]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I come up in opposition to AM1484. I really believe if you're going this route then you need to have a report of a place that there has been rape charges filed. There are many rapes that are not reported even though the law says they should be. I don't believe that this is necessary because you don't have to look. No one is telling them that they have to look at this screen. No one is telling them that they don't have to look at the screen or saying that they...there's nothing here to prevent the abortionist from telling them that you don't have to look at it. I think this is nothing more than to dilute the bill tactic. You know, this is not a mandate to watch and don't assume everyone is going to watch just because it's there. If you're saying they don't have to watch if they've been raped, you're assuming that everyone is going to watch. That's not the way this bill is written. It's not a mandate. No one is forcing them to watch. Think about this. If they're going to not have to watch this, whether it's done in writing or it's done in...because they're saying they're raped, then there should be a police report with it. And the doctor should be required to do a report of the rape. I mean how far are we going to go with this? I just think we really need to think about where we're going here. How many of these...I think doctors are probably required now to report if there is a rape case, but are they asking who the gentleman is that's bringing them in, if it's an older gentleman bringing in a young person? I mean what do we want to require here, folks? We've got a good bill. We've got a bill that should be passed and gone forward as it is, not lined out here restricting this. Thank you. [LB675]

SENATOR FRIEND: Thank you, Senator Christensen. Senator Haar, you are recognized. [LB675]

SENATOR HAAR: Mr. President, members of the body, I would like to talk with Senator Gloor a little bit more if I could. [LB675]

SENATOR FRIEND: Senator Gloor, will you yield to a question? [LB675]

SENATOR GLOOR: Yes, I will. [LB675]

SENATOR HAAR: Okay. This is not an attempt to get a certain answer out of you. I'm asking you these questions because I consider you the expert, and I appreciate your opinions. Okay. Standard of care--older men, I start out with a little bit of a story here, Paul Newman was interviewed on television and somebody said, this is when he was older, and he said, how have things...the interviewer asked, how have things changed for you as you get older? And he said, well, when I was a young guy my friends and I would get together and have a beer and talk about the dates we'd had. And he said,

Floor Debate
May 20, 2009

now we get together and talk about our operations. And so as men get older, we talk about certain operations. If men...older men have this problem with prostate gland. A standard of care around that would be to tell the man what this operation is going to...it could be cancerous, it could just be enlarged, that sort of thing. Do you have any idea what would be considered a standard of care around that sort of procedure or? [LB675]

SENATOR GLOOR: Well, it's hard for me to relate to procedures on older men, but (laughter)... [LB675]

SENATOR HAAR: It's not for me. [LB675]

SENATOR GLOOR: (Laugh) I think the issue here is, regardless of what the procedure may be, there is an expectation. And Senator Fulton used the term informed consent, that patients have a full understanding of what the procedure entails or what the lab tests may entail. And that can involve drawings, it can involve images, x-rays. But, you know, as a patient you are still very much in control of your care and you could say to the physician, I have a queasy stomach and would just as soon not see x-rays or images that relate to my prostate. And the physician is going to adhere to that requirement. Usually informed consent involves a verbal dialogue, but it can be more extensive if the physician and the patient are in agreement. I don't know if that answers your question, but. [LB675]

SENATOR HAAR: Okay. So around like a prostate procedure, is the standard of care...who defines the standard? I guess that's kind of what I'm trying to get at with my questions. [LB675]

SENATOR GLOOR: Actually, though, that's a great question. And in my years of experience, the standard of care is...very much relates to what in current medical science and what in current actual medical practice seems to be what people do. If you have an ingrown toenail, the standard of care is likely not to be amputation of the toe. [LB675]

SENATOR HAAR: (Laugh) Hopefully. [LB675]

SENATOR GLOOR: That is sort of a, you know, I'm going overboard on this, but clearly... [LB675]

SENATOR HAAR: Right. Right. [LB675]

SENATOR GLOOR: ...standard of care is going to be what do most people do in a situation like that providing care. And the term itself is pretty explanatory--standard of care. [LB675]

Floor Debate
May 20, 2009

SENATOR HAAR: Uh-huh. Okay. Now are the standards...now in this case, I guess what I'm trying to get at, what bothers...one of the things that bothers me about LB675 is that it's a standard of care that's put into law. For example, would a standard of care around my prostate, would that be put into law or not? [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR GLOOR: I do not know. I cannot think of an example of how that would be specifically put into law. [LB675]

SENATOR HAAR: Okay. So most standards of care are actually perhaps just professional practice or...and thinking about the insurance consequences and things like that. [LB675]

SENATOR GLOOR: And the medical liability. [LB675]

SENATOR HAAR: Yeah, that's a big one. [LB675]

SENATOR GLOOR: That's certainly probably the...there is a quality practice issue, but I would say second to that would be concerns about medical liability if someone was treated in a way different than everybody else was. And that, to a large extent, can be quite a legitimate concern obviously. [LB675]

SENATOR HAAR: Okay. Well, I'd like to talk a little bit more with you about standards of care and my prostate a little later (laugh). [LB675]

SENATOR GLOOR: (Laugh) I'll look forward to the discussion. Thank you. [LB675]

SENATOR HAAR: (Laugh) Thank you. [LB675]

SENATOR FRIEND: Thank you so much, Senator Haar and Senator Gloor. Members of the Legislature wishing to speak are Senators Fulton, Nantkes, Campbell, Nelson, Karpisek, McGill, Dubas, and others. Senator Fulton, you are recognized. [LB675]

SENATOR FULTON: Thank you, Mr. President, members of the body. I do stand opposed to FA45 and AM1484, and I started to explain some of my reasons and I did. And I'm going to go a little bit further into this. Senator White and I actually have been able to discuss this off the microphone and if there's ample time then maybe we can do this on the microphone. The nature of informed consent, okay, does place and should place the onus of responsibility for providing that information on the medical provider. A mother who comes in for an abortion doesn't do this every day. Okay? She's not an expert on the procedure; the abortionist, the physician, is. And so within informed consent law, not just for abortions but any procedure, the onus of responsibility for

Floor Debate
May 20, 2009

providing informed consent is on the provider, not the patient. So when we were drafting LB675, that was...and again, that's not just my opinion, this is something that's talked about in the court decisions and it's something that has, oh, this is how standards of care have evolved within our society. Informed consent, the main responsibility falls on the provider. So some may ask, well, why don't we just say that when the woman is coming for an abortion she can request to have an ultrasound made available to her? Other states have done that. My response to that was and is, then aren't we putting the onus for information on the mother when indeed it should be on the physician, on the abortionist? And so by way of statute, if we pass LB675, we are requiring the abortionist to display the image. Now the question is, is the display of that image, does it present an undue burden upon the mother, an undue burden such that she is not able to freely exercise her volition? And that is what we talked about within the committee in the hearing and in the weeks and I think months that we spent coming up with a committee amendment. That is addressed on page 6, lines 2 through 7 again. So if you look at FA45, see where the burden of the law is placed. It's back on the mother, and that's what we're trying to avoid. Oftentimes, these are women who are in vulnerable situations. They're coming in a sense of urgency. If indeed an abortion is a hard procedure to choose, it is because the nature...and I agree, it is because the nature of the choice is so grave. There is another life. She's not going to be thinking through her head, going through the checklist: I'd like to see an ultrasound, I'd like to have an idea of how long I'll be in recovery, I'd like to have an idea how much sedative I'm going to get. These are not the things on her mind. But this is what the abortionist does day in and day out. So we put the onus of informed consent on the abortionist, not the mother. Number two, within FA45 and AM1484 we accomplish what seeks to be accomplished in both of these amendments. Okay? We are not forcing women, that is clear within the existing bill. If we were to adopt a standard that says as a result of rape or incest, then look at the other side. We, as policymakers, are charged with the responsibility of looking out for both lives--that of the mother and of the child. By putting forward this language, we create a second class of child,... [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR FULTON: ...the children that might be able to be displayed on an ultrasound image or the unborn fetus or however you want to regard it, those who are the result of rape or incest, we're not going to display them, but those who aren't the result of rape or incest we will. I fully, I fully well recognize that there is a difference between a woman who becomes impregnated by a choice that she made and a woman who is forcibly impregnated through rape. I fully recognize that and we address that in the bill. But what of the child who does not know the difference? We should not create a second class of child for the same reason we should not put the psychological burden on the mother out of respect for human life. It was asked, well, I think I'll get to that a little bit later. Mr. President, I stand opposed to FA45 and AM1484. Thank you. [LB675]

Floor Debate
May 20, 2009

SENATOR FRIEND: Thank you, Senator Fulton. Senator Nantkes, you are recognized. [LB675]

SENATOR NANTKES: Thank you, Mr. President. Colleagues, the concerns we've heard thus far in relation to the proposed amendment and the floor amendment is that it may be redundant in terms of the underlying legislation. I don't believe it would be redundant in regards to the underlying legislation. But even if it were to be, that wouldn't be the first time that would happen in the Nebraska Revised Statutes or in the course of an individual piece of legislation. And I think it does, even if it was redundant, which I don't think it is, but if it was, it sends an important public policy message to women who are victims of rape or incest and saying we recognize that and we're going to make it crystal clear in our law that you shouldn't be forced to view an ultrasound. Senator Fulton keeps trying to tell us what his intent is with the legislation because I think there are a lot of gray areas and a lot of unanswered questions with the language itself. And he keeps saying that no one is going to be forced to view an ultrasound. Colleagues, I want to take him at his word and that's why I got the transcript from the floor debate on the General File amendment. I'm going to read some of it for you. This was part of the question and answer between Senator Christensen and Senator Fulton. I'm going to read it to you verbatim: Senator Christensen to Senator Fulton, question was: Could the ultrasound image be displayed behind the woman? Senator Fulton: No, Senator, because that would be out of her view and she would not be able to view them. And part of what we're trying to accomplish here is to allow the mother to view if she chooses. Senator Christensen: Okay. Could the ultrasound images be on a monitor in the same room but turned away from the woman unless she wants to view them? Senator Fulton: No, because they would not then be displayed so that she is able to view them. I tried to clarify this point later in General File debate and asked Senator Fulton again. Senator Nantkes to Senator Fulton: But you said it would be up to the woman to turn her body or her head to choose to view the ultrasound screen or not. Was that correct? Senator Fulton: That's...yes. Colleagues, this is why even if it is redundant, which I don't think it is, we have to make our public policy crystal clear because it's unclear in Senator Fulton's language and his legislation whether or not a woman is going to be forced to view these images in any circumstances. So at the very least, if a woman who becomes pregnant as a result of rape or incest chooses not to view the ultrasound image, we should make that clear in our public policy. We have to make that clear because, unfortunately, we can't rely on the language in the bill to make that clear. Additionally, you've heard, colleagues, Senator Fulton say, well, these were specific policy choices that were rejected in the committee process. Is Senator Rogert available for some questions, please? [LB675]

SENATOR FRIEND: Senator Rogert, will you yield to questions? [LB675]

SENATOR NANTKES: Senator Rogert, thank you, Senator Rogert. I know that you worked very hard from the Judiciary Committee perspective to try and negotiate issues

Floor Debate
May 20, 2009

surrounding this legislation. Is that right? [LB675]

SENATOR ROBERT: Yes, we worked for several weeks. [LB675]

SENATOR NANTKES: And, Senator Robert, can you tell me was this a policy choice specifically presented to the Judiciary Committee to exempt women who become pregnant because of rape or incest from being forced to view an ultrasound picture? [LB675]

SENATOR ROBERT: Well, throughout the course of the several weeks that we worked on the bill, there were several different... [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR ROBERT: ...issues that we worked on back and forth. And it has been quite some time so I'm not for certain, but this particular aspect seems to be something that would not have been discussed the first time. [LB675]

SENATOR NANTKES: Senator Robert, did anyone bring forward specific language to exempt women who become pregnant because of rape or incest at the committee level? [LB675]

SENATOR ROBERT: Not that I remember. [LB675]

SENATOR NANTKES: Okay. So would it be fair to say that in fact the Judiciary Committee was not presented this specific policy choice and thus did not specifically reject it? [LB675]

SENATOR ROBERT: From the terms of what actually came through me, probably so. [LB675]

SENATOR NANTKES: Thank you, Senator Robert. Thank you, colleagues. [LB675]

SENATOR FRIEND: Thank you, Senator Nantkes and Senator Robert. Senator Campbell, you are recognized. [LB675]

SENATOR CAMPBELL: Thank you, Mr. President. I stand in favor of the floor amendment and AM1484, perhaps for different reasons than we have articulated. The other day I tried to be very thoughtful and respectful in listening to all of our debate. Senator Fulton and I exchanged a reminiscence that when I was running for the Legislature I sat down in his office and he and I had a great conversation and knew at the end of that conversation that there would be topics to come before the Legislature that we would personally disagree with. And it was nice to share that the other day. The

Floor Debate
May 20, 2009

most poignant testimony I thought that we had was that from Senator Sullivan, who talked about going through this experience with her daughter. Today, I want everyone in this Chamber to imagine that you are standing next to your daughter who has been raped and tell me that you would want an ultrasound there, that you wouldn't want what Senator Council has talked about, that this would not even be a part of it. The second reason that I talk about this is that most of you know, because I talk about it all the time, is that I've spent 30 years in children's issues. And I want you to obviously think about the fact that in those issues I've spent a lot of time in child abuse and neglect. And child abuse has also...has been inflicted by people who choose to sexually abuse children or through incest. And if we had a youth in that situation and they were standing there with their parent or their guardian who had not, obviously, been involved in the incest, how would we feel? I truly think, and I've tried to be as respectful and thoughtful of the opposite side of this, but I think we do need to think about situations where we really do not want that ultrasound to have to be a part of the discussion. Thank you, Mr. President. [LB675]

SENATOR FRIEND: Thank you, Senator Campbell. Senator Nelson, you are recognized. [LB675]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have to say that the ultrasound is a part of this discussion. I think that LB675 is very clear and very plain in its language. And I support Senator Fulton, what he's saying, that no one is being forced to watch an ultrasound. But if we are going to make it available, then it stands to reason that the doctor, the abortionist, or whoever is performing this is going to have to place that display where it can be viewed but doesn't have to be viewed. So it can't be right in front of the person. She couldn't avoid it. It can't be behind because she couldn't see it. That would do away with the intent of this bill. It's going to have to be placed at the side where she can either look at it or avert her eyes. Do we have to put that language in the bill? Do we have to add anything to what is there? The burden is on the doctor to comply with what we, as a Legislature, are saying should be done. I feel for women who have gone through incest or rape. They have to deal with that all of their lives, just as anyone who becomes pregnant and decides that perhaps an abortion is the way that they want to go. But no one is forcing this person who has been the subject of rape or incest to look at the display. I should ask Senator Haar a question, if he will yield. [LB675]

SENATOR FRIEND: Senator Haar. [LB675]

SENATOR HAAR: Yes. [LB675]

SENATOR NELSON: Senator Haar, you have an amendment coming up where any woman could request in writing that the display not be there. Do you intend to proceed with that amendment? [LB675]

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

Floor Debate
May 20, 2009

SENATOR HAAR: Yes. [LB675]

SENATOR NELSON: All right. Thank you, Senator Haar. Senator Fulton, would you entertain a question? [LB675]

SENATOR FRIEND: Senator Fulton, will you yield to a question? [LB675]

SENATOR FULTON: Yes. [LB675]

SENATOR NELSON: Does the abortionist doctor know in any way whether the subject before him has been the victim of incest or rape? Is there anything in the record that that person has to reveal that woman? [LB675]

SENATOR FULTON: I don't believe so. I don't know how he would unless it was told to him, unless it was shared with him. I'm not positive though. There may be some procedures in place that the abortion clinics have in order to determine that fact. But I don't think that it's immediately evident. I'm not positive, though. [LB675]

SENATOR NELSON: Is there any reason why a woman could not go forward and tell the abortionist I'm here because I was a rape victim or an incest victim and, therefore, I don't need to even have the display in the room? [LB675]

SENATOR FULTON: That's with...she could say that, yes. That's...yeah, she... [LB675]

SENATOR NELSON: All right. [LB675]

SENATOR FULTON: ...there's nothing prohibiting her from saying that, yes. [LB675]

SENATOR NELSON: I think this is an unnecessary exception. I think it's clear that I stand in favor of LB675, but, in my opinion, we don't need to add the amendments or the floor amendment that are being presented at this time. So I would urge you not to vote for either of those amendments. Thank you, Mr. President. [LB675]

SENATOR FRIEND: Thank you, Senator Nelson. Senator Karpisek, you are recognized. [LB675]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I will reiterate again, I stayed out of this argument a couple of days ago. I planned to stay out of it today, but I decided I can't. Senator Christensen said that this is just a way to harm this bill. I stand in favor of LB675 and I voted for it. I support this amendment. I am not trying to harm this bill. If something is getting by me, then it is, but I don't think it is. I think this was brought in good faith worried about women, women's health, women's rights.

Floor Debate
May 20, 2009

Senator Fulton told us what is or is not going through the woman's mind at the time of the abortion. Senator Fulton doesn't know what's going on through anyone's mind, except for mine probably right now. And I'd like to say if some people think that closing your eyes to something will make it less painful, we've got some ways that we can try that out. I think this is a very easy amendment, a very simple compromise. I do agree with Senator Nelson that can anyone just come in and say that they've been raped or had incest performed. I think that we can work through that. I asked Senator Nantkes that same question at the beginning. Members of the body, I feel that, as any male in here, you do not know how those women are feeling, and you certainly do not know what they are thinking. Again, I don't think that this is a hostile amendment. I think it can be worked through. I did vote for LB675. There were quite a few votes for that, and I thought it was great discussion and great giving back and forth. I don't see any give on this one and I think that's too bad because I think we need to think about who we're talking about here. Not in favor of harming LB675. If that's what the body feels will help prevent some abortions, fine, let's give it a try. But let's not lose everything because of a simple amendment that we can work through. Mr. President, I'd like to yield the rest of my time to Senator Nantkes. [LB675]

SENATOR FRIEND: Senator Nantkes, 1 minute 40 seconds. [LB675]

SENATOR NANTKES: Thank you, Mr. President. And I did want to address the issue that Senator Karpisek and I talked about off mike and Senator Christensen mentioned briefly in his comments in relation to whether or not...Senator Wightman also presented this...it should only apply to reported instances of rape or incest. And, colleagues, I don't think it would be news to you to know that many sexual assaults and many instances of rape and incest go unreported because of stigma, because of shame, because of a variety of reasons. According to the Rape Abuse and Incest National Network, about 73 percent of rape victims know their assailants; only 6 percent of rapists... [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR NANTKES: ...ever spend a day in jail. Sixty percent of sexual assaults are not reported to the police, despite the fact that reporting has increased by one-third since 1993. In 2007, there were over 248,000 victims of sexual assault in the United States, and about 1 in 6 women and 1 in 33 men will be sexually assaulted at some point in their lifetime. College-age women are four times more likely to be sexually assaulted. Knowing what these statistics are, it's no wonder that a majority of rape victims or incest survivors don't make a report. Particularly, colleagues, think about the case of incest. That's a family member who's assaulted them. Of course there's going to be fear and apprehension about exposing them to prosecution. Again, this is a very straightforward, very, very humane position. [LB675]

SENATOR FRIEND: Time. [LB675]

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

Floor Debate
May 20, 2009

SENATOR NANTKES: Thank you, Mr. President. [LB675]

SENATOR FRIEND: Thank you, Senator Nantkes and Senator Karpisek. Senator McGill, you are recognized. [LB675]

SENATOR MCGILL: Question. [LB675]

SENATOR FRIEND: Members, the question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor please signify by voting aye; all those opposed vote nay. Record please, Mr. Clerk. [LB675]

CLERK: 32 ayes, 2 nays, Mr. President, to cease debate. [LB675]

SENATOR FRIEND: Debate does cease. Senator White, you are recognized to close on FA45. [LB675]

SENATOR WHITE: Thank you, Mr. President. Let me make this very clear so that the body understands what we're talking about. In my view, if a woman comes in to a clinic, whether it is an abortion clinic, as Senator Fulton would say, or if it is one of the emergency pregnancy services clinics, and a woman comes in and says, I've been the victim of rape or I've been the victim of incest, I'm pregnant or I'm afraid I'm pregnant, what should we do? At that point, I think that person is not in the same position as a woman carrying a child because of a voluntary act. Now, Senator Fulton, I disagree strongly...I agree with you strongly that the children, the child that she's carrying is not different. The child is the same. But the woman on whom's body that child depends for life is very different, very different situation. And if we're seriously going to be pro-life and we're going to be pro women and pro crime victims, then what we need to do is recognize we have to support this woman's psychological health as well. And that...if you want her to carry the child to term, and I would and Senator Fulton would, the worst thing you can do is devastate her psychologically by forcing her to view something that may cause deep emotional pain, scarring, or difficulty in even accepting that she might continue to live. I have known rape victims who are suicidal following the attacks. They are also patients and have rights too. If we're going to fully inform, here's what I'd suggest is a minimum responsible response. When a woman advises the person performing the ultrasound that the pregnancy is the result of a rape or an incest, in other words, we assume that it is not, but when the woman says that, at that point a modicum of just human decency is...you state, look, the law says when we do an ultrasound you have the right to see it and it should normally be displayed so you can see it. Do you think you want to see it? Because if you don't think you can or you can stand it, we're going to turn the monitor away and you have the right at any time to ask to see it. And, of course, we'll let you see it. But we're not going to inadvertently show this to you. And all this is, folks, is common decency to a person who does not come into the clinic on

Floor Debate
May 20, 2009

the same footing. And I would tell you treating a person with that level of sensitivity and decency and support, recognizing the peculiar psychological and emotional problems that brought her to that place is your best bet on saving the life of that child. Let that woman know from the start that she's among friends, people who understand her unique pain and want to help. We don't want to force her again because, after all, she was forced to become impregnated. We're not going to force her or presume that she must look at this, but we are going to offer her every opportunity to look and every opportunity to support her if she chooses to look. And one of the reasons I really strongly support having an RN or a person under a physician's supervision doing these is so they have the training and the ability to deal with these kind of medical problems, the psychological problems coming along with the pregnancy. Because I will tell you, Senator Fulton, you know what I deeply fear? [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR WHITE: I deeply fear that someone will walk in, say I'm a victim of pregnancy, my pregnancy is the result of a rape. And you'll say, oh, okay, well, let's go ahead and have the ultrasound. We don't even describe it to them. We'll just set it up in a way and they'll see the ultrasound. They will walk out deeply conflicted. They see a human life that is an event that is the most painful, degrading, humiliating in their existence is how that human life came in and you will have suicides. And when you have a suicide, we will lose not only that baby, we will lose the mother. And the responsible thing is not to do that idly. The responsible thing is to act like a true advocate. We want to help the child live. We want to help the mother get past this rape. And all you do to promote that healing, the basic thing you do to promote that healing is start treating that woman like a person who has... [LB675]

SENATOR FRIEND: Time. [LB675]

SENATOR WHITE: ...control of her own body with respect... [LB675]

SENATOR FRIEND: Time. Thank you. [LB675]

SENATOR WHITE: Thank you, Mr. President. [LB675]

SENATOR FRIEND: You're welcome, Senator White. Members, you have heard the closing on FA45, the amendment to AM1484. All those in favor of adopting the amendment please vote aye; all those opposed vote nay. [LB675]

SENATOR WHITE: Mr. President, I call (microphone malfunction). [LB675]

SENATOR FRIEND: There has been a request for the call of the house. All those in favor of the house going under call please signify by voting aye; all those opposed vote

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

Floor Debate
May 20, 2009

nay. Record please, Mr. Clerk. [LB675]

CLERK: 43 ayes, 0 nays, Mr. President, to place the house under call. [LB675]

SENATOR FRIEND: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. There has been a request for a roll call vote in regular order. Senators are checking in. Senator Cornett, the house is under call. All members are present and accounted for. There has been a request for a roll call vote in regular order. Mr. Clerk, please call the roll. [LB675]

CLERK: (Roll call vote taken, Legislative Journal pages 1653-1654.) 26 ayes, 8 nays, Mr. President, on the amendment to the amendment. [LB675]

SENATOR FRIEND: FA45 to AM1484 is adopted. I do raise the call. Mr. Clerk, you have items for the record? [LB675]

CLERK: I do, Mr. President, very quickly, thank you. Natural Resources confirmation report; Senator Stuthman offers LR242, that will be laid over; and a communication from the Governor (Read re LB97 and LB97A, Legislative Journal pages 1654-1655.) [LB97 LB97A LR242]

Mr. President, back to Senator Nantkes' AM1484 as amended. [LB675]

SENATOR FRIEND: Thank you, Mr. Clerk. There are members in the queue. Members wishing to speak are Senator Dubas, Senator Council, Haar, White, Fulton, Gloor, Hansen. Senator Dubas. [LB675]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I am pro-life. Those innocent, unborn babies deserve our voice, but so do women and children who are faced with the circumstance that we're dealing with through Senator Nantkes' amendment. I'd like to thank Senator Karpisek for being willing to admit that as a man he has no way of understanding how a woman could feel in this circumstance. I have never had a rape in my family or incest, but when I hear it on the news my gut wrenches because I can have sympathy for what a woman has gone through under those circumstances. And I know we've come a long way in the way that we treat women who have been victims of rape or incest. But by the direction of this conversation today, it's obvious we have not come far enough. There are two victims in circumstances such as this: the unborn child and the woman facing this decision. And as I stated the other day when we began this discussion on this topic, under normal or at best regular circumstances, a decision to have an abortion is traumatic mentally and physically. And then you throw in this additional trauma of rape or incest and you have magnified that

Floor Debate
May 20, 2009

decision beyond measure. And by not recognizing that women in this situation deserve special care, deserve special consideration, we are further victimizing that woman. We are further placing her in a position of God only knows what. How can we be assured through this legislation that women will be treated with that extra measure of care and compassion? And I guess if Senator Fulton would yield to a question, I would like to ask him that. [LB675]

SENATOR FRIEND: Senator Fulton, will you yield to a question? [LB675]

SENATOR FULTON: Yes. [LB675]

SENATOR DUBAS: Thank you, Senator Fulton. And I know you've stated that you feel this amendment isn't needed because the woman already has this option or the ability not to look at the ultrasound should she so choose. Could you recognize that a woman under these particular set of circumstances might not be in the clearest or best frame of mind to be making that choice or that decision? [LB675]

SENATOR FULTON: Senator, yes, I could and I'll take that even a step further. We're expecting her to make the decision to...whether or not to abort her child under those circumstances. And so that is the nature of the bill, period... [LB675]

SENATOR DUBAS: So... [LB675]

SENATOR FULTON: ...to provide...go ahead, sorry. [LB675]

SENATOR DUBAS: I didn't mean to interrupt you, I'm sorry. I didn't realize you weren't finished. So how can we ensure that a woman in this position will be treated with that extra sense of care and compassion and gentleness? [LB675]

SENATOR FULTON: Well, Senator, I would hope that the fact that she's going to a physician whose job it is to inform her and to care for her. Remember, part of the mantra of the physician providing for this abortion is women's health. Now the problem that I have with that is because it doesn't take into account that there's also an unborn child. [LB675]

SENATOR FRIEND: One minute. [LB675]

SENATOR FULTON: But I don't know that we as a state can pass laws saying that the abortion doctor has to treat the woman in a certain way. I would hope that if he understands that the woman comes to him as the result of being forcibly violated through rape that the abortionist or the abortion clinic, anyone who is there, would treat her with a higher level of respect. I would hope so, but I don't think that we accomplish that in AM1484. [LB675]

Floor Debate
May 20, 2009

SENATOR DUBAS: Well, I would certainly hope that would be the case also and just through this legislation, which I am supportive of. As I stated, I am pro-life. We need to defend the unborn. But under these...and we're interjecting ourselves into this through this legislation. And so I see nothing wrong with us taking that extra added step to support and encourage a woman who has been a victim of... [LB675]

SENATOR FRIEND: Time. [LB675]

SENATOR DUBAS: Thank you, Mr. President. [LB675]

SENATOR FRIEND: Thank you, Senator Dubas. Senator Council, you are recognized. [LB675]

SENATOR COUNCIL: Thank you, Mr. President. You know, I have been reviewing all of LB675 as previously amended by AM994 to try to put the issues involved in AM1484 into some perspective, particularly in light of some of the questions that were raised by a number of my colleagues. And a couple of my colleagues raised the question of whether or not the physician has some duty to determine whether or not the patient is or is not a victim of rape or incest. So I go beyond the particular subsection that is the subject of the amendment, and I look at the act in its totality. And if you look at subsection (4), which is found on page 6, I mean this is the heart of the act. And that says that: The woman certifies in writing, prior to the abortion, that the information that's required in subdivisions (1) and (2) have been furnished to her; two, that she has been informed of her right to review all this information; and what's added by LB675 is that the requirements of subdivision (3) of this section have been performed. Would Senator Fulton yield to a question? [LB675]

SENATOR STUTHMAN PRESIDING []

SENATOR STUTHMAN: Senator Fulton, would you yield to a question from Senator Council? [LB675]

SENATOR FULTON: Yes. [LB675]

SENATOR COUNCIL: Okay. And, Senator Fulton, I'm looking at page 6, subsection (4), subparagraph (c). On my copy, it begins on line 24 and it says that "The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion." Can you help me understand how that requirement would be satisfied by the woman preparing the certification? What will she be certifying? [LB675]

SENATOR FULTON: Well, with regard to the...I mean, this is existing statute. "The

Floor Debate
May 20, 2009

woman certifies in writing," that exists now presently in the statute. And then, I don't have them committed to memory, but they're listed here... [LB675]

SENATOR COUNCIL: Yeah. [LB675]

SENATOR FULTON: ...(a), (b), (c) and then... [LB675]

SENATOR COUNCIL: No; (c) is added by LB675. That language does not currently exist. And my question to you is how does the woman satisfy the requirement in (c) that she certify that the requirements of subdivision (3), which are the ultrasound requirements, of this section have been performed? How would you envision that certification being made? What would she be certifying? [LB675]

SENATOR FULTON: Well, the way I'd answer that is in the same way that she satisfies subsections (a) and (b) presently, that's how I would envision the new subsection (c) also. [LB675]

SENATOR COUNCIL: Okay, but... [LB675]

SENATOR FULTON: With regard to specifics, I guess I'd have to find out how (a) and (b) are satisfied now. With that being existing statute, that is the mechanism by which I would suppose that subsection (c) would also be satisfied. [LB675]

SENATOR COUNCIL: Okay, well, that's the problem I have because for subsection (a) and (b), all she has to do is say I received the information and, number two, she has to say I was informed that I had a right to review the information. How does she certify that the requirements of subdivision (3) of this section have been performed? Does she simply say that there was an ultrasound in the room? Does she have to certify that the ultrasound was... [LB675]

SENATOR STUTHMAN: One minute. [LB675]

SENATOR COUNCIL: ...displayed so I could see it? But the contradiction, ladies and gentlemen, is in subdivision (b) itself. It begins: Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound image or not view the ultrasound image. But the duty on the doctor is the woman shall be informed that the ultrasound image will be displayed so that she is able to view them. It doesn't say it will be displayed so that she can choose to view it or not to view it. It says the doctor has to tell her that it will be displayed so that she can view them, where the previous obligation is that she has a choice to choose to view it or not to view it. And it's for that reason I've offered a floor amendment that if we're going to be consistent, if we have some understanding what it is we're placing upon this woman to certify to, then it should be clear in the statute. And if it's going to be displayed so she can choose not to view it or

Floor Debate
May 20, 2009

to view it... [LB675]

SENATOR STUTHMAN: Time. [LB675]

SENATOR COUNCIL: ...then the certification should be to the same effect. [LB675]

SENATOR STUTHMAN: Thank you, Senator Council and Senator Fulton. Senator Haar, you are recognized. [LB675]

SENATOR HAAR: Mr. President, members of the body, I don't know. This is just my opinion, but I think the attempt at LB675 is to abolish abortion without abolishing abortion. And the problem with that is it's very difficult to...so I'm going to pursue this thing of placement of the screen a little bit more. I'm wondering whether Senator Fulton would talk with me a bit. [LB675]

SENATOR STUTHMAN: Senator Fulton, would you yield to a question from Senator Haar? [LB675]

SENATOR FULTON: Yes. [LB675]

SENATOR HAAR: Well, both you and I know that in any kind of...any kind of procedure that walks the line between, let's say, pro-choice and pro-life elements that there's going to be testing. For example, I know that a number of times people have come into clinics trying to trap, you know, that procedures were done properly, such as there's a requirement right now that, if talking to the person who wants an abortion, that they were abused by a minor, that has to be reported and is reported to the proper authorities. But yet people come in trying to play that and trap the clinic into, you know, into the situation where they can say that they didn't do that. So however this works out, there's going to be people trying to trap. So my question is, in placement of the screen, what...first of all, what kind of...if someone has this thing placed right in front of them where they have to avert their eyes, can a complaint be filed and what's the penalty for that complaint? [LB675]

SENATOR FULTON: Well, a complaint could be filed. The penalty, I don't know what the penalty would be. The penalty would be under...I think the penalty would be under the jurisdiction of the department because that is the agency through which the abortion provider is operating in the state of Nebraska. I'm not sure about that,... [LB675]

SENATOR HAAR: Okay. [LB675]

SENATOR FULTON: ...but certainly a complaint can be filed. [LB675]

SENATOR HAAR: And on the other hand, if it's placed so that they...so it can't be seen,

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

Floor Debate
May 20, 2009

can a complaint be filed and is there a penalty for that? [LB675]

SENATOR FULTON: Same answer. Yeah, of course, a complaint could be filed, I would assume it would be the Department of Health and Human Services. But that's...we're not spelling out the remedy here. I mean, in the way that the department has to operate, because they're...this is an abortion provider who's a physician licensed in the state of Nebraska, has to operate with...under certain strictures put forward by the state, and that's through the department. So I'm not positive, but I'm reasoning through it here out loud while we're talking. And, yes, the complaint can be filed and ostensibly it would seem that that would come under the jurisdiction of the Department of Health and Human Services, I think. [LB675]

SENATOR HAAR: So if a complaint were filed in the Health and Human Services...I'm sorry, I just need to hear about the process. Would they hold a hearing and then it's he said, she said or how does that work, Senator? [LB675]

SENATOR FULTON: I'm not positive. I mean, I'll ask you what happens when a patient files a complaint against a doctor now? [LB675]

SENATOR HAAR: And I have no idea. [LB675]

SENATOR FULTON: Yeah, I'm not positive, but I'm sure there is a process put forward when one files a complaint against a doctor. And I would presume that is the same process that could be followed in this regard. [LB675]

SENATOR HAAR: Okay. Now things like if really a minor is coming for an abortion and is...they relate that they've been abused by someone who's above a certain age, I mean, that's a criminal offense and then that's followed up by the police and so on. But so in terms of this, we're going to get things on both sides. Some people saying that it wasn't provided,... [LB675]

SENATOR STUTHMAN: One minute. [LB675]

SENATOR HAAR: ...you know, it wasn't placed or it was placed inappropriately. And right now we're just leaving that up to the department. Is that correct or... [LB675]

SENATOR FULTON: Again, Senator, it would be the...it's...I don't believe this is any different than if a complaint were filed against a regular doctor, a nonabortion-providing doctor. So I can't...not having that knowledge at my fingertips right here right now, that's...I'm thinking through this and that is the mechanism which seems to be congruent to the situation you are relaying. [LB675]

SENATOR HAAR: Okay. Well, I would like to...I would think that at some point we ought

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

Floor Debate
May 20, 2009

to find that out because there are going to be complaints from both sides. As we know, people try to trap on both sides. And we probably ought to figure out what are going to be the consequences and how it's going to be followed through. Thank you. [LB675]

SENATOR STUTHMAN: Thank you, Senator Haar and Senator Fulton. Senator White, you are recognized. [LB675]

SENATOR WHITE: Question. [LB675]

SENATOR STUTHMAN: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB675]

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate. [LB675]

SENATOR STUTHMAN: The debate does cease. Senator Nantkes, you are recognized to close. [LB675]

SENATOR NANTKES: Thank you, Mr. President. Thank you, colleagues, for your kind consideration in regards to this serious amendment. Also, I want to thank Senator White for working as a negotiator to make this concept better technically and in substance, and by the recent adoption of his floor amendment I think we've done that. I want to make clear, because I was asked this question by my friend, Senator Hansen, and he was remembering lessons from Senator Chambers about the word "shall" and "may" and how those work together. And when you take the floor amendment and AM1484 in concert, it simply says that women who become pregnant as a result of rape or incest shall not be displayed an ultrasound image, qualified by the comma included in the floor amendment, unless she asks to do so. So there's no prohibition for a woman who finds herself in a vulnerable circumstance but yet who chooses, according to Senator Fulton the whole reason for this bill, to allow the woman full choice, to allow her full, informed consent if she chooses, despite her difficult circumstance, to view the image she can do so and it will be presented, otherwise it will not. Otherwise it simply says that we as a state are sympathetic to the difficult position that you find yourself in. I want to again thank Senator White for his work on this regard. I want to thank you each for your kind consideration because I know that this is a very difficult vote and that you're feeling a lot of pressures. But humaneness should always trump politics. I urge your support of AM1484. Thank you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator Nantkes. You have heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Senator Nantkes. [LB675]

SENATOR NANTKES: Mr. President, I'd like a call of the house, please, and then I'd

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

Floor Debate
May 20, 2009

like to proceed with a roll call vote in regular order. [LB675]

SENATOR STUTHMAN: Thank you, Senator Nantkes. There is a request for a call of the house. All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk. [LB675]

CLERK: 45 ayes, 0 nays, Mr. President, to place the house under call. [LB675]

SENATOR STUTHMAN: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Nelson, would you check in, please? Thank you. All members are present. There's been a request for a roll call vote. Mr. Clerk, please call the roll. [LB675]

CLERK: (Roll call vote taken, Legislative Journal page 1656.) 22 ayes, 20 nays, Mr. President, on the amendment. [LB675]

SENATOR STUTHMAN: The amendment is not adopted. Mr. Clerk. I do raise the call. [LB675]

CLERK: Senator Haar would move to amend with AM1480. (Legislative Journal page 1656.) [LB675]

SENATOR STUTHMAN: Senator Haar, you are recognized on your amendment, AM1480. [LB675]

SENATOR HAAR: Mr. President, members of the body, AM1480 is really simple and so I'm just going to read it. It says: If the woman requests in writing, prior to the performance of the ultrasound, that the ultrasound images not be displayed so that she is able to see them, such ultrasound images shall not be displayed so that the woman is able to view them. A copy of the request shall be retained in the woman's medical record. The purpose of this amendment is very simple. If we're saying that the knowledge should be available, she knows, she's told she can see the ultrasound, but that she's given the choice of saying she doesn't want to see it, then it shouldn't make it more difficult for her to see it. Then she should be given the choice. It puts...it gives the woman the information, but it also allows for her to say, I don't want to see it. And again referring to the situation that we just talked about, in the case of rape and incest, that might very well be the case, where she's told she can see it, but she says, I really don't want to see it. And so that it...then it's placed so that she cannot see it. I think that's only fair and it would get...it would really say that the purpose is to make sure that she can have the information but that she can refuse to see it, not simply by not looking to the right or the left, but simply that she says, I don't want to see it. I don't think men can

Floor Debate
May 20, 2009

know what's going on in this situation. In my family there has been rape and incest. It affects the family forever but it affects the person forever. And I think if a woman, being told she can see the information, if she says I don't want to see it, that should be enough. Her word should be enough. It shouldn't take body language like turning this way or that way; her word should be enough. So I say we need to trust women. We need to give them the information they need. As we found out it's called out practice, I'm sorry I'm not using the correct terms here but, proper practice. She's being told she can see it, but if she says, I don't want to see it, she should be respected. That's what this amendment is about. And I would urge the body to support this amendment because the message is clear then. Step one is every woman facing an abortion should have the information. But after that, she should be allowed, she should be able to give her word whether or not she wants to see the ultrasound. And then step three is she should be respected. Thank you very much. [LB675]

SENATOR STUTHMAN: Thank you, Senator Haar. Those wishing to speak: Senator Hansen, Christensen, Council, Fulton, and McGill. Senator Hansen, you are recognized. [LB675]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I would be opposed to AM1480 but I am for the bill, LB675. I voted in favor of the last two amendments of Senator White's and Senator Nantkes only because it involved rape and incest. I believe that abortion is not the right thing to do, with the exception of rape and incest, and that's why I voted for those two amendments. Unfortunately, they did not pass. And Senator Haar's amendment has nothing to do with rape and incest. It only has the written word. I think it's going to be harder for the mother. I don't know what the mother is thinking. But this is another step that's going to have to be put down on paper that says, I do not want this child. It's going to be more paperwork for the doctor, and those doctor papers get lost, they get misplaced. It may or may not end up in a permanent file. And then we'll have no problems with that down the line too. And I'm not sure this is a medical request that Senator Haar is talking about. I think that we need to be careful about any other amendments that don't...that do not refer to rape and incest. Senator Fulton, if Senator Fulton is in the...would you like some time? I would lend my time to Senator Fulton, Mr. President. Thank you. [LB675]

SENATOR STUTHMAN: Senator Fulton, you have 3 minutes and 24 seconds. Thank you, Senator Hansen. [LB675]

SENATOR FULTON: Thank you. Thank you, Mr. President. Thank you, Senator Hansen. I am opposed to AM1480. And let me explain why. This is...what we are witnessing out here on the floor, and incidentally, I don't mind the debate. We're all in the same boat here. I want to see my bills go forward and you all understand that. I don't mind the debate on this bill because of the subject matter. But I want to point out that much of what's going on here out on the floor is what occurred in the committee.

Floor Debate
May 20, 2009

Now for those that are new, you know, I didn't know much about the committee structure in the Legislature until I came here. And there are those who have...who place a higher authority on the committee, there are those who place a lower authority on the committee. But we recognize that the committee structure is where we have a lot of the debate. A lot of what has been going on out here on the floor has been discussed within the committee hearing, the public hearing, but even more so in the back and forth, the deliberations that originally were between me and Senator Lathrop but, in the end, ended up between me and Senator Rogert. Now to that end, I want to thank Senator Rogert on that last amendment, he did not support the amendment. And I know that on its face the amendment has some appeal. But we talked about...it was fetal deformity, what do we do in the case of fetal deformity. It wasn't specifically rape or incest, as I recall, but what do we do in the case of fetal deformity. And the decision between the committee and myself was that we construe the language in the bill such that the woman is not forced to view. And that is the upshot that we see in the form of the E&R amendments, that which we adopted last week. And so to that end, I am not going to support AM1480. The mother has...the woman has the ability to choose to view or not to view as it stands now. So I thank you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator Fulton and Senator Hansen. Senator Christensen, you are recognized. [LB675]

SENATOR CHRISTENSEN: Thank you, Mr. President. I just stand in opposition to this. This is another way to try and get around this bill. It would be very easy with this amendment just to have a preprinted form, have it laying there. As the woman is in stress, just sign these forms and it takes care of the problem they have. It would be a very easy thing to work around to just use as a tool to negate the bill. I also think it's another step that's a burden, as you heard Senator Hansen say. So I think we got to think about what we're doing here. I think we're making tough decisions here on the floor. I think it's time to move on. And I don't know that we're going to really be able to improve this anymore. I think we need to move on. Thank you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator Christensen. Senator Council, you are recognized. [LB675]

SENATOR COUNCIL: Yes, thank you, Mr. President. I think I need to clarify something for the record. This bill came before the Judiciary Committee. I'm a member of the Judiciary Committee. I voted against the bill in committee. I was never involved in any discussions with regard to any of these issues. There was no discussion, to my recollection, about rape, incest, fetal deformity. It may have occurred between Senator Fulton and other members of the committee. But these global references to the committee, I just want to make it clear that that does not include me. Number two, getting to Senator Christensen's last statement, I find it interesting that when people point out flaws in this bill we begin to get attacked on the policy. You know, if you read

Floor Debate
May 20, 2009

the rest of the bill, and that's what I was trying to point out the last time I stood, all of this is set forth for the purpose of the woman. Read the bill. The woman certifies in writing, prior to the abortion, that these things have occurred. Senator Haar's amendment says if she was offered the opportunity and chose not to view the display, that would be a part of the certification. It gets back to the question I asked Senator Fulton last time. When it says the woman has to certify that the requirements of (3) of this section have been performed, how does she do that? What does she write? And Senator Haar's amendment fits squarely with the amendment that I have offered. And again, look at the inherent contradictions and inconsistency in (b) on page 6, "Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images." Senator Haar's bill simply...amendment simply says, if she chooses not to view it, she certifies that in writing, which, according to (c) of (4), she's expected to do anyhow. If that's not what she's expected to do, I'm going to ask the question again. What is the purpose of (c) of section (4)? But look at the second line of (b), "The woman shall be informed that the ultrasound images will be displayed so that she is able to view them." Now the preceding statement said that the ultrasound will be displayed so that she may choose to view them or not to view them. But the next sentence says that the doctor has to tell her it's going to be displayed so that she can view them. He doesn't have to tell her that they're going to be displayed so that she can choose to view them or not to view them. That's an inherent contradiction in that section in and of itself. I think that Senator Haar's amendment goes to addressing that contradiction. Senator Haar's amendment goes to clarifying what we are asking this woman to certify in writing. She would have to certify that, yes, she was told that she had an opportunity to choose to view it or not to view it. And she elected not to view it. I would think that people who had advanced this bill would want that because what does the certification serve? Look later in the bill. The certification only serves as an irrebuttable presumption... [LB675]

SENATOR STUTHMAN: One minute. [LB675]

SENATOR COUNCIL: ...that the doctor did and was in compliance with all of the informed consent provisions. I mean, think about it, if we really want to achieve the "stated objective" and not some other agendas, then let's fix the legislation. This body adopted an amendment that I put forward. I didn't have to put it forward but I put it forward because that section of the bill made no sense. This section of the bill makes no sense. Senator Haar's amendment helps to make that section of the bill make more sense. And I would urge you to adopt AM1480. [LB675]

SENATOR STUTHMAN: Thank you, Senator Council. Senator McGill, you are recognized. [LB675]

SENATOR MCGILL: Mr. President, members of the body, once again no surprise where I stand on this bill. I do support this amendment. But, you know, I just get more and

Floor Debate
May 20, 2009

more frustrating because, as I said from the beginning, I don't feel this bill does diddly-squat. And here we are, continuing to debate amendments that honestly don't really, in my mind, even change it from the status quo right now. A woman can request to see the ultrasound. Now Senator Fulton did say, you know, this is informed consent and it should be the doctor's burden to do this. And I don't have a problem with our current informed consent laws. But he lists ultrasound in a list of all these things that a woman is in too much of an emotional state to be able to handle. An ultrasound, colleagues, is very straightforward. I've never been pregnant before but I've had one on my breast before to take a closer look at a lump that was there a few years ago. And it's very clear what's going on. A woman knows, like you have to live in a cave in Africa to not know what an ultrasound is and that you can view the image if you want to. So I honestly hope this debate ends soon because I don't feel like any of this legislation is doing anything. The amendments, you know, I would...in the end, I guess, the last amendment, you know, we will still have that right to choose whether they want to look at it or not. But that's what we currently have right now. And without having any real point and function behind the bill and again no research to show that bills like this happen, I go back to this just being a political issue. And I talked to several members of the body who didn't vote for the last amendment because they were afraid of the political ramifications. That is proof that this bill is all about the politics of the matter. And again, I don't feel this bill really does anything. I will yield the rest of my time to Senator Nantkes. [LB675]

SENATOR STUTHMAN: Senator Nantkes, you have 2 minutes and 54 seconds.
[LB675]

SENATOR NANTKES: Thank you, Mr. President. Thank you, Senator McGill. I've drafted a variety of amendments to put on this bill. I haven't filed them all yet, if I will. I think the last vote speaks very clearly about whether or not any of them would have a legitimate chance of moving forward. And I think that's sad. I think it's a clear indication of how out of touch this body is with the citizenry of this state that the Nebraska Legislature says we are making a conscious public policy choice to force victims of rape and incest to view the product of those horrific crimes. It shows out of touch this body is. It shows how out of touch and how willing Senator Fulton and his colleagues are willing to go to push their radical personal agenda on the citizenry of Nebraska. I wish we could take them for their word, which is ever-changing, as evidenced earlier. They said it's about this, it's about this, the burden is on the abortionist, it's not on the woman. Senator Christensen and Senator Fulton said very clearly on General File the burden is on the women. They've said it again. They said, oh nobody is forced to view an ultrasound under this legislation. The Nebraska Right to Life director is quoted in the Journal-Star, January 21, saying the ultrasound has to be presented, it's up to the woman whether or not she wants to avert her eyes. Let's be really clear here. They're proud to say that this is the strongest ultrasound law on the books. [LB675]

Floor Debate
May 20, 2009

SENATOR STUTHMAN: One minute. [LB675]

SENATOR NANTKES: And you have to say, well, why would that be? Because it forces a woman to view an ultrasound. It's an unbelievable intrusion into medical privacy and the doctor and patient relationship. And, you know, a friend of mine in the body said, why could we have such a civil debate over the death penalty and why do things get so emotional when it comes to choice related issues. And you know why? Because we have honest brokers in the death penalty debate. We do not have honest brokers in this debate. They say one thing, they mean another, they write another thing, and they reject reasonable amendments along the way. That's disgusting. The Nebraska Legislature has failed the women of this state by their rejection of the last amendment. [LB675]

SENATOR STUTHMAN: Thank you, Senator Nantkes and Senator McGill. Senator Haar, you are recognized. [LB675]

SENATOR HAAR: Mr. President, members of the body, my seven-year-old granddaughter used the word "sarcasm." She said something, then she said, well, Grandpa, that's sarcasm. So I'm going to use some sarcasm. And I think the debate right now can kind of be summed up as we really can't trust women to make a decision. Because what I'm suggesting...and the bill itself says to choose or not...to choose to view or not to view. And it seems very reasonable to me--this is not an unreasonable kill the whole bill sort of thing--that the woman could say beforehand, I choose not to view the sonogram. And I guess what this means is...I'm not sure what it means. I just go back to saying we really can't trust women. We got to put that thing in front of them where they can see it, whether or not they like it. It's going to require a physical gesture on their part to avoid seeing that sonogram. It's sort of like requiring a bow before the king. And, men, I hope you don't miss what I am saying. I think we're saying that we need to decide. And women, if they want to make a choice, they're going to have to turn their head or they're going to have to just look straight ahead. They're not going to be able to look to either side, they're going to have to be really careful. And depending on which clinic does this for them, and most clinics that provide abortions, by the way, do allow women...they give them the choice of whether or not to see the sonogram. But we're saying that, by God, we're going to have to put that right in front of them where they can see it. And then they're going to have to do something physical, whether it's averting their eyes or whatever, to avoid looking at that sonogram. And all I am saying is give them the choice. This thing of an additional burden in writing, they already have to do something. The bill says that. (Laugh) I mean, that's just the sort of thing you try not to step in, in the pasture. My amendment would allow women, for example, who have experienced rape or incest to say beforehand, I really don't want to have that where I can see it. Or any other woman, that's what the choice means here, is that a woman gets to say, gee, I would like to see the sonogram or not see the sonogram, not that it's going to be put in front of me and I'm going to have to look in a different direction or I'm

Floor Debate
May 20, 2009

going to have to avert my eyes or I'm going to have to look straight ahead so that I don't see it if I don't want to. So we're giving them...the only matter of choice here is they have to somehow avert their vision because it has to be placed where they can see it. So I'll just sort of end this where I started it. And I say this in sarcasm, but I think the message is, men, we really can't trust women and so we have to set down processes so that they behave the way we want them to behave. Thank you very much. [LB675]

SENATOR STUTHMAN: Thank you, Senator Haar. Those wishing to speak: Senators Coash, Nelson, and Wallman. Senator Coash, you are recognized. [LB675]

SENATOR COASH: Thank you, Mr. President, members of the body. Didn't talk a lot about this bill. When it first came up I signed onto it because I believe it does some things. And I'm going to call LB675 as it is what it is. Myself and the supporters of this bill want to see a reduction in abortions in our country. And I believe that when a woman sees what's inside her she's less likely to end its life. Mission accomplished. But we can't do that in a way that violates the U.S. Constitution. And we have to be careful about women's rights. I want to tell you what I think AM1480 is all about. If AM1480 is adopted, I believe that women will be coached. People will...women will go in and they will be coached. And they will be told, sign this so we don't have to show you the ultrasound. We heard testimony to that effect. I've heard a couple of different opinions regarding this whole concept. One was that the bill does nothing. This is standard procedure, happens every time. Then I hear that supporters of this bill are radical. I'm a little confused as to which one it is. Does it do anything or is it radical? I say it is what it is. It's showing a woman what's inside her so she can make the best decision. With that, I'll yield the balance of my time to Senator Fulton. [LB675]

SENATOR STUTHMAN: Senator Fulton, you have 3 minutes and 1 second. [LB675]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Coash, I think that was well said. The...I am going to be opposed to AM1480. Now there are...you can look on your gadget, there are going to be a number of amendments that are going to come up. Senator Nordquist, and this is in response to whether or not I am being reasonable in entertaining amendments. Okay? I understand and recognize Senator Nantkes is pretty emotional about this because she cares very deeply and is advocating for the position of a woman and I respect that. I'm putting forward this bill suggesting that we're advocating for both, which indeed the courts have indicated is legitimate, and not just legitimate, sometimes obligatory on the part of the state. Am I...or shall we be considering or are we considering these bills or these amendments reasonably? Yes. That is the nature of debate between us, we are reasoning through. So there are going to be...there was the floor amendment that Senator Council brought last go around, which we did adopt. She has another floor amendment that's coming up, I think it's FA46, which we're going to get to, hopefully, here soon. I've read through that. I think I'm going to be in support of that. We'll probably get to have some debate on that.

Floor Debate
May 20, 2009

Senator Nordquist is going to be carrying an amendment which is what Senator White and Senator Nantkes and I talked about last week, which I believe improves the bill and improves our policy. I'll be supportive of that. But I do not want to have anyone believe that I am going into this unreasonably. There was a great deal of time spent on this bill to bear in mind the lives of both. We will have some...I think it's...well, I wouldn't call it temptation. I think that it's just human nature to lurch from one side to the other, advocating for the unborn with a blind eye to the woman's position and vice versa, advocating for the woman to the exclusion of the unborn. [LB675]

SENATOR STUTHMAN: One minute. [LB675]

SENATOR FULTON: We don't get to do that. The state has an interest in both. We have heard that abortion should be rare. Why? If abortion is just another medical procedure, why should it be rare? We don't hear that appendectomies should be rare. Because the object of an abortion is a human life. And so we have an obligation to look at both. And within the purview of informed consent that's what LB675 does. Thank you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator Fulton and Senator Coash. Senator Nelson, you are recognized. [LB675]

SENATOR NELSON: Thank you, Mr. President, members of the body. Much has been said already by Senator Fulton and Coash that I intended to say. And I endorse their comments. I stand in opposition to AM1480. I think it should be clear that, from those comments, that this is not a radical, personal agenda. I simply...this is an emotional issue, but I can't see that way. We are concerned both about the unborn child and the rights of the woman involved and women, and trying to be as fair as possible so that both of them are protected to the extent possible. And it's not a matter of not trusting women, as far as I'm concerned. I simply at this juncture would point out that in comment on what Senator Council was advocating, saying that AM1480 is nothing more than a certification, that we already have in the statute the same thing, it's not. If you read the wording of AM1480 it says, "If the woman requests in writing, prior to the performance," that she not have to look at this or to...not be required to, whatever the wording is here. That's a request. A request is not the same thing as a certification at all. Certification is attesting to what has been done and it's the protection of the doctor, from his or her standpoint, that he or she has complied with the law. That is what the certification is. A request is something separate and simply adds nothing to this amendment, which I think is entirely...or to the bill, which is entirely fair. So again, I stand in opposition to AM1480 and will support amendments for LB675. Thank you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator Nelson. Those wishing to speak: Senator Wallman, Haar, Council, and McGill. Senator Wallman, you are recognized. [LB675]

Floor Debate
May 20, 2009

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I just got done reading an e-mail letter from a constituent. He said, what about the males? What's their responsibility? They going to pay for some of this stuff? DNA testing is out there, going to have that responsibility? It takes two. This man was quite adamant and quite angry where this conversation is going because are we absconding our authority as males? Are we in control? So what should we do? I appreciate...I'm pro-life and also responsible. So I did vote for Senator Fulton's bill and I will vote for Senator Haar's amendment. And if it gives an excuse, that's not our concern. Our concern is to pay attention to what we're doing as male constituents and senators. So thank you, Mr. President. [LB675]

SENATOR WALLMAN: Thank you, Senator Wallman. Senator Haar, you are recognized. [LB675]

SENATOR HAAR: Mr. President, members of the body, gee, if women will be coached to say not to see it, and that kind implies that if women are coached they're going to change their mind. I at least am not married to such a women where (laugh) my coaching doesn't change her mind usually, I think. I think in this whole process women need to be counseled, hopefully, by their pastor, by their doctor, by their mate. Women can't be pregnant by themselves, as we know. So they do need counseling. And most of them, I know, get counseling. And then I think it is up to a woman to make some decisions. Once she's walked into a clinic where she may or may not get an abortion, or if she goes in to get an abortion she's already made a lot of decisions, she's already gone through a lot of coaching. I guess all I'm asking in this amendment is that we do respect a woman's choice, and that if she says, you know, if I'd rather not see it, that she be given that choice. Now if all the bill says is she requests this or that, I would think she should be able to request not to see the sonogram. And otherwise, I think it is a matter of control. And we in this Legislature are saying that we need to control her and put that screen where she can see it instead of saying, would you like to see it or would you not like to see it. Putting it where she can see it and then making her physically do something, that's not a choice, that's control. And I, for one, think that men should not exercise that kind of control over women. Thank you very much. [LB675]

SENATOR STUTHMAN: Thank you, Senator Haar. Senator Council, you are recognized. [LB675]

SENATOR COUNCIL: Thank you, Mr. President. Again, I rise in support of AM1480. And my support of AM1480 is even stronger as a result of my off-the-mike conversations with Senator Fulton and his indication during his on-the-mike comments that FA46, which is an amendment I have offered which would address (b), would be something that he is supportive of. And the reason I rise in support of AM1480, because all it does is complement. In fact, the benefits of Senator Haar's amendment run to the

Floor Debate
May 20, 2009

proponents of this piece of legislation. Again, and I don't want to appear redundant, I just want people to focus in on what it is LB675 is designed to do and how AM1480 assists in accomplishing that result. Subparagraph (b) specifically states that the person performing the procedure shall, "Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images." Okay? That's all it says, "it shall be displayed in such a manner..." Now where is there an obligation? The obligation comes in the next sentence where it says, "The woman shall be informed..." So that places a duty on the provider, the medical provider, "The woman shall be informed that the ultrasound images will be displayed so that she is able to view," and my amendment says "or choose not to view the ultrasound images," because the preceding sentence says the ultrasound shall be displayed so that the woman may choose to view it or not to view it. Now if you go down to (4), that's the meat of this bill. And the meat of this bill is the certification process, which is why I find it rather laughable that there was the comment about coaching someone through the certification. You know, if they can be coached to comply with (c), they can be coached to comply with (a), they can be coached to comply with (b). Subsection (a) says the woman shall certify in writing that the information described in (1) and (2)(a), (b), and (c) of this section have been furnished. And if you go back and read that, that's all of this material, all the information about the risk of going through such a procedure, the list compiled by the Department of Health and Human Services, she has to certify in writing that that information was furnished to her. Can she be coached to say, yep, it was furnished to me, even it wasn't? You bet. And there's nothing in this bill that prevents it. Subsection (b), that she has been informed of her right to review all of this information, can she be coached to sign, certify in writing that she was told that she can review it? You bet. And there's nothing in this document, in this bill as it stands that gives you any basis to challenge that. In (c) it says she writes...she certifies in writing that the requirements of (3) of this section have been performed. I have asked Senator Fulton on numerous occasions how does one... [LB675]

SENATOR STUTHMAN: One minute. [LB675]

SENATOR COUNCIL: ...comply with that? And he has honestly stated, we, neither one of us, we don't know how you comply with it now because...you can't comply with it now because it doesn't exist. Well, so I asked, how do you envision it being complied with? Well, Senator Haar's bill gives you the way to comply and to certify and to document compliance with this whole ultrasound provision. It says that the woman must certify in writing that when she refuses to view it that she was advised that she had the choice to view it or not to view it, she chose not to view it, and she certifies it in writing. That's exactly what paragraph (c) is intended to do. But you don't have a mechanism to do it because no one can explain how to do it. [LB675]

SENATOR STUTHMAN: Time. [LB675]

Floor Debate
May 20, 2009

SENATOR COUNCIL: Senator Haar has given you that opportunity. Please support his amendment. [LB675]

SENATOR STUTHMAN: Senator McGill, you are recognized. Thank you, Senator Council. [LB675]

SENATOR MCGILL: Mr. President, members of the body, I rise first to, you know, share with folks that I do appreciate the people who are purely pro-life, who are completely against abortion and I can understand that. I can understand where they're coming from on that matter. But when it comes to this bill and the rationale they're using that this bill is going to help lower abortions or actually not even that is what's bothering me the most right now. What's bothering me is that they think that they know exactly...they have such a simplistic view of how a woman makes this decision. If she sees the ultrasound, oh, that means she's not going to have an...more likely to not have an abortion or if she, you know, may be coaxed into signing something she doesn't want to. A woman may...when a woman finds out she's pregnant she makes decisions immediately on...or slowly, I guess, but she makes decisions on who to talk to about it. She makes decisions about whether to go to Planned Parenthood or go to a more Christian establishment. Those are choices she is making before she even steps in the door to even...before she gets any sort of counseling or has made up her mind about abortion 100 percent, but she is already making these choices that are leading her down a likely path. You know, and if people are concerned that Senator Haar's amendment means she could get coaxed into saying she doesn't want to look at it, well, that could happen in the room too. They could coax her to look away from the screen. You know, I stand by my belief that this bill, honestly, is not that big of a deal. I know some other senators have been calling it radical. That's not how I frame it. I do think it's political. And there are people in here who have admitted it off mike. I know that's not the case for everybody. You know, again I can completely appreciate if someone thinks abortion should be completely illegal. That is not my opinion. I think it should be rare and legal. And to address Senator Fulton's, you know, how can you believe that, it's because I don't want a black market for abortions. It's because I don't want girls doing it to themselves or their boyfriends or even their parents driving them to another state or even another country to get an abortion where it won't be as physically harmful to them as doing it on their own. I don't want girls and young women to be afraid to talk to their families when they do get pregnant and then try to hide it and have the child on their own and just put it in a dumpster. I don't understand how some people can have such a simplistic view of the world that, oh, if abortion goes away, then these problems with women and pregnancy are going to go away. They're not going to go away, not unless we're doing other programs to better educate women on contraceptives and give them stronger career paths in life. I do rise in support of this amendment. I likely still will not support the bill regardless. I do think that women have the information available right now to make decisions. And I really hope that folks don't continue to talk about how they know what these woman are going through because I don't think 95 percent of you do know. Thank

Floor Debate
May 20, 2009

you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator McGill. Senator Gloor, you are recognized. [LB675]

SENATOR GLOOR: Thank you, Mr. President. Although a supporter of LB675, I will tell you that I would not be supportive of LB675 were I felt it was an effort to force women to look at an ultrasound screen. I understand in my discussions, in my readings that this has been vetted to a great extent through the committee. And it probably, obviously, wasn't vetted enough since we seem to continue to need to talk about it here. But I would not support LB675 if I felt the intent was to force women to look at an ultrasound screen. I've talked about standard of care. I also appreciate the comments from senators like Senator Campbell, Senator Dubas, Senator McGill. This is a women's issue and it is unfortunate that we can't let just women wrestle with this issue, although I believe from what I have seen they are clearly as conflicted with this important, important issue as men are. But we have a representative form of government and I happen to be that representative and my gender happens to be male. And so I'm in a position to have to talk about it. I do find some great irony that Senator Haar and I end up having prostate discussions on a very important issue as relates to women. But that aside, this issue of rape and incest to me ignores a very, very, very important factor and that is that we have care providers. And some will roll their eyes at this thought, but they are care providers regardless of what kind of clinic they are in, who have as their first most priority the well-being, and not just physiological but psychological, of the patients who come to them. And I see nothing in this bill that will require them to position screens in any way that will damage that relationship because it will be their priority. And we can legislate all we want but they as care providers will continue to do what they've always done and are trained to do, and that is out of the sense of decency as well as concern for the overall health, again physical as well as psychological health for this patient, make sure that they can't see that screen if it's made clear to them that's the case. And no paperwork filled out is going to change that, no form that we require them to fill out. They do a medical history. And if they know there's rape and incest involved they will make good quality decisions with the best interest of this patient in mind. We can beat ourselves up over this. We can add amendments to try and make it clear. But it is ultimately their responsibility to do this. And regardless of what we decide here, I believe that what we are doing is a redundancy, I really seriously do, I believe it's a redundancy. I'm also concerned that we begin cracking the door of telling practitioners what they should be doing. I would like to think that somewhere watching this debate is somebody in an abortion clinic who is saying, thanks, but no thanks, we have our hands full anyway and now you're going to, in what you think is the best interests of the patient, force us to jump through even more hoops than we already do; thanks, but no thanks. LB675, as it stands, I believe, is good, is clear, accomplishes what came out of the committee to be accomplished. And I think well-meaning amendments, although I understand they have the patient's psychological frame of mind in mind, are

Floor Debate
May 20, 2009

unnecessary. [LB675]

SENATOR STUTHMAN: One minute. [LB675]

SENATOR GLOOR: Thank you, Mr. President. Now I know I'm talking about abortion clinics as a site where this might be performed, and I have been told that there may be other sites that crop up with well-intentioned individuals who purchase these very, very expensive machines to do exams, who will in fact find ways to show these films. There are such a small number of cases of abortions in this state overall with an incredibly small number of those cases relating to rape and incest that I cannot honestly believe people will be sinking hundreds of thousands of dollars into the purchase and ongoing expense of having these machines scattered throughout the state of Nebraska. I can't believe that's going to happen, but we're legislating, we're talking about legislating as if that's going to be the case. The pragmatic side of me says it will not be the case. Again,... [LB675]

SENATOR STUTHMAN: Time. [LB675]

SENATOR GLOOR: Thank you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator Gloor. Seeing no other lights, Senator Haar, you are recognized to close on AM1480. [LB675]

SENATOR HAAR: Mr. President, members of the body, what's my time on closing? [LB675]

SENATOR STUTHMAN: Five minutes. [LB675]

SENATOR HAAR: Five minutes. Senator Gloor, we're going to get back to talking about the prostate (laugh) a little later. Thank you. I have the same fear, I guess I interpret the bill differently, that this may...that LB675 is cracking the door to telling practitioners what to do. I think absolutely it's telling practitioners what to do. Looking at my thesaurus, my favorite book, coaching, talking to, tutoring, influence, praying, all those kinds of things come into this decision. And I think we have to trust a woman to finally make that decision. And the fact that we put it where she can see it if she doesn't want to see it, I think, takes away that choice. It's kind of like saying to my granddaughter who didn't want to go out on the diving board to say, you got to go out, you know, I know you don't want to go on the diving board, but you got to go out to the end and you got to jump a little bit and you've got to see how that feels and then you can make the decision. I think by putting the screen where the patient can see it, even if she says she does not want to see it, I think that's more than just a crack in the door to telling the practitioner what to do. I think it's telling the practitioner how he has to control the woman. I haven't used the word radical in any of these discussions. I think labels like that are totally useless. I think

Floor Debate
May 20, 2009

what's at issue here in my amendment is whether that highest level of ability of human beings to speak and express themselves is sufficient for trusting a woman. If a woman says, with her voice and putting it on the paper, whatever, with being able to use speech, that she does not want to see that, I think that that's where the choice should happen. And it's very simple. If she says, I don't want to see it, I think then it should be removed from her site. I think that's what choice in this matter...anything beyond that is saying, no, you know what, we're going to require a little bit more. You got to go out to the end of the diving board and I'm going to tell you that. I think that's interference. I think that's opening...more than just cracking the door, I think that's opening the door wide open. Thank you very much. I would urge you to vote for AM1480. And I would like a call of the house and a roll call vote. Thank you. [LB675]

SENATOR STUTHMAN: Thank you, Senator Haar. 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 aye; all those opposed vote...record, Mr. Clerk. [LB675]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB675]

SENATOR STUTHMAN: Thank you, Mr. Clerk. The house is under call. Senators, please record your presence. The senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Cornett, Nantkes, Avery, Ashford, Council, please record your presence. The house is under call. Senator Avery, thank you, Senator Avery. Senator Council, the house is under call. All senators are present or accounted for. The question before the body is, shall AM1480 be adopted to LB675? All those in favor vote aye; all opposed vote...a roll call vote has been requested, thank you, in reverse order, Mr. Clerk. [LB675]

CLERK: (Roll call vote taken, Legislative Journal page 1657.) 10 ayes, 30 nays, Mr. President, on the amendment. [LB675]

SENATOR STUTHMAN: AM1480 is not adopted. Mr. Clerk. I will raise the call. [LB675]

CLERK: Mr. President, the next amendment I have is by Senator Council, AM1482. (Legislative Journal page 1657.) [LB675]

SENATOR STUTHMAN: Senator Council, you're recognized to open on AM1482. [LB675]

SENATOR COUNCIL: Yes, thank you, Mr. President. In view of the way amendments are going on this piece of legislation, it is patently obvious to me that the desire of the proponents of this measure are not to make this bill the best bill it can be but is to advance whatever underlying policy agenda wishes to be advanced. Because, quite

Floor Debate
May 20, 2009

frankly, it's laughable. You have a written certification requirement in a bill and you don't want to provide the means for certifying it. This bill is hollow, it's shallow, it's meaningless. You will never, under the way this bill is written without some of these amendments, particularly Senator Haar's amendment, ever be able to enforce this. And the medical providers, those individuals who are performing abortions, not something that I would like to see happen, but they should...I suspect they're laughing out loud right now because the failure to make the corrections in this bill that would make it workable just opened the door for that which you claim you don't want to see occur. AM1482 gets to the issue I raised last week. And the issue that was raised last week is if these professed concerns about the health of the woman, the welfare of the woman are real and not simply propaganda, then you should support AM1482. Because under the bill as it currently exists, on page 6, it states that if a woman requests information about the displayed ultrasound image her questions shall be answered. If she requests a detailed simultaneous medical description of the ultrasound image, one shall be provided that includes the dimensions of the unborn child, the presence of cardiac activity if present and viewable, and the presence of external members and internal organs if present and reviewable. So what's significant about that, colleagues, is that earlier in this bill there is a requirement that a woman who is seeking an abortion must be provided, 24 hours in advance, a list compiled by the Department of Health and Human Services of entities that provide ultrasound services and specifically those who provide ultrasound services free of charge. I raised the question last week, what is the purpose of that requirement that it be done 24 hours in advance of the performance of the abortion, if in the same bill you have a requirement that the abortion provider has to perform...if he or she is going to perform an ultrasound in the course of the procedure, which I don't think there's any dispute that that's almost a necessity, that they have to do that at least 1 hour prior to? So what is in this magical 23 hours? And if what's in the magical 23 hours is...the intent is that the woman not rely on the physician who's going to perform the abortion for the ultrasound but they go to one of these other entities, my question to you is, why shouldn't these other entities be subject to the same standard if they perform an ultrasound? And that same standard would be if she "requests a detailed simultaneous medical description of the ultrasound image, one shall be provided." Well, last I checked, in order to provide a medical description of the ultrasound image, you have to be a trained medical provider. And in this state you have to be a licensed medical provider. And if we're really concerned about the health and welfare of the woman and the unborn child, we should require that these clinics or other health services, as they're listed on the list to be prepared by the Department of Health and Human Services, meet that same standard. And that's all that AM1482 provides. It states that, "A facility or clinic that is not licensed may only be included on the list" developed by the Department of Health and Human Services, "if there is a contractual relationship between that facility or clinic and a licensed healthcare provider providing for the delivery of medical services." So if the purpose of the ultrasound, in part as it was stated, was to provide for the safety, the health and welfare of the unborn child and the woman, then AM1482 should be an amendment with which there should be no

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

Floor Debate
May 20, 2009

dispute. But if the purpose of the requirement in the bill, of providing a list...of DHHS developing a list of clinics and other pregnancy crisis centers, is merely to do that which is condemned in other settings, coaching and counseling, let's just be honest, let's just be honest. But for those who would be critical of my position on that and would want to ascribe to me a certain philosophical position on the underlying issue here, I'll make it clear, I'm concerned about the health, well-being of the unborn child and the mother. And if you were not concerned about that then why do you include a requirement for all of these medical related descriptions and information. I hope that you do it because that is what you're concerned about. And if we're going to provide this procedure, then AM1482 should be a part of that procedure. But you know, after I've stood here and listened to the debate this afternoon and watched two good amendments fail, particularly Senator Haar's amendment, I don't think I should waste any more of my energy on trying to help the proponents of this bill make a bill to enact legislation that's going to make a tinker's bit of difference, because it won't. The way you just passed on an amendment that gives you some documentary basis for determining whether these abortion providers are doing that which you say you want done, which is provide women with an opportunity to see an ultrasound, you have no way to do it. So with that, Mr. President, I withdraw AM1482. [LB675]

SENATOR STUTHMAN: Thank you, Senator Council. It is withdrawn. Mr. Clerk. [LB675]

CLERK: Mr. President, the next amendment I have, Senator Council, FA46. (Legislative Journal page 1657.) [LB675]

SENATOR STUTHMAN: Senator Council, you are recognized on FA46. [LB675]

SENATOR COUNCIL: The same thing. I've made the point that you've got language in the statute that says that the ultrasound should be displayed in such a manner that the woman may choose to view it or not to view it. But the obligation, in terms of what's to be certified, is an obligation on the doctor to inform the woman that it will be displayed only in a manner that she can view it. That is absolutely a contradiction, absolutely a contradiction. And the only reason I won't withdraw this amendment is I want to see the vote, because Senator Fulton said this amendment made sense. With that, I close. [LB675]

SENATOR STUTHMAN: Senator Fulton, you are recognized. [LB675]

SENATOR FULTON: Thank you, Mr. President. Well, Senator Council said it. And I have had a chance to look at and think through her amendment. And I think her amendment is fine. And let me explain a little bit more about that, about why I think it's okay, and then also how it might be construed, okay, and how I don't want this construed. On page 6, line 2, "Simultaneously display the ultrasound images so that the

Floor Debate
May 20, 2009

woman may choose to view the ultrasound images or not view the ultrasound images." The woman, and this is line 4 and this is where Senator Council is bringing her amendment. "The woman shall be informed that the ultrasound images will be displayed so that she is able to view them." That's the way it reads now. Were we to adopt FA46, it would read, "The woman shall be informed that the ultrasound images will be displayed so that she is able to view them or not view the ultrasound images," I believe is how it reads. Well, there is some consistency in language between line 2 and line 4. And there would be consistency in stating that by adding FA46 we would not be requiring the woman to look. Now I think we could get by without FA46 because of line 5, "Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images." But there is some reason to this and so I'll leave it to you. I'm okay with FA46, though. It adds greater clarity. What I don't want to have happen, the word "display," the word "display has a connotation which, I think, most people would recognize means that if one were to choose to look, one would be able to look. If one chose not to look, that doesn't change the display. That really is key to the bill. The idea behind this bill is that we are going to require that the ultrasound image be displayed such that the woman can choose to view. Okay? Right now, if we didn't change anything in the law, it could be...the ultrasounds could be construed such that the woman couldn't choose to view. In fact, that's my concern. That's why I'm bringing this bill. That why, if we advance LB675, we would want to advance it to change what I believe is occurring now. So I don't want...I'd like to make the record clear here, I don't want this language to be construed such that the doctor could display the image in some way such that it couldn't be viewed and be meeting the intention behind this bill, so that that's clear. But I think that a plain reading...and I think what Senator Council intends here is to continue with some consistency that nothing in this subdivision shall be construed to require the woman to view. But it should be construed that we are requiring the abortionist to display such that the woman could view should she so choose. So thank you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator Fulton. Senator Haar, you are recognized. [LB675]

SENATOR HAAR: Thank you, Mr. President, members of the body. The thing I had passed out I'm really sorry that...I hope somebody has an amendment relating to the list. And I want to tell you about my concern. You've all probably heard about Craigslist, that very popular thing out on the Internet where they had a section where you could list things like masseuse and those and it was being used by sexual predators to commit crimes and murder in fact. And the thing I pointed out, and honestly Woody Allen's picture was up there, I just cut out the other pictures. (Laugh) But this was a case of somebody in New York who pretended to be a gynecologist and actually got people to come. And he examined them for free. And what I'm concerned about here, and by the way, it was mostly poor women who couldn't otherwise afford the gynecological exam. What I'm concerned about here is that if Nebraska just puts out a list, and there's

Floor Debate
May 20, 2009

absolutely no standards for that list, that we could have this sort of thing happening. We could become the Craigslist of sonograms. And I think if we...obviously, we're talking about the safety of women here. But if we thought safe haven made us the laughing stock, if we got somebody offering free sonograms and it turned out that they were some kind of predator, we would be back in the same boat. Now obviously giving a sonogram does not require the same kind of undress and so on that giving a gynecological exam does, but still there's a great deal of intimacy in that process. So I think in some respect we have to have this list vetted and it has to be people who know what they're doing and there has to be safety for the women. There was another case in Dallas, and this is just unbelievable but this really happened, where he operated out of a storage...the office of a storage facility. And he was offering things, as you can see from this article, including vaginal irrigation in a newspaper and ran his scam in a storage facility. And they finally caught up with him and so on. But he claimed, he claimed to, and I guess he did, give free gynecological examinations. So I think we have to be very careful about the state of Nebraska compiling that list, how they do it, the people involved, because there is absolutely no guarantee otherwise that sexual predators will not somehow get on that list and then we, as a state, will become liable for handing out a Craigslist of sonograms. And I'm very concerned about that. Thank you. [LB675]

SENATOR STUTHMAN: Thank you, Senator Haar. Senator Council, you are recognized. And there are no other lights, you can either use this as your time or your closing. [LB675]

SENATOR COUNCIL: Yeah, thank you, Mr. President. After an off-mike conversation with Senator Fulton, and principally based upon his statements while he was on the mike, it is absolutely clear to me, despite the language in my version of the bill, which is on line 5 of page 6, that "a woman may choose to view the ultrasound image or not view the ultrasound image," that's not the intent of this legislation. There is no intent that the woman have a right to choose to see or not see the ultrasound. Senator Fulton made that absolutely clear, never the intent for the woman to have a choice here. And for that reason, I withdraw FA46. [LB675]

SENATOR STUTHMAN: Thank you, Senator Council. It is withdrawn. [LB675]

CLERK: Mr. President, the next amendment... [LB675]

SENATOR STUTHMAN: Mr. Clerk. [LB675]

CLERK: Excuse me. Mr. President, next amendment, Senator Nordquist, AM1492. (Legislative Journal page 1658.) [LB675]

SENATOR STUTHMAN: Senator Nordquist, you can open on AM1492 and you're recognized. [LB675]

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

Floor Debate
May 20, 2009

SENATOR NORDQUIST: Thank you, Mr. President and members. AM1492 is kind of along the lines of the compromise that was being discussed on this bill on General File. Basically, it says to get on the list that Health and Human Services is going to be providing you have to...the ultrasound has to be "performed by a person at least as qualified as a registered nurse under the Uniform Credentialing Act." The department would determine who's more qualified than a registered nurse. But it would set some minimum qualifications to get on the list that we are going to be handing out. The list, as you know, in the bill it says that there will be "denotion" for...and specify which ones are free ultrasounds and which ones are not. But to get on the list, you have to have some basic qualifications. I think this is a commonsense compromise to ensure some level of qualification that these women will be receiving competent care when it comes to these ultrasounds. Thank you, Mr. President. [LB675]

SENATOR STUTHMAN: Thank you, Senator Nordquist, for your opening. Those wishing to speak: Senator Haar and Senator Fulton. Senator Haar, you are recognized. [LB675]

SENATOR HAAR: Mr. President, members of the body, I'd like to ask Senator Nordquist a question. [LB675]

SENATOR STUTHMAN: Senator Nordquist, would you respond to a question from Senator Haar? [LB675]

SENATOR NORDQUIST: Yes. [LB675]

SENATOR HAAR: Now you're saying they have to be at least as qualified as a nurse. We found another case of a gynecologist facing sex and fraud charges in New York. And he had been suspended by the...he was actually a gynecologist who had been suspended by state regulators a year before he began practicing out of his office with free gynecological exams. Would your amendment cover that as well? [LB675]

SENATOR NORDQUIST: You know, I believe that that clarification would have to be made, be made by the department to make that determination. I...if he's not...you said he's not...he lost his license, is that what you said? [LB675]

SENATOR HAAR: Yes. [LB675]

SENATOR NORDQUIST: You know, it would be my intent that someone that had lost their medical license would not be as qualified as someone who is a registered nurse, a licensed registered nurse. [LB675]

SENATOR HAAR: Okay. Senator Fulton, could I ask a question? [LB675]

Floor Debate
May 20, 2009

SENATOR STUTHMAN: Senator Fulton, would you respond to a question from Senator Haar? [LB675]

SENATOR FULTON: Yes. [LB675]

SENATOR HAAR: Yeah. Would you address my concerns that we don't have anyone on the list that either has qualifications but has been disbarred or...I'm sorry, lost their license or that we get people who are posing to do something they can't do. What's the solution in the current LB675? [LB675]

SENATOR FULTON: Well, LB675 isn't putting forward remedies for discipline. This is the informed consent part of the statute, that's what we're doing here. Again, I don't know. But I would think that one who is licensed, is licensed by the state and the Department of Health and Human Services, as Senator Nordquist is...well, I don't know if he knows for sure or not, but it sounds reasonable to me. It seems the department would have purview. [LB675]

SENATOR HAAR: Okay. So...but part of the bill says that the state will maintain a list and give that information out for free sonograms. Isn't that part of the bill? [LB675]

SENATOR FULTON: Yes. I guess, I don't understand what your question...how does that relate to the gynecologist that you were taking about? [LB675]

SENATOR HAAR: Okay. My concern is that by the state providing a list without qualifying who's on that list could lead to exactly this kind of depraved behavior that we've seen in New York, Washington, and Texas. What is there in the bill that prevents that from happening? Because if we're going to mandate that the state prepare a list, shouldn't we have something in that qualifies that list, that tells them who they can put on the list? [LB675]

SENATOR FULTON: That's... [LB675]

SENATOR HAAR: Yeah. [LB675]

SENATOR FULTON: ...that's in the bill, we're putting that forward now. And that's what has been adopted. And this amendment would further clarify that those that have...the ultrasounds be performed by at least one who is as qualified as a registered nurse. So we have...I guess, I'm not understanding your question, Senator. [LB675]

SENATOR HAAR: I guess, others, you know, people always find loopholes in things. And it seems that people in these other states have found loopholes to actually involve, you know, in this case it would be a sexual predator kind of situation offering to give free

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

Floor Debate
May 20, 2009

sonograms when either the person isn't qualified, and I agree that Senator Nordquist's amendment would take care of that one probably. But what about the case of somebody, for example, who had a suspended license? Could they still appear on the list or not? [LB675]

SENATOR FULTON: Well, I don't think so. I mean, these are...the Department of Health and Human Services... [LB675]

SENATOR STUTHMAN: One minute. [LB675]

SENATOR FULTON: ...has purview over licensed health practitioners, I think is the term. I think what you're trying to get at is what remedies exist for people who are putting themselves out as doctors when indeed they're not doctors. And that's an entirely other part of the statute. This is within the confines of informed consent. So if there's a doctor who's saying, look, I'm a doctor, come to my practice, and indeed he is not a doctor, then that would fall under a different part of the statute. I do believe the Department of Health and Human Services would have purview. Does that answer your question? [LB675]

SENATOR HAAR: Well, I guess my time is...I would like to continue my question. Am I next on the light? [LB675]

SENATOR STUTHMAN: No. [LB675]

SENATOR HAAR: Okay. Well, I'll...thank you, I'll get back to you. Thanks. [LB675]

SENATOR STUTHMAN: Thank you, Senator Haar, Senator Nordquist, and Senator Fulton. Senator Fulton, you are recognized. [LB675]

SENATOR FULTON: I...thank you, Mr. President, members of the body. I rise in support of AM1492. You might recall last week Senator Nantkes brought up a concern that the individuals performing these ultrasounds may not be qualified to do so or the folks that are within, I think it was Crisis Pregnancy Centers was her concern, may not be, you know, adequately able to perform the ultrasounds. Senator White had raised the same concern. We had worked back and forth on an amendment. Then it became very urgent here as we've getting close on time. This is the upshot of that concern. Senator Nordquist, thank you, has taken it upon himself to get this amendment drafted and put into a part of the bill which makes sense. And I'm supportive of it. I believe that the Crisis Pregnancy Centers do provide registered nurses or require registered nurses to perform these ultrasounds. That being the case, I don't see why it's a problem to make that statutory. And that's really what AM1492 does. So with that, thank you, Mr. President. [LB675]

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

Floor Debate
May 20, 2009

SENATOR STUTHMAN: Thank you, Senator Fulton. Senator Nantkes, you are recognized. [LB675]

SENATOR NANTKES: Thank you, Mr. President. Thank you, colleagues. I was hoping, I am trying to match this amendment to the bill as amended by the committee amendment. And I was hoping that Senator Nordquist would yield to some questions. [LB675]

SENATOR STUTHMAN: Senator Nordquist, would you yield to a question from Senator Nantkes? [LB675]

SENATOR NORDQUIST: Yes. [LB675]

SENATOR NANTKES: Senator Nordquist, thank you for trying to address the issues that we talked about on General File. And I think that this is a good attempt in that regard. But what I'm not clear about is on page 5, in section (3), and if you don't have it in front of you from the committee amendment I... [LB675]

SENATOR NORDQUIST: I have it. [LB675]

SENATOR NANTKES: Okay, great. Does your amendment in anyway then eviscerate this language that was put forward by the committee amendment which provides that the ultrasound could be conducted by a physician, a nurse, or their agent? [LB675]

SENATOR NORDQUIST: Does it affect that language? [LB675]

SENATOR NANTKES: Yes, would it? [LB675]

SENATOR NORDQUIST: No. No, this language is strictly limited to the list that the department will be putting together. [LB675]

SENATOR NANTKES: Okay, thank you. [LB675]

SENATOR STUTHMAN: Thank you, Senator Nantkes and Senator Nordquist. Senator Haar, you are recognized. [LB675]

SENATOR HAAR: Mr. President, members of the body, Senator Fulton, I'm not trying to be trivial with my concerns. But there are very few cases in which the state of Nebraska puts forward a list. And we've seen in other states where people claim to be what they aren't. And what's to prevent someone from advertising themselves to be something they aren't and sort of luring people into a...into a place, they may not get a sonogram, but luring themselves to the place where a free sonogram is offered and do you see any problem with that, the state providing that list? I'm sorry. I guess I should have asked

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

Floor Debate
May 20, 2009

again, would Senator Fulton answer some questions for me? [LB675]

SENATOR STUTHMAN: Senator Fulton, would you yield to a question from Senator Haar? [LB675]

SENATOR FULTON: Yes. [LB675]

SENATOR HAAR: Okay, thank you. To repeat my question, what's happened in other states is that people are lured to a situation, you know, where something is not as advertised, obviously, and it's much more evil than that. In this case, if the state provides a list and, you know, there may be nobody there to perform a sonogram but yet the state is handing out a list of people who say they're performing a free sonogram. Does that make the state liable in anyway? [LB675]

SENATOR FULTON: I don't believe so. And this...I...no, I don't believe so. [LB675]

SENATOR HAAR: Okay. I don't know, do we have any lawyers around yet? I don't...I think they're all gone. [LB675]

SENATOR FULTON: Do you want me to answer that question, Senator? (Laughter) [LB675]

SENATOR HAAR: And then I get back once more, just the consequences, and maybe that's not appropriate for this bill. But if someone goes and gets a sonogram and it's not interpreted correctly, for example, let's say that somebody goes and gets a sonogram and they're told it's a perfectly healthy baby and it's not, are there any consequences to that? Because somehow people are, especially people going for free sonograms, that probably means they can't afford to go to their regular doctor and so on. Are there any consequences of any of this, improper interpretation, for example? [LB675]

SENATOR FULTON: Again, Senator, I don't know that this...the consequences that would exist would exist under the regulation and licensure of the doctor. So if you're looking for consequences spelled out to someone who's impersonating a doctor, that's not in this bill. And what's more, it wouldn't be appropriate that it be in this bill. That's in a completely other part of the statute. Do you...am I answering your question? I...those...the consequences for putting oneself out as that which he is not,... [LB675]

SENATOR HAAR: Um-hum. [LB675]

SENATOR FULTON: ...with regard to licensed health practitioners, aren't spelled out in this bill, nor should they be. That's a different part of the statute, the regulation and licensure of physicians or licensed health practitioners,... [LB675]

Floor Debate
May 20, 2009

SENATOR HAAR: Okay. [LB675]

SENATOR FULTON: ...I believe. [LB675]

SENATOR HAAR: Would a qualified nurse be qualified or certified in some way by the state to interpret a sonogram and say this is a healthy fetus or not? [LB675]

SENATOR FULTON: It would be under the Uniform Credentialing Act. [LB675]

SENATOR HAAR: Okay. [LB675]

SENATOR FULTON: So a registered nurse... [LB675]

SENATOR STUTHMAN: One minute. [LB675]

SENATOR FULTON: ...and that's what AM1492 spells out. That is the course of things now... [LB675]

SENATOR HAAR: Um-hum. [LB675]

SENATOR FULTON: ...and AM1492 would make that statutory. So that's why I'm in favor of AM1492. It's clarifying. I don't think that it necessarily changes the status quo, but it takes the status quo and makes it statutory. [LB675]

SENATOR HAAR: Okay. Well, I guess, I'm just hoping that in this whole process of the state providing a list we don't somehow wind up with someone on that list who indeed is a sexual predator, does not give free sonograms, but gets somebody to their office or warehouse or whatever. Thank you. [LB675]

SENATOR STUTHMAN: Thank you, Senator Haar and Senator Fulton. Senator Haar, your light is on, you're recognized. Senator Haar waives his time. Senator Nordquist, you're recognized to close on AM1492. Senator Nordquist, you're recognized to close on AM1492. [LB675]

SENATOR NORDQUIST: Thank you, Mr. President, members. Just quickly, again, this just says that the list that the department will be providing of ultrasound providers contains...to get on the list the ultrasound has to be performed by a person at least as qualified as a registered nurse. I think this is a commonsense amendment that we can all get behind. And I'd appreciate your support of AM1492. Thank you. [LB675]

SENATOR STUTHMAN: Thank you, Senator Nordquist. You have heard the closing on AM1492. The question before the body is, shall AM1492 be adopted to LB675? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Mr.

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

Floor Debate
May 20, 2009

Clerk, please record. [LB675]

CLERK: 36 ayes, 1 nay, Mr. President, on the adoption of Senator Nordquist's amendment. [LB675]

SENATOR STUTHMAN: The amendment is adopted. Mr. Clerk. [LB675]

CLERK: I have nothing further on the bill, Mr. President. [LB675]

SENATOR STUTHMAN: Senator Nordquist for a motion. Senator Ashford, your light is on. [LB675]

SENATOR ASHFORD: No. (Laughter) [LB675]

SENATOR STUTHMAN: Senator Nordquist for a motion. [LB675]

SENATOR NORDQUIST: Mr. President, I move LB675 to E&R for engrossing. [LB675]

SENATOR STUTHMAN: You have heard the motion. All those in favor...there's been a request for a roll call record vote... [LB675]

SENATOR ASHFORD: Reverse order. [LB675]

SENATOR STUTHMAN: ...in reverse order. Senator Fulton, you are recognized. [LB675]

SENATOR FULTON: I request a call of the house. [LB675]

SENATOR STUTHMAN: A request for a call of the house. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB675]

CLERK: 38 ayes, 0 nays, Mr. President, to place the house under call. [LB675]

SENATOR STUTHMAN: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Janssen, Avery, and Hadley, please return to the Chamber. Senator Janssen, the house is under call. There has been a request for a roll call vote in reverse order. Mr. Clerk. I would ask that the individual that requested the reverse order please identify yourself. Senator Ashford, thank you. [LB675]

CLERK: (Roll call vote taken, Legislative Journal page 1658.) 38 ayes, 6 nays on the

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

Floor Debate
May 20, 2009

advancement, Mr. President. [LB675]

SENATOR STUTHMAN: LB675 does advance. I raise the call. Next bill, Mr. Clerk. At the present time, the next item is on Final Reading. Senators, please find your seats. [LB675]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: We are on Final Reading. Senators, please return to your seats. Sergeant of Arms, please secure the Chamber for Final Reading. Mr. Clerk for a motion. []

CLERK: Mr. President, Senator Ashford would move to return LB35 to Select File for specific amendment, AM1468. (Legislative Journal page 1600.) [LB35]

SENATOR LANGEMEIER: Senator Ashford, you're recognized to open on your motion to return for a specific amendment. [LB35]

SENATOR ASHFORD: Thank you, Mr. President and members. LB35 has a number of measures in it. It is the Judiciary Committee's every biennium bill that includes numbers of court measures, many of which brought to us by the bar association. One of the initiatives that we placed in LB35 was the addition of a new eighth judge for Lancaster County and as I know this body realizes, and I don't want to preach about it, this body is the only body, the only entity in government in our state that can add judges. And Senator Coash introduced a separate bill dealing with the addition of five judges to the district and county court and juvenile court benches throughout the state. The committee chose to take one of those, one piece of that initiative, the Lancaster County District Court judge, and add it to LB35. And I want to commend Senator Coash. I think the tradition of our committee is that each member has one or two or three significant initiatives that they move, try to move forth through the body and through the committee, and we try, I think as a committee, to empower that person to do that. And Senator Coash chose the judge's bill as a priority for him and he's done an excellent job as a first year senator in attempting to do what is very difficult to do, which is to add a judge to the number of district judges that we have. So I commend Senator Coash for his efforts. You know, I stand here, I support the Lancaster County District judge addition or there's no question that Lancaster County could use an additional judge; that the additional demands on the district court are immense, primarily because of the administrator procedure appeal or appeals from state agencies across the state to that particular bench. However, this year we obviously are in a situation where we have to pick and choose issues that will eventually get to Final Reading and be voted upon. And my discussions with Senator Coash about this matter, he felt, and I think his recommendation is the appropriate one, that we put off the debate on the permanent eighth, new eighth member of the Lancaster County District Court until next year.

Floor Debate
May 20, 2009

Senator Coash has a bill on the floor to address that issue. It will be up next year and I'm certain we will address it and I'm certain, and Senator Coash can talk to this, that it will be a priority of his, and it should be addressed as should other issues involving how we allocate judgeships. But this committee, the Judiciary Committee, and this body has seen fit to address concerns of judges across the state this year. We have raised their salary by 2.5 percent each year in the biennium. Thanks to the good work of the Retirement Committee and Senator Pankonin, its Chair, we have addressed the concerns raised about retirement. We have...the Governor signed, obviously, the mainline LB313, the mainline appropriations bill which funded a retired judge for Lancaster County to fill in some of the gaps that clearly are there in the Lancaster County bench and that has been done. In addition to that, LB35 appropriates a significant amount of cash funds to do various things. One important initiative is the completion of the court automation system. There's an appropriation of around \$800,000 to complete that very, very important initiative. And certainly, it's an initiative that our court system and the bar association has supported and continues to support. You know, I don't like to give up on issues. I don't like to say, gee, I wish...I hate to wait until next year. It's not in my nature to do so and I know it's not in the nature of my committee colleagues to do that either. But to me...and the Governor's Office has indicated that the Governor will sign LB35 if this motion is successful. And in looking at all of the facts and circumstances surrounding LB35, the fact that we have made significant, done significant things for the judges this year and for the court system generally, and responded to the needs of the bar association in a variety of ways, and also the fact that Senator Coash has a bill on the floor on General File dealing with the district judges particularly, all...well, Lancaster County and other district judges, and after talking to Senator Coash and agreeing with him that it's probably best not to risk the...what is in LB35 now with the exception of the Lancaster County District Judge, it's my recommendation to the body and it's up to you all to decide what to do, but I think we've done a lot. I think the Governor's Office in the last few days has been very forthright with me about this matter that they feel comfortable...the Governor feels comfortable in signing LB35, and certainly the Governor was comfortable in appropriating \$80,000 each year of the biennium for a retired judge, that on balance my recommendation to the body is that we put off, not forever certainly, that we put off a final decision on Lancaster County District Court and other courts in Senator Coash's bill until next year. And next year comes very quickly. And I think quite frankly not only as it relates to the court system but as it relates to healthcare and violence issues and other issues, this body has seen fit to up to now to really make significant strides. And we've been able to do so in a time of obviously economic stress around our country. So I think in conclusion, I certainly understand the need and I respect those members of my committee who feel strongly that the judge needs to be added and needs to be added now. I have the utmost respect for that opinion. But my recommendation based on my conversations with the introducer of the judge's bill and with the Chief Justice of the Nebraska Supreme Court and others, that we delay the discussion of the Lancaster County District Judge and other judges until next year. Thank you. [LB35 LB313]

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: Thank you, Senator Ashford. Speaker Flood for announcement. [LB35]

SPEAKER FLOOD: Thank you, Mr. President. Good evening, members. As it relates to this evening, we will be taking a dinner break at 5:30 p.m. and it will conclude at 6:00 p.m. We're doing that primarily because we're on Final Reading with LB35. Again, we will take a dinner break. The Legislature will stand at ease from 5:30 to 6:00 p.m. this evening. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you. You have heard the opening on the motion to return LB35 for a specific amendment. The floor is now open for discussion. Those wishing to speak, we have Senator Lathrop, Rogert, Christensen, White, and Coash. Senator Lathrop, you're recognized. [LB35]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I stand in opposition to this attempt to pull LB35 back for an amendment to Select File. I want to start by pointing out the bill came out of our committee with this section, the judge for Lancaster County District Court, unanimously, with the bill's sponsor, Senator Coash, as well as the Chairman voting in favor of it. In fact, everyone did. And you might wonder what happened in the meantime and maybe I'll talk about that in a moment. But before I do, I want to point something out. The judiciary in this state has a unique relationship to the other two branches of government. We in the legislative branch, as well as the Governor in the executive branch, can engage in politics. We can come onto the floor of the Legislature or send somebody over to lobby the Legislature because we can engage in politics; judges can't. The men and women who serve our state as district court judges in this state cannot participate in the political process. All they can do, all they have available to them is to rely upon us to set, when we come to the judiciary, to set aside politics, to set aside politics long enough to take care of and properly attend to the apolitical branch of our government. Today I believe the Judiciary Committee is getting caught up in politics. This bill came out of the Judiciary Committee unanimously. We haven't heard a rationale for not doing this. Indeed when we were in Judiciary Committee, we heard that we need five judges. The Judiciary Committee considered this carefully and decided that we would put one judge up. Perhaps Senator Coash can address why he's changed his point of view, but I suspect, ultimately, that it's politics. This is a body that deals in politics, I can appreciate that, but this isn't the bill to do it on. The judges in this state require more from us than to engage in politics when it comes to the judiciary. I believe that the judiciary also has a unique relationship with the Judiciary Committee and with the lawyers in this body. The lawyers in this body practice before the courts in the state and they understand what these caseloads mean. They understand when we talk about needing judges in the Lancaster County District Court, judges in this body understand, they should understand, and they should lead on this subject. It is incumbent upon the lawyers in this body to stand up and to speak for the

Floor Debate
May 20, 2009

judiciary. We haven't heard an argument on this that we can't afford it. A judge, a district court judge...by the way, we dictate the pay, we dictate the conditions of employment, and we dictate the caseloads. And if we don't attend to the needs of the judiciary, we're not going to get good lawyers to leave private practice to go into the judiciary. It's not going to happen. We haven't heard a rationale for taking this judge out. They need a judge in the Lancaster County District Court. And the rationale I have heard is the Chief Justice will take care of it, let him decide the new boundaries, he'll decide how to allocate the resources and the problem will be solved. The difficulty with that argument, and you may hear it, the difficulty with that argument is we tried to do that in LB1014 and the rural senators in this body said, no, we're not going to turn this over to the Chief Judge. So when somebody says there's... [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR LATHROP: ...another way to fix this problem, understand, we talked about that. That was in a Judiciary Committee bill last year. It was LB1014 and it was stripped out of that bill because rural senators understandably said, we'd rather have the issue taken up in here. Now you may have also been lobbied and told, don't worry, the urban areas aren't going to take your judges. I don't think that's a fair statement. This is not just about Lancaster County, although they have the most acute need. It's about the rural judges as well because, ultimately, those rural judges will not be reassigned to the districts they serve in... [LB35]

SENATOR LANGEMEIER: Time. [LB35]

SENATOR LATHROP: ...after the retirement. Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Rogert, you're recognized. [LB35]

SENATOR ROBERT: Thank you, Mr. President. Members, I also stand in opposition to this motion to return and the amendment to strike this provision. And I come at it from an angle that Senator Lathrop just mentioned in terms of holding up the courts in rural Nebraska. There are significant...we have much more traffic going through the court system than we did just even a few years ago. There was a newspaper article in the World-Herald just a few weeks ago that talked about Nebraska is bucking the trend in terms of tough on crime. We are getting tougher where other states are relaxing some of their laws because of the costs of imprisonment and effective judicial prudence. Bills like LB63, LB155 have many increased penalties in them because we've made a decision here that we are going to be tough on crime and be standing very strong behind our judges in our system. When there is a vacate of a judge in rural Nebraska, if Lancaster, Douglas, and Sarpy County are needing judges, they will get it. They don't have the power to just take it. It's written in statute what counties and what areas are in

Floor Debate
May 20, 2009

those districts but they do a review and they'll bring it to the Judiciary Committee and they'll say, we need that vacation from western Nebraska put into our district either in Lancaster or Douglas County. And they'll get it. We're...we have to stand up and make sure that our courts across the state have the ability to run in a prudent fashion to take care of the issues that we have at hand. If you have a district judge that's coming to your county once or twice a month, be assured that in the future if we don't approve more judges, they will only be coming once a month at best or they'll be picking up more counties in their judicial district. We have some money to take care of the problem that this judge will cost, which is about \$250,000 or a little less. LB16A, we killed yesterday, had \$100,000 in it. The Appropriations Committee gave us about \$80,000 for this part-time judge to solve part of the problem, and Senator Sullivan today has pulled LB489 which is a \$500,000 bill. We have the money to pay for this. My concern is that if we don't approve the judge or at least talk about approving a judge at a later date today, then we send a message to the court system in the state of Nebraska that says, we're not going to expand our judgeships in the state. We're just not going to do it. And when it comes time to them to relook at where their judicial districts are at, they're going to recommend that we start moving them east. It won't affect me that much because I'm on the east side, but it will affect Scottbluff, Kearney, Hastings, Norfolk, North Platte, without a doubt. The judges are swamped in parts of the state. The judges aren't that swamped in parts of the state but they're spending a lot of time driving around from county to county. The bar is unanimous in their recommendation for more judges. This is a judge, one judge. We could probably use five, but we need one. I oppose this amendment to return to Select File and strike that provision, and I encourage you to vote and stand strong and keep our judicial system strong in the state. Thank you, Mr. President. [LB35 LB63 LB155 LB16A LB489]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Senator Christensen, you're recognized. [LB35]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Ashford yield to a question? [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR CHRISTENSEN: Senator Ashford, when we're striking Section 4 here, the way this would be is we're going back to the original language just meaning seven judges instead of eight, correct? [LB35]

SENATOR ASHFORD: That's correct. [LB35]

SENATOR CHRISTENSEN: And then everything else...so when this says strike section,

Floor Debate
May 20, 2009

we're not losing all the districts, things this way. I just want to make that clear to people. [LB35]

SENATOR ASHFORD: No, we're not and we...no, we've been asked that several times. Thank you, Senator Christensen, for asking me the question and the answer is, no, we are not striking all the other judge provisions. [LB35]

SENATOR CHRISTENSEN: Okay. So the whole thing the bill does or your amendment does is we just go back to the same number of judges we had. That's the only thing that is changing here, correct? [LB35]

SENATOR ASHFORD: In this, yes. [LB35]

SENATOR CHRISTENSEN: Okay. Now, stay there. [LB35]

SENATOR ASHFORD: Thank you. [LB35]

SENATOR CHRISTENSEN: Sorry. (Laughter) Can they...when judges are shared, how are they determined how they're going to be shared and how are they assigned to be shared now? [LB35]

SENATOR ASHFORD: Well, some of it is done on the...at the district level where the various judges work between themselves to decide where they're going to go and they volunteer to go to other districts. You know, there are 12 districts and they can do it themselves, work out themselves, or the Chief Justice from time to time will consult with the district court. It's a pretty give and take sort of thing. I think there's some judges, Senator Christensen, that like going to other districts and move around. [LB35]

SENATOR CHRISTENSEN: Okay. Because I know I visited with some judges in my district and they talk about they come and help Lancaster County out now and they would really like to see another one down here. [LB35]

SENATOR ASHFORD: Right. Right. [LB35]

SENATOR CHRISTENSEN: And is there any way that they can end up being relocated from western Nebraska to the eastern end or is it all temporary assignments? [LB35]

SENATOR ASHFORD: It's temporary unless the Legislature makes a decision to reallocate. Like we did two years ago, as you remember, from District 12 to Kearney we moved a judge, the Legislature moved a judge from that district, District 12, to...there was a retirement, I believe, of...or I believe it was a retirement, not a death, but there was a move of that judgeship to Kearney by us, by the Legislature. [LB35]

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

Floor Debate
May 20, 2009

SENATOR CHRISTENSEN: Yes. Thank you, Senator Ashford. Senator Lathrop, would you yield to a question? [LB35]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB35]

SENATOR LATHROP: Yes. [LB35]

SENATOR CHRISTENSEN: Senator, we did move a judge a few years ago and what do you foresee happening now if we don't add a judge now? Is it critical to be done this year versus next year? [LB35]

SENATOR LATHROP: Yes. First of all, there's nothing about next year that's going to be any different than this year. Secondly, the need is acute and it's now and it's in Lancaster County. And to answer your question, the solution is, as oftentimes happens in state government, there are limited resources and people are left to fight over it. And what's going to happen when there is a vacancy, as there is in Scottsbluff and Senator Harms I expect will talk, is now the judicial reallocation process will begin. We'll look at the caseloads in Scottsbluff and if they don't have enough to do out there, the recommendation is coming in here to move that judge, that position from Scottsbluff to Lancaster County. And today it's Scottsbluff. Tomorrow it could be Valentine. It's going to be...rural communities are going to lose their district court and county court judges to the eastern part of the state unless we provide for the needs of the populations that are growing in the eastern part of the state. [LB35]

SENATOR CHRISTENSEN: So is the workload decreasing in the west or is it just an increased load in the east? [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR LATHROP: It's probably both. Senator Schilz, I think, the other day was talking about how so many of the communities in his district are shrinking in population. The more population there is, the more lawsuits you're going to have, so I suspect that the actual workload is going down, I suspect. But they still have to drive from one neighborhood to the next. And what's going to happen if we leave this to a different process is these judges in rural Nebraska are going to have to cover one and a half times the number of counties they're doing right now. So they'll be doing more windshield time. [LB35]

SENATOR CHRISTENSEN: Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Those still wishing to speak, we have Senator White, Coash, Council, Friend, Nelson, Dierks, and others. Senator White, you're recognized. [LB35]

Floor Debate
May 20, 2009

SENATOR WHITE: Thank you, Mr. President. It seems like just yesterday that we advanced a law having lethal injection as a method of execution in this state and there was extensive discussion about the fact that that is a three-judge panel. If any of you have ever watched a sentencing of a first-degree murder, it is inordinately time consuming. And you are not taking up one, you're taking up three judges' times. It seems deeply ironic that at the same time we have passed probably one of the bills that will absorb more broad judicial time, that we are now talking about not funding necessary judges to carry that out. Let me explain what happens when you don't have enough judges. We have a law and it's a federal constitutional law called the Speedy Trial Act. If you do not give a person who demands it a trial in 60 days, they get to walk away from any charges. So how do we handle that? That means that all other business in a court under pressure comes to a halt. If you, for example, are involved in a really profound property dispute if you're a farmer, or you're in a fight on a contract, or you have a pending divorce, or you have a will that you need to get finished and probated, those resources will not be available for you. They will go first at having a trial for a person so that they are not released from any charges because we can't afford to allow that to happen. So what you're really doing is taxing all normal business. We have already set the priority. The judges must take care of the criminal defendants now. And they do that. And you and your constituents pay an increasingly higher price because you cannot get what is absolutely necessary for a civil society or a decent economy and that is fast, efficient, just and reasonably priced resolutions of controversies so that you can go on about the business of your life. You can go on about the business of your business. And the longer cases pend out, the longer they take, trust me, they are far more expensive. Any lawyer here who has tried cases can tell you the most efficient way, in terms of your out-of-pocket costs, to get a case resolved is a judge who says with no nonsense, you are going to have this prepared in six months or nine months. I am going to be available. If we have disputes about discovery or other petty disputes, you're going to have to deal with me personally right away and I won't tolerate nonsense. Because they watch over the case and they push it forward, that saves money. It saves you and the public a lot of money. What is enormously expensive is a backlogged caseload of judges, that are backing up judges, so they can't get at their cases and resolve them promptly. That is hugely expensive and you will pay more in attorney fees for it. You also won't get the highest quality of lawyers to be judges. If they know that they are trapped in a system that they can never see daylight, and they know that if they become a judge in Lancaster County they cannot possibly do the job properly, they cannot devote the time, they cannot oversee the attorneys, they cannot write good opinions, they can't do a thoughtful reflective job because they're... [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR WHITE: ...just putting out little fires, that will cost you even more money because the best and the brightest won't take up that job. And that is the real hidden

Floor Debate
May 20, 2009

cost of not taking care of infrastructure. It's no different, a judicial system is no different than a bridge. It is on a day-to-day basis expensive and painful to paint it, and the only thing more expensive and painful than painting it and maintaining it is the consequences of not maintaining it. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Coash, you're recognized. [LB35]

SENATOR COASH: Thank you, Mr. President, members of the body. I want to thank a few of my previous colleagues, Senator Rogert, Senator Lathrop. I appreciate their comments. This amendment deals with my part of LB35, adding a district court judge for District 8. It's been a tough decision for me and I've come down to support our committee Chair, but I rise to let you know that this issue is not over. My intent with amending this judge into LB35 was always to garner more judicial resources for Lancaster County. The problem of short judicial resources in some ways has been addressed by LB35. The automation fee is an example. But the problem of short judicial resources has not been solved. In the signed budget was an increase for retired judges to assist where resources are short. There's a commitment to assure resources are allocated in District 8, 9, and 10 to assure that they have it. But again, let me be clear, this does not solve the problem. As Senator Rogert pointed out, the more this body decides to increase penalties and get tough on crime, the more judicial resources will be needed. My main reason for supporting this amendment is because it is not my intent to jeopardize the remaining contents of LB35. There are needed provisions in this bill which must be passed in order to keep the judiciary branch running. I want my colleagues to know that I do not intend to leave this issue. I'm committed to addressing judicial resources across this state. While I'm convinced that there are areas of this state where judicial resources are in demand, I also know that there are areas where judicial need has changed and the current need for judges is different. This is not a Lancaster County issue. This is a state issue. And I intend to look at the entire state and its resources. I have two mechanisms to address this. I have an interim study to look at judicial resources, and I have LB669 currently sitting on General File. I'm going to put this out here right now, colleagues. I will designate as my priority bill LB669. And I will address resources...I will use that bill to address judicial resources as I see fit. But I will not make those decisions in isolation. I will invite and I do expect the bar, the Chief, and the Executive Branch to come to the table, and I will work with any member of this body. At some point we will need to add judicial resources. We cannot just move lines around. I've been working with the committee Chair, Senator Ashford, and have his support to address these state issues. And I want to say, I understand the opposition. Adding judges or judgeships versus redrawing lines comes down to philosophical decision and a philosophical discussion. And I invite the body to join me in this decision. I'm not running from this issue. I'm taking control of it. This has become my issue. I'm not throwing my own county under the bus. I'm going to fight for them. Whatever the outcome of this vote today, I own it, good or bad. But I want to remind the body, should

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

Floor Debate
May 20, 2009

we reject this amendment, that is our prerogative, then we're all in this together. I will leave it to the body. [LB35 LB669]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR COASH: Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Coash. Those still wishing to speak, we have Senator Council, Friend, Nelson, Dierks, Stuthman, Lathrop, and others. Senator Council, you're recognized. [LB35]

SENATOR COUNCIL: Thank you, Mr. President. I rise in opposition to AM1468. And when I discovered that AM1468 had been introduced, I was surprised. I didn't really know the reason why and, quite frankly, I just found out through Senator Coash's comments. Senator Coash stated that he supports this amendment because he doesn't want to jeopardize the balance of LB35. Well, clearly the committee has no problem with the balance of LB35. The committee had no problem with LB35 in its entirety. It advanced on a 8-0 vote. The committee had no problem supporting Senator Coash's original judge bill, LB669. That advanced on a unanimous committee vote. To my knowledge, no one in this body has yet to act in a way that could have any impact on LB35. So the jeopardy that Senator Coash is seeking to avoid, to me, is clear as coming from outside of this body that pressure. And in that regard I think my colleagues need to be aware of the conscientious manner in which the Judiciary Committee addressed these judicial issues. As Senator Coash stated, LB669 provided for five additional judgeships, five additional judgeships. You look at the committee statement that the proponents were representatives of the district courts in the affected counties, the county courts in the affected counties, the juvenile court in the affected county, and the bar association and the lawyers associations respectively. And it was really interesting because in regard to Senator Coash talking about Lancaster being his home county, believe me that's not the reason that the committee voted to add to LB35 a Lancaster County judge. The reason the committee voted to add a Lancaster County judge is because Lancaster County needs the judge the most. Douglas County needs a juvenile judge, and after passing LB63, they're going to need a whole bunch of additional juvenile court judges. I stated when this body was deliberating over LB63, there are costs associated when enhancing penalties. Senator Rogert has referred to it. Senator Lathrop has referred to it. We enacted not one but two significant measures that add criminal penalties, create new criminal penalties. Who do you think is going to adjudicate those? And then just last week, voted to advance...and that's this week, this is...today is Wednesday, this week, the legal injection--days start to blur--lethal injection. And for those of you don't know, under the laws of the state of Nebraska any challenges to action taken under the Administrative Procedures Act... [LB35 LB669 LB63]

SENATOR LANGEMEIER: One minute. [LB35]

Floor Debate
May 20, 2009

SENATOR COUNCIL: ...are litigated in the district court of Lancaster County. You just advanced a lethal injection bill that says the protocols for the administration of the drugs used in execution will be developed pursuant to protocols enacted/developed under the Administrative Procedures Act. Every single challenge of that has to go to Lancaster County. Believe me, you are going to need to have additional judges. All of the other...there's another claims process. Actions against state agencies go to Lancaster County District Court. There is a need for this judge. I respect Senator Coash because I have a part of LB35 that I don't want to lose. But this body needs to do the right thing. We were conscientious when it came... [LB35]

SENATOR LANGEMEIER: Time. [LB35]

SENATOR COUNCIL: ...to the dollars. We need to advance LB35 in its original state. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Friend, you're recognized. [LB35]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I think...I was talking to Senator Janssen about this a little while ago. I saw one of my favorite movies, it was called, the movie called The Hunt for the Red October. It was a Tom Clancy novel. One of my favorite lines is one of the sub captains says, the difficult part about playing chicken is to know when to flinch. And, of course, he was playing chicken with another submarine. It's a little bit different, but I think...I don't believe that it's in our state's best interest to call this bluff or to play chicken. Yesterday, I think it was yesterday, the Governor signed LB313 into law. The bill specifically included new state General Funds for the retired judges program in order to finance an additional half-time district court judgeship for Lancaster County, a part-time position covered by a retired judge. Senator Ashford brought this up earlier. Needs have to be addressed. I concur with that thought process. I concurred with it on Select File and General File as well. But the argument is this, from the standpoint...and call them outside of this body if you want. We can't ignore it. The argument is that the needs, whether sufficiently or insufficiently, whatever the perception might be or the reality might be, the needs are being addressed with what occurred yesterday. The office believes that and has dealt with it at least to the best of their...what they feel like is the best their fiscal ability, capability. It's my understanding, you know, based on obviously this discussion and the conversation I've had with Senator Ashford, I think the Governor has agreed to sign LB35 and LB35A into law if the Ashford amendment is adopted. I think it would be somewhat irresponsible to play chicken at this point. If there...there are numerous provisions in the bill. Remember, this was the Christmas tree. This is where I was singing. This is it. I mean 14 bills in this thing. And senators have brought up they're important to just about everybody in every area of this state. Frankly, members of the Legislature, I don't think

Floor Debate
May 20, 2009

the Governor necessarily did this to pick a fight. I don't think that. If he wanted to pick a fight he would have done it on the budget. If you remember, I voted no on the budget. You know why? Because I had 12 amendments that I could have made to it. I had them sitting in front of me. It's the best budget I've seen in six years. I told Lavon Heidemann that. We could have cut. If he wanted to fight, if they wanted to fight outside that glass, it wouldn't be on this, folks. It would have been on the budget. Sell me the 1 percent increase all you want. Like I just said, I told Senator Heidemann it's the best budget I've ever seen. And I still voted no. You know why? Because I would have given a zero all the way across the board. And if I had 12 amendments, what do you think the PRO would have had? Could they have come up with some vetoes? Yes, they could have. And by the way, he's not just picking a fight with the Legislature if he does that to a budget. He's picking a fight with five or six or seven agencies that either depend on that money or expected it based on the appropriation hearing that they had. The executive branch isn't the boss of us. They're not. I accept that. But when the executive branch makes a move, when the judiciary... [LB35 LB313 LB35A]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR FRIEND: ...makes a move, we don't ignore it, nor should they ignore the moves we make. Let me give you an example. I voted for things, goes all the way back to Johanns, I voted for...and I've overridden Governor's vetoes. But I've also supported the vetoes, things that I voted for within this Legislature, because I think when something is vetoed, it changes the complexion of the discussion. I've said that to lobbyists. I've said that to other senators. I've said that to anybody. I think we were living in a cocoon if we don't believe that it doesn't change the complexion of a discussion. We don't live in cocoons. I haven't, frankly, decided what I would do with LB35. I know Douglas County needs it. I know Douglas County needs it to implement JUSTICE. I know it's going to be nine years before they can...they'll be crawling through this with their implementation. But I do know LB35 is in jeopardy if we don't do this. [LB35]

SENATOR LANGEMEIER: Time. [LB35]

SENATOR FRIEND: Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Friend. Members, we'll be standing at ease after this next speaker. Senator Nelson, you're recognized. [LB35]

SENATOR NELSON: Thank you, Mr. President. Shall I take that, that I should be brief then or no one is going to pay any attention to my comments? Members of the body, I'm a lawyer. I've practiced many, many years in Douglas County. I'm not a trial lawyer, but I'm familiar with our court system. As a lawyer, I don't feel it's incumbent on me to necessarily speak on behalf of the judges. They can take care of themselves and they do so very well. They have their representatives. They have our Chief Justice who

Floor Debate
May 20, 2009

advocates for them. They've been involved in their 2.5 percent raise and agreement on contributions to the retirement. As a result of the raise, in a couple of years they're going to be paid \$132,000 a year plus benefits. The cost of this Lancaster County judgeship is going to be in the area of \$240,000. Now, we have 55 judges. We have 12 districts. We have 55 judges. They're pretty evenly divided around the state: 28 in the rural, I think, if my figures...yeah, 27 outstate and 28 on the eastern part of the state, which includes Lancaster, Douglas County, Sarpy, Cass, and one other. At the present time, yes, they may be shorthanded in Lancaster County Court or district court, and I understand that, but they are working it out. Reference was made to the fact that perhaps there's less population in the western part of the state, not as much to do. I feel that we can continue to do this for another year and that these judges can come in and they can help out and they can sit, and some of them are happy to do so. We have a large bill here, a lot of factors. We've got in LB35, we're already spending \$800,000. We've heard that the Chief Justice, although he might not be happy about it, would much prefer to have that and all the other things in the bill for the needs that he and the Supreme Court have to meet for our court system, and that in order to get this bill passed that we should give up the Lancaster judgeship here, at least for another year. I think that's very reasonable on his part. I think it's reasonable on the part of the Judiciary Committee, Senator Brad Ashford and also Senator Coash to feel that perhaps this is the best move that we should make at this time to return to Select and go in that direction. And I, therefore, feel that...and I subscribe to the comments of Senator Friend, that it's in our best interest and the best interest of the state to return this to Select and to follow the recommendation of the Judiciary Committee. The fact that it came out unanimously when it was...came out initially, that's fine. But things change. We've had money issues. I'm on Appropriations. We've had to think in terms of expense and cost; the Governor does too. So I stand in support of the amendment, AM1468, and urge the body to support that and return this to Select. Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Nelson. At this time, members, the body will stand at ease until 6:05. [LB35]

EASE

SENATOR LANGEMEIER: We would ask that you return to the Chamber. We're about to reconvene on discussion on LB35 and the motion to return to Select. When we resume, those wishing to speak, we have Senators Dierks, Stuthman, Lathrop, Loudon, Sullivan, Price, Rogert, and others. Members, we are set to reconvene. We are on Final Reading. Please take your seats as you come back to the Chamber. Mr. Clerk, items for the record. [LB35]

CLERK: Thank you, Mr. President. Enrollment and Review reports LB16, LB241, LB288, LB288A, and LB561 as correctly engrossed. Urban Affairs Committee, chaired by Senator Friend, reports LB658 to General File with committee amendments, and an

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

Floor Debate
May 20, 2009

amendment to be printed to LB285 by Senator Lautenbaugh. That's all that I have, Mr. President. (Legislative Journal pages 1659-1661.) [LB16 LB241 LB288 LB288A LB561 LB658 LB285]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will return where we left off on the motion to return this LB35 to Select File for a specific amendment. The floor discussion, those wishing to speak, we have Dierks, Stuthman, Lathrop, Loudon, Sullivan, and others. Senator Dierks, you're recognized. [LB35]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I was hoping to have a little dialogue with Senator Ashford but I don't see him, so...oh, there he is. [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes, sir. Yes. [LB35]

SENATOR DIERKS: Thank you. Senator Ashford, I am taking the opportunity to ask some questions here that don't reflect necessarily on this legislation, but it's an opportunity to talk about something that's of great concern of mine. We have three branches of government, legislative, administrative, and judiciary, or executive instead of administrative. Who has the oversight over those three branches of government? Who makes the corrections? Who decides salaries? Who decides appointments? How does that happen? Let's talk about judiciary at the state level first. [LB35]

SENATOR ASHFORD: We do, in the Legislature. We make the appointments. Well, the Governor makes the appointments but we decide the salaries. We decide where judges are...is that what you're asking? I mean, if I'm missing the question, I... [LB35]

SENATOR DIERKS: Yeah, that's right. [LB35]

SENATOR ASHFORD: Okay. [LB35]

SENATOR DIERKS: And I want to know who has oversight over the legislative branch. [LB35]

SENATOR ASHFORD: God. (Laughter) [LB35]

SENATOR DIERKS: Well, that wasn't exactly what I was thinking... [LB35]

SENATOR ASHFORD: I was just trying...(Laughter) [LB35]

SENATOR DIERKS: ...but that's not a bad idea. (Laughter) He probably has the same

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

Floor Debate
May 20, 2009

oversight over the rest of them too. (Laughter) And what about the administrative branch, the executive branch? [LB35]

SENATOR ASHFORD: Well, the Governor is in charge of the executive branch. [LB35]

SENATOR DIERKS: Well, the electorate has something to do with that. [LB35]

SENATOR ASHFORD: Well, the people do fit in there as well, exactly. [LB35]

SENATOR DIERKS: Okay. Let's go to the federal branch of judiciary. Where's the oversight there? Who handles that? [LB35]

SENATOR ASHFORD: The Congress. The President nominates all federal judges, I believe I'm correct, and specialty court judges and the Supreme Court. And the...those judges are approved, voted upon by the Senate, I believe. [LB35]

SENATOR DIERKS: And if I'm not mistaken, those federal district judges are most likely lifetime appointments, aren't they? [LB35]

SENATOR ASHFORD: Yes, I believe they are lifetime appointments in the federal system. [LB35]

SENATOR DIERKS: Is that the same thing in Nebraska with our Nebraska judges? [LB35]

SENATOR ASHFORD: No, I...there's an age and I believe it's 72 and I could stand corrected. And they can, the judges can serve beyond that age if the Supreme Court, I believe, the Chief Justice has that authority. But I believe it's 72, though judges do serve beyond that age or have done. I think it's 72. [LB35]

SENATOR DIERKS: Thank you very much, Senator Ashford. Mr. President, I'd like to engage Senator White in a question or two. [LB35]

SENATOR LANGEMEIER: Senator. [LB35]

SENATOR DIERKS: Go ahead. [LB35]

SENATOR LANGEMEIER: Senator Ashford. It's Senator Dierks's time. Senator White would you yield to a question? [LB35]

SENATOR WHITE: Certainly. [LB35]

SENATOR DIERKS: Senator White, you've had considerable experience in courtrooms

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

Floor Debate
May 20, 2009

with trial work. [LB35]

SENATOR WHITE: That's true. [LB35]

SENATOR DIERKS: I have a great concern about let judiciary legislating from the bench. Do you see anything like that going on at the federal level? [LB35]

SENATOR WHITE: Yeah, I've had bitter experience and, believe it or not, the real judicial activists are the very, very, very conservative judges. [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR WHITE: They've destroyed fundamental longstanding statutes. Teddy Roosevelt passed one of the first great innovations to protect rural America, the Packers and Stockyards Act, and the Eighth Circuit and other federal judges, literally, after 100 years, wrote whole provisions out, just destroyed it. It no longer exists as a functioning piece of legislation. So I see it all the time. [LB35]

SENATOR DIERKS: Thank you. I just wanted to get that on the record. Thank you very much, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Dierks. Senator Stuthman, you're recognized. [LB35]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to engage in a little conversation and ask a couple of questions of Senator Ashford. [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR STUTHMAN: Senator Ashford, I do support returning it back to Select File and your amendment. If we...if this amendment goes and we return to the seven judges in Lancaster County, I've been hearing rumors that they can take a judge from another area to replace that one in Lancaster County. Is this possible? [LB35]

SENATOR ASHFORD: Not on a permanent basis. That moving judges from district to district is our function in the Legislature. [LB35]

SENATOR STUTHMAN: And that... [LB35]

SENATOR ASHFORD: Permanently moving. I mean... [LB35]

Floor Debate
May 20, 2009

SENATOR STUTHMAN: Permanent moving. [LB35]

SENATOR ASHFORD: ...taking a judge from one district and moving that judge to another district. [LB35]

SENATOR STUTHMAN: Okay. Thank you, Senator Ashford. I've been reading...I have the statute that refers to district court, judicial districts and it states, and I've been hearing the fact that, you know, if we don't allow this extra one in Lancaster County, they're going to come out to Platte County, they're going to come out to Scottsbluff, and they're going to take one away from the rural area because there is not quite the work force there. But in the statute, it does state that...and District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, and Seward and Saunders. And then, "District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant and Deuel." Now it does state here in the statute, it says in the 5th and 12th districts, which I just did mention were the two districts that I was concerned with, there shall be four judges of the district court. Now, there's four judges in those two districts. But I'm hearing rumors that they're going to take one of them away. That can't happen unless the legislative body, in my opinion, comes up with a bill, has a hearing, passes it on the floor in the next legislative session or whenever to make the statement that that district will only have three, in my opinion. So this can't happen that they're going to rob one away from a district that doesn't have near the workload to fulfill the need in Lancaster County, if we don't pass LB35, you know, as it was to start with, leaving it in eight. You know in this amendment it returns it back to seven. And I just feel that it is a legislative body's duty to change it if needed, but there is a process to go through to accomplish that. And I think, you know, that this can't happen unless something else happens in another year or two as far as the number of district judges or the areas that the districts are affiliated with, with the counties. So I do support the fact of getting it back down to the seven and I don't...I myself, don't feel threatened that we're going to lose some of them in the rural areas where we don't have quite the workload. Yes, I feel there will be district judges helping with the workload on a request basis. [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR STUTHMAN: But they're not going to permanently take a judge away from these areas unless the legislative body allows it to happen, in my opinion. And if I'm wrong, I would wish that someone would correct me on this. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Lathrop, you're recognized. [LB35]

Floor Debate
May 20, 2009

SENATOR LATHROP: Thank you, Mr. Chairman, President, and colleagues, good evening. I think it's interesting that Senator Friend gave us a metaphor to work with while we debate this bill or this amendment. That is, we're playing chicken and we need to know when to flinch. It's kind of a moment where we're testing our mettle here in the Legislature, a separate branch of government. I couldn't help but see that another branch of government was lobbying a lot of my colleagues today, and I talked to some of the people after to see where they were at on this afterwards, and I kind of got a sense of what was being said. And that was like, well, we'll deal with it next year, this isn't a good year, let's have a study. When you were out there getting lobbied, did anybody give you a good reason not to do this? Did somebody tell you we couldn't afford this or that there's a plan B? Let me tell you, there is no better time to move LB35 with this judge in there. Next year is not going to get better and, Senator Coash, with all due respect, the bar association has paid professionals to study this. There isn't one more thing we need to learn about the subject matter. Next year isn't going to get better. We're playing chicken. We're playing chicken, that's all plain and simple, that's what we're doing today. Well, maybe we ought to look at what we got to lose and what this is about. Were somebody to stand up and tell me that the problem is, this is too expensive, this isn't the year because it's too expensive, I'd say, let's hear the argument. That's not what we've heard. It's just plain, somebody is threatening to veto. And so now what are we going to do? We're going to put an amendment up to pull something out of a bill because, and it's not even a threat, it's...he's considering a veto. All right. But why you think you're jumping on board with this? Is it because there's a good reason that's been given to you or because you're afraid? You know, every time I go speak somewhere somebody invariably says, what do you think about term limits? Ultimately, colleagues, the biggest problem with just having a bunch of people that have only been here a few years is when I was here with the guys that had been here a long time, they knew how to stand up for this body. And they didn't have somebody down at the other end of the hall call them and say, I'm considering a veto, pull this out of the bill. No one has given us a reason to take this judge out of there. Lancaster County District Court needs this judge and I'm going to tell you every reason you've been given to do this. If you're in the rural communities, you're going to lose judges. And Senator Harms will talk about that in a minute. He knows it. He's seen it. It's happening. And if somebody tells you we can't afford a judge and the only way we're going to get one in Lancaster County is to do it without having a new judge appointed, it's coming out of your district. And today it might be Senator Harms's district and tomorrow it might be Senator Sullivan's and pretty soon it will be Senator Dierks's district. And that's how the game is played. It's time this body grow up. It's time this body stand up for itself. It's time that we establish ourselves as an independent branch of government and not have somebody tell us that they are considering a veto, and then have us put up an amendment like this to take something out of a bill that came out of committee 8-0. Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Loudon, you're recognized. [LB35]

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

Floor Debate
May 20, 2009

SENATOR LOUDEN: Thank you, Mr. President, members of the body. As I look this over, I'm not a lawyer as you will notice, so I won't try to look this problem over as a lawyer, but I would look it over as a rancher that's trying to round up a hay crew or something like this. I was wondering if Senator Ashford would yield for some questions, please. [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yep. [LB35]

SENATOR LOUDEN: Now, it's my understanding that in the appropriations bill they did appropriate some money for a part-time judge for Lancaster County. [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR LOUDEN: Okay. And at the present time then, Lancaster County has seven judges at the present time. [LB35]

SENATOR ASHFORD: Correct. [LB35]

SENATOR LOUDEN: And so then they would, therefore, would have seven and a half judges if we didn't do anything with this bill. [LB35]

SENATOR ASHFORD: Correct. [LB35]

SENATOR LOUDEN: And then there's 16 judges in Douglas County? [LB35]

SENATOR ASHFORD: District judges, I believe that's correct. [LB35]

SENATOR LOUDEN: Okay. And if my calculations are right, there's 55 district judges in the state of Nebraska, the whole state all over, is that what there...if they're all got, yeah. [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR LOUDEN: What I'm wondering here as I look at this, there's District 1 and District 2 and 3, which is Lancaster, and Douglas which is 4, out of those 4 districts, there's 30 judges in those 4 districts. And would that be safe to say that there's 30 judges within a 75-mile radius of Lincoln, of the city of Lincoln. If you draw 75-mile circle which would put you over into Iowa... [LB35]

SENATOR ASHFORD: Yeah, that's probably going to be close, Senator Louden. [LB35]

Floor Debate
May 20, 2009

SENATOR LOUDEN: But that would be...and then in the rest of the whole state, there's 25 judges to cover, you might say, what, 99 percent of the state then. So I'm wondering what...where's the beef? I mean, what's the problem? Maybe perhaps instead of worrying about taking judges from different areas or stealing them from some place, what would happen if these four districts were all consolidated and you had that one judicial district and you had 30 judges in it? If we had to put another half-time judge in or something, why...and then they could work that workload around amongst the 30-some judges. [LB35]

SENATOR ASHFORD: I think the argument is...is that...I don't want to take your time but if I could... [LB35]

SENATOR LOUDEN: Oh, be quick. (Laughter) [LB35]

SENATOR ASHFORD: Okay. Very quickly, I think the issue that was raised to me by the Governor's Office was not...was that he would veto it, not that he was going to veto it or may veto it. But I think the issue is more around reorganization than it is around cost. That's my perception. Now what his motivation is or not, or whatever it is, I don't know except that that's my understanding, that he wants to study that issue. That's what I hear. [LB35]

SENATOR LOUDEN: Exactly, and that's what I've...my point is getting to the fact that you're going to get a half a judge, I guess, if there is such a thing, in Lancaster County here for the next year because the money has been appropriated for that. And then perhaps when you come out with your study on the thing, maybe there's other ways of looking at this than what we've been doing about worrying about each little district having their judges. We have judges out there in, well, like District 12 where my district is. There's 12 counties out there and there isn't a judge out there that doesn't probably travel 75 miles one way most of the time to go to a...for courts of some kind. District 8 out there has 17 counties and you take the District 11 and 12 and probably throw in District 8 and you've got, oh, way over half the land mass of the state of Nebraska. So I'm wondering if there's a better way that...sure, they need more judges down in eastern Nebraska, they got more criminals down there and they also have more people, so I agree that they need more judges down there, but the way we're going about it, I don't know if it's right. So I think I would support the amendment... [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR LOUDEN: ...that Senator Ashford has brought forwards and I think there's better ways to go about this than what we have been doing. Thank you, Mr. President. [LB35]

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: Thank you, Senator Louden. Those still wishing to speak, we have Senator Sullivan, Rogert, Harms, White, Campbell, Coash, Pahls, and others. Senator Sullivan, you're recognized. [LB35]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. As a freshman senator, I'm still trying to figure out the three separate branches of government and who is to do what, but in the conversation that's been conducted thus far it seems to me that we, as a legislative body, have every right to preserve our role to appoint judges. And so we have every right to be having this conversation and certainly Senator Ashford has every right to introduce this amendment. But with all due respect, I have to stand in opposition to his amendment. We've so far in this One Hundred First Legislature passed a number of pieces of legislation that, as I think Senator Rogert said, get tougher on crime, whether it's trying to curb gun violence, graffiti, a number of things. And a lot of those kinds of things are taking place here in urban Nebraska and particularly in Lincoln and Omaha. So I think there is a need to increase the number of judges in this part of the state. And I also believe that there are people in rural Nebraska, particularly attorneys, that see this firsthand that agree. I have received e-mails from some concerned about this and they are stepping up and saying that they are in support of a bill that contains a judgeship for Lancaster County District Court. This person said the additional judgeship is sorely needed in Lincoln and one of the reasons this individual cited it is, and I quote, "if this judgeship is not added, we in outstate Nebraska will face even greater pressure from the Governor and the Chief Justice to move outstate judgeships to the eastern part of the state." This was an attorney from my district so I'm listening to one of my constituents, so that's one of the reasons also that I stand in opposition to this amendment. I'm concerned about other aspects of LB35 and I don't want to lose them either. I'm concerned about the economy. I'm making some sacrifices with the priority bill that I had that's not going to see any daylight this session. But if we look at this LB35 in its totality without AM1468, I think this is one light on the Christmas tree that should not go out. And also in addition to that, Senator Ashford, really I don't think you've given me enough reasons to why you think this amendment is important. So if I've got any time at all and if he's interested, I would yield my time to Senator Ashford. [LB35]

SENATOR LANGEMEIER: Senator Ashford, 2 minutes. [LB35]

SENATOR ASHFORD: Thank you. Thank you, Senator Sullivan. And I'm giving the body an opportunity to make its decision on this issue. LB35 is a big bill. It has numbers of initiatives in it that affect the entire state. It is up to you all to decide whether or not you want to risk that. That does not to say that we...that the matter cannot be over, that a veto cannot be overridden. It can. It is up to the body to do that. I've had many discussions with many people on this issue, and most particularly with the Governor's Office in the last just two days and when it was mentioned to me that the Governor would veto the bill. If this initiative were not on LB35, if it were standing alone, it would

Floor Debate
May 20, 2009

be a different situation. The Judiciary Committee has put a lot of work into LB35. There's much in there that needs to pass, in my view. The matter can be resolved next year if we so wish with the Lancaster County District Judge. I'm offering you this option. It is not...I'm not going to sit here and tell you its cost, because Senator Lathrop is right, it isn't cost. It isn't cost. [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR ASHFORD: My sense is it has to do with reorganization and reallocation or different ways of organizing where judges go. That's my sense what the Governor's position is. But the Governor, I don't speak for the Governor. The Governor would have to give you that answer himself. I am giving this option to you as Chair of the Judiciary Committee because 99 percent of LB35 is in jeopardy if this bill is vetoed. That does not mean that is not a reason for you to vote yes or no. But it is my role, I believe, to give you and everybody in this place that opportunity and that option. I don't think I would be doing my job otherwise if I did not do that. That's why it's before you. That's why I filed the motion. But I appreciate the question. Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Ashford and Senator Sullivan. Senator Rogert, you're recognized. [LB35]

SENATOR ROGERT: Thank you, Mr. President. Members, we've been here a long time today. I took some notes over the last sets of speakers that have been up, and I want to maybe try to help address some of the questions and concerns that are brought up. We mentioned that there was some money appropriated, about \$80,000 from the committee, Appropriations Committee, for a part-time retired judge in Lancaster County. That is true. Today, as of today, they don't have a judge to fill that spot. We have the money. We don't have the judge. So that doesn't really get us very far. We also had questions about Senator Loudon mentioned that some of the judges out west cover 12 counties or 17 counties. Imagine if they covered 20 counties and 25 counties. You lose 1 of those 17 county judges, you got to deploy those counties to the other 5 judges that are out there. Those add up pretty fast. Mr. President, I wonder if Senator Lathrop would yield to a question. [LB35]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB35]

SENATOR LATHROP: Yes, I will. [LB35]

SENATOR ROGERT: Senator Lathrop, Senator Stuthman asked some questions on the process by which we as a body change judicial judge districts. Will you help enumerate that process a little bit with us about how...? [LB35]

SENATOR LATHROP: I would. I would because I think he may be laboring under a

Floor Debate
May 20, 2009

misunderstanding. It is true that we cannot take a sitting judge out of Platte County and require that that judge today go down to Lancaster County and perform judicial functions. But when that guy in Platte County resigns, retires, leaves the bench, that's a vacancy. We then go through the process, the judicial allocation or Resources Commission looks at where the need is and you will lose a judge because the next guy will go to...will be appointed and we won't fill a...if there is a great need in Lancaster County and a surplus in Platte County, for example, the Resources Commission will say that vacancy is going to be filled in Lancaster County. You're one judge short now, Lancaster County has its judge. It is true that that has to go through the political process, but after we redistrict in two years that won't be a problem. [LB35]

SENATOR ROBERT: Thank you, Senator Lathrop. It's been brought to our attention as well that the Chief Justice and the Supreme Court intends to study, again, as they've done in the past with the bar association, the allocation of judges across the state and where they're sitting. I truly believe if we do not put forth this judge this year, over the summer they will look at that and say, we're not going to. And they're going to say, well, we have a greater need in the urban areas so we're going to put the judge in the urban area. And that is my concern. If we have 25 judges in western Nebraska, we're going to get 24 judges in western Nebraska and move that other guy to Lincoln, regardless. So to me it is about keeping the judicial system moving in a proficient manner throughout the state but especially in western Nebraska. Thank you, Senator Lathrop. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Senator Harms, you're recognized. [LB35]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in opposition of AM1468. I really believe that, regardless of what we are hearing here, the people that I represent from western Nebraska, I feel very strongly about this particular issue. I've probably gotten more e-mails and communication about this particular issue of concerns about not filling this judge position here. They honestly believe, and I'd have to support that, that if we don't fill this position, they will pull it from rural Nebraska. They will pull it from western Nebraska. We have retirements. We have people who become ill. We have the aging process. And when those open up, they're gone. And I will tell you right now, just look around this Chamber. If Omaha, metro, or just urban America wants it, they've got it, because they have the votes, they have the power. They can pull that away. And that's what my concern is. I don't want to see that happen. And I've heard discussions here that maybe we don't have enough work time for these people. You know what, in tough times what happens? Crime goes up. I haven't looked at the latest data but I'll bet that where I live crime has gone up. I'll bet there's more abuse. I'll bet there's more theft, and very surprisingly, we've had several murders in my community. That takes time. And then not only that, to say we're going to share judges, this is not like going to a neighborhood, it's mileage. It's a long ways to travel. It's a 200-mile,

Floor Debate
May 20, 2009

one-way trip in some cases or longer. So what I'm tell you now is...and I set politics aside. I'm just not very good at that. I'm not very good about political lines. I don't really care. What I think you have to do is what is right and this is right. I think we have to object to this. And you know what, colleagues? If this bill, LB35, is worth the effort of this Christmas tree effect, why are we not saying, you know what, we take this issue on? I don't think this...I don't think I've ever seen this body walk away from a good battle. And I'm not saying battle with the Governor or anybody else. I'm just telling you, I don't think we should walk away from these kinds of issues. It's our responsibility to represent the people that voted us in, and that's what I'm doing and that's why I'm telling you. They have strong views about this. I hope that I'm...I hope that they're wrong and I'm wrong if this doesn't happen, because I believe it will happen and we will be back here having this discussion. I watched it two years ago take place. Senator Erdman and I were debating and all of a sudden we found out we didn't have the power to do this. And the fact that our own attorneys from our region started making phone calls and just give up the ship, you're creating an issue and a problem that will cause us some suffering later on. Well, I tell you what. I'm through with that. If this is the right thing to do, then that's what we need to do. And I'm not being critical of the Governor and I'm not critical of vetoes. I'm just saying to you as colleagues, you know what, we have a responsibility here. And I don't think we should allow anyone to tell us that this is not the right thing to do, because it is. Not only that, we're talking about, well, maybe next year will be better. I will tell you right now, from just what I've been able to see through the budgeting process and projections in the future, I don't think it's going to be any better next year. It may not be any better for two more years or three years. And times become more difficult for us, it's going to be hard to make this, a decision. So I'm just telling you right now, the people that I represent are strongly opposed to this amendment, and I'm going to fight for it...fight to make sure that it doesn't pass because I think it's the wrong thing for us in rural Nebraska. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator White, you're recognized. [LB35]

SENATOR WHITE: Thank you, Mr. President. I would urge my rural colleagues to consider this very carefully. I grew up in a household of a circuit judge in rural Nebraska. He covered an area, at various times, from as far away from home, Columbus being my home, as Albion and Fullerton. And he would have to try a case 12 hours maybe during the day, get done at 6:00 and then drive home. And then go back and do it again the next day. And you are now asking judges to go further distances than that. And this is what will happen. Lancaster will have a crying need. They will pull judges out of your districts for a time. They'll circulate them out and they will find, because these are hardworking people, that they've covered it, we're okay, you got along just fine with a third less of judge time, we used him down in Lancaster or they'll move them and expand their districts to cover the hole left by the nearest judge. And that then will support removing judges from your communities. And I am a person who has a deep

Floor Debate
May 20, 2009

interest in rural communities. Actually have worked hard with Senator Dierks and others to help the rural economy in different ways for many years in lawsuits and other ways. And I can tell you, you lose your hospital, you lose your school, you lose your bank, you lose your courts, you're not a community anymore. And the further you get from those essential services the less viable you are. So believe me, they will fill the need in Lancaster County whether we spend this money or not. And it will come out of the rural areas. And then, because of the experience they had by using judges on a part-time basis from those rural areas, they'll justify taking away judges from them. And they will do it by looking at caseload and number of cases. And, Senator Loudon, I think you will see a loss of judges and then you will see a consolidation of courtrooms and then pretty soon you will have commuter judges who will come in out of the population centers every once in awhile to your community. And that will be your tie to the legal system. And oddly enough, for a guy from an urban area, I don't want that to happen. It's bad for the legal system and it's bad for your communities, very bad. And guess what? Some guy in the corner wants to hold his breath and stamp his feet, he's got to do what he thinks is best for the state, that's fine. We need to do what we think is best for the state. If he can veto this and we don't have enough votes to override it that's okay, too, because that's what's best for the state under our system. I will vote against this. And if the Governor decides that he needs to veto LB35, I will vote to override it. And if we don't override it, well, the state can live with the consequences. What we can't live with, to be honest with you, is lack of an honest discussion about the long-term implications of population shifts from our rural areas into our urban areas. You have to go home to these places. Imagine your community or the communities you represent without a viable courtroom and a court system. I'd yield the rest of my time to Senator Nantkes. [LB35]

SENATOR LANGEMEIER: Senator Nantkes, 1 minute, 10. [LB35]

SENATOR NANTKES: Great. Thank you, Mr. President. Thank you, Senator White. Colleagues, I just wanted to put this issue into context in terms of our budgetary perspective. As a member of the Appropriations Committee, I thought it might be helpful to know and might be good for the citizens to know what responsible stewards of the taxpayer dollars our court system is. As a whole, the entire court system expends less than 6 percent of our overall General Fund obligation. That's to fund an entire separate and distinct branch of government, and I think that's important to know. Additionally, when you look at what their budget actually is, it hovers around the same amount annually as separate and distinct state agencies within other branches of government. So I think (a) that's important to know in terms of context that the state court system is very, very cautious and careful about utilizing taxpayer dollars. And this is a very, very reasonable request in regards to that history and that tradition. And I appreciate that times are very, very hard, but I think emergency would be an understatement in terms of level of need at the district court level... [LB35]

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: Time. [LB35]

SENATOR NANTKES: ...here in Lancaster County. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Nantkes and Senator White. Those still wishing to speak, we have Senator Campbell, Coash, Pahls, Dubas, Price, Christensen, Wightman, and others. Senator Campbell, you're recognized. [LB35]

SENATOR CAMPBELL: Thank you, Mr. President and colleagues. This is an unusual situation to be in as a state senator and at the same time a former Lancaster County Commissioner. I want to speak to you tonight as one who reflects on having held one position and now another. There have been times on the floor when I have said this year, this is what we did on the county board but as a state we need to do something different. In this situation, having worked with the Lancaster County Board and the district court judges for over 16 years, it gave me an appreciation of the enormous amount of work that comes to the Lancaster District Court from being in the State Capitol. And we wouldn't change that for anything but it's still a fact that we have to realize. There were numerous times in which we'd call up and they would be indicating the district court judges have cases having to do with Corrections, the Department of Health and Human Services, and on and on and on. As a county board member, I routinely came to this very body to solicit help for the district court. I've watched the studies, I've heard from the bar association, and year after year the answer was usually the same: No, we don't have the money or we don't have the method in place, we don't have the study. I also worked annually with the district judges on their budgets so I knew what we were providing as a county and what the state was providing. I think it is very regrettable that all of LB35 is at risk. But I cannot now say to you there is no need. I know the need is there. I cannot now say the district court is not at any capacity and doesn't need another person. And I know that that's not true. And therefore, I cannot now support this amendment. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Coash, you're recognized. [LB35]

SENATOR COASH: Thank you, Mr. President, members of the body. Is this getting political? Yeah, it's hardball. It's also philosophical. I couldn't pretend to the committee Chair and I can't pretend to this body that LB35 was not in jeopardy with this judge in it. So at the end of the day I had to make a decision: risk LB35, be stubborn; be reasonable and work it. I did learn a lesson. If it's important to you, and this judge is important to me, let it stand on its own. I made my position clear. Should this amendment fail I'll support LB35 because, for the same reason I support this amendment, to save what's in LB35 I will support the entire bill. I just wanted to stand up and say I couldn't pretend that it wasn't in jeopardy because it was made clear to me that it is. Thank you, Mr. President. [LB35]

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: Thank you, Senator Coash. Senator Pahls, you're recognized. [LB35]

SENATOR PAHLS: Thank you, Mr. Speaker, members of the body. Speaking of the body, where were you? I missed you within the last couple of weeks. We would not have to be having this discussion if you would have said no more sales tax-exemptions. (Laughter) You...in all sincerity, I'm looking, and you need...sometime you need to look at the backside of this sheet. And you need to see this year there will be over \$2,360,000-some will be exempted. And the reason why I'm going to have you take a look at that, because that number is different than the number that's on the bottom line here because the CHIP bill that we did pass, and you can see that is actually moving positive money into the General Fund. But here is a prime example. We are going to be doing this and we're just lucky this year that we do not have a lot of bills that a lot of us think we're going to lose. If we were, you probably would be a little bit more serious about it or we would be a little bit more aware of the value of those exemptions. But the thing that I'm trying to bring out again, if you follow that down, I would say four more years it's going to be over \$5 million. And sometime between now and then you're going to have a bill that you want but we will not have money available because it doesn't look that bright down in the future, but we are exempting these things. And this year my intent was never to fight the bills that were in front of us this year but to prove some points. Well, I'll just give you an example, this year what we did when we...with the mineral oil, we said that was okay because the co-ops said they had never paid it. But there were groups that had paid it for years. The co-ops haven't, but we didn't get the complete story. So we lost that money. And that's going to continue. And the one reason why I'm harping on this is because in the future, thank goodness, we have three resolutions to study the tax policy. I think I'm really intrigued by Senator Dierks's concept. I think it really has merit. I'm just waiting for next year for that. But we need to take a look at this. We would not be having this discussion tonight about this amount of money if we would really take a look at the total picture, especially in the future. Now here's another thing I'm going to propose. It's...in fact it's the opposite of sales tax-exemptions. In this body we have I think at least ten attorneys. I don't know if you...are you...do you collect taxes, sales taxes? No, no, no. No, you do not. And I'm not saying...but I'm saying is if you are so concerned, and I think you're right, (inaudible) because we do need good judges. Maybe the bar ought to step up to the plate and say, hey, we need to start paying some of those taxes. So then in turn, I know we can't just earmark that money for those positions, but that would be one good way of saying we're going to stand up to the plate. Where are you, the bar? You should be saying, we want better paid...(laugh) I'm getting a little bit of...and I appreciate that, I appreciate it. But again, see, you do not really want that tax. Well, what about some of these other taxes that are out there? And I'm having little bit of fun with this, but there are other options. Again, not speaking directly to this particular bill but this is an example, if we continue to do away with that General Fund. And I...I mean,... [LB35]

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR PAHLS: ...I do believe we need well-qualified attorneys to be judges. And the reason why I'm saying that is hopefully my sister who is an attorney is listening to this and I grew up with her so I know what she was like as a young kid. Now that she's an attorney for several years, she still is a young kid to me. But again, I'm hoping that we take a look at this. And I can assure you I probably will still be stepping up to the mike and talking about this just to prove a point and hopefully get the brain cells moving for next year. Isn't that right, Senator? (Laugh) Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Dubas, you're recognized. [LB35]

SENATOR DUBAS: Thank you, Mr. President, members of the body. As legislators, we have a duty, and that duty is to examine the issues, to educate ourselves, and then make a decision and vote. That's our responsibility and I believe everyone in this room does that to the best of their abilities. We also have a check and a balance in place and that's the executive branch, and they may exercise their right to sign or veto any bill that comes across that desk. But we must never ever, ever abdicate our position as a separate but equal branch of government. The words of Senator Chambers are echoing through my mind tonight. I can remember more than once him chastising us and reminding us to get a backbone, stop being willing to just swallow spit and quit rolling over. If there's a veto on this bill, so be it. That's any Governor's right to do. But then we have that option to reexamine it. We can accept that veto; we can challenge it and try to override it. That's the way the system is crafted. That is the beauty of a democracy. Longtime members of the court system are telling me that they are very concerned about this issue, that they are seeing urban areas cannibalized, and that's a word that was used in one of my discussions, cannibalize judicial seats once they are vacated by retirement or death. They are seeing a slow but sure erosion of judicial services in rural areas. These are the people that are in the trenches, these are the people that are serving our rural constituency. These are the people that I think we really need to be giving a lot of weight to their opinions and their observations. This bill is important, the entirety of the bill is important, all of it is important, every aspect of it is important. And this issue dealing with judges is and already is impacting in a negative way rural Nebraska. All too often rural Nebraska is very willing to just settle for crumbs. We have to continue to fight for our rural communities. In my estimation this amendment is penny wise and pound foolish. Safe haven highlighted to us what happens without adequate services. And those who do not learn from history are destined to repeat it. I hope that we can learn from that example. And I would yield the remainder of my time to Senator Lathrop. [LB35]

SENATOR LANGEMEIER: Senator Lathrop, 2 minutes. [LB35]

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

Floor Debate
May 20, 2009

SENATOR LATHROP: Thank you, Senator Dubas and Mr. President. I serve on Judiciary Committee and I sat through a lot of hearings on bills that ended up in LB35 and I counted. There's a lot. This is a big Christmas tree bill. And I looked at the things that are in LB35. Frankly, I don't care if it gets vetoed. I'd rather send LB35 in the way we put it out of the committee and let the thing get vetoed and come back here and override it or at least talk about that. There is nothing in LB35 we have to have this year. There's a \$2 increase in the filing fee so that we can pay for a...help put the computer system into Douglas County. We'll put it off a year if this gets vetoed. We use the metaphor of playing chicken. You know, this is an important moment for this body. This is an important moment for this body. There's... [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR LATHROP: ...nothing in LB35 that is so important that we should compromise that. Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Lathrop and Senator Dubas. Senator Price, you're recognized. [LB35]

SENATOR PRICE: Question. [LB35]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB35]

CLERK: 31 ayes, 5 nays, Mr. President, to cease debate. [LB35]

SENATOR LANGEMEIER: The debate does cease. Senator Ashford, you are recognized to close on your motion to return for a Select File amendment. [LB35]

SENATOR ASHFORD: Thank you, Mr. President. I want to clear up one misconception that Senator Coash laid before you and that somehow he was responsible for us having to be here tonight to make this decision. And that isn't correct. Senator Coash has been an advocate for the Lancaster County district judge throughout this entire time. He has...I will plead guilty that I did leave it up to him to think through this on his own and talk to whomever he needed to and he did that. But in no instance did he cave in or whatever the metaphor is on this issue. This is my call; totally, completely and utterly my call. I can only tell you that I...we...Senator Lathrop is absolutely right. There are defining votes that we make here. If this is one of them, it's up to you to make that decision as to whether or not it's a defining vote. Every time we vote on issues that are framed this way they are defining. The issue of...before us is, is this the legislative

Floor Debate
May 20, 2009

prerogative. There's no question, and Senator Stuthman asked the question, there is no question that this is the Legislature's prerogative to decide policy regarding judges. I don't know, we've moved two judges in the last ten years. It may very well happen that other judges will be moved from rural areas to urban areas. There's no way to predict that. In the end it is the decision of this body to make that policy. This is before you and it's your decision and your decision alone. And I'm not going to sit here and advocate. I'm not going to...I certainly would not demean my colleagues and friends by doing that. You know the issues. If the issue is where should a judge go or should Lancaster County get an extra judge, that's a level of issue. Is the issue how should judges be allocated across the state? If that's the issue then that's your issue. Is it a bigger issue that Senator Lathrop is suggesting, and that's the issue of legislative prerogative? And Senator Dierks was very...was getting at that issue as well. It's my call, I brought this amendment because I felt it was prudent to do so. It is up to all of you, for whatever reason, to decide to adopt this amendment or not. If this amendment to strike or the amendment to return to Select File, motion to return to strike is successful, so be it; if it's not, so be it. I support LB35. It's a bill that's necessary and is important. The district judge in Lancaster County is necessary and is important. It's up to you, members. And I have too much respect for you to try to tell you what you should or shouldn't do. With that, Mr. President, I would suggest we vote. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on the motion to return LB35 for a specific amendment. The question before the body is, shall LB35 return from Final Reading to Select File for a specific amendment? All those in favor vote yea; all those opposed vote nay. There's been a request for a record vote. Have all those voted that wish to? Record, Mr. Clerk. [LB35]

CLERK: (Read record vote, Legislative Journal page 1661.) 26 ayes, 20 nays, Mr. President, on the motion to return. [LB35]

SENATOR LANGEMEIER: The motion to return is successful. Mr. Clerk, for an item. [LB35]

CLERK: AM1468. (Legislative Journal page 1600.) [LB35]

SENATOR LANGEMEIER: Senator Ashford, you are recognized to open on AM1468. [LB35]

SENATOR ASHFORD: I'm sorry, this is the... [LB35]

SENATOR LANGEMEIER: This is the amendment itself. You're recognized to open. [LB35]

SENATOR ASHFORD: Right. I would just urge the adoption of the amendment. [LB35]

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

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: Thank you. You have heard the opening on AM1468 offered to LB35. The floor is now open for discussion. Those wishing to speak, we have Senator Christensen, Schilz, Council, Lathrop, Carlson, and others. Senator Christensen, you're recognized. [LB35]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Would Senator Harms yield to a question, please? [LB35]

SENATOR LANGEMEIER: Senator Harms, would you yield? [LB35]

SENATOR HARMS: Yes, I will. [LB35]

SENATOR CHRISTENSEN: Senator Harms, two years ago there was a couple of judges moved around. Do you remember where they come from? [LB35]

SENATOR HARMS: Western Nebraska or in rural...I think they came from rural Nebraska. [LB35]

SENATOR CHRISTENSEN: Yeah. I was thinking Scottsbluff, but maybe they didn't come from there. But where one of them landed was in Kearney and the other one landed in Lancaster Juvenile Court. And we've already seen this body shift...thank you, Senator Harms. We've already seen this body just two years ago vote to redistrict or move around judges. The problem you're seeing here is very real. For all of you that are new this year may not realize we've already done that in this body. It takes a bill, it's moved around and it's voted on. We don't have the votes in rural Nebraska to stop it. And after next census it's just going to get worse. And if you think...you're from a rural area and it's not going to hit you, you're wrong. You've got to think about this a little bit. You can either stand up and fight right now, which is going to be the easiest approach, or you can stand up and just be outvoted like we was two years ago because that's the direction it's going. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator Schilz, you're recognized. [LB35]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Would Senator Ashford yield to a question? [LB35]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB35]

SENATOR ASHFORD: Yes. [LB35]

SENATOR SCHILZ: Thank you, Senator Ashford. You know we talked a lot about

Floor Debate
May 20, 2009

workload here and sharing judges and how that all works. Do you have any sense of how that happens? Are there urban judges heading out west to take care of some of that driving? Are the rural judges heading east to take care of that stuff there? [LB35]

SENATOR ASHFORD: Yes. Well, I don't think...there may be an instance but it would be rare where an urban judge would move west. [LB35]

SENATOR SCHILZ: Thank you. And that gets to my question. I mean, you know it seems to me that we're already moving down the path. Senator Christensen himself said two years ago we moved things around. Thank you, Senator Ashford, I appreciate that. This is my concern as well. I find myself agreeing with Senator White which it's surreal. (Laughter) But here we are. I guess I'll deal with that later, maybe some therapy or something. But he's right, you lose these essential functions, and I've seen it happen time and time again in community after community where it gets really tough to make things happen. And, you know, I don't think anybody here wants to, you know, wants to get in a battle over how this should happen but here we are. I mean if we're talking about, as we've heard here on the floor from Senator Ashford, reorganization, what does that usually mean? I mean, so if we're talking about the workloads being in the east and the judges that are moving and sharing that time coming from the west, I think Senator Christensen is right. Inevitably over time, if we're not careful and we don't keep track of what we're doing here, we will lose judges out west. Now is that the right thing? I don't know. But I know this. When I campaigned, my constituents back in western Nebraska, in the 47th District, told me to hold the line, told me don't let this happen anymore, we've seen enough of it. And so without knowing anything else, I'm going to hold the line as well as I can. Thank you very much. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Schilz. Senator Council, you are recognized, followed by Senator Lathrop. [LB35]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in opposition to AM1468. And I indicated the primary basis for my opposition to this bill on the debate as to whether it should returned to Select File, but I want to go a little further after hearing the debate that has occurred thus far. The only reason for this amendment that has been stated is that there is a threat of veto. There's been no reason or rationale provided for this veto. And I've always operated on the theory that if there's no rational basis for an action, it must be an irrational basis for the action. And there's been no rational basis stated for this threat of veto. So I turn to the irrational. And the only thing at issue out of all of the bills that comprise LB35 is the creation of an additional judgeship. So obviously the basis for the threatened veto is some disapproval, dislike of the creation of judgeships. Well, I think that that's a matter that needs to be publicly discussed. If the Governor has a problem with creating judgeships, that needs to be addressed with the public, because he can't have his cake and eat it too. He can't walk around boasting and beating himself on the chest because we've enacted legislation that's going to get

Floor Debate
May 20, 2009

tough on crime, that's going to enhance penalties, and after Select File debate and final round debate and, by golly, folks, we're going to get you lethal injection. Who does he propose is going to litigate these cases? Who does he propose is going to oversee this? And I do take exception to the fact that there...by this process we are ignoring the work of a committee that put in hours. I recall when this was first introduced the kind of snickers and the discussion about, man, how big is this Christmas tree going to get, is it going to fall over? How many more lights can you put on it? Well, we put a lot of work into it because we wanted to present a bill on the court system that addressed what the committee identified as being the needs to be met. Now there's been suggestion that, oh, you know, it won't hurt if we wait a year. Well, I submit to you we'll be in this same discussion this time next year if the only reason for this threat of a veto is, uh, I don't want to create anymore judgeships. Because if we introduce the same bill next year then it's going to be, uh, I don't want to create anymore judgeships. We should not succumb to that kind of lack of reasoning and rationale. And to my friend, Senator Pahls, I like hearing your argument about sales tax and sales tax-exemption, and this is an issue that we need to discuss at some point in time. And I would entertain it on this issue if this was about money. This isn't about money. And \$80,000 for a part-time retired judge, I don't know how many cases he or she is expected to rule over or have jurisdiction over because that \$80,000 is not just his or her salary. That's the entire staff associated with that judge carrying out... [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR COUNCIL: ...his or her responsibility. Lancaster County needs a full-time district court judge to address all of the additional duties and responsibilities that this body has placed upon the judges in this state. And it's this body's responsibility to provide the resources needed to carry out all of the additional responsibilities and duties that we've placed on the judiciary. We need to step up. The metaphor, call it chicken if you may, but we need to stand firm on this issue, respect the work of this committee and move forward with LB35. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Council. Those still wishing to speak, we have Senators Lathrop, Carlson, Avery, White, Karpisek, Nelson, and others. Senator Lathrop, you're recognized. [LB35]

SENATOR LATHROP: Thank you, Mr. President. I guess I'm back again, a little bit of a different approach, maybe to make two points. The first point is that no one has articulated a reason for adopting this amendment, none. There was maybe speculation about what the Governor is thinking with his consideration of a veto but we have not as a policy matter had anyone articulate the reason for this. And there was maybe a few days ago one reason articulated, a thought, it was more of a rumor. Maybe I can talk about the rumor. The rumor was...is that next year we'll have a bill and we'll turn this whole thing over to the Chief of the Supreme Court. I'm going to tell you, we tried that a

Floor Debate
May 20, 2009

year ago in LB1014, and it didn't go over well with the people who were going to lose the judges. But here's how that works. Plan A is...there's two plans. Plan A is we continue to do it the way we've always done it, which is we don't increase the number of judges, and then when there's a vacancy the east, the population areas, are going to start taking judges from the west. That's what happens when you don't increase the pool of judges. That's what is going to happen if AM1468 is adopted. But the alternative floated is we'll just turn this over to the Chief; let the Chief do this and he can draw new lines and reallocate resources. The difficulty with that is we have to give up our control over that issue. Okay? We have to give up our control over the issue. The Legislature then goes out of it. There's a resource committee, it does its work and then they turn it over to the Chief Justice of the Supreme Court and the Chief Justice then decides who's going to work where, where the boundaries are going to be, and how many judges we're going to have somewhere. And then, let me tell you, you're really going to lose judges. So option A and B don't work very well. If you're in a rural community you are going to lose judges. You are going to lose judges unless you expand the number of judges available in this state. And let me say this, besides no one articulating a reason for adopting AM1468, this is a fundamental function of government. For us to provide for a court system is a fundamental function of government. This isn't a social service where conservatives and progressives can disagree on whether it's necessary or a good idea or whether we'll get our money's worth. This is a fundamental function of government to help people have a forum to sort out their disputes, whether they're criminal or civil. And we passed LB63 this year--a big bill. It took several misdemeanors and bumped them up to felonies. And for those of you unfamiliar with this, that means we just increased the workload of the district courts across the state. You've heard talk about the death penalty, that's true. But we've also, in LB63, increased the number of felonies. And we've increased the workload for these judges. And we have, as Senator Harms indicated, in tough times we're going to have more domestic problems, we're going to have more divorces, we're going to have more foreclosures, we're going to have more collection actions. Everything is going to be increasing in its demand on the judiciary and we cannot... [LB35 LB63]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR LATHROP: ...turn our back to them. We cannot turn our back on the Judiciary Committee. They have no other place to go. It is imperative that we set politics aside and do the right thing for the judges in this state and that is tonight to not pass AM1468. And for the sake of this body, don't pass AM1468. Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Carlson, you're recognized. [LB35]

SENATOR CARLSON: Mr. President, members of the Legislature, I'm speaking out. I had some remarks prepared before we voted to come from Final Reading to Select File.

Floor Debate
May 20, 2009

I'm not speaking for or against AM1468 but I'm reflecting on some things. Sometimes I'm a Republican, sometimes I think I'm a bipartisan state senator. I hope I'm that tonight. I think I'm a reasonable person. Having said that, I like to have friends. I like people to approve of me. But I have a backbone. I have convictions on many things. I appreciate being asked what I think about an issue. I don't mind it at all when someone takes me aside and tries to persuade me to one side or another of an issue. But I don't like being threatened, I don't like to be told vote this way or we'll have a fight. I think I can read people pretty well. Senator Ashford, you're not passionate about AM1468. That's okay. I have a great deal of respect for you. Senator Coash, you aren't passionate about your request to support AM1468. That's okay. I respect you very much. Term limits have been mentioned tonight. One of the dangers--there can be too much influence and power in the other branches of government, there can be too much influence in the lobby. I like most lobbyists. They provide good information, but they don't think for me. LB35 is in trouble? I think we'll decide that. And I hope, like Senator Lathrop indicated, that we will hear some good, logical, convincing reasons why we should vote for AM1468. LB35 in trouble is not a good reason. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Avery, you're recognized. [LB35]

SENATOR AVERY: Thank you, Mr. President, colleagues. My county stands to gain if this bill becomes law unchanged. But I am going to vote for this amendment. Let me tell you why. The first reason is that the committee Chair supports this, I think that's important. Also the principal introducer supports it and that's persuasive to me as well. But I have a more practical reason and that is that we don't have the votes to override. If we had the votes to override a veto it might be a different issue. And there are some good things in this bill. I was just looking it over and Senator Wightman has three of his bills that are contained in LB35. My committee worked very hard on sheriff's fees and it is in this bill. And I'm concerned that we might lose some good things. I've been told and I've listened to the debate that we need to stand up and fight. And I would be the last person to abandon this body, abandon this institution and its prerogatives. But I also remember a Kenny Rogers song where he used to sing, you've got to know when to hold 'em and you've got to know when to fold 'em. Well, if we take a poker game analogy to this issue, I think we in the Legislature need a straight flush and we have a pair and it's probably a pair of deuces. Why do I say that? You just saw the count on that last vote. Unless we can muster 30 votes, I think we need to fold 'em. And the reason we need to is there are very good things in this bill that will be lost otherwise. We don't have 30 votes to override. We have to be realistic. There is simply too much good in this bill to let it go over a judgeship. There's one other issue that bothers me and that is the University of Nebraska is probably going to lay off 300 people because we can only find a 1.2 percent increase in their operating budget. I've been through some of those budget cuts at the university. I can tell you how painful they are. I can tell you

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

Floor Debate
May 20, 2009

about the times when faculty would write checks out of their own personal banking accounts to help supplement the operating budgets of their departments. That's what is going to happen at the university again. That's a worthy institution. How can we justify creating new judgeships when other worthy institutions are going to be suffering. There are too many good things in this bill to let them go. I have a few minutes remaining, Mr. President. How much time do I have remaining? [LB35]

SENATOR LANGEMEIER: Two minutes. [LB35]

SENATOR AVERY: I'm going to cede that time to Senator Ashford. [LB35]

SENATOR LANGEMEIER: Senator Ashford, 2 minutes. [LB35]

SENATOR ASHFORD: Thank you. Let me, members, tell you where I would like to take this right now. I have an amendment drafted which I have given to Pat, to the Clerk, that will extend the time for the implementation of the Lancaster County district judge out two years, two fiscal years. So that this will give the Governor's Office, Senator Coash, the Judiciary Committee time to work through this issue, some of the broader issues that I think the Governor's Office indicated to me that he would like to work on, and Senator Coash has indicated that he would like to work on, and the Chief has indicated he would like to work on. I have no idea (laugh) what anybody else thinks about this, probably not much. But I think it is a responsible option because it gives the body time to think about judge allocation, it gives the executive branch time to think about how it would like to move forward on some of these judicial issues. And it gives Senator Coash, who again I think has done a great job on this issue, the summer to work through it. And it gives my committee, the Judiciary Committee, an opportunity, because there is...I think we have an interim study on this issue. It gives our committee...can I have a gavel, please. [LB35]

SENATOR LANGEMEIER: (Gavel) [LB35]

SENATOR ASHFORD: It gives the Judiciary Committee the time to also assess this issue and bring it back to the body. With that, Mr. Clerk, I would withdraw the amendment. [LB35]

SENATOR LANGEMEIER: Seeing no objections, AM1468 is withdrawn. [LB35]

CLERK: Mr. President, we need to readvance the bill. [LB35]

SENATOR LANGEMEIER: Senator Nordquist for a motion. [LB35]

SENATOR NORDQUIST: Mr. President, I move LB35 to E&R for engrossing. [LB35]

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: You have heard the motion on the advancement of LB35 to E&R Engrossing. All those in favor say aye. All those opposed say nay. [LB35]

SENATOR FISHER: Record vote. [LB35]

SENATOR LANGEMEIER: Senator Fischer, we can't do a record vote on voice. Would you like a machine vote? She waives that opportunity. The ayes have it. LB35 does advance. Mr. Clerk. [LB35]

CLERK: Mr. President, I now have a motion to return LB35 to Select File for specific amendment, specifically AM1493. (Legislative Journal page 1662.) [LB35]

SENATOR LANGEMEIER: Thank you. Senator Ashford, you are recognized to open on your motion to return LB35 to Select File for specific amendment. [LB35]

SENATOR ASHFORD: Let me tell you where we are, members. Thank you, Mr. President. Where we are is at AM1493. It is an amendment that...and I have consulted with Senator Coash and maybe he will speak to this. And he indicated his support for this amendment. This would extend the date for the implementation of the district court judge addition to eight judges to...well, the next...two years from now, the fiscal year that would begin in 2011. So this again would...for all the reasons I think that were mentioned here today, is there's a lot of confusion, not confusion necessarily but concern. Certainly Senator Harms has raised a very valid concern about what happens in Scottsbluff because certainly there was a judge moved from Scottsbluff to Kearney two years ago. We need to get a grip on this issue in the body. We need to give the executive branch an opportunity to chime in, the judicial branch. And again, getting back to Senator Dierks's question to me about the separation of powers, I think all three branches need to enter into this issue. By next session, if we desire to change what we have done here, and I strongly urge that we do this, we can, we can. We have plenty of time between next session as the...and then the end of the One Hundred First Legislature and going into the next fiscal year to change what we are doing here. But I think, quite frankly, sometimes in this body we just need to move on. We need to get the issues framed in a manner that are appropriate, that enough people here feel comfortable with. And that is why I'm offering this to you. I'm just hearing to...this is not a good place to be, members, in my view. It is not a good place to be. This is not where I want us to be. I can't be here anymore. (Laugh) It's time to have a new place. So let's get a new place here, let's adopt this amendment, let's move LB35, let's work cooperatively with the executive branch, the judicial branch and let's go on with the rest of this session. Thank you, members. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Ashford. For the body's benefit, LB35 is on Final Reading. This is a motion to return LB35 to Select File so we can take up AM1493, if the body so chooses. You have heard the motion to return to Select File, the

Floor Debate
May 20, 2009

floor...the opening. The floor is now open for discussion. We have those wishing to speak, we have Senator White, Karpisek, Nelson, Wightman, Stuthman, Lautenbaugh, and others. Senator White, you're recognized. [LB35]

SENATOR WHITE: Thank you, Mr. President. Ladies and gentlemen, I cannot support Senator Ashford's sentiments for a number of reasons or this amendment. Let me explain why. Here's what's going to happen. If you don't put a new judge in Lancaster County now and you wait two years, for the next two years the rural areas will be missing a judge. You're not postponing anything. The resources will be transferred now. Now he won't be permanently transferred. He'll still seem like he's assigned there. The court system...you'll think you have a judge but his time will be somebody else. And the people out in your areas, their lawsuits will be slowed down. Now I wouldn't tell Senator Stuthman how to plant corn or harvest it, but I'd sure love to have him tell me about the judicial system. So what I'm telling you right now is when you go home after this session, if you do not support a Lancaster County judge now, a district judge for Lancaster County, in effect, what is happening is you will lose for the next two years, even if this is adopted, for the next two years the rural areas will lose the use of a district judge. Won't be from any one area at all the time but it will come out of that pool and it will go to Lancaster County because they have cases that are not being tried, they have criminal cases, and those resources on a shifting basis will be pulled out of the rural areas and they will fill that gap and they will do that whether you...whatever you do. As long as there's that hole in Lancaster County the other judges will move in. Now I submit to you...and I, too, am deeply uneasy about finding myself in agreement with Senator Schilz. (Laughter) It's...frightening is not really the word so much as I feel like I'm trapped in an alternative universe. But that universe is rural Nebraska and I actually do share deep roots there. And I can tell you that the stress and the strain on a family and a judge traveling many miles to hold court is considerable but it's a fraction of the stress and the strain on litigants. And you are going to force people who need a timely quick divorce and don't have a lot of money perhaps to travel a long distance, and that's coming, or wait a long time. That is the reality. And you can pretend, okay, well, we'll just push it off, but you're not pushing it off, folks. The judge the borrow to hear the cases being pushed by the speedy trial in Lancaster County is coming from your community. That time is being transferred now. It was transferred last year. And it was transferred the year before that because they pulled judges in from areas where the caseload is lighter and they feed them in where they need them. And it might only be a week or a two at a time for an individual judge, but make no doubt about it, there is no doubt, you've lost a judge. And the only way you're going to get a judge back is if we put one in Lancaster County. And here's the thing, to my fellow legislators, look around if you're from a rural area because the census data indicates three or four of you won't be here after the next census. The next census indicates the rural areas will lose three to four seats. That doesn't make me happy but that's how it is. And if you think two years from now you're going to have the horses, after that census and after that redistricting, to hold the essential elements of a community together--... [LB35]

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR WHITE: ...a courtroom, a judge, those kind of basic backbone of a small town, of a county--you're wrong. And we will move to a statewide allocation of judges and the judges will come out there like they do in the federal court, they'll drive out from Omaha or Lincoln, out to North Platte once a week for six months, a year, and that will be that. And a whole bunch of communities will die and they'll die much more quickly. And that's a shame. And we can stop it. And oddly enough, you have the support from your urban colleagues. Overwhelmingly your urban colleagues don't want that to happen to you. And you know what, if it gets vetoed, let's override it. I disagree with Senator Avery. I don't think we know whether we have the votes to override that bill until there's a veto. That's like saying, how will I react if somebody threatens me. I don't know until they do. Let's find out. I think the votes will be there because it's a good bill. [LB35]

SENATOR LANGEMEIER: Time. Thank you, Senator White. Those still wishing to speak, we have Senator Karpisek, Nelson, Wightman, Stuthman, Lautenbaugh, and others. Senator Karpisek, you're recognized. [LB35]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I did vote not to send it back the first time. I'm going to...if I could vote double not to send it back this time I would. I think that our...we look worse in two years of our budget than we do now. Is there any guarantee that this will happen in two years if we do this? I don't think so. And I could be wrong. If someone wants to disagree on that, go ahead. I told Senator Carlson I was going to follow his lead on this one. And he voiced his opinion and I agreed with him so I will follow him. This, to me, is not political. The Governor has a job to do. He can veto things, that's great. We have a job to do. We can send something to him to veto and we can attempt to override it. I don't want to lose everything in LB35. There are a lot of things in there that I feel are important. The Government Committee worked on the sheriff's fees bill for a long time. But I feel if I would vote for LB35 without the threat of a veto I should vote for it on the threat of a veto. If I think it's right, it's right. I have learned one huge thing here. These big Christmas tree bills probably are not good for any of us. Senator Coash, I will say what Senator Ashford said, feels bad. He has no reason to feel bad. His bill, he brought it, it moved, it got sucked up in there. I would have done the exact same thing. But I don't know that we should do that very much more. I would just like to tell the body or ask the body if you think LB35 is good enough to vote, vote. It's not political. We vote against each other's bills in here all the time. The Governor influences bills in here all the time, the lobby does, everyone does. Can't take it personal, this is not a personal vote to me. I know we're trying to spin it that way, I wish we wouldn't. We all have opinions, vote your conscience. I will be trying to move LB35 ahead without pulling Senator Coash's bill out of it. And with that, Mr. President, I'd like to yield the balance of my time to Senator Coash. [LB35]

Floor Debate
May 20, 2009

SENATOR LANGEMEIER: Senator Coash, 2:20. [LB35]

SENATOR COASH: Thank you, Senator Karpisek. Thank you, Mr. President, members of the body. I want to clear a few things up here. Senator White talked about what could happen here, he may be right. But I would remind the body that we still have the part-time judge in the budget and there for Lancaster County. So with that in place I think we can't afford to push this out. I do want to acknowledge I had a judge on, I think it was LB63, that I "withdrew" because on Senator Heidemann's advice, he doesn't like pushing things out, I understand that but sometimes you have to. There is a...I only have a couple minutes here. Okay. There is a couple of things I want to say. You can add a judge, we can move lines. And I have heard from different branches of government and different people in here there may be judicial districts where they don't need the amount of judges that they have. And I want to reiterate my commitment to this body that if, if that is the case I will objectively and impartially find those judges and I will work... [LB35 LB63]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR COASH: ...with interested parties and I will work with this body to assure that resources are appropriately allocated. I have the vehicles to do it, got the committee Chair to support me on it. Very well could be in two years, if this amendment passes, we're going to get a judge in Lancaster County. And that is good. And it may be very well in two years that we don't...we have another district without a need. And if that's the case, I will bring it to this body and I'll make my case as to why we don't need it. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Coash. Senator Nelson, you're recognized. [LB35]

SENATOR NELSON: Thank you, Mr. President, members of the body. You have heard all sorts of dire protections from some of the senators here, namely Senator White. I'm here to tell you in the next two years I don't believe those things are going to happen. You're not going to lose courts. You're not going to lose judges. We need one judge in Lancaster County. Perhaps we've got half a judge but it's not a matter of life and death. They're crippling along now if you want to call it, and they can certainly do it for another two years. If they need help in the form of 1 judge, there are 28 judges in outstate Nebraska. One of them comes in. Is that going to affect you that much? The statement has been made that the caseloads are down. Why are you going to lose courts? Why are you going to lose judges? That's just not going to happen. Let's be sensible about this. We've said this is not political. It's interesting to me that most of the opposition to this is coming from people that have issues with the Governor from time to time. Why do we want to pick a fight with the Governor? You can be sure if he vetoes this that he's going to be able to articulate his reasons and it's going to be a win-win for the Governor,

Floor Debate
May 20, 2009

because whether it's saving costs or whether it's taking another look at it for reorganization there's nothing wrong with that. I fully support this amendment that Senator Ashford is bringing about and the motion to return to Select. I think it's exactly the thing that we need to do. We've got two years in which to act. If we need it at that time then we can go ahead. There's more that I could say but I'm going to give the remainder of my time to Senator Heidemann, if he will yield. [LB35]

SENATOR LANGEMEIER: Senator Heidemann, 3 minutes. [LB35]

SENATOR HEIDEMANN: Thank you, Senator Nelson. And, Mr. President, fellow members of the body, I thought I would just touch base with you a little bit on this just to let you know a little bit probably what we went through in Appropriations, where I'm at right now on this bill, where I'm at with all other A bills and maybe a few other things that happened. It was a very tough budgeting year. We went around and around and around and we did things in Appropriations probably that we wouldn't normally like to do by any means, but the revenue wasn't there. We thought we did what was responsible. We thought we did what was good for not only this two years but for two years out. And when we did that we didn't give people the resources probably that they needed to continue on with what they was doing. And you can ask the university system, you can ask community colleges, you can ask the state college system, they will not have the resources to continue on as they was leading to go on, covering salary and health benefits and other things. There will be positions lost. The state patrolmen, as one example, there will not be as many state patrolmen and carrier enforcement when this budget passes, which everyone voted for, because they do not have the resources there. And you can go from state colleges, community colleges, the university, and agency after agency after agency, there will be less positions there. I cannot support this judgeship at this time knowing that we did so much to so many other agencies and groups that they will have less. I'm not saying that this isn't needed but so are things needed in the university and college system and other places and they didn't get it. When it comes to A bills, we passed the budget, it came back to us. I made my mind up at that time, as somebody in a leadership position. I had a bill that would cost money. [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR HEIDEMANN: I had an A bill. I pulled it because I thought it was the right thing to do. And there are other people in this body that pulled their A bill because they thought it was the right thing to do, looking at the economy that we have in this country and the revenue shortfall that we see in this state. I'm running out of time but I want you to tell you that Senator Coash is probably...he's behind this amendment but he has a bill, I believe, that's on General File that could do this same exact thing that this amendment will do. He could come back next year and address this situation and get a judgeship, if that's what this body so desires and if we can afford it at that time. It can be

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

Floor Debate
May 20, 2009

done. This is being put off two years. We're gaining nothing here. I'm going to run out of time but I want you to grab your green sheet. If we pass all our A bills I will tell you...I'm going to make a commitment right now... [LB35]

SENATOR LANGEMEIER: Time. [LB35]

SENATOR HEIDEMANN: ...I'm going to vote for LB603. Look at your out-years, what our shortfall is. Thank you, Mr. President. [LB35 LB603]

SENATOR LANGEMEIER: Thank you, Senator Heidemann and Senator Nelson. Senator Wightman, you're recognized. [LB35]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I agree with some of what has been said here. I think maybe Senator Avery summed it up best. I don't think there's the votes here to override the Governor's veto if there is a veto. Should we be considering that? We've had a lot of discussion of that. That is part of the legislative process, like it or not. The Governor has the right to veto our legislation. And we can pass it, but if we can't get it by the Governor's veto we better have enough votes here to override it, and I don't think we do and I'm not sure that we should. So I stand here in support of AM1493. I'll disagree with my committee Chair there, because at the same time I think it might make more sense, as he suggests, to look at the bill that's on the floor that's been voted out of committee. And that might be a better vehicle. You know, we can talk all we want about whether we're playing chicken, whether the Governor is playing chicken. But I think maybe a better metaphor might be are we wearing blinders. And if we leave the Governor out of the legislative process I think we are wearing blinders. Maybe another metaphor that would work is are we operating in a vacuum. I think we have...I think all of these are proper considerations. Now I'd like to address a little bit about whether we're going to lose judges in outstate Nebraska. You know, we probably aren't going to lose them during the next year. We may not lose them during the next two years. And certainly it is the right of this Legislature, that's part of the legislative process, to determine where judges are going to be. But I've appeared before what's called the Judicial Resources Committee (sic). They look over all of the state and where the judges are located and how many counties are in a district. They then make recommendations to the Judiciary Committee. If I'm wrong on that perhaps Senator Ashford will correct me but I think that's correct, that they make a recommendation to the Judiciary Committee that probably can result in proposed legislation which would come before this body. But if we think that there aren't going to be judges lost over a period of years, if we continue to decline in population in western Nebraska, we're wearing blinders because that's not going to be the case, we are going to lose judges. If a district loses 10 percent of its population during two consecutive decennial censuses that...there should be a redistricting. The fact is that you can't justify continuing to have the same number of judges in a district that only has 80 percent of the population that it did have. You're going to have to enlarge the district by adding

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

Floor Debate
May 20, 2009

counties or you're going to have to reduce judges, one of the two. But you can't keep the same number of judges out there and we're wearing blinders if we think that's going to continue on a long-term basis. So I suggest to you that the fact that we're going to lose judges, that's going to be a long period of time probably. But the Judicial Resources Commission, I think, meets every two to four years. They look at that every time they meet as to whether the judges are correctly numbered and the districts are properly sized. And so we're going to...you're going to lose judges if population continues to decline, you better count on that. So I do think that it makes sense to look at this amendment. One of the things I would suggest to you I think I heard over in Iowa and I know there are some states that are only holding court four days a week. So we aren't being asked to take too big of sacrifices... [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR WIGHTMAN: ...in Nebraska. Thank you, Mr. President. But we do have to look at the economy. I'm concerned over passing the bill with AM1493 which would just delay the implementation of the provision, but I would be willing to vote for that. I'm not sure that it still isn't better to pull this amendment at some point, pull the request for this district judge and then look at Senator Coash's separate bill. That may well be the better solution. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Stuthman, you're recognized. [LB35]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. Yes, I will admit that, you know, Senator White says he don't try to tell me how to plant corn and stuff like that. And I really don't know that much about the judicial system. But the fact is I'm very much concerned of the issue, what is in statute, and the conversation as to the fact that, you know, if they need one in Lancaster County they're going to come up to Platte County and grab the judge. Yes, they may do that if there is not a job for a day or two or something in Platte County. And I truly respect the fact that they're working, they're communicating, they're cooperating, and they're willing to do this. But the issue in my point that I'm trying to drive home is that that position in that district, them four positions in District 5, will not change. We're not losing one until the legislative body has a bill introduced, it's heard, it's referred to the body for discussion, and it's voted on. It seems like we need help tomorrow and we're going to rob one from Platte County. You may utilize one from Platte County but you're not taking the position away and that's what I'm trying to emphasize. So with that, I'd like to yield the balance of my time to Senator Lautenbaugh. [LB35]

SENATOR LANGEMEIER: Senator Lautenbaugh, you're recognized. [LB35]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And thank you, Senator

Floor Debate
May 20, 2009

Stuthman. This is an important bill. LB35 is an important bill. And anyone that says we can do without it, well, there's lots of things we can do without. But should we do without it? The sheriff's fee increase, that's not a throwaway thing, that's property tax relief. If the users are paying more, the counties have to subsidize that service less. That is property tax relief that is coming in this bill, plain and simple. Senator Council had a provision in there that would make jury pools more representative of the population by letting state IDs be used as a basis for being part of the jury pool, just like a driver's license. That's important. It should be that way, it's only fair. That's in this bill. Court automation fee, the biggest district court in the state is not automated and on the same system as everyone else. That's causing tremendous problems. That includes the juvenile court system so we can't compare apples to apples when deciding how many juvenile court judges we need because the Omaha or Douglas County Juvenile Court system isn't on the automation system yet either. The fee in here will pay for that. This not a trivial gathering of random bills, although I'll admit there might be a few that have snuck in them and some of them have my name on them, but they're there. And I'm not standing here waiting to talk about those. This is an important bill. And we are where we are because something that doesn't offend me occurred. We got a heads up saying you're going to lose all this stuff, potentially, if you don't do something about this judgeship. I support this judgeship, I supported it. I don't want to lose the whole bill, though. And I sympathize with Senator Coash's position. I sympathize with Senator Ashford's position. This is mess. I've been telling people all day long who have been writing me, e-mailing me, this is a mess. The bar association sent out an e-mail to all of its members saying, please contact Senator Ashford and Senator Lautenbaugh about this, just the two of us. So believe me, I've been getting e-mails all day long. Of course, they did not tell people what to say, so one guy who knows me wrote in and said, you're very handsome for a fat guy, I love you. (Laughter) [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR LAUTENBAUGH: So, bar, in the future be more clear about what you want people to write in to us, please. But how do you roll the dice on this? There are important things in this bill. And we had a warning that it wasn't going to fly perhaps as it was. And then there was talk of the override. And I don't know where we are with that, considering the last few votes. I have to echo the sentiments of Senator Avery, that was an eye-opener. I don't believe that any future reshuffling is going to be the death knell of small towns when it comes. And I think Senator Wightman makes some very apt comments, the population is moving, there is always going to be a pressure to shift. But that's not this bill, that's not this judge. That's within the purview of the Legislature and next year's Legislature and the year after that's Legislature. We make those calls. [LB35]

SENATOR LANGEMEIER: Time. [LB35]

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

Floor Debate
May 20, 2009

SENATOR LAUTENBAUGH: Thank you. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh and Senator Stuthman. Senator Harms, you're recognized. [LB35]

SENATOR HARMS: Thank you, Mr. President, colleagues. I yield my time to Senator Flood. [LB35]

SENATOR LANGEMEIER: Speaker...Senator Flood. [LB35]

SPEAKER FLOOD: Thank you, Mr. President. Good evening, members. I sat quiet during the vote, the first vote on the return to Select File that Senator Ashford had on his original amendment that would have stricken the judge in Lincoln, the district court judge. And I did so because, you know, I want to be very clear it had nothing to do with the Governor, it had nothing to do with some outside extrinsic pressure. It had everything to do with two years ago and before that I was on the Judiciary Committee, I got in the middle of this whole mess called judges and allocating them across the state. I saw how it was done. A group of lawyers in a community get together, they pump the bar association up, the bar association comes in, they get a judge, a brand new one for Buffalo County. They tell me, you know what, Senator Flood, you're next, we'll get you a judge in Madison County, you'll be next on the list. We'll go to bat for you. Well, we didn't need one after that because our Tyson Plant closed and our crime went down. So here we are today. I participated in a discussion over the summer a couple of years ago and the discussion centered around the idea that we should have a one-tier court system. And, boy, did I hear about that. I heard about that from lawyers across the state. Nobody wanted it, nobody wanted it. They did a big study. They had meetings in everybody's town. I thought, you know, why do I pass a district court judge on my way to go to county court in Antelope and I'm following the county court judge? Why couldn't one judge handle all the arraignments that day? And to the judges' and to the bar's credit I will tell you this, I don't think...I don't think that was the right thing to do. But what I thought would happen was that we would talk about allocating the judges and the resources we have responsibly throughout the state, more responsibility, more efficiently. So last year, in LB1014, the Judiciary Committee put together a plan that said, you know what, Chief Heavican and the court, you draw the lines, you draw the lines. And I supported that. My good friend and colleague, Senator Fischer, hated it, hated it so much it came out of the bill so that the judiciary package could go forward. That was the right answer. We can't play arbiter of these types of personnel decisions in this body. The head of that branch of government has to do it or the Supreme Court has to do it. And I know the bar association doesn't like this. But you know what's funny? The bar association doesn't go over and ask the court who needs a new judge; they decide. Well, guess what? The court runs the court. The Supreme Court runs that branch of government, not a private association that happens to be the licensing agency of all lawyers. That's why I didn't vote for that return to Select File motion and I wouldn't

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

Floor Debate
May 20, 2009

do it again. But now we are here today. We're looking at an option of putting this two years down the road. I tell you what, I will vote for this because we do need this bill. It's been said that we don't need this bill. We do need this bill, the court needs this bill. This is the court's top priority. They need that money to fund that system for the computers and that's why I'm in this game. I say give Lincoln their judge in two years on this condition, they start listening to the Supreme Court, they start taking direction from the people that run this branch of government. The bar association and the Supreme Court get together this summer and they figure it out. And if they don't, I will be on the highway next year and I will figure it out for them. Senator Coash will figure it out for them. And you know what? It may mean that we have to reallocate resources in rural Nebraska. We're from rural Nebraska, that's how it works. Because at the end of the day you can't talk about efficiency in government and taxpayers' dollars and then have somebody working not as much as somebody else in a busier district. You can't make all those things fit. So I'll vote for this. I don't really like the way it's been handled. I think the bar association needs to get its head on and needs to sit down with the Supreme Court and they need to talk about what the mission of the judicial branch is... [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SPEAKER FLOOD: ...and they need to figure out a plan and they got to come here with one voice. You've got a lobbyist out there that's calling the shots for a branch of government, and it's not right. The people run that branch of government. They elected a Governor who appointed those judges that sit on the Supreme Court, and those are the judges that make the calls, and those are the ones that I have listened to. And that's why I voted to return it to Select because Chief Heavican and members of the Supreme Court said, we need this money for these computers. We can make it in Lincoln, we'll plug the hole until we get a solution. And I say, we got to find a solution for those folks in Lincoln. And they said, you know what, we do and we're going to. So I'll do this and we'll move it along. I don't know if it will go or not, but I'm going to vote for it. I expect to see some cooperation from the bar, I expect to see the Supreme Court leading the effort. That's who I'm going to listen to when this comes around. Thank you, Mr. President. [LB35]

SENATOR LANGEMEIER: Thank you, Senator Flood and Senator Harms. Senator Lautenbaugh, you're recognized. Senator Lautenbaugh waives his time. Senator Wallman, you're recognized. [LB35]

SENATOR WALLMAN: Thank you, Mr. President. I'd yield my time to Senator White. [LB35]

SENATOR LANGEMEIER: Senator White, you're recognized. [LB35]

SENATOR WHITE: Thank you, Mr. President. Let's...first of all, I want to clear up a

Floor Debate
May 20, 2009

couple of comments. Senator Nelson indicated that this dispute on a judge for Lancaster County was motivated by a desire to take on the Governor by people who have issues with him sometimes. That is not true. I got an e-mail from Wayne Mark, an attorney I have a lot of respect for. He's the immediate past-president of the bar association. He has talked to me and many others and said, Lancaster County has an emergency, they need another district judge, we are not delivering essential services in a timely manner in Lancaster County District Court and we need to put one in. That's why I stood up. And then Senator Lathrop asked me if I would support it and I had to. I thought it was true. And I do understand and appreciate what Senator Flood just said. And I also kind of like to see him all wrought up. It's nice to see him care about something. But he said something that's very important and folks should listen to it. We will plug the hole in Lancaster County. Okay? What that means is that judicial services from the rural areas, from judges will be diverted from there to Lancaster County to cover that need. Will it be any one judge? No. Will the position still be there, as my friend Senator Stuthman observed? The answer is yes. But here's what that means. If Senator Stuthman has a tractor but it's only going to be used to plow my farm, it's still his tractor. The position is still there but he's not plowing his ground with it. And that is exactly what's going to happen here. We're going to borrow resources as we have for years from areas with less population or caseload and put it in areas with higher. Now understand something, folks. Caseload is not everything; the distance you travel, the need to bring the law to the citizens in their home, the need to have the right to have a trial in the county where you're from with a jury of your peers there, not in a place far removed. You want to file a lawsuit in federal court right now, you will get a trial in Omaha, Lincoln or North Platte, and I don't care if you're from Chadron or Imperial. And we are actually on the cusp of moving that way. Senator Flood, I think, recognizes that that may be necessary and he says we have to be realistic. We're from rural areas, we get it. And I do understand that and I do appreciate the use of the resources. I would like to have more judges in my areas where I practice a lot, would make my life a lot easier. But I don't want to do it at the expense of the rural communities because it's not the same thing, folks, to go 50, 60, 70, 100, 150, 200 miles to a strange town to have your case tried because the judicial resources aren't available anymore to try it in your county. And is this all going to happen over in two years? Senator Nelson made a good point. No, of course not. But are we and do we continue to move that way? And the answer is, yes, of course, we do. And if you're from a rural area and if you're okay with that, then by all means, you know, we should take AM1493, Senator Ashford has offered a handsome compromise. You should take that and figure you've got a victory and go with it. The question I have is, if it is a bad idea to put a judge in Lancaster County a year from now and the Governor will veto it,... [LB35]

SENATOR LANGEMEIER: One minute. [LB35]

SENATOR WHITE: ...then why isn't the Governor going to veto it with this compromise? And do you have the votes with this compromise to override it? And if you have the

Floor Debate
May 20, 2009

votes with this compromise, why not just do what the committee did initially? I mean is this going to prevent a veto? Personally, I think that's backwards. Don't worry about the veto, do not worry about the veto. Worry about what is good legislation, what is good policy, vote your conscience. And then if a veto occurs, because the Governor voted his conscience, then we work together, see if we have the votes to override it. And if we lose a lot of good things it won't be because of us, it will be because the Governor decided to veto them; that on balance the community didn't need the other aspects of LB35, and that's his prerogative. What is completely wrong is for this body to worry about what the Governor's decisions are influencing what we do here. You have just given away... [LB35]

SENATOR LANGEMEIER: Time. [LB35]

SENATOR WHITE: ...a lot of not only your authority but your responsibility. [LB35]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Ashford, you're recognized. [LB35]

SENATOR ASHFORD: Thank you, Mr. President. I'm going to be very brief and give my time to Senator Coash. But I want to apologize to my friend, Senator Heidemann. This amendment came about in a matter of seconds. And I did not speak to Senator Heidemann before that time and I apologize to him for that. Senator Heidemann has been...I worked with him on this amendment and other bills. And in fact we do have in LB35...I worked with Senator Heidemann to make sure that the Grand Island Law Enforcement Center bill was in LB35. He's been extremely cooperative and obviously a watchdog of the budget. But I apologize for not conferring with him and Senator Fischer but Senator Heidemann most particularly because of his budgetary responsibility. With that, I'd give the rest of my time to Senator Coash. [LB35]

SENATOR LANGEMEIER: Senator Coash, 4 minutes. [LB35]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Mr. President. I won't take too much time here. I just want to comment on some of the things that Speaker Flood said. He's right. My bill, LB669, turned into a committee bill. Then for some reason it turned into my bill again. And then it took a life on its own out in the lobby. Well, I'm taking it now and I'm running with it. I serve District 27 and I serve the state. I want...I can't put it as good as Speaker Flood did, but I echo what he says and I'm going to follow through with my commitment. I will be responsible to the judicial needs of this state, and I will do it within the context of the resources available. And I'll run the ship. And I'll take input and I'll remember what our responsibilities here. And when I bring something to this body, you can be assured that it came from my and the Judiciary Committee's thoughtful analysis of what needs to happen. Thank you, Mr. President. [LB35 LB669]

Floor Debate
May 20, 2009

SENATOR FRIEND PRESIDING []

SENATOR FRIEND: Thank you, Senator Coash. Senator Lathrop, you're recognized. [LB35]

SENATOR LATHROP: Mr. President, thank you. [LB35]

SENATOR FRIEND: You're welcome. [LB35]

SENATOR LATHROP: Colleagues, good evening once again. Senator Ashford has, I think, graciously put up a compromise in AM1493. It is, to me, an acceptable compromise. We are going to appoint and provide for a new judge in the Lancaster County District Court. It is to be sure two years out. The budget provides for a part-time judge, if they can find one, to help plug the hole for the next two years. And in these times that's probably a fair solution. So I support it. And that having been said, I want to make a few comments about what happened tonight. I think what happened tonight is a good thing. I think what happened tonight is a good thing. This is the way we should be legislating. We ought to be talking about this. It ought to be about the 49 of us inside here. We can bloody one another if we need to, but we are in here to work on legislation and work on the state's policy. And I think that's what's happened tonight. And ultimately in the middle of that fray, when a compromise that meets the needs of people in the body, and makes for good policy, come through then we've done our job. And I think that happened tonight. I want to comment on some of the comments I've heard because you have...maybe the other thing that happened tonight is you now have a glimpse into the complexities of providing for judicial resources across the state. I started out by saying this is an essential function of government and it is. We can cut corners on some things, but we got to be careful not to cut corners when it comes to judges. And I say that not because I'm a lawyer that tries cases, but because that's an essential function of government. We got to provide for the education of children and we got to provide for courts for these disputes to happen in. I think we've heard from Senator Schilz and Senator White talk about an important part and an important component of the resources, the judicial resources and the allocation of those resources across the state. These judges being available to greater Nebraska is important. It's every bit as important as them being available to the metropolitan area that I come from. It is not a simple solution. It is, in fact, a complicated solution. Senator Flood understandably believes that the solution is to turn this responsibility over to the court. Certainly we could develop efficiencies if the chief of the Supreme Court could make these allocations of resources him or herself. But that means we've got to give up power, we got to give up our authority and our power to vote on those appointments and the...or not the appointments but the districts and the reallocation of those resources. I will join with Senator Coash, who I appreciate what he's done for us tonight. I will join with Senator Coash and Ashford and Flood in working on the issue. But understand that

Floor Debate
May 20, 2009

when we come back here we're talking about the reallocation of limited resources and it will be important that you participate in that process because, if we're tightening the belt, it's going to be tightened and it's going to affect the availability of judges in your home community. And with that, I would encourage your support of AM1493 and LB35 and an override, if that should be necessary. Thank you. [LB35]

SENATOR FRIEND: Thank you, Senator Lathrop. Members, we are discussing the motion to return to Select File. Senator Nordquist, you are recognized. [LB35]

SENATOR NORDQUIST: Thank you, Mr. President and members. I'm going to be brief here. I enjoyed the discussion tonight to get a better understanding of this. My concern is that right now, at least through this process, it seems like the right hand doesn't know what the left hand is doing, and that's through our budgeting process. I'm going to plead with the members of the Exec Board to reconsider the referencing procedures of this. I know it's been a precedent in the past, but when we're setting out...and I agree with Senator Lathrop, the courts are an essential service, much like public safety and the State Patrol is an essential service. We need to look at this as a comprehensive picture. And I think the Exec Board needs to look at whether or not bills like this that deal with judicial resources should be going to the Judiciary Committee as opposed to the Appropriations Committee. Because when we look at the Supreme Court's budget, we dealt with...we funded the use of retired judges to fill needs, we funded distance learning services, interpreter coordinators, all these other core essential services so they can meet the needs around the state, but this isn't in the picture. I think it needs to be in the funding picture so we can have a comprehensive look at what we need in this state to meet these resources. So I appreciate the discussion. Thank you, Mr. President. [LB35]

SENATOR FRIEND: Thank you, Senator Nordquist. Senator Heidemann. Senator Heidemann, you are recognized. [LB35]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. Just briefly once again, I had touched base about kind of where I was at in my position with some A bills and with the budget. Senator Coash is right. We normally don't put things...and he had came and talked to me and I discouraged him from putting it off two years because if something is worth doing, it's worth funding now, it's worth starting now. Sometimes as things unfold, if you're maybe building a building, a new facility, and you don't need employees right away, maybe we'd do something like that. But that's not the case here. The case is that Lancaster County probably needs a judge. And I'm not going to argue that. But if they need it, let's do it and stand up and put it in, if that's the will of the body, and stand behind it, but let's do it now. Let's not put it off because that's not the way the process is supposed to work. And I will vote against AM490...AM483...AM493, whatever it is, AM1493 for that reason. I don't think you should put a decision off or backdate something just because you don't have the money

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

Floor Debate
May 20, 2009

now or just because it's not going to be accomplished right now because it's too controversial. And in reality I think Senator Coash has a bill on General File that would do the same thing. You're delaying this for two years, you're gaining absolutely, positively nothing except somewhat of a commitment, something that the Legislature can undo next year because we have a history of doing that. Twenty-five votes will buy you almost anything in this body. So we don't have to do the amendment. Senator Coash can move forward next year and accomplishes the same exact thing. I was going to vote for LB35, I will say that, if the previous amendment was adopted. I don't even know where I'm at anymore. Senator Flood, I will say, gave a very good speech. And if we could hold his feet to the fire, maybe that might sway me a little bit. I don't know. This thing is getting so convoluted I am even confused. That's not the first time. I do want to...I have an opportunity right now to talk to you just a little bit about where we are with the budget. And I want to congratulate this body and the members of my Appropriations Committee. We've done a good job not only this year, but we've done a good job over the last three years or we wouldn't be in this position. But I wouldn't be much of a leader if I wouldn't point out the fact that if you look on your green sheet in the out-years that we will show if we adopt all the amendments on Select File and Final Reading, we will show a shortfall of \$474 million. We do have money in the Cash Reserve, and somebody will tell you that just right off the bat: \$324 million to take care of that \$474 million shortfall--doesn't quite match. I also want to point out that the Forecasting Board projected revenue in the second year of, I believe, 5.1 percent. I hope we meet that. I hope we're on the bottom right now. I hope we're coming back, and I hope we get that 5.1 percent. In the out-years, the LFO numbers are 7.2 percent revenue growth. It's fairly optimistic. If we do not meet those revenue growth numbers, we are in major trouble. Because that... [LB35]

SENATOR FRIEND: One minute. [LB35]

SENATOR HEIDEMANN: ...that \$474 million number will be added...hundreds of millions of dollars of shortfall will be added to that. It's something to be concerned. And by starting down the road of not funding something in this biennium, but let's start it up and fund it next biennium, all you are doing is growing your problem. Thank you, Mr. President. [LB35]

SENATOR FRIEND: Thank you, Senator Heidemann. Senator Price, you are recognized. [LB35]

SENATOR PRICE: Question. [LB35]

SENATOR FRIEND: Members of the Legislature, the question has been called. Do I see five hands? I do see five hands. The question before the Legislature is, shall debate cease? All those in favor please signify by voting aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB35]

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

Floor Debate
May 20, 2009

CLERK: 32 ayes, 7 nays to cease debate, Mr. President. [LB35]

SENATOR FRIEND: Debate does cease. Senator Ashford, you are recognized to close on your motion to return the bill to Select File. [LB35]

SENATOR ASHFORD: Thank you. I'd urge the body to return the bill to Select File. Thank you. [LB35]

SENATOR FRIEND: Members of the Legislature, you have heard the closing. The question before the body is, shall LB35 be returned to Select File for a specific amendment? All those in favor please signify by voting aye; all those opposed vote nay. Record please, Mr. Clerk. [LB35]

CLERK: 33 ayes, 10 nays, Mr. President, on the motion to return the bill. [LB35]

SENATOR FRIEND: The motion is successful. Senator Ashford, you are now recognized to open on AM1493. [LB35]

SENATOR ASHFORD: Yeah, I would relinquish my time back to the Chair. We've had plenty of debate on the issue, thank you, for me anyway. [LB35]

SENATOR FRIEND: Thank you. Senator Ashford. The floor is open for discussion. There are members wishing to speak. Senator Council, you are recognized. [LB35]

SENATOR COUNCIL: Thank you, Mr. President. I rise in opposition to AM1493. I cannot and will not vote to amend LB35 in this manner. And there are a couple of points I want to address. First of all, my colleague, my fellow Judiciary Committee member, Senator Coash, I know he's worked extensively on this bill, and I respect and empathize with him on this position. But with all due respect, Senator Coash, the provision in LB35 for the addition of a district court judge in Lancaster County is a committee amendment. That is not your amendment. Your bill, LB669, called for the creation of five additional judgeships. That bill still sits on General File because it was advanced by the committee on a unanimous vote. What the committee elected to do, in recognition and trying to be fiscally responsible, recognizing the difficulties in trying to fund five additional judgeships, even though there was testimony as to why these other four were needed, recognized that there was an acute need for an additional district court judge in Lancaster County. So that's why the committee advanced LB35 unanimously including the Lancaster district judge. Senator Nelson asked a question, why do we want to pick a fight with the Governor? Senator Nelson, you've got it twisted. Why does the Governor want to pick a fight with this body? And I put it that way because this bill, what the component that we're discussion here, LB669, was heard in committee February 6. February 6, eight people testified in support of it, including the person who introduced it,

Floor Debate
May 20, 2009

Senator Coash. Nobody testified against it. Nobody testified in a neutral capacity. No one from the executive office came and related these issues that Speaker Flood just outlined. No one from the Supreme Court came forth and talked about these processes. That was February 6, didn't hear a word about these things. LB35 comes to this body. The bill is advanced April 14, almost six weeks ago, at least five; didn't hear a word, no concern expressed by the executive branch, no concern expressed by the judicial branch. This body advanced it to Select File. May 12 we advanced it to Final Reading; no indication of any concern by the executive, no concern by the judiciary. But all of a sudden there's a problem, there's a threat of veto. And now we're expected to support AM1493 because they say, okay, we're willing to play fair now, we want to come and cooperate, ignore the fact that I just threatened you with a veto that I had no basis that was ever articulated to anyone. With all due respect, Senator Ashford, I still don't know why a veto threat was there. But now we're expected to adopt AM1493. [LB35 LB669]

SENATOR FRIEND: One minute. [LB35]

SENATOR COUNCIL: Senator Heidemann, I appreciated, from an Appropriations Committee perspective, as Chairman, your recognition that this won't address the problem. You know, if we're going to add a judge in Lancaster County, do it now, do it now. And that's how we should go, and quickly. Judge Chevront, you know, about this part-time judge, he says: It's my understanding there's a belief that there are funds for a part-time district judge and everybody thinks I'm going to retire and fill that position. That is not true. While I'm 70 years old, I have no present plan to retire. About six months ago, I did briefly discuss such a possibility. I'm quickly paraphrasing: Also--this is important--I am not aware of any other retired judge in the area who is interested in such a position. So you create a part-time position. You won't fill it. [LB35]

SENATOR FRIEND: Time. Thank you, Senator Council. Senator White, you are recognized. [LB35]

SENATOR WHITE: Thank you, Mr. President. For those senators who live in rural areas, let me give you a little example of what can happen when you don't have a judge nearby. You have, for example, a farm that you've qualified as organic. The wind is blowing out of the south. Your neighbor to the south decides to spray herbicides or pesticides on their property. It's drifting. You know that if you get a certain level of contaminate of a pesticide or herbicide in your soil, you will be disqualified from lucrative contracts to supply organically grown vegetables, corn, whatever, for ten years because that's how long it will take to get it out of the soil. Now you need a judge and you need one fast and you got to get down there physically with either your testimony or an affidavit. Who are you going to call? Where are you going to go? Because your judge is in Lancaster County trying a drive-by shooting. And by the time you drive the 90, the 200, the 150 miles to a judge, you get your hearing, you get the permanent injunction and you try to get back to get the paper served, the damage is done. Or your judge now

Floor Debate
May 20, 2009

just isn't going to be around in time to try that case you've had over the water dispute you have with your neighbor on whether or not they're interfering with your riparian water rights or flooding or groundwater issues or where that new fence is going in. And instead of going 15 miles to the county seat, in to the courthouse that your father, your grandfather, your great-grandfather, and your great-great-grandfather not only built but then passed on, you get to go four counties away because that's where the judge is. Hey, listen, here's the ironic thing: This does not affect my practice. It does not affect my home, which is now Omaha, but it really will affect yours. And really what we're saying...and God bless Senator Flood. It's courageous what he said. Senator Nelson is courageous. They're lawyers and they're taking on the bar and I admire courage from wherever it comes. But I see it very differently. I really am committed to the idea that one of things we do as a state, if we're really senators for the whole state as I've heard a lot, is at minimum we provide equal, open access to the courts. An open court to me means one that's not very far away, that's not too hard to get to, that's not too burdensome to use. And what we're talking about here, make no mistake about it, is a system where we move away from a judge is in place in your areas that we've had for well over 100 years in this state, and we're going to move, and not very slowly, we're going to move to putting judges in big clumps in populated areas, and then sending them out on scouting excursions every now and again to provide essential services to the people who live in other parts of the state. Hey, if you want to satisfy...if you're satisfied with that future, if you're okay with watching that happen to your district and the communities in your district, I can't stop it. But I'm not going to pretend I'm okay with it. I'm not going to pretend that draining those resources from your communities is anything else than, with a nod and a wink, acknowledging that they're dying and we're going to start sucking out essential government services... [LB35]

SENATOR FRIEND: One minute. [LB35]

SENATOR WHITE: ...to save a buck. I'm not ready to give up on them. [LB35]

SENATOR FRIEND: Thank you, Senator White. Senator Pirsch, you are recognized. Senator Pirsch waives his opportunity to speak. Senator Gloor, you're recognized. [LB35]

SENATOR GLOOR: Thank you, Mr. President. In many ways I continue to think through issues as if I was still running a hospital. And I don't and can't speak to getting heavy lobbying from the executive branch, but I can tell you, although not lobbied, when someone tells me or I hear that the CEO of the judicial system is supportive of what's been recommended, it does get my attention. That, after all, is his job. So my influence on this comes from within the judicial system itself, and that makes my decision a lot easier. It's where I naturally gravitate. I wonder if Senator Wightman would yield to a couple of questions. [LB35]

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

Floor Debate
May 20, 2009

SENATOR FRIEND: Senator Wightman, will you yield to questions? [LB35]

SENATOR GLOOR: Senator Wightman, while you're moving to the mike, can you tell me who appoints the members of the Judicial Resources Commission? [LB35]

SENATOR WIGHTMAN: I think they're selected by the bar association, but...the Judicial Resources Commission, right, I think they're selected by the bar association. I can't tell you that for sure. [LB35]

SENATOR GLOOR: Who serves? I mean, who has the opportunity to serve on that commission? Could I serve on that commission? [LB35]

SENATOR WIGHTMAN: Lawyers, judges, and laypeople. I can't tell you the breakdown among them. [LB35]

SENATOR GLOOR: Are there very many laymen...you don't know if there are very many laymen who serve on that commission? [LB35]

SENATOR WIGHTMAN: Any what? [LB35]

SENATOR GLOOR: Is it safe to say that this entity is a commission that's a component of the State Bar Association? [LB35]

SENATOR WIGHTMAN: I think it is appointed by the State Bar Association or they're probably elected by the State Bar Association. I don't remember ever voting on the Judicial Resources Committee (sic) for sure, but there are judges on it as well as attorneys. [LB35]

SENATOR GLOOR: Thank you, Senator Wightman. [LB35]

SENATOR WIGHTMAN: And it is representative of the state. [LB35]

SENATOR GLOOR: Thank you, Senator Wightman. I'm just trying get a handle on, since this has been referenced and since it seems to play some degree of a role in where judges go, what this particular entity is. I am also reminded as I think about this topic, note that I made to myself during orientation that you need to be careful what you hang on a Christmas tree because too big an ornament might bring the whole thing down. And there was an awful lot of discussion that I had on LB35 with individuals, had concerns about individual components of it. I have some guidance from the CEO of the judicial system as relates to it. I've reconciled myself with the importance of other components of LB35. I wish the original amendment Senator Ashford put up was still there. But as it currently stands, I am in support of AM1493 and LB35. Thank you, Mr. President. [LB35]

Floor Debate
May 20, 2009

SENATOR FRIEND: Thank you, Senator Gloor. The Chair would like to now recognize Senator Flood for a Speaker's announcement. [LB35]

SPEAKER FLOOD: Thank you, Mr. President. Good evening, members. Tonight we are going to, one way or the other at some point, resolve LB35. And it is my intention to go back to the handful of consent calendar bills that we still have on Final Reading. And after we resolve LB631 on consent calendar Final, adjourn at that point. Thank you, Mr. President. []

SENATOR FRIEND: Thank you, Senator Flood. Members of the Legislature, back to discussion of AM1493. Senators wishing to speak are Fischer, Karpisek, Stuthman, Utter, Wightman, Nelson, and Janssen. Senator Fischer, you're recognized. [LB35]

SENATOR FISCHER: Thank you, Mr. President and members. Senator White asked a few minutes ago, what happens when you don't have a judge there, when you don't have a judge nearby? I can tell him what happens because we face that situation in my district right now. I'm not worried about losing another judge. As has been said earlier, the one that was lost in the Panhandle a couple years ago, that was a decision by rural senators in this body to reallocate a judgeship to another area of the state that needed a judge. I know we've heard differently from some people that, oh, they took our judge and isn't that horrible. I can tell you the senators involved in that. There were quite a few that didn't fight it, and one happened to be Senator Phil Erdman, who fought anything that (laugh) came up his way. And I went over and asked him if he wanted help in fighting it. So let's be clear on that point. I have courts that are open once every two...one day every two weeks. We're facing that now. This isn't new. And the idea that we keep hearing--oh, my goodness, what's going to happen to rural Nebraska--I'm tired of that. I see a lot of people on this floor who stand up and defend rural Nebraska, and they defend it with their vote. I see other people on this floor who like to stand up and really worry about us out there. But funny thing, I don't see their vote in my column when I need it. Let's be clear on that. So where are we on this bill? I don't know. I don't know where we are. It seems like we've kind of cobbled together another compromise on the floor. I don't know what happens if this amendment doesn't pass. Does that mean that the bill then is back in its original form with the judge in it? Oh, dear heavens, we better not pass that then. Or maybe that's the objective and we better pass it. That's what happens when we try to compromise our way through a session. Sometimes a compromise is not the way to go. I just love what Senator Nordquist said. We'd been talking about that earlier in the day. And I talked about that exact same thing with the bar association this summer, and I told them I support getting more money for judges but they needed to follow the process. I was on a conference call with them. I said, you guys need to get your lobbyists and you need to follow a process, and that process is you go to Appropriations Committee and you get the money in the budget. I realize you like to go to Judiciary Committee and have it in a bill, a bill such as LB35, because when

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

Floor Debate
May 20, 2009

you tack it in there, that makes us fight in here. But if you go to Appropriations, like Senator Heidemann said and Senator Nordquist said, and you work it through the budget process, then you're fighting with every other agency, you're fighting with the university, you're fighting with the State Patrol that we've made cuts on. Shouldn't we be appropriating money in our budget for the courts if we think it's that important? Isn't that the way it should be done instead of a Christmas tree bill where it puts everything in jeopardy? [LB35]

SENATOR FRIEND: One minute. [LB35]

SENATOR FISCHER: Although Senator Lathrop stood up earlier and said, didn't matter if this bill passed this year. But then we heard from Senator Lautenbaugh and we hear from Senator Flood, boy oh boy, this bill better pass this year. I appreciate the advice of the attorneys in here on this subject, but I think we've compromised ourselves into a situation where it may take some common sense to get out. Thank you, Mr. President. [LB35]

SENATOR FRIEND: Thank you, Senator Fischer. Senator Karpisek, you are recognized. [LB35]

SENATOR KARPISEK: Question. [LB35]

SENATOR FRIEND: Members of the Legislature, the question has been called. Do I see five hands? I see at least five hands. The question before the Legislature is, shall debate cease? All those in favor please signify by voting aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB35]

CLERK: 30 ayes, 3 nays, Mr. President, to cease debate. [LB35]

SENATOR FRIEND: Debate does cease. Senator Ashford, as introducer of AM1493, you're recognized to close. [LB35]

SENATOR ASHFORD: Mr. President, I urge the body to adopt AM1493 and then advance LB35 back to Final Reading. Thank you. [LB35]

SENATOR FRIEND: Members of the Legislature, you've heard the closing on AM1493. The question is, shall AM1493 be adopted? All those in favor please signify by voting aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB35]

CLERK: 35 ayes, 8 nays, Mr. President, on the adoption of the Select File amendment. [LB35]

Floor Debate
May 20, 2009

SENATOR FRIEND: AM1493 is adopted. Senator Nordquist for a motion. [LB35]

SENATOR NORDQUIST: Mr. President, I move LB35 to E&R for engrossing. [LB35]

SENATOR WHITE: Mr. President, are there lights on, sir? [LB35]

SENATOR FRIEND: Sorry, Senator White, it is debatable. There are lights on. Members in the queue are Senator Stuthman, Senator Wightman, Nelson, Janssen, Dierks, and White. Senator Stuthman, you are recognized. Senator Stuthman waives his opportunity. Senator Wightman waives his opportunity. Senator Nelson, you are recognized. Senator Nelson waives his opportunity. Senator Janssen. Senator Janssen waives his opportunity. Senator White, you are recognized. [LB35]

SENATOR WHITE: Senator White does not waive his opportunity. A couple of points: First of all, Senator Fischer says that this should have gone through Appropriations. Would Senator Fischer be kind enough to yield to the question of where is it written that if you want another judge you must apply to Appropriations? [LB35]

SENATOR FRIEND: Senator Fischer, will you yield? [LB35]

SENATOR WHITE: Where in the rules, Senator Fischer, is that written because it is not traditionally where you go to get another judge. [LB35]

SENATOR FISCHER: Yes, I will yield. Senator White, what I was talking about was the funding for the judge should have gone through the Appropriations Committee and be in the part of the budget that deals with the courts. It is then within in the Judiciary Committee that, if the money is appropriated, then you bring a bill up for the judge and you decide where the judge is going to be. You may not like that process, of course, but I think it makes sense and I think Senator Nordquist would agree with me on that. [LB35]

SENATOR WHITE: Senator Fischer, the process set now is that you put in a substantive bill, and then you get an A bill and we fund on the floor. That is the time-honored process in this body. It is not the time-honored process that you go beg permission from Appropriations to get money and then, if they say it's okay, you then substitute the bill on the substantive matter. That is standing tradition on its head. Now... [LB35]

SENATOR FISCHER: May I respond? [LB35]

SENATOR WHITE: Oh, certainly. [LB35]

SENATOR FISCHER: Are you suggesting then that every committee, such as the

Floor Debate
May 20, 2009

committee that I am Chairman of, Transportation and Telecommunications, that I would, for example, have the Public Service Commission come to my committee and I would determine what their needs are and present that then to the body instead of going through the Appropriations Committee process? [LB35]

SENATOR WHITE: What I would say to you, Senator, is when you have a new initiative, the whole purpose of an A bill and a reservation of money in the budget is to subsequently fund bills that meet not only the committee approval and reach the floor but then are approved on the floor. And that has been the tradition for decades in this body. [LB35]

SENATOR FISCHER: But I'm asking then if you're saying that's the tradition, why is my committee not getting bills for Public Service Commission or Department of Roads or State Patrol? We deal with a lot of those issues in my committee also, Department of Motor Vehicles...I could go down a number of those departments. Are you saying the court should only go to the Judiciary Committee to make those important decisions through that committee process? [LB35]

SENATOR WHITE: Not at all, Senator. I think you would have every right, should you decide to introduce and entertain a bill that would expand the number of Public Service Commissioners, for example, and it came out of your committee and we debated on the floor and then it had to compete for limited A bill money. You would have every right to do that. I have no problem with that. That's well within the traditions of the body. But it is not--and it is important for the new senators--it is not and never has been the tradition of the body that you first go get money. That is not the tradition of the body. Because if that's the case, we ought to have just one committee, the Appropriations Committee. Thank you, Mr. President. [LB35]

SENATOR FRIEND: Thank you, Senator White and Senator Fischer. Senator Fischer, you are recognized. [LB35]

SENATOR FISCHER: Thank you, Mr. President and members. I would say it's important for the new members in this body to understand that debate is always good, and I thank Senator White for asking those questions. He and I do disagree on that, however. I would also say that compromise isn't always good and that sometimes you need to battle on the floor. Senator Friend, it's good you're in the Chair because you can't participate in this tonight. (Laughter) There are blessings. (Laughter) But truly on this bill I think I appreciate Senator Council's comments that she made earlier in her opposition to what was happening. She and I don't agree on the reasons why, but it's frustrating to see things break down and decisions made quickly. Senator Ashford said he drew up that amendment in seconds, the one that is now on this bill, drew it up in seconds. How long did we debate that amendment? We debated the earlier amendment a long time, but we cobbled together a compromise on an amendment that was drawn

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

Floor Debate
May 20, 2009

up in a few seconds. Can we be proud of ourselves for the good policy decisions we have made on this floor this evening? That's something we'll have to judge in the future, I would imagine. But postponing everything into an out-year, in my opinion, is not good policy. Because we don't have the funding now, let's put it off, let's put it off. I'll be gone in three more years. Some of you will still be here and you're going to have to deal with those decisions where we keep putting it off and putting it off. You make decisions on policy based on something more than an amendment drawn up in a few seconds because things were getting a little heated on the floor. We get heated on this floor and I'm happy to see it happen finally. I have to laugh with Senator White over that. Heaven forbid, I don't agree with him, don't take that as I agree with him. (Laughter) But we need to do battle. That's why you're here. That's why you're here, is to fight for a position, not when you hear some opposition to say, oh gosh, oh gosh, we better...I better give in on this one, we need to move this. No. You stand up for what you believe in. You stand up for a position. You stand up for a commitment you made on a position. Thank you, Mr. President. [LB35]

SENATOR FRIEND: Thank you, Senator Fischer. There are no other members wishing to speak on the advancement of LB35. Senator Nordquist for a motion. [LB35]

SENATOR NORDQUIST: Mr. President, I move LB35 to E&R for engrossing. [LB35]

SENATOR FRIEND: Senator Council, did you ask for a roll call vote? Members, there has been a request for a roll call vote. And, Senator Pirsch, did you ask for a reverse order? There has been a request for a roll call vote in reverse order. Mr. Clerk, when you are ready, call the roll. [LB35]

CLERK: (Roll call vote taken, Legislative Journal pages 1662-1663.) 43 ayes, 4 nays, Mr. President, on the advancement of the bill. [LB35]

SENATOR FRIEND: LB35 does advance. [LB35]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Members, we return now to Final Reading, consent calendar. In just a moment we will do that. We now go to LB35A, Mr. Clerk. [LB35A]

CLERK: Mr. President, Senator Ashford would move to return LB35A to Select File for a specific amendment, AM1467. (Legislative Journal page 1600.) [LB35A]

SPEAKER FLOOD: Senator Ashford, you're recognized to open on your motion. [LB35A]

SENATOR ASHFORD: This is to return the A bill to strike the appropriation for the

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

Floor Debate
May 20, 2009

judge. [LB35A]

SPEAKER FLOOD: Members, you've heard the opening to Senator Ashford's motion to return LB35A to Select File for a specific amendment. There are no members wishing to speak. Senator Ashford, you're recognized to close. Senator Ashford, waives his closing. The question before the body is, shall LB35A return to Select File for a specific amendment? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB35A]

CLERK: 39 ayes, 1 nay, Mr. President, on the motion to return the bill. [LB35A]

SPEAKER FLOOD: LB35A is returned to Select File for a specific amendment. Senator Ashford, you are recognized to open on AM1467. [LB35A]

SENATOR ASHFORD: Thank you, Mr. Speaker. This amendment would strike the appropriation for the Lancaster County district judge. [LB35A]

SPEAKER FLOOD: Members, you've heard the opening on AM1467. There are no lights on. Senator Ashford, you're recognized to close. Senator Ashford waives his closing. The question before the body is, shall AM1467 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB35A]

CLERK: 41 ayes, 2 nays, Mr. President, on the adoption of the Select File amendment. [LB35A]

SPEAKER FLOOD: AM1467 is adopted. Mr. Clerk? [LB35A]

CLERK: Nothing further, Mr. President. [LB35A]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB35A]

SENATOR NORDQUIST: Mr. President, I move LB35A to E&R for engrossing. [LB35A]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The ayes have it. The E&R amendment is adopted or is advanced, the bill is advanced. We now return to Final Reading, consent calendar. Mr. Clerk, the first bill is LB598. [LB35A LB598]

CLERK: (Read LB598 on Final Reading.) [LB598]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB598 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB598]

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

Floor Debate
May 20, 2009

CLERK: (Record vote read, Legislative Journal page 1664.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB598]

SPEAKER FLOOD: LB598 passes. Mr. Clerk, LB604E. [LB598 LB604]

CLERK: (Read LB604 on Final Reading.) [LB604]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB604E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB604]

CLERK: (Record vote read, Legislative Journal pages 1664-1665.) 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting, Mr. President. [LB604]

SPEAKER FLOOD: LB604E passes with the emergency clause attached. Mr. Clerk, LB627. [LB604 LB627]

CLERK: (Read LB627 on Final Reading.) [LB627]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB627 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB627]

CLERK: (Record vote read, Legislative Journal pages 1665-1666.) 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB627]

SPEAKER FLOOD: LB627 passes. Mr. Clerk, we now proceed to LB631E where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB627 LB631]

CLERK: 43 ayes, 1 nay, Mr. President, to dispense with the at-large reading. [LB631]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB631]

CLERK: (Read title of LB631.) [LB631]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB631E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Members, we are on Final Reading. Please stay in your seats. The vote remains open. Mr. Clerk, please record. [LB631]

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

Floor Debate
May 20, 2009

CLERK: (Record vote read, Legislative Journal pages 1666-1667.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB631]

SPEAKER FLOOD: Thank you, Mr. Clerk. LB631E passes with the emergency clause attached. While the Legislature is in session and capable of transacting business, I proposed to sign and do hereby sign LB531, LB533, LB537, LB540, LB562, LB587, LB598, LB604, LB627, and LB631. Mr. Clerk, items for the record. [LB631 LB531 LB533 LB537 LB540 LB562 LB587 LB598 LB604 LB627]

CLERK: I have none, Mr. President, other than a priority motion. Senator Rogert would move to adjourn the body until Thursday morning, May 21, at 9:00 a.m. []

SPEAKER FLOOD: Members, you've heard the motion. All in favor say aye. Those opposed say nay. We are adjourned. (Gavel) []