

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

Floor Debate  
March 10, 2010

---

[LB235 LB507 LB571 LB709 LB801 LB817 LB888A LB919 LB925 LB937 LB937A  
LB939 LB948 LB961 LB1014 LB1048 LB1057 LB1077 LB1081 LB1094 LB1105  
LB1106A LR284CA LR295CA LR297CA LR368 LR369]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-ninth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Rhegan Stansbury with the Salvation Army in Beatrice, Nebraska, Senator Wallman's district. Would you all please rise.

PASTOR STANSBURY: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Stansbury. I call to order the thirty-ninth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

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

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll proceed to the first item under General File, appropriations bill, LB937A. [LB937A]

CLERK: LB937A, Mr. President, by Senator Fischer. (Read title.) [LB937A]

PRESIDENT SHEEHY: Senator Fischer, you're recognized to open on LB937A. [LB937A]

SENATOR FISCHER: Thank you, Mr. President and members of the body. It is always such a pleasure to stand up on an A bill and tell you that I'm putting money back into the General Fund. The purpose of LB937 is to eliminate the per diems for members of the learning community coordinating council. The bill will continue the per diem payments for current members through the end of their respective terms. [LB937A LB937]

PRESIDENT SHEEHY: (Gavel) [LB937A]

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

Floor Debate  
March 10, 2010

---

SENATOR FISCHER: Members currently receive \$200 per day up to \$12,000 per year in these per diems. LB937A will reduce the amount of state aid provided to the learning community by \$72,000 in 2010-2011. This reflects the amount saved in per diems as 12 current learning community council members end their terms in January of 2011. This \$72,000 will be reverted back to the General Fund. With the revenue gap continuing to increase, I believe it's important that we return these dollars back to the General Fund. Thank you, Mr. President. [LB937A]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to LB937A. Members requesting to speak are Senator Howard, followed by Senator Carlson. Senator Howard, you're recognized. [LB937A]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I stand in support of Senator Fischer and LB937A. I think she's setting a great example. Possibly others on this floor could follow in her footsteps. Thank you. [LB937A]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Carlson, you're recognized. [LB937A]

SENATOR CARLSON: Mr. President and members of the Legislature, I...of course I'm in support of this bill but I would like to ask Senator Fischer a question if she would yield. [LB937A]

PRESIDENT SHEEHY: Senator Fischer, would you yield to Senator Carlson? [LB937A]

SENATOR FISCHER: Yes, I will. [LB937A]

SENATOR CARLSON: Senator Fischer, you had talked about bringing good news and it is good news and returning money. How, in fact, procedurally does that really work that that money comes back into the General Fund? Do you know that? [LB937A]

SENATOR FISCHER: I can't tell you the process exactly on how that works. It's money that is not needed by the learning community coordinating council. That \$72,000 represents just six months, a half a year. For 2011 to 2012, that will be \$144,000. And then when it completes the cycle, when the learning community council members no longer receive their per diems, it should be about \$216,000, I believe, is the fiscal note on that. [LB937A]

SENATOR CARLSON: Okay. Thank you, Senator Fischer. And not to ask you to dig any deeper than you already do, I may talk to you off the microphone, but I think that hearing these figures and the fact that they should be coming back into the General Fund, it would be comforting to know by Select File exactly how that does work. But I

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

Floor Debate  
March 10, 2010

---

am in full support of your bill. Thank you, Mr. President. [LB937A]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Adams, you're recognized. [LB937A]

SENATOR ADAMS: Thank you, Mr. President, members of the body. Given what happened last week with LB937, this does not come as a surprise to me, but I think that I have an obligation to stand up and talk about that million dollars and you make your decision as you will. That million dollars that the state appropriates to the learning community council--per diem, rent, expenses, IT--is the state's contribution to trying to help solve a problem. As a result of the common levy and the way that we distribute aid now in that area, there's a redistribution of valuation, a redistribution of, therefore, taxes and state aid that in effect is probably costing the state a little bit less in state aid. This million dollars was a contribution or an appropriation to try to solve a huge problem in the metro area. And I realize what happened last week with the per diems and I wasn't totally opposed to that. I was opposed to Senator Fischer's amendment but not to the idea of phasing it out. But I'm real concerned that as we're going down this road I don't want you to look at this million dollars as easy getting because when you do, realize there's a trade-off. These folks in that learning community, I believe, are working hard to solve some huge problems that have evolved over decades, and this million dollar appropriation...I realize we're not taking the whole million dollars away, a little here, a little there, this is the state's recognition that there is a big problem in the metro, and we've asked these people to help solve it, and this is the money that they use for the rent, for salaries, for IT to do exactly that. So please think about that. If it's not today, if it's on the next appropriation bill or the next appropriation bill that tries to erode this money away. Thank you, Mr. President. [LB937A LB937]

PRESIDENT SHEEHY: Thank you, Senator Adams. Are there additional members requesting to speak? Seeing none, Senator Fischer, you're recognized to close. [LB937A]

SENATOR FISCHER: Thank you, Mr. President and members. To Senator Carlson, Senator Conrad just informed me that I kind of answered you correctly. The money would just lapse back, it's turned back to the General Fund from the appropriations, that \$70,000. In regards to Senator Adams' comments, I want to assure the body that I am not trying to chip away at the learning community council. The A bill here addresses the per diems that will not or I guess will no longer be used by the learning council members, and that's as far as I am going on this. I certainly want to assure him and assure the members of the body that there's not some plan here that this is a first step at chipping away at the learning community council. I think all of us realize that this council is in statute, it has work to do, and the members of the council will certainly continue to do that work with the appropriated money that they have. But this A bill addresses that per diem that will no longer be needed. And I would ask you to please

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

Floor Debate  
March 10, 2010

---

advance it. Thank you very much. [LB937A]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB937A. All those in favor vote yea; opposed, nay. Have all voted who wish? Senator Fischer, you're recognized. [LB937A]

SENATOR FISCHER: Mr. President, I would request a call of the house, please. [LB937A]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB937A]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB937A]

PRESIDENT SHEEHY: The house has been placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel, please step from the floor. The house is under call. Senators, please record your presence. Senator Heidemann, Senator Ashford, Senator Lautenbaugh, the house is under call. Senator Fischer, all members are present or accounted for. There has been a request for record votes. Also, would you prefer for a roll call or call-in? [LB937A]

SENATOR FISCHER: I would take call-in, Mr. President. [LB937A]

PRESIDENT SHEEHY: Please proceed, Mr. Clerk. [LB937A]

CLERK: Senator Lautenbaugh voting yes. Senator Janssen voting yes. Senator Heidemann voting yes. Senator Dubas voting yes. Senator Cornett voting yes. Senator Campbell voting yes. Senator Ashford voting no. Senator Giese voting yes. [LB937A]

PRESIDENT SHEEHY: Please record, Mr. Clerk, and announce the record. [LB937A]

CLERK: (Record vote read, Legislative Journal pages 799-800.) 31 ayes, 10 nays, Mr. President, on the advancement of LB937A. [LB937A]

PRESIDENT SHEEHY: LB937A advances. The call is raised. We will now move to item under Select File, appropriation bill, LB888A. [LB937A LB888A]

CLERK: Senator Nordquist, LB888A. I have no amendments to the bill, Senator. [LB888A]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB888A]

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

Floor Debate  
March 10, 2010

---

SENATOR NORDQUIST: Mr. President, I move LB888A to E&R for engrossing. [LB888A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB888A advances. We will now proceed to LB571. [LB888A LB571]

CLERK: LB571, Senator, I do have Enrollment and Review amendments. (ER8083, Legislative Journal page 1141, First Session, 2009.) [LB571]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB571]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB571. [LB571]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB571]

CLERK: Senator Lathrop would move to amend with AM1534. (Legislative Journal page 184.) [LB571]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on AM1534. [LB571]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I'm going to take you back a year on LB571. This was a matter that was on the consent calendar, and it was a bill dealing with gap coverage for those people who are...had their car totalled and they're upside down on their loan. It is a product that is sold by car dealerships. And essentially what happens is you go into the car dealership and you buy a car for \$10,000, for example. You drive off the...you get a loan for \$9,000 and you drive off the lot and the car is worth \$8,000. What you do with the gap insurance and what this bill will allow is for this product to be sold. The product essentially is an agreement that you enter into with the financing business that promises to write off the balance should you find yourself with the car totalled and owing more than it's worth. That's the idea. This is authorized. Federal banks can do this already. The bill would allow institutions in the state of Nebraska the same opportunity to sell this product that federal banks are allowed to do right now. I had concerns. I think Senator White had concerns and McGill when this was on consent calendar. I have worked with those in the car industry to put in additional safeguards. The amendment provides for consumer safeguards, makes the bill better, and I believe it warrants our adoption, makes the bill an improvement and puts local financing businesses on par with federal authorities or federal banks that are permitted to do this by federal law, and I would encourage your support of AM1534. Thank you. [LB571]

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

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening of AM1534 to LB571. Member requesting to speak, Senator Pirsch, you're recognized. [LB571]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. As the Vice Chairman of the Banking, Commerce and Insurance Committee, that is the committee through which this bill passed February of 2009...well, first of all, I'd say we do support the amendments Senator Lathrop has voiced. Would ask for you to adopt both the amendments and to vote for the underlying bill. It did pass out of committee with an 8 to nothing vote. Thank you. [LB571]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Seeing no additional...Senator Wightman, you're recognized. Senator Wightman, you're recognized. [LB571]

SENATOR WIGHTMAN: My light is not on. I don't know (laugh). [LB571]

PRESIDENT SHEEHY: Your light did come on. [LB571]

SENATOR WIGHTMAN: Okay. Well, I will waive it. I didn't realize it was on. [LB571]

PRESIDENT SHEEHY: Oh, Senator Wightman waives. Seeing no additional requests to speak, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is on the adoption of AM1534 to LB571. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB571]

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's amendment. [LB571]

PRESIDENT SHEEHY: AM1534 is adopted. [LB571]

CLERK: I have nothing further on the bill, Mr. President. [LB571]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB571]

SENATOR NORDQUIST: Mr. President, I move LB571 to E&R for engrossing. [LB571]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB571 advances. We will now proceed to LR295CA. [LB571 LR295CA]

CLERK: Mr. President, LR295CA is on Final Reading. Senator McGill would move to return LR295CA to Select File for a specific amendment, AM2114. (Legislative Journal page 780.) [LR295CA]

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

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: Senator McGill, you're recognized to open on your motion to return LR295CA to Select File. [LR295CA]

SENATOR MCGILL: Thank you, Mr. President, members of the body. After we advanced both this legislative constitutional amendment and Senator Karpisek's constitutional amendment, LR297CA, it was brought to our attention that both of these constitutional amendments amend the same section of our constitution and there are questions about if this resolution passed in May and then his resolution passed the public in the general election, then the language wouldn't sync together. So what we came up with, what was suggested by the Revisor of Statutes was to move this legislative resolution, LR295CA, to another section of Article XIII of the constitution. We'd be creating a new section, Section 4, and taking it out of the current green copy location of Section 2. The language stands alone. This was what the Revisor of Statutes recommended, and then Senator Karpisek's legislative resolution would stay the same. Hopefully then if both do potentially pass on the ballot, then there won't be that conflict of language. Thank you, Mr. President. [LR295CA LR297CA]

PRESIDENT SHEEHY: Thank you, Senator McGill. You have heard the opening on the motion to return LR295CA to Select File. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LR295CA]

CLERK: 33 ayes, 0 nays, Mr. President, to return the resolution to Select File. [LR295CA]

PRESIDENT SHEEHY: The motion to return is adopted. [LR295CA]

CLERK: AM2114, Mr. President. [LR295CA]

PRESIDENT SHEEHY: Senator McGill, you're recognized to open on AM2114. [LR295CA]

SENATOR MCGILL: Thank you. As I just stated, this is the amendment that would move the language in LR295CA in the green copy to a new section, Section 4 of Article XIII of our constitution. I hope everyone will go ahead and quickly vote green here so that the two sections...we have two sections that will be amended by the two different resolutions. Thank you, Mr. President. [LR295CA]

PRESIDENT SHEEHY: Thank you, Senator McGill. You've heard the opening of AM2114 to LR295CA. Seeing no requests to speak, Senator McGill, you're recognized to close. Senator McGill waives closing. The question before the body is on the adoption of AM2114 to LR295CA. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LR295CA]

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

Floor Debate  
March 10, 2010

---

CLERK: 33 ayes, 0 nays, Mr. President, on adoption of the Select File amendments.  
[LR295CA]

PRESIDENT SHEEHY: AM2114 is adopted. Senator Nordquist, you're recognized for a motion. [LR295CA]

SENATOR NORDQUIST: Mr. President, I move LR295CA to E&R for engrossing.  
[LR295CA]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LR295CA advances. Mr. Clerk, we will now proceed under General File, 2010 Senator priority bills, Haar division, LB1014. [LR295CA LB1014]

CLERK: Mr. President, LB1014, introduced originally by Senator Haar. (Read title.) Bill was discussed yesterday, Mr. President. At that time, Senator Haar presented his bill. Senator Adams presented the Education Committee amendments to whom the bill was referred. Senator Adams also presented an amendment to the committee amendment, specifically AM2058. (Legislative Journal page 730.) [LB1014]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Haar, would you like to give us a recap of LB1014. [LB1014]

SENATOR HAAR: Yes, thank you, Mr. President and members of the body. Very briefly, LB1014 creates a fund for teacher performance pay and the money comes from wind and solar leases on existing school lands. The money would be distributed to begin in 2016 and, with the various amendments, it would be up to the local school board then to award...decide how to award teacher performance pay. Again, just a reminder, it came out of the committee 8-0. It has no A bill, had no opposition in committee, and is supported by teachers, administrators, and school boards all looking at this idea of teacher performance pay. So with that introduction, I would...I'll be free to answer any questions later. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Adams, would you give us a recap on your Education Committee amendment and amendment to committee amendment. [LB1014]

SENATOR ADAMS: All right. Members of the body, what...in summary, what the committee amendment does is say that if this bill is passed, monies that would be distributed to a school would show up on the needs side of TEEOSA but the money that comes in would also show up on the resource side, making it a wash in the formula rather than causing the GFOE to go up and causing the state to have to come up with more money. So what we're doing is creating a balance on both sides of the TEEOSA ledger, both needs and resources. The other thing that it does is to harmonize some

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

Floor Debate  
March 10, 2010

---

language and it also says that currently the State Treasurer is to exhibit the monies that are in the temporary land fund...the temporary school fund, excuse me, on the 15th of January. What this would say is that this money as well as the money in the temporary education fund would both be displayed on the third Monday of January. So it's really kind of harmonizing things. My amendment to the committee amendment strikes some language. And remember what this is; this is for performance. And the language in the green copy outlines some of the things that could be considered performance and one of the things listed there is getting additional graduate hours. And what my amendment does is to strike that out. Because currently, pay schedules in the 253 school districts that we have in the state already take into consideration additional graduate hours so there's no need, in my opinion, for that to be a performance measure. So it would strike that out. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Adams. (Visitors and doctor of the day introduced.) Returning to floor discussion on AM2058 to AM1979, members requesting to speak: Senator Sullivan, followed by Senator Stuthman. Senator Sullivan, you're recognized. [LB1014]

SENATOR SULLIVAN: Thank you, Lieutenant Governor. Good morning, colleagues. I supported this legislation when we discussed it in the Education Committee and I think that I still continue to support it, although the discussion that we've had thus far has raised some questions. And would just like to know if Senator Haar would yield for a couple questions. [LB1014]

PRESIDENT SHEEHY: Senator Haar, would you yield to Senator Sullivan? [LB1014]

SENATOR HAAR: Yes, thank you. [LB1014]

SENATOR SULLIVAN: Thank you, Senator Haar. First of all, this is sort of an unknown, as I understand it, that how much money potentially could be coming in from these leases. Do we have any guesstimates at all? Do we know what currently is being received by landowners for rent on a wind turbine? How many wind turbines would be on a school land section if there was a windfarm in the area? Do we have any of that information available? [LB1014]

SENATOR HAAR: I'm hoping for a zillion dollars. (Laughter) No, the point is we really don't know at what rate wind and solar development will take off in Nebraska and so this was looking at a new source of money and seeing what develops. Really, that's the point. And as I see it, at some future point, if in our wildest dreams we get what we think is an excessive amount of money, then I would hope before 2016 some future Legislature would take care of that. [LB1014]

SENATOR SULLIVAN: That...well, that's the other concern that I have. When you made

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

Floor Debate  
March 10, 2010

---

the comment about you hope for a zillion dollars, what if we did get, no pun intended, a windfall? Because I'm looking at, I think as Senator Fischer had commented yesterday, currently this money is apportioned out to all school districts, even those that are nonequalized, for the benefit of all children. And we may be looking at more and more nonequalized districts in this state and they will be looking to that as an additional source of revenue which potentially won't be there. So that's another one of my concerns. [LB1014]

SENATOR HAAR: Uh-huh. [LB1014]

SENATOR SULLIVAN: Didn't know if you wanted to comment on that at all. [LB1014]

SENATOR HAAR: Yeah, and I think that's a legitimate concern. Again, constitutionally, whatever money comes from leases, from land leases or from this trust fund, would have to be divided up on a per capita basis, a per student basis. So again, my hope would be that this accumulates a great deal of money because I'm really hoping that wind energy is going to take off in Nebraska, and if it does, I think again we'll need to deal with that as it comes up. But right now, the intent really is to set that money aside, to make sure it doesn't just get gobbled up. Because I think in the future it would be much easier to say there's too much money there than in the future to say let's start setting aside some of that money. [LB1014]

SENATOR SULLIVAN: Do you have any concept at this point? I know the bill identifies the responsibility for providing some benchmarks for teacher performance. But that's, again, one of my concerns, is that will there be a model for districts to follow in terms of deciding how they're going to identify teacher performance and rewarded accordingly? [LB1014]

SENATOR HAAR: There will be...well, according to the amendments and so on, it's up to the local school board to decide how to do this. Right now across the country there are many models under consideration of how do you do performance pay with teachers. And again, the 2016 deadline gives some time. What I would foresee and what I would hope is that we would do some studies with the Department of Education... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR HAAR: ...so that school boards would have some models to look at when they do this. [LB1014]

SENATOR SULLIVAN: Thank you, Senator Haar. This is a situation, I believe, that is great in theory but it certainly, in my mind, is one that we, if we approve this legislation and go forward, it will deserve close monitoring and will certainly, I believe, need our further attention in the years ahead. Thank you. [LB1014]

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Stuthman, you're recognized. [LB1014]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. First of all, I want to thank Senator Sullivan for her comments. I truly believe in the same direction that she is headed there. But I would like to ask Senator Adams a question. [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Stuthman? [LB1014]

SENATOR ADAMS: Yes, I will. [LB1014]

SENATOR STUTHMAN: Senator Adams, in the fact of awarding teachers for performance, has this created in the school systems some disagreement or could you see some disagreement between the fact of an individual teacher being rewarded, financially being rewarded, for performance when maybe other teachers feel that they have done an equal amount of duty towards the education? Could this cause a ripple effect or a negative effect among the teachers? [LB1014]

SENATOR ADAMS: To answer your question very candidly, Senator, yes, depending on how you structure it. The 31 years I was in teaching, I can tell you that my colleagues were always afraid of how something like this may work. Now if you're just going to put money in the hands of an administrator and, say, walk around the building and reward the people you like the best, that's a problem. What...I believe that we can get beyond that and develop a performance mechanism that's based on something more than just handing dollars to an administrator and let them walk around and hand it out to who they like best, but instead this has to be arrived at by collective bargaining so the teachers' group would be part of developing the mechanism. Now in the end, if the teachers' group and the school board arrived at a mechanism and somebody gets the money and somebody doesn't, is the person that didn't get any upset? Probably. Probably. There are school districts in the state, I would tell you, Senator, very, very few, but there are some that already have performance mechanisms right now. [LB1014]

SENATOR STUTHMAN: Thank you. Thank you, Senator Adams. This is the issue that really does concern me and, in my opinion, you know, this bill...we're generating additional money from what is intended of school land and the revenue from those school land is, in my opinion, should go to the benefit of all children. But now, since we have found a way to generate more revenue, we're looking for a place, you know, where can we...where can we give some money to some people for performance or try and figure out some way to get rid of that money that was, in my opinion, structured and intended for the benefit of all children. I think by adding this, you know, with wind energy

Floor Debate  
March 10, 2010

---

or the carbon credits, the revenue from that, you know, that it complicates the process that we have. I, personally, feel that the revenue generated from those X amount of acres that is school land should benefit all of the children in the state of Nebraska. That's how I feel. The fact that we can get some more money, you know, a lot more money, but now we got to find a way to get rid of that money, award teachers, and I have two members of my family that are in education and I can see, from listening to them, where this could really create some problems, unless, like Senator Adams states, that it's structured correctly. But no matter how perfect you have it structured, there's going to be some disagreement with the awards being given. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR STUTHMAN: And in my opinion, I feel we should stick with what the real intent of that ground is for. We're trying to sell a lot of that ground. So many acres are supposed to be sold of that school land. But I really think the revenue generated on that ground was the intent, from the word "go," in my opinion, till now and it should continue, that it should benefit all children in the state of Nebraska. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Speaker Flood, you're recognized for an announcement. [LB1014]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members, I wanted to talk briefly about today's agenda. You'll note that, as you know right now we're on LB1014 from Senator Haar, at 1:30 we move to LB1081. If for some reason we resolve one way or the other LB1014, we will immediately then proceed to LB1081 and the 1:30 time frame will be irrelevant. So I've had a couple of questions from people asking me about that. Again, if we move or resolve either way LB1014 this morning and it's before noon, we will continue on the agenda with LB1081 from Senator Cornett. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Members requesting to speak on AM2058 to AM1979, we have Senator Fischer, followed by Senator Utter, Senator Hansen, and Senator Haar. Senator Fischer, you're recognized. [LB1014]

SENATOR FISCHER: Thank you, Mr. President and members. And thank you, Senator Stuthman, for your comments. I agree with you on what the intent of the school lands were when they were set up, and I realize that 25 votes can change any intent, whether it was from a year ago or 100 years ago. That's the reality we face in here. But I think we also need to be aware of the historical context that we're dealing with. I believe it was in 1996 that...and I think it was Senator Wickersham had a bill that would have required the sale of some of that school land in order that the Board of Educational Lands and Funds would have a more balanced portfolio. That did not happen to the extent that that Legislature wanted or that is currently in statute. A reason that did not

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

Floor Debate  
March 10, 2010

---

happen is because the Board of Educational Lands and Funds would argue that they are in the constitution and, therefore, they have a fiduciary responsibility and they believe they are carrying it out currently and do not have to, I guess, comply with the law here in the state of Nebraska because of their constitutional responsibility. But that's another story. I know that many people that have school lands, they say that they pay a bonus. Besides paying the lease for the land, the Board of Educational Lands and Funds requires them to pay a bonus, an extra amount to have the privilege of paying a lease. And I guess that's one question I would like to discuss with Senator Adams and I have some more, Mr. President, if Senator Adams would yield. [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Fischer? [LB1014]

SENATOR ADAMS: Yes, I will. [LB1014]

SENATOR FISCHER: Senator Adams, do you...do you know about the bonus payments that the board requires of lessees of school lands? [LB1014]

SENATOR ADAMS: I'm a little hazy on that. I'm going to take a shot at it and I may be all wrong, but I think when those leases come up, if I understand it correctly, Educational Lands and Funds will set a base amount and then it, in effect, kind of goes for auction and the amounts over and above kind of become the bonus amounts. Now I may not be thinking correctly, so that's why I say... [LB1014]

SENATOR FISCHER: Do you know...do you know where that so-called bonus money goes? I assume it goes into the trust right now. [LB1014]

SENATOR ADAMS: It does. [LB1014]

SENATOR FISCHER: Is that right? [LB1014]

SENATOR ADAMS: Yes. [LB1014]

SENATOR FISCHER: If somebody would lease the land in order to get a wind or solar facility to locate on that land and then have that lease money come in, too, where would that bonus money go under this legislation? Does it go to the fund or does it go to this new pay fund? [LB1014]

SENATOR ADAMS: It would go to the fund. That would be my belief. [LB1014]

SENATOR FISCHER: You know, yesterday I talked about performance pay and that's the purpose for this fund and I agree we need to do something and I think it should be at the local level that we do something to help retain good teachers, to help retain excellent teachers, to attract them. To me, that's performance pay and it should happen

Floor Debate  
March 10, 2010

---

at the local level. But yesterday I mentioned that I think a lot of local districts are stymied... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR FISCHER: ...in that regard. Senator Adams, do you know if local districts have any flexibility now that they can offer teachers that they consider to be excellent teachers more money? [LB1014]

SENATOR ADAMS: I do know that actually the flexibility is there if it can be arrived at through collective bargaining. There's a small handful of school districts in the state...I was off the mike there and I'm not sure I got your whole question. I can tell by that look in your eye that I may have missed the question here. There are a small handful of schools right now that do have a performance mechanism over and above their pay scale but it's agreed upon in collective bargaining. [LB1014]

SENATOR FISCHER: So if we're going to have performance pay under this bill, if we establish a fund here at the state level, how does that work with regards to collective bargaining agreements if a district doesn't recognize collective...under their agreement, a mechanism to allocate... [LB1014]

PRESIDENT SHEEHY: Time, Senator. [LB1014]

SENATOR FISCHER: ...any kind of performance pay? [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Fischer. (Visitors introduced.) Continuing with floor discussion on AM2058, we have Senator Utter, followed by Senator Hansen, Senator Louden, and Senator Fischer. Senator Utter, you're recognized. [LB1014]

SENATOR UTTER: Thank you very much, Mr. President. Good morning, colleagues. I do have some questions on this bill. I have...and have some concerns and let me voice them, and if I can do that fast enough, why, I would yield the balance of my time to Senator Haar to respond to the concerns that I've raised. Let me start out by saying that I've long been a proponent of performance pay for teachers, even though that I know that it's...at times can be very subjective, it's hard to put down in a black-and-white model and it's difficult to administer and at times fraught with danger. I do have to raise some concern over the fact that I have long felt that the organization that represented the teachers in the state has been opposed to performance pay for teachers and now all of a sudden it is my understanding that they are supporting this measure. And if Senator Haar would respond to that when I yield him some time, I would appreciate that. The final thing about what we're doing here with regard to teacher pay that I think we're missing the point on is the fact that I think that the teacher pay problem in Nebraska and the idea of retaining and getting highly qualified teachers is...runs with the problem of

Floor Debate  
March 10, 2010

---

the low pay for the beginning teacher. It almost seems as though we have to run them through a gauntlet, so to speak, before they can get up to the higher levels of a satisfactory pay level and, unfortunately, performance pay doesn't address that problem at all. The final concern that I have, quite honestly, is that we're making a big change in policy with regard to Educational Lands and Funds and we are earmarking a portion of those funds now of unknown amount. At this stage of the game, we don't have a clue about what is eventually going to be in this fund, but we are preparing to earmark those funds for a specific purpose. And I have a real concern that now that...before it's been set up in the trust funds to do...to benefit education and to go back to the students on a...to the schools on a student per capita basis, and even though we will still be doing that, we're sending a mandate back to the schools that part of this money we're sending back to you from the income that's generated off of Educational Lands and Funds is now going to be mandated that you spend in a specific way. And I'm having some difficulty with that issue and I just...Senator Haar, if you don't mind, I would yield the balance of my time to you to respond to those concerns. [LB1014]

PRESIDENT SHEEHY: Senator Haar, you're yielded 1 minute 25 seconds. [LB1014]

SENATOR HAAR: Thank you, Senator Utter. I don't know if I can answer all that in a minute and a half, but as to the intent of the NSEA and the teachers, I guess you'd have to talk to them. But I find it very interesting that the teachers and the school boards and the administrators are all looking at this as an opportunity and so I guess I would have to leave it there. One other quick thing I would like to say, my colleague... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR HAAR: ...Senator Stuthman talked about we have all this money, how are we going to spend it? Actually, it evolved absolutely opposite of that. We were looking for ways to help teachers and we saw this as a new source of money that we could set aside for that. So our intent, at least my intent, speaking personally, was to help teachers. And again, putting my passions together, as Senator Coash said the other day, of wind and education, this seems like a good idea to me. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Utter. Thank you, Senator Haar. Senator Hansen, you're recognized. [LB1014]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I rise in opposition to the underlying bill and I can give you a few examples of why. We've already passed a bill this year of Senator Haar's that okayed renewable energy on school land, which is fine if they carve out a few acres here and there or the whole school section or whatever they want to do to have the renewable energy on there. But that money was intended to go back to the Board of Educational Lands and Funds and now this bill kind of take that money, that income, and diverts it, and I have a problem

Floor Debate  
March 10, 2010

---

with that. We have Educational...Board of Educational Lands and Funds in my district in our area in western Nebraska and if we divert those funds that the board thought that they needed or would go along with the renewable energy concept, they're going to be lacking in funds, whether that means it's going to raise the rent on the rest of the school acres out there, and I don't think that that's a good time to do this. Talking about potential for the Board of Educational Lands and Funds, let's say we take 20,000 acres of the school lands and charge hunters that don't have a place to hunt upland game \$5 an acre. That's going to raise \$100,000. Well, what could we do with that \$100,000 if we don't want to put it in the Board of Educational Lands and Funds' budget or their money that they send back to schools? This is a new idea too: \$100,000. Well, let's give that to Game and Parks because they're really hurting for funds right now and they can maintain their parks, maintain their hunting areas along the river. But this is a new idea. This is a potential. This is what I see as a parallel to what's happening now with teacher pay. And I'm like Senator Stuthman. I come from a family with several teachers and I understand that pay for good teachers is necessary. But it's a local issue. In the 1940s and 1950s, eastern Nebraska sold all their school land, and I'm not sure where that money went. I assume it went into the fund and they reinvest it and it goes back into the school districts too. But it was all sold in the forties and the fifties, so now where is that, where is that land? The number of acres, 90 percent of the acres in the Board of Educational Lands and Funds is in the western part of the state. So we pay...there was a question on rent and a question on bonuses. There are bonuses. There's bonuses at every sale that those school sections come up with, a school quarter or a school half or a full section, and they're considerable. We pay market rate for rent and then we pay a bonus on top of that. We lost a school section last fall because we couldn't justify paying the rent at market rate plus a \$7,500 bonus, so we lost that to a young man that wants to...that had some extra money, I guess, and wanted to outbid us for sure. I think we need to reevaluate this. I think we need to spend this money where the rent and the bonuses are paid. If we're going to do this on a local level, we need to get the money back in the school districts but back in the school districts where those school lands are. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Louden, you're recognized. Senator Louden. [LB1014]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look at this bill again, it's still, like I say, this is two different issues. You're talking about teacher incentive pay, which I agree with. Something like that is a very good idea. Where we get the money, though, is another issue. To go into the Board of Educational Lands and Funds, in the trust fund, to get that money is someplace that we shouldn't be going. This money is already set aside for your state apportionment for every student in the state of Nebraska between 5 and 18 years of age. And as you heard awhile ago when the discussion was that what would you do with the bonus money that was bid for this windfarm, well, it would also go into that same teacher incentive trust fund or incentive

Floor Debate  
March 10, 2010

---

cash fund. And by doing that, then we have no idea how much money it is. It probably will be different numbers on different years. So I don't think this is probably a good revenue source for trying to do what Senator Haar has in mind to do. There's other places that you could probably set aside money. You could probably go into the Environmental Trust Fund and set aside a certain amount every year. You'd have an even revenue flow to be able to decide how much could be given for a teacher incentive every year. But the way it sets up with this, putting it in the educational trust fund, relying on the bidding from one year to the next, relying on how much will actually be sold, at the present time it's about a little over \$18,000 worth, which doesn't amount to anything as far as the statewide is concerned, but in the future it could be a huge amount of money. Then if it was a huge amount of money, then that should be used in there to offset some of our state aid to education. This is what it was set up for was to educate the children in the state of Nebraska, and I think it should continue to be that way. We've never, historically, went into that trust fund to start siphoning money off to...for some other issues. Closest we came was a few years back with the early childhood development and that did...all they did with that was to set aside some money in that fund and take the interest off of it. But I think we have to be very careful here. This is something of historical significance that you are doing, and once it ever started then where will we end up at? With that, I still can't support the bill. I think there's other ways that it can be done and I would like to see either the thing go back to the committee and reevaluate where you're going to get the money from or perhaps an amendment on there. But at the present state, I can't support this bill. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Louden. (Visitors introduced.) Continuing with floor discussion on AM2058, members requesting to speak: Senator Fischer, followed by Senator Giese, Senator Stuthman, Senator Christensen, and Senator Carlson. Senator Fischer, you're recognized. [LB1014]

SENATOR FISCHER: Thank you, Mr. President and members, and thank you, Senator Louden, for your comments. It's...sometimes I've found, over my life span as a rancher from the 43rd District, it's hard to explain what school lands are, first of all. Most people think that school lands are where the building sits, and that's not the case with what we're discussing here. So if you have questions on what we're talking about and what school lands are, please ask. But Senator Adams and I were having a discussion earlier when I was on the mike and, Mr. President, I was wondering if Senator Adams would yield to some more questions. [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Fischer? [LB1014]

SENATOR ADAMS: Yes, I will. [LB1014]

SENATOR FISCHER: Senator Adams, I had asked you before about the bonus

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

Floor Debate  
March 10, 2010

---

payments and if they would go to the trust fund or if they would go to the pay fund if a bonus was paid on a lease dealing with the wind or solar, and could you give me the answer that you found out on that, please? [LB1014]

SENATOR ADAMS: Yes. Yes, I did answer your question incorrectly and after visiting with counsel the money on these leases, including a bonus, would go into this incentive fund. [LB1014]

SENATOR FISCHER: Okay. Thank you for clarifying that. Also, when we were talking about performance pay and ran out of time, my question is, can a district offer performance pay if they have not reached an agreement with their collective bargaining unit on performance pay? [LB1014]

SENATOR ADAMS: I can't answer you absolutely, but I believe there would have to be some kind of contractual arrangement with the collective bargaining group, but I can't say absolutely. [LB1014]

SENATOR FISCHER: If...hypothetically speaking, if a district...if a district could not reach an agreement with their collective bargaining unit on performance pay, how would they handle the money that is...I guess it's prorated out from this pay fund, if this would pass. How would that district handle that money then? [LB1014]

SENATOR ADAMS: Well, therein lies part of the problem. You've identified one. Because what this bill says, that this money will go out through the apportionment formula, not TEEOSA but through the apportionment formula, and it goes out to all schools and if there is not an agreement then, in effect, the money sits. If you don't have an agreement, a collective bargaining agreement, for the performance mechanism, there's no way that that school district can distribute it, yet that school district is going to get some of that money and there it sits. [LB1014]

SENATOR FISCHER: Okay. If the money is just going to sit in, I assume, the general fund of a school district...is that where it's going to be deposited, into their general fund account? [LB1014]

SENATOR ADAMS: I suppose it could be. [LB1014]

SENATOR FISCHER: So if that money, which right now doesn't amount to much but could amount to a lot since this bill also doesn't have a cap in it, which I'm concerned about, but if this pot continues to grow and the money is sitting in the general fund account of a school district that has not reached an agreement with their collective bargaining unit, what does that do to their state aid? Doesn't that give them more resources then? Are they going to lose state aid? As you can see, I have a lot of questions on this bill. [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR ADAMS: It really shouldn't because the committee amendment would say that whatever money that school district got from this fund shows up on both sides, on the needs side and on the resource side, so it shouldn't affect state aid. [LB1014]

SENATOR FISCHER: So it...it would just be wiped out. It wouldn't... [LB1014]

SENATOR ADAMS: From a state aid concern, it would be. [LB1014]

SENATOR FISCHER: From a state aid concern. [LB1014]

SENATOR ADAMS: It would be a wash: dollar out, dollar in. [LB1014]

SENATOR FISCHER: Right. If we're allowing districts to reach an agreement with their bargaining unit with regards to this money, shouldn't those districts have the flexibility to reach...well, I guess they have the flexibility now but shouldn't we be looking at performance pay across the board with any funds? Why are we just saying... [LB1014]

PRESIDENT SHEEHY: Time, Senator. [LB1014]

SENATOR FISCHER: Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Giese, you're recognized. [LB1014]

SENATOR GIESE: Question. [LB1014]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? Do I see five hands? I do not see a sufficient number...four, five. I do see a sufficient number for the call of the question. The question before the body is, shall discussion cease on AM2058? All those in favor vote yea; opposed, nay. Have all voted who wish? Senator Giese. [LB1014]

SENATOR GIESE: I'd like to request a call of the house. [LB1014]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014]

CLERK: 27 ayes, 1 nay to place the house under call, Mr. President. [LB1014]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the

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

Floor Debate  
March 10, 2010

---

floor. The house is under call. Senators, please record your presence. Senator Conrad, Senator Avery, Senator Krist, Senator Coash, the house is under call. Senator Giese, all members are present and accounted for. How would you like to proceed? [LB1014]

SENATOR GIESE: Roll call, regular order, please. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Giese. Members, the question before the body is on the question, shall debate cease on AM2058? Mr. Clerk. [LB1014]

CLERK: (Roll call vote taken, Legislative Journal page 801.) 19 ayes, 22 nays, Mr. President, to cease debate. [LB1014]

PRESIDENT SHEEHY: The motion to cease debate is not adopted. The call is raised. We will resume floor discussion. We'll resume floor discussion on AM2058. Members requesting to speak: Senator Stuthman, followed by Senator Christensen, Carlson, and Senator Fischer, and Senator Fulton. Senator Stuthman, you're recognized. [LB1014]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I would like to ask Senator Haar a question, if he would respond. [LB1014]

PRESIDENT SHEEHY: Senator Haar, would you yield to Senator Stuthman? [LB1014]

SENATOR HAAR: Yes. [LB1014]

SENATOR STUTHMAN: Senator Haar, in your last comments that you made, you stated that this was going to be a new source of money. Explain that to me. [LB1014]

SENATOR HAAR: Well, right now...and by the way, the bill to allow for renewable energy on school lands I believe was Senator Adams'. That was not my bill, although I supported it. So income from renewable energy on school lands is a new source of money. [LB1014]

SENATOR STUTHMAN: Okay. You claim that this is a new source of money. Is this lease money? Are they leasing this school land to the renewable energy for the wind towers? [LB1014]

SENATOR HAAR: Yes. [LB1014]

SENATOR STUTHMAN: Okay. So that is...that's money generated from a lease. And what we have in existence right now is the state owns school land. What does the state do? The state leases the school land out. And what Senator Haar has just stated, this is a lease to renewable energy. We have...we have school land leased out to livestock operations. We've got irrigated farmers that lease some of the ground. And in my

Floor Debate  
March 10, 2010

---

opinion, it's a lease. I don't think those dollars are any different than the dollars that are generated from the lease of that existing school land. I don't see where this is a new source of money. If you think this is a new source of money, then why don't you...why don't we take the money that...the last lease period of school land was probably an eight-year lease and it generated, let's just say \$100,000. The lease came up to be re-rented. It was offered again. It raised the lease payment. The lease payment came to \$110,000. Is this \$10,000 new money? No. I think it's just money that was generated from the property of the state of Nebraska. I just personally feel that it's immaterial as to who leases the ground. Whether it's renewable energy, whether it is grazing, whether it's irrigated corn, it's still dollars generated from that property that is owned by the school lands fund, and those dollars, the intent of those dollars must go to the children of all...all children in the state of Nebraska divided up. That's why it just...it boggles my mind to think that we've got new money coming in. That's not new money. That's additional money for leasing. That is my concern. We're generating more money from that property. I'm very much in favor of that. But it's not new money. It's money from that owners...from having the ownership of the school land fund owning that ground and they're able to generate more revenue on that ground. So I'm not supportive of this and I do not see it in a way that this is new money. It's the same \$100 bill but we got two \$100 bills this year. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR STUTHMAN: And that's why I don't think we should dwell on the issue that we've got this big pile or big bucket of new money coming in. It's just another bucket of money aside of the rest of the buckets of money, you know, to help with the education of the students of Nebraska. Thank you, Lieutenant Governor. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Christensen, you're recognized. [LB1014]

SENATOR CHRISTENSEN: Thank you, Mr. Lieutenant. I support incentivizing teachers for doing good work. I get a little concerned on how this is going to be handled. I have grave concern where the money is coming from. And this might be an old debate to some of you but it has been mentioned on the floor. School lands trust board sold land years ago. I challenge you to look, see where they sold the land--in eastern Nebraska. And how do we use the funds? We divide it by child number. So we're already taxing the west, sending it to the east. And now we want to take and turn the incentive pay, we want to take the income again from the west, shove it to the east. Is this the right direction to go? Yeah, I see some nods from Omaha, sure it is. Why don't we just put a \$5 per visitor on the Qwest Center and divide it equally to kids? Be doing the same thing. It would shove it from the east to west now, or at least a portion of it. And now we're going to take the money from the west that was originally set up on school lands for the kids. I remember having a discussion because one time I wanted to get rid of the

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

Floor Debate  
March 10, 2010

---

irrigated portion of all the land in my district because of the water crisis, and I got told by a lobby out there it's for the kids; we can't not irrigate that land because this money is for the kids. Now all of a sudden, it's not. A lot of mixed messages here. I agree with incentivizing teachers, but I struggle with how we're starting to do this. The longer I look at this bill, the longer we debate this bill, the less I like the bill. I was ready to vote for it. If it would have passed yesterday, I would have voted for it. But again, I see it's...and I know my argument, you can stand up and say, Mark, this isn't even a good argument because the money is already going to the east. But at least I want people to think about what's going on. Unfortunately, they sold the land in the east. All they do is take the interest off of it now, which ain't nearly keeping up with the change in rent and bids. So we continue another way of shoving money from the west to the east. I get told quite often, if it wasn't for Omaha, there wouldn't be any money in this state. Well, I argue with that. And I really get frustrated way this is. I really think they need to step up and buy school lands in the east or they need to sell it all. We ought to be on an even playing field. We need to do this equitably and we're not. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR CHRISTENSEN: I know this bill isn't seeking to change the equitability of this law, but it could be. I'll offer you an amendment before long that will say why don't we use this money where it is raised to incentivize the teachers of that school district. That would be fair. I don't know how you could argue with that one. Where the money is raised the money goes. You know, I think this is...I see a lot of people laughing and that's fine. It's the age-old debate. You know, look at your school sheets that were handed out. I don't know if they was handed out everywhere. I got it from my school districts. [LB1014]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Christensen. Senator Carlson, you're recognized. [LB1014]

SENATOR CARLSON: Mr. President and members of the Legislature, I'm one that voted not to cease debate on this bill and my understanding is that from the start, the income that comes in through school lands is allocated equally per student across the state, and as Senator Adams simply nods in agreement with that, I won't call him to the microphone. The districts can spend the money then, I almost want to say however they wish, but it's not however they wish. They have some restrictions on how that money could be spent. I would like to ask that of Senator Adams, if he would yield. [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Carlson? [LB1014]

SENATOR ADAMS: I will. [LB1014]

SENATOR CARLSON: Senator Adams, how...what are the different ways that districts

Floor Debate  
March 10, 2010

---

can spend that money? [LB1014]

SENATOR ADAMS: Where, and let me back up a minute. You're talking about the general apportionment dollars that we already pay out to schools? [LB1014]

SENATOR CARLSON: Yes, but it eventually gets kind of mixed up, doesn't it? Or are there only specific ways that the income from school lands can be used? [LB1014]

SENATOR ADAMS: No. Those dollars are distributed to every school district in the state based on a census and it goes right into their general fund to use as they please. [LB1014]

SENATOR CARLSON: Well, when you say "as they please," does that really mean...what ways can that money be used? [LB1014]

SENATOR ADAMS: It may be for teacher salaries, it may be for insurance, it may be to turn the lights on, drive the buses, whatever it takes. [LB1014]

SENATOR CARLSON: Okay, thank you, a lot of different ways that money can be spent. We have a decision to make and I'm going to be in disagreement with Senator Stuthman because I'll still call this new money. It's coming from a source that...it can be argued the source has always been there but now there's a way to capture that source and perhaps, perhaps generate income for schools. I said it before, I'll say it again: I think that the income that has been realized for education off school lands has been inadequate. Now school land assets are in, I've put them down, in four different forms. The assets are cash. There's a lot of cash because some land has been sold. The assets include land. We know that. Now the asset includes wind and the asset may include oil or other natural resources. But the point is, and I've heard this in argument as we've gone along here, that several people feel like that these assets are to be used in a way to benefit all students in the state. We've talked about local control. I still like the concept of Senator Haar's bill, and I think that by using it on teacher performance restricts it in the way it can be used. That's a departure from history, but I would argue that that helps benefit all students because it's encouraging good teachers to stay in the system. It may be encouraging hiring other teachers that can get into that category and I think it can be argued that eventually it benefits all students. As far as local control is concerned, I think the money, as it goes out to school districts, should be used for teacher salaries and should be used however that district deems it fair and however they want to use it. I don't think it needs to be restricted by some kind of formula or some kind of list that's set up that says this is the way you're going to proceed and judge teacher performance. Having been a coach, I could say that every member of the team is as important as every other member...as any member, any single member. We have most valuable players. [LB1014]

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

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR CARLSON: We have all-state. We have all this and all that. But a coach may feel that the 12th young man or young woman on that team is just as important as the one that scores all the points, and I think that's true. So therefore, we'd spread it equally. But this is a way of addressing the problem of teacher salaries. And if we're 43rd in the nation or wherever we are, we're pretty low, and I realize salaries in Nebraska are not the same as salaries in New York or someplace else but we're lower than we ought to be. And this is a way of increasing those salaries, I would say, without asking for more sales and income taxes from other people in our state. So I like the concept and I will be voting for it. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Carlson. (Visitors introduced.) Continuing floor discussion on AM2058, members requesting to speak are Senator Fischer, followed by Senator Fulton, Senator Heidemann, Senator Utter, Senator Conrad, and others. Senator Fischer, you're recognized. [LB1014]

SENATOR FISCHER: Thank you, Mr. President and members. Would Senator Adams yield to some questions, please? [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Fischer? [LB1014]

SENATOR ADAMS: Yes, I will. [LB1014]

SENATOR FISCHER: Senator Adams, am I off-base on all these questions that I keep asking you? I just have a lot of questions on this bill. Am I off-base? [LB1014]

SENATOR ADAMS: No, you're not at all off-base. I have a lot of questions. [LB1014]

SENATOR FISCHER: Well, good. I'll ask you some more then. (Laughter) When we...this performance pay issue really, I guess, starts throwing up a lot of red flags for me. I served on a school board. I know there's a lot of members in here who served on school boards. And when I was on a board for over 20 years, we could not offer staff members a bonus or performance pay or a package to get them to come to Valentine. And that was a situation that was faced by a lot of schools in rural Nebraska and in sparsely populated areas. So going back to the performance pay, how can schools address that? How can schools reward teachers who are doing an excellent job and who I think are the vast majority of educators across this state? How can we pay them for the good jobs that they do? We can't just write every teacher a check for \$100. What would that cost the state? [LB1014]

SENATOR ADAMS: About \$2.1 million. [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR FISCHER: So \$2.1 million if every teacher gets a check for \$100. [LB1014]

SENATOR ADAMS: Right. And you really haven't accomplished anything. [LB1014]

SENATOR FISCHER: And you really haven't accomplished anything, I would agree with you on that, and I could not support that. So if we wrote every teacher a check for \$1,000, we're up to \$21 million. Is that right? [LB1014]

SENATOR ADAMS: Twenty-one million, closer to twenty-two. [LB1014]

SENATOR FISCHER: Now I think we're...if the body agrees that that's a responsibility of state government to write that check for \$1,000, that policy question is first, but then I think that would make a difference. But I still couldn't support it because that's \$21 million, right? [LB1014]

SENATOR ADAMS: You know, you're thinking the same way I am. If you were going to hand out \$1,000 performance stipend to each teacher, now you've probably done some good but you've also...you're also talking \$22 million which would otherwise be used to buy down TEEOSA. [LB1014]

SENATOR FISCHER: What's TEEOSA growing this year? [LB1014]

SENATOR ADAMS: I don't remember the percentage. [LB1014]

SENATOR FISCHER: But we are seeing an increase, right? [LB1014]

SENATOR ADAMS: Correct. [LB1014]

SENATOR FISCHER: How much...how many millions is it growing? Do you know that? [LB1014]

SENATOR ADAMS: Oh, we're about \$940-some million. [LB1014]

SENATOR FISCHER: I guess, you know, we're in a quandary here. I don't think anybody in this body would say that good educators shouldn't be compensated and shouldn't be rewarded for their work. In private business, it's up to, as Senator Janssen said, he's the dictator in his business and he can decide who gets that performance pay. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR FISCHER: It's harder to do, it's harder to do when you're a political subdivision, wouldn't you agree? [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR ADAMS: Yes. Yes. [LB1014]

SENATOR FISCHER: Thank you, Senator Adams. This is...this is a bill that I think, as Senator Lautenbaugh and I were talking, we need a "perhaps" button to vote. It's not just a red or a green; we need a "perhaps" button. Because while the idea I think is admirable, I see too many questions and too many problems with the bill and so I can't support the advancement. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Fulton, you're recognized. [LB1014]

SENATOR FULTON: Thank you, Mr. President and members of the body. Would Senator Adams yield to a question? [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Fulton? [LB1014]

SENATOR ADAMS: Yes, I would. [LB1014]

SENATOR FULTON: Thank you, Senator. I'm going to echo what has been said. I like the principle here. I like the creativity. Starting to think through how this could affect us down the road, as a matter of policy. Could you touch on how this might affect the resources and perhaps the needs side of the TEEOSA formula going forward? First of all, let me ask, is this bill going to have a General Fund impact somewhere down the road through the mechanism of TEEOSA? [LB1014]

SENATOR ADAMS: It is. It is. The question is how much and when. Now if...as you read the committee amendment, what it does is to attempt to neutralize money going to a school district in the form of performance pay by showing it as a need on one side and then showing the money coming in to them as a resource on the other, okay? So in that very narrow sense, we've not impacted TEEOSA. However, let's assume that in the year 2016, when this is supposed to go into effect for the first time, that there is \$2 million in that fund. That \$2 million is money that will not go through the general apportionment formula, which would therefore have a \$2 million impact on TEEOSA. [LB1014]

SENATOR FULTON: Is there a way, Senator, to alleviate that so it's not going to the apportionment portion of the formula? Is there a way to alleviate that? We're introducing new monies. There's really no way to introduce new monies without having some effect on TEEOSA. Is that correct? Is that what I'm hearing? [LB1014]

SENATOR ADAMS: I think that's right. In some shape or another, micro or macro, you're going to have an impact on it. [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR FULTON: So at this point we're not able to quantify, but we can conclude that there will be some effect on the General Fund. [LB1014]

SENATOR ADAMS: Yes. [LB1014]

SENATOR FULTON: Okay. I will yield there. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Heidemann, you're recognized. [LB1014]

SENATOR HEIDEMANN: Thank you, Lieutenant Governor and fellow members of the body. I do have to say, I'm not going to mince words, I do stand in opposition of LB1014. I appreciate things that teachers do. Without a doubt, I like teachers. I love one so much that I married one. That being said, I do have some questions, if I could get Senator Adams maybe to yield to a couple of questions. [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Heidemann? [LB1014]

SENATOR ADAMS: Yes, I will. [LB1014]

SENATOR HEIDEMANN: Senator Adams, we had a bill, LB235, that was up earlier this year that I supported and I thought was very worthy. One of the reasons that I supported it, because I seen a new source of revenue for Boards of Educational Lands and Funds. And when you see that new source of revenue, they would have more money to put out across the school districts in the state of Nebraska. Wouldn't that be shown as a local resource then at that time? [LB1014 LB235]

SENATOR ADAMS: Yes, it would. [LB1014]

SENATOR HEIDEMANN: And if that is shown as a local resource, wouldn't that be picked up in the TEEOSA formula? [LB1014]

SENATOR ADAMS: Yes. Now in this particular bill, you understand we show on the special receipts allowance on the needs side for this money so that it's a wash. But as I indicated to Senator Fulton, it still has a General Fund impact. [LB1014]

SENATOR HEIDEMANN: And that was the point that I was trying to get across. I mean I believe that a lot of people stood up and supported LB235 because we recognized that, and I think it was even stated on the mike, that there would be a General Fund impact on the positive side. Wouldn't you agree to that? [LB1014 LB235]

Floor Debate  
March 10, 2010

---

SENATOR ADAMS: Yes. [LB1014]

SENATOR HEIDEMANN: It appears to me that we're taking that positive impact away now then, right? [LB1014]

SENATOR ADAMS: Potentially, yes. [LB1014]

SENATOR HEIDEMANN: Potentially, yes, or yes? [LB1014]

SENATOR ADAMS: Well, yes. Yes, depending on the amount of money we're talking about. But if it's \$1 or if it's \$20 million, it's going to have an impact. [LB1014]

SENATOR HEIDEMANN: Where do you see how much money that is going to be in this fund in, say, five years? [LB1014]

SENATOR ADAMS: Your guess is as good as mine, Senator. You know, if you can give me a second, I will merely project pure speculation, but let's say that it has \$1 million in the fund. Well, you spread that out to 253 school districts or 21,000-plus teachers, you really haven't done much. If it's got a lot of money in it, now all of a sudden you're having a bigger impact on the TEEOSA side. [LB1014]

SENATOR HEIDEMANN: So it can be positive in one way but negative in another. [LB1014]

SENATOR ADAMS: That's right. [LB1014]

SENATOR HEIDEMANN: Do you worry about the precedence that we're setting here, that we might be starting down a path that might be worrisome to some? [LB1014]

SENATOR ADAMS: I do, and as you and I have had the discussion, that bill, LB235, I believe it was the number, was my bill and we wrestled with this last year and I didn't want to earmark that money then because of its General Fund impact. And as I indicated when I introduced my amendment here, the reason that I was more in favor of this, this time, was because it was pushing teacher pay in a little different direction that I think that they needed to start looking at. But I still absolutely share the same concern now about General Fund impact in TEEOSA that I had earlier this session and last session when that bill was up. [LB1014 LB235]

SENATOR HEIDEMANN: Do you worry? I worry that there might not be enough money coming in to this fund as they would like, but the fund is created. It's not doing what they would like and they will try to get other revenue sources that will affect the General Fund. Do you worry about that? I do. [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR ADAMS: You know, and I've not given it much thought. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR ADAMS: I mean you raise an interesting point and...but I've not given it much thought. [LB1014]

SENATOR HEIDEMANN: Do you worry about down the road and would you object...we have created, I think it's, correct me if I'm wrong, the Teacher Performance Pay Fund, is that... [LB1014]

SENATOR ADAMS: Correct. [LB1014]

SENATOR HEIDEMANN: I'm worried down the road that they're going to strike the word "performance" and you will have a teacher pay fund, a very easy thing to do, and then we have something created that is far from what originally was meant to be. Do you have any of that fear whatsoever? [LB1014]

SENATOR ADAMS: Well, when you bring it up, Senator, how many bills do (laugh) we hear the slogans, what is it, camel's nose under the tent, slippery slope? Like so many bills, this has a slippery slope. [LB1014]

SENATOR HEIDEMANN: For the present time, thank you, Senator Adams. Thank you, Lieutenant Governor, fellow members of the body. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Utter, you're recognized. [LB1014]

SENATOR UTTER: Thank you, Mr. President. And, colleagues, I want you to know I've listened very carefully to this debate and I really feel like we have got two measures here. We've got a measure that is promoting performance pay for teachers, which I really agree with. And even though it is fraught with difficulties and dangers, I've long thought that good teachers need to be rewarded for good service. The second bill we've got tied in here is the earmarking, and I hesitate to use the word "earmark," but is the earmarking of funds that are generated by our school lands for a specific purpose, and I see that's a deviation in policy, that we are going a long ways to where we start earmarking funds, not even in a specific amount but in an unknown amount at this stage of the game, to fund performance pay for teachers. Seems to me like these ought to be two different measures, but since they're not, I'm going to have difficulty supporting this bill. And when it comes time to push the buttons, I will have a difficult time keeping my finger off of the red button strictly because of the way we're handling the lease monies that are coming in to the Board of Educational Lands and Funds. Thank you very much. [LB1014]

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: Thank you, Senator Utter. Members requesting to speak on AM2058: Senator Conrad, followed by Senator Loudon, Senator Christensen, Senator White, and Senator Haar. Senator Conrad, you're recognized. [LB1014]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I have not yet had a chance to speak on this important legislation and I rise in full support of LB1014 as amended and in full support of the substantive issues and ideas contained therein. Thus far, throughout the course of the debate, I've heard it said that many times, by many senators on both sides of this bill, that I support performance pay but just not this idea and just not this legislation. And I say, good, well, there's some common ground that we can find in this body. And I say to you, if you support that concept but you don't like this bill, what bills have you introduced to address the concept and where are they in the process and what will their financial impact to our state be? Because I haven't heard a lot in terms of substantive alternatives. So if you support the concept, this is the bill that you should support and that you should vote for, as it is before us and Senator Haar has made it his priority bill and it has little to no financial impact on the state. I've also heard it said, well, I just don't trust that the Nebraska State Education Association and others who, you know, had concerns about performance pay are really on board with this. Well, take that commentary to heart and see how far this organization and the teachers of our state have come to try and meet the common ground that you have laid out for them, and reward that and acknowledge that and support that. That is a significant development. To be quite honest, I still have some concerns about how we would implement performance pay on a statewide level, but I trust the local school boards to do it in a fair way. I trust the collective bargaining process to define that in a fair and meaningful parameter. And I think that the concerns that have arisen around performance pay in the past are that how do we ensure that we are also rewarding teachers who are in the toughest schools, who have the toughest abilities before them to increase test scores without a lot of parental support or financial resources? And those are the concerns that exist in professional educators' world. Those are some of the concerns that I've heard from my teacher team that I'm in frequent contact with in my district. But if we're going to find common ground around the concept, there couldn't be a more elegant proposal than what Senator Haar has brought forward. Because not only does it promote the concept, but it does so in a way that is a carrot rather than a stick approach. It's an incentive. It says, hey, local school boards, if you, too, like this concept and idea, we're going to provide you an incentive; we're going to provide you an option, some flexibility to engage in these ideas through your collective bargaining process rather than a mandate and rather than an unfunded one at that. This is a flexible option that promotes and supports local control and the processes we have in place, because the alternative in pushing that concept on the local level, without a source of revenue to support it, is an unfunded mandate on local schools. You're going to see local schools have to look for a property tax increase or otherwise if they're going to implement these kinds of programs without any revenue source from

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

Floor Debate  
March 10, 2010

---

the state or otherwise. So if you support performance pay, support this bill. Or tell me a substantive, credible alternative before us... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR CONRAD: ...that accomplishes the same without a reliance or an additional burden on our already too high property tax burden. I want to thank Senator Haar for being forward-looking, visionary, and prospective in terms for how we incorporate new technologies and the revenues that they may generate in protecting and promoting other important interests in our state. Finally, real quick, senators, and I'll hit my light again because I didn't have enough chance...enough time to get to it, but the issues that have been brought forward as to legality or constitutionality are unwarranted. There is an Attorney General's Opinion on this very topic that has been issued and it says this legislation is in line with our history, our statutory framework, and our constitution. And that's an important point that I haven't heard talked loudly enough about in the course of this debate. We can be confident that this is a sound piece of legislation to accomplish important goals. [LB1014]

PRESIDENT SHEEHY: Time, Senator. [LB1014]

SENATOR CONRAD: Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Louden, you're recognized. [LB1014]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As we're talking about this funding, I'm wondering whether we're even talking about enough money to make any difference, as some of the discussions have on it would take \$20 million in order to be much of an impact on any of the teachers around there in the district as far as any incentive fund. Would Senator Adams yield for a question, please? [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Louden? [LB1014]

SENATOR ADAMS: Yes. [LB1014]

SENATOR LOUDEN: Senator Adams, how many teachers are in the state of Nebraska? [LB1014]

SENATOR ADAMS: A little over 21,000 I believe... [LB1014]

SENATOR LOUDEN: 21,000? [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR ADAMS: ...is the numbers that we were looking at last night. [LB1014]

SENATOR LOUDEN: Okay. And for instance now like the wind agreement only had brought in \$16,000 so, I mean, that's nothing for what we have going now. How many of those 21,000 teachers would be eligible for some kind of an incentive pay? Would at least... [LB1014]

SENATOR ADAMS: Potentially all of them. [LB1014]

SENATOR LOUDEN: All of them? And so how much money are we going to have to build into a fund in order to make it worthwhile or I mean to be of any value whatsoever? [LB1014]

SENATOR ADAMS: Well,... [LB1014]

SENATOR LOUDEN: Are you going to give some \$500 and some \$50, or how would that...how would that incentive be set up? [LB1014]

SENATOR ADAMS: Well, when it comes from the state, it would be the same amount on per student basis. Now, how the school board and the collective bargaining agreement decided to dole it out would be between them. Now, if I understand the background context of your question, what's the amount, what's the amount that does any good and what's the amount that does too much good? [LB1014]

SENATOR LOUDEN: If there's enough to do any good, it would be enough to make an impact on your TEEOSA payments. Is that... [LB1014]

SENATOR ADAMS: Right. [LB1014]

SENATOR LOUDEN: ...correct? [LB1014]

SENATOR ADAMS: That's right. [LB1014]

SENATOR LOUDEN: So whatever we're doing here we will probably impact your state aid to education somewhere along the line. [LB1014]

SENATOR ADAMS: That's right. [LB1014]

SENATOR LOUDEN: Now, as we look at what we're getting nowadays, the agricultural lease bonuses, the bonuses for lease on agriculture last year was \$863,000. Now that...is that enough to do anything with, what, you say 21,000 teachers? That's three-quarters of a million dollars. [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR ADAMS: Senator, you could do that math as easily as I can. [LB1014]

SENATOR LOUDEN: But yet with 300 and, what, 360,000-some students, 349,000 students, why, that's what, about 3 bucks? Not quite \$3 a student, is what that went in at. Is that correct, somewhere along in there? [LB1014]

SENATOR ADAMS: Yeah, I think your student...well, if you're counting your parochial students, you're right. Right. [LB1014]

SENATOR LOUDEN: Yeah. But anyway, we're only giving...every student gets \$104, so right there you're talking about a 2 percent difference on the students that you would be cutting down if that wind lease brought in as much as an agriculture bonus lease. And then, of course, you have your mineral lease which was \$300,000-some, so I'm wondering what kind of money we're even talking about on this thing and if we've been, what would you say, beating our gums here for two days and we're not talking about any significant amount to make any difference anyway. Were you...can you remember about, oh, I suppose 30-some years ago or so when there was a teacher incentive money put out? I mean I went through this once when I was on the school board there and I don't remember how many years ago, but it didn't work then. We had a problem with it then. I don't know if you are familiar with it or not. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR ADAMS: I might look like I'm that old, Senator,... [LB1014]

SENATOR LOUDEN: I see. [LB1014]

SENATOR ADAMS: ...but I can't reach back quite that far. [LB1014]

SENATOR LOUDEN: Okay. [LB1014]

SENATOR ADAMS: That was right at the beginning of my teaching career. I don't know about that. [LB1014]

SENATOR LOUDEN: But I think it was...I think they got \$100, \$200, I don't remember, and I don't remember where the money come from. All I can remember is it didn't work, because usually the teacher that did the work wasn't the one that got the money. And this is what I'm concerned about on this. Thank you, Senator Adams. As we get back to the agricultural lease rentals that we get off of this nowadays, about \$27 million or \$28 million a year, and some of those begin to be significant numbers. We start chiseling away at this, using it for something else, those numbers will go down. As far as new money, it isn't new money. This is money that comes from owning that school land out there. It isn't any different than if somebody was raising wheat and the price of wheat

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

Floor Debate  
March 10, 2010

---

went from \$4 to \$6. That isn't new money. [LB1014]

PRESIDENT SHEEHY: Time, Senator. [LB1014]

SENATOR LOUDEN: That's what you're entitled to. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Christensen, you're recognized. [LB1014]

SENATOR CHRISTENSEN: Thank you, Mr. President. Is Senator Adams around to yield to a question? [LB1014]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Christensen? [LB1014]

SENATOR ADAMS: Yes, I will. [LB1014]

SENATOR CHRISTENSEN: Senator Adams, on your bill, could a school district use...or your amendment here, use this money to increase all the teachers' wages instead of just a few? [LB1014]

SENATOR ADAMS: That would...that would depend on how the school board and the collective bargaining unit had developed their performance mechanism. Each teacher could gain or a handful of teachers could gain. [LB1014]

SENATOR CHRISTENSEN: Senator Adams, do you have a concern that there could end up being a buddy system utilized and it would reward some of the wrong teachers? Or do we...is there a mechanism in place that we make sure we're going to incentivize the right teachers that are really performing? [LB1014]

SENATOR ADAMS: Well, you know, there's always that concern. I could probably argue, Senator, that I would have that concern right now under the existing pay schedule, although it's more blind to things than what this might be. I would like to think that the collective bargaining unit, when they sit down with the school board to develop these mechanisms, would be the protective device to some of those discriminatory practices happening. [LB1014]

SENATOR CHRISTENSEN: Thank you. Another question, Senator Adams. You know, I hear discussion of whether we should have a dedicated source of income for this. I think everybody agrees with the performance-based. I think it's a great incentive and I think it's something we need. Is there another route of leaving this money in the fund that could allow some of the money within the same TEEOSA formula now to have a variance to allow for some performance? Or is there a way for them to do it now?

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

Floor Debate  
March 10, 2010

---

[LB1014]

SENATOR ADAMS: You know, there...herein lies the problem. I don't have an immediate answer for you, but I could tell you, you know, as I skim the surface, if we start doing that with TEEOSA then one of the hue and cry that I will hear is now it's even more complicated. Could it be done? I suppose we could do about anything with TEEOSA that we choose to, but it would make it more complicated. It would also...well, it would simply make it more complicated. [LB1014]

SENATOR CHRISTENSEN: Senator, can you...do you know, you said there's a few schools doing performance-based pay now. Do you know how they're doing that and where they're getting their funds? [LB1014]

SENATOR ADAMS: I'm going to reach a little bit but I know of one or two schools, one in particular that has been doing it for over 20 years. And it's a performance mechanism that's over and above their pay schedule and the whole thing is negotiated between the teachers and the school board, and it comes right from the existing dollars that they have to operate with. [LB1014]

SENATOR CHRISTENSEN: So there's no mandate, and I didn't think there was, on how the money they spend locally now, so they could set that up or we could suggest language for them to use the performance within their same structure now. [LB1014]

SENATOR ADAMS: They can do it right now. For us to suggest that they do, in statute, I think is very problematic. But for a school district to take it on their own, to work with their collective bargaining agreement and doing that, they have that prerogative. It's happening. [LB1014]

SENATOR CHRISTENSEN: Wouldn't it be to the advantage of a school district to set that up within their own district now to encourage teachers to stay engaged for the full term of their teaching and work with the kids for the best opportunity they can have? [LB1014]

SENATOR ADAMS: I can see some advantages... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR ADAMS: ...to just what you're saying. It's also...many school districts would probably say, yeah, we'd like to do that but it's a matter of dollars. [LB1014]

SENATOR CHRISTENSEN: Okay. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Senator White, you're

Floor Debate  
March 10, 2010

---

recognized. [LB1014]

SENATOR WHITE: Thank you, Mr. President. I rise in support of this bill and I'd like to make a couple of observations. First of all, Senator Haar is quite visionary in this regard. Wind power is in its infancy and he, along with Senator Dierks and especially Senator Langemeier, have been essential in developing the potential of wind power. Now we are going to have bills later that we need to pass for that potential to become reality. But it is not wrong to think in advance about what we might do if we are able to turn potential into reality. We have been at wind power conferences, I know Senator Haar was there, Senator Langemeier was there, where they've talked about a gross sales of electricity from Nebraska well in excess of \$1 billion from the sale of wind-generated electricity. The portion of that, that could be placed on schools is unknown, but the potential of the industry is well established. Simply drive through Iowa. So I would say on that regard, I thank Senator Haar for thinking ahead of a responsible use that really invests in the future of the state, and I can think of no better way than paying teachers who are successful at educating and motivating our children to become better students. That is the ultimate infrastructure, is investing in our young. Unlike Senator Stuthman, I do believe this in fact is very new money. Senator Stuthman might think that if I've always farmed land, this is just farming, but it's not. It's like discovering oil under the land and I'm still able to farm it. It does arise out of land but it is new money. It is a new source of income. And I recognize there are many problems with this and I appreciate those who are sorting through those problems, but I agree with my colleague Senator Conrad that it is appropriate, it is foresighted, it is what we should be doing when we start thinking about new industries, when we start thinking about encouraging them by allowing them to take a spot on our publicly owned lands, that we also think about a meaningful, long-term, future investment of proceeds which we will reap. I am less concerned than Senator Heidemann about that someone will ask for more money in this fund. I think this fund is pretty well defined as money that will spill into a special fund that arises from wind power. Senator Heidemann, every cash fund could ask for General Fund dollars, every one, and so I don't see that as a legitimate objection. Now whether this bill is ready to move forward or not, Senator Haar and the body will make that decision, but there can be no doubt that Senator Haar is seeing the future and trying to put us into a position to reap its benefits. I was especially persuaded by Senator Langemeier's comment and I would urge you to consider this carefully. None of this will matter if we don't pass a wind bill, none of it. And as you drive through Iowa, recognize what we've already missed. Recognize the jobs that did not exist, the income that did not exist, the movement to a cleaner, safer environment that we have not pursued. And when you put our future of our children in that mix as well, I think it becomes a compelling case. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator White. (Visitors introduced.) Continuing with floor discussion on AM2058 to AM1979, members requesting to speak: Senator Haar, followed by Senator Wallman, Senator Avery, Senator Wightman, and Senator

Floor Debate  
March 10, 2010

---

Langemeier. Senator Haar, you're recognized. [LB1014]

SENATOR HAAR: Thank you very much, Mr. President and members of the body. First of all, I'd like to say to my friend Senator Christensen, this is not a good argument that you made earlier. And just to quote him, to try to take this bill and make it an east versus west kind of discussion I think is way off base. When the school lands were set up, it didn't say this many acres goes to this school district and so on and so forth. The school lands belong to all of us and so we're not taking dollars from the east and sending them to the west. In this whole process...and this is set up in the constitution. This is in the Nebraska Constitution. For those who would like to, and it's been mentioned a number of times, for those who would like to take the school lands, the money from the school lands in the west and give it to those districts close to where the school lands are, you got to change the constitution. So I really think that argument doesn't work and I think it interferes with my personal philosophy that we're all one state. When it comes to TEEOSA, it's not a perfect bill, of course, of course any formula is not, but the genesis of TEEOSA came because there were some schools, some school districts in western Nebraska that were paying twice as much in property tax as those in eastern Nebraska. And so the whole thing of equalization, the big message behind equalization is we're all in this together. We're all one state. And I've had many conversations with Senator Carlson when we've talked about, you know, whose problem are...who really should bear the brunt of the problems we have with water with Kansas and those kinds of things. Well, my opinion is that it belongs to the whole state. You know, I guess that one is up for debate, but I'll tell you where I come down on that one. But the school lands is in the constitution. It says that you take the...you take the money from the school lands and you divide it up equally per student basis across the state. So that's really not an issue. I mean that really is a separate issue, Senator Christensen. If that's your goal, I think you need to work on a constitutional amendment in that way. So I think that's one of the issues that's not an issue in this debate. Sure, it takes up time, it takes up debate time, but that's not an issue. I've also heard quite a bit of discussion, how are local school boards going to divide up teacher performance pay. Well, I think we go back to this proposition we all believe in that's called local control. It is going to put some additional burdens on school districts and school boards because they're going to have to look at this issue and it's going to put some additional time and effort on the part of teachers because they're going to have to negotiate how performance pay is given out. That's one of the interesting things I found about the committee hearing, that we had teachers and school boards and administrators all looking at this as an opportunity, and I'm sure all three of those groups look at this opportunity and realize that it requires some work on their part. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR HAAR: Thank you. So again, if...gosh, if we don't trust the schools, if we don't trust local control, if we don't trust teachers to be able to work out these issues,

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

Floor Debate  
March 10, 2010

---

then I totally disagree with that because this will be a matter of local control, it will be a matter of administrators and school boards working with teachers on performance pay and I think that's a great idea. I saw this as a source of money that wasn't there before using wind energy and solar, the rental, and it is rental, coming from those sources as a way to fund this great opportunity that teachers and administrators and school boards see. We can work out details. The funding will not start till 2016 and that was very deliberate. We need to work out, we need to come up with some great models. [LB1014]

PRESIDENT SHEEHY: Time, Senator. [LB1014]

SENATOR HAAR: Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Wallman, you're recognized. [LB1014]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. I can see that education is important to this state, and also teachers. I just had coffee early this morning with a fellow farmer, said his wife, on account of assessments and everything which we passed in here, she works literally till 10:30 almost every night and so...to bring up the slower kids, so-called, up to speed maybe. She's a good teacher. I know her personally. So here we are about reimbursements, teacher incentives. Are we going to keep our teachers in Nebraska forever? You know, this seems like a small carrot out there. We're worried about too much money, not enough money. Are we setting a precedent here? Sure. That's our job, to set precedents. And school lands, I guess if it was up to me they probably would have been sold a long time ago, but it's not up to me. So now we have an additional source of revenue which I think basically is new money. And I would yield the rest of my time to Senator Conrad, if she so wished. She waives. To Senator Haar then. [LB1014]

PRESIDENT SHEEHY: Senator Haar, you're yielded 3 minutes 40 seconds. [LB1014]

SENATOR HAAR: Is it germane to call the question? No, not at this point. Okay. Okay. I would waive as well then. [LB1014]

PRESIDENT SHEEHY: Senator Avery, you're recognized. [LB1014]

SENATOR AVERY: I call the question, Mr. President. [LB1014]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on AM2058? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014]

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

Floor Debate  
March 10, 2010

---

CLERK: 27 ayes, 0 nays, Mr. President, to cease debate. [LB1014]

PRESIDENT SHEEHY: Debate does cease on AM2058. Senator Adams, you're recognized to close. [LB1014]

SENATOR ADAMS: Thank you, Mr. President. All this amendment does is to take out of the green copy of the bill the language that says that if you get more graduate hours that becomes part of the performance test. We already have that in our current pay schedules so I see that particular language as being bothersome to me and, frankly, unnecessary. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Adams. You have heard the closing. The question before the body is on the adoption of AM2058 to AM1979. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014]

CLERK: 38 ayes, 0 nays on adoption of Senator Adams' amendment to the committee amendments. [LB1014]

PRESIDENT SHEEHY: AM2058 is adopted. We will now return to floor discussion on AM1979. Members requesting to speak: Senator Langemeier, followed by Senator Haar. Senator Langemeier, you're recognized. [LB1014]

SENATOR LANGEMEIER: Mr. President and members of the body, I thank you for the opportunity here. We've waited awhile to get to this point. I do appreciate all the discussion we're having about wind energy and I want to talk about a couple little things. As Senator...well, first of all, let me back up, that LB1048, which is the committee's wind bill and, committee, hopefully we get that out. If we don't get that out and get that passed, all this discussion is pretty pointless. The other thing I want to bring out is kind of a discussion of value here. Senator Stuthman talked about removing an acre of ground out of a farming operation on school lands and put a wind turbine up and it's a, using his terminology, it's just a bucket of money next to a bucket of money. Let me tell you what's in those buckets. If that farming operation was paying \$100 an acre, we take it out and put a wind turbine up, you're looking at a wind lease from \$5,000 to \$7,000, so it's definitely a change of use and change of funding for that one acre of ground. So it definitely can generate some money. But the thing I want to point out is, is I appreciate all the discussion, and Senator Haar, I think I can speak for him as well, he appreciates the enthusiasm that the body has for the development of wind in Nebraska and hopefully we can expand that at a pretty rapid rate with the passage of LB1048. And with that, I look forward to having that discussion when that bill gets on the floor. Thank you, Mr. President. [LB1014 LB1048]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Haar, you're recognized. [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR HAAR: Mr. President and members of the body, I would like to ask Senator Christensen a question, if I could. [LB1014]

PRESIDENT SHEEHY: Senator Christensen, would you yield to Senator Haar? [LB1014]

SENATOR CHRISTENSEN: Yes. [LB1014]

SENATOR HAAR: Senator Christensen, have we started trapping in the ditches? [LB1014]

SENATOR CHRISTENSEN: Yes. [LB1014]

SENATOR HAAR: (Laugh) Okay. I just wanted to make sure of that. I would like to explore this east-west issue with you somewhat because it's something that really concerns me as we have discussions in this body. And anytime I see that happen, I jump on it because that's somewhat offensive to me. Do you think this is an east versus west issue? [LB1014]

SENATOR CHRISTENSEN: No, not your bill. It's just the way school lands' funds has developed over the years where they sold the lands in the east. If you look at the interest return versus the rent returns, you know, there's no comparison between what it does, you know, and that's my issue. Has nothing to do with this bill but I like to bring it up every time this comes up on school lands because I don't think it's been handled properly and I don't know...this body, previous to you and I being here, had told the school lands fund to sell considerable more and they haven't done it. They have ignored what we've told them. They're not obeying the wishes of this body and that to me alone is frustrating, and yet we don't hold them accountable to it. And then when you look at...if you grab a map and look at it, it is disheartening to me to see there's virtually no school lands in the east. Yes, they kept the funds, stuck it in a trust and they use the interest off of it. That makes it, quote, legal or constitutional, because I've asked them questions several times if what they've done is legal. Because, to me, it is wrong when they sell them in one end of the state and not in the other. And I really think they need to step up and buy lands back in the east or they need to sell everything in the west and be fair and even about it. You know, it's like saying, well, we're going to have one tax in the east and one tax in the west. That's wrong, you know? It's...I can...I could go on, number of issues, but I don't want to drain your time. [LB1014]

SENATOR HAAR: Okay. Well, I do wish to explore that a little bit further and I appreciate that because I'm trying to understand. Do school lands not...I mean people making money off of school lands and stuff, don't they pay taxes on those earnings? Or why would it make a difference if the school lands are in the east or the west? [LB1014]

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

Floor Debate  
March 10, 2010

---

SENATOR CHRISTENSEN: Well, because of the way they use it. If the school lands were all sold, then there would be property tax locally for your cities, counties, fire departments, schools, all there. They do contribute a portion back to try to offset some of that funding. But I don't think it's ever been adjusted to keep up with the real effect that it has. But why did we sell one side of the state and not the other? Yes, there's been a chunk or two in the west sold over some major disputes, but why did we do it in one end and not the other? And then the thing I brought up just this time, how can the Legislature give them a mandate... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR CHRISTENSEN: ...to sell more land and they didn't do it? [LB1014]

SENATOR HAAR: Yes, and I, as you know, I like to know a lot about a lot of things and so I will (laugh) I will look into that. I am interested in how the school lands got sold and why they got sold and so on and so forth. But I see this new...this new opportunity, whether we call them new monies, whatever, obviously these new kinds of leases for solar and wind, as a great opportunity to challenge us to look at performance pay for teachers. So I thank you on that and you've given me some more insight. Thank you very much. [LB1014]

SENATOR CHRISTENSEN: Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Haar. Members requesting to speak on AM1979, we have Senator Fischer, followed by Senator Loudon, Senator Hansen, and Senator Dierks. Senator Fischer, you're recognized. [LB1014]

SENATOR FISCHER: Thank you, Mr. President and members. I guess I'd like to reassure Senator Haar that I certainly don't think this is an east-west debate and don't view it that way at all. I did make a comment early about the majority of school lands are in western Nebraska. That's just a fact; that I didn't mean to imply anything else and I certainly hope he didn't think so. He's nodding that he...I think he agrees with me, so that's good. But I'd also like to thank Senator Langemeier for his comments and his work, and Senator Haar's work and our committee's work on wind development in the state and look forward to that bill coming out. We passed a bill earlier this session, LB235 that Senator Heidemann referenced, that would allow for leases on school lands for wind development and that was a step I think towards recognizing that wind development is important for the state and hopefully will prove to be an economic benefit to the citizens across the state. With this bill, I think we're moving in that same direction, and I do thank Senator Haar for bringing the bill so we can continue to discuss not just the importance of performance pay for teachers but also wind development in the state of Nebraska. I would like to ask Senator Haar some questions please, Mr.

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

Floor Debate  
March 10, 2010

---

President. [LB1014 LB235]

PRESIDENT SHEEHY: Senator Haar, would you yield to Senator Fischer? [LB1014]

SENATOR HAAR: Certainly. [LB1014]

SENATOR FISCHER: Senator Haar, I know you've been paying close attention to the debate and I had asked Senator Adams a number of questions about the performance pay because I do have concerns with that and I was wondering if you would be willing to answer some questions on that. [LB1014]

SENATOR HAAR: Sure. Thank you. [LB1014]

SENATOR FISCHER: There's...in this bill we're recognizing that pay to teachers can be based on performance. Do you believe that's a wise step that we should be taking here? I know that in the past teachers have not wanted to be judged and did not want their pay based on performance, so what's...I guess what's your reasoning on this bill that all of a sudden now we're recognizing performance pay? [LB1014]

SENATOR HAAR: Well, I think we're recognizing it because of this new opportunity that's come forward. And again, I find it very interesting, the indication to me, because of the people who supported this bill--the school administrators and the school boards and the teachers--and it was really kind of fun in the hearing because when the representative, I believe it was from the school boards got up, he was smiling. And I think he was looking at this challenge of working with, you know, of school boards and administrators and teachers working together on performance pay. I guess in my mind I think that some form of performance pay makes so much sense because, especially among in the teaching profession, so many people leave teaching in the first few years, and I think we have to reward excellence so we keep those teachers. [LB1014]

SENATOR FISCHER: And I do not disagree with you on that. As I've said before on the discussion on this bill, I don't disagree with that. [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR FISCHER: I do question setting up a new fund, though, for the lease money here. Why wouldn't you want to put the money from a wind or a solar lease into the current trust fund that is set up from school lands that is also apportioned out to every district? Why wouldn't you want to do that? [LB1014]

SENATOR HAAR: I'm sorry, to take the current...? [LB1014]

SENATOR FISCHER: To...why are we setting up a new fund? Why can't we just put the

Floor Debate  
March 10, 2010

---

money from these wind leases into the current trust fund for school lands where the land leases go now? [LB1014]

SENATOR HAAR: Well, I guess in response to that, the thing I've learned here and, of course, when I was on the city council, too, if you come up with an idea, suggest a way to fund it, and when we first came across this last year... [LB1014]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Fischer. Thank you, Senator Haar. Senator Louden, you're recognized. [LB1014]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As the discussion awhile ago, I think Senator Haar and Senator Christensen, they were talking about whether it was east-west or whatever it was, and since I've been around school lands probably about as long as anybody else in the Chamber here and maybe a little bit longer, there is an east-west problem on some of that because most of the land is out in the western end of the state. Those bonuses are paid. Most of that bonus money, as like last year, the \$863,000, that didn't come out of Douglas County, because I think at the present time I think Douglas County only has 142 acres of school land in Douglas County. Sarpy County has 257 acres. So most of the land, the lease and the bonus all comes from the western end of the state. But then, when it's divided up with the districts that get it on a regular basis, I think Douglas County gets probably "somewheres" around \$10 million for the whole Douglas County. The Omaha Public Schools alone get \$6.4 million and yet they only got 247 acres of school land in there. So there is an east-west problem here, always has been, because most of that money comes from the other parts of state. Now has anybody complained about that? Probably a little bit, but does that make any difference on how we operate? No, it hasn't, because we've went ahead and that's the way it was set up, the school land trust, and it's divided up that way. Now that isn't taking into account that there are some trust dollars. I guess they have stocks and that sort of thing that over the years as they've sold some of this school lands and they've put it in to other revenue sources. So part of the reason that you hear about this is because of the fact that a lot of that land comes from western Nebraska. One other issue happened and I suppose that's been about 35-40 years ago or so, but the schools used to get that tax money for the school lands that was in their district years ago. The district that I came from, we had "somewheres" around five sections of school land in there and we received that tax money. Well, some 25 or 30 years ago that was changed by the Legislature and that money all went into what the school lands had to pay or anything. It went into the one kitty and that was divided up amongst all the schools. So everybody got the same choice or the same percentage of it and that's the way it's been for several years, is the state apportionment is divided up on a per pupil basis across the state of Nebraska. That's worked over the years because state apportionment was a big thing years ago when we had our Class I schools out there. It was what we called in lieu of school land tax. In other words, we didn't...we weren't able to tax those school lands so we were able to receive the money that we would have

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

Floor Debate  
March 10, 2010

---

ordinarily gotten from those school lands. So it has been changed over the years. I don't know as we've ever allowed to have anyone to go into the trust fund and start bringing money out for some other reason than to divide it up for state apportionment. I think that's where we should stay on this situation. There isn't any reason that the teacher incentive cash fund couldn't be funded with some other money from outside sources, and I think this is something that needs to be pursued. We've went through these teacher incentive payments over the years... [LB1014]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB1014]

SENATOR LOUDEN: ...and up to now most of them haven't been...haven't worked out that successfully. At the present time it's been done that the districts handle that themselves and I think that's the best way to do it. You either handle it through your state aid to education, your TEEOSA funding, or your regular funding that the state themselves or the districts themselves can handle. Thank you, Mr. Speaker. [LB1014]

SPEAKER FLOOD: Thank you, Senator Louden. Senator Hansen, you are recognized. [LB1014]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I've done a little research on the Internet of just some of the history of school lands in the state of Nebraska. It started in 1864 where every section...every township section number 16 and 36 was designated as a school land, and the school land that ran off those school sections across the state funded our school system. And Senator Adams would be...I think would be a little shocked about what the total income of those school lands were then, but it certainly has grown considerably. In 1900, they divested themselves of quite a few of the acres, from 2.8 million to 1.3 million acres. Right now there's 3,200 ag leases in school sections and quarters and halves in the state of Nebraska, and also 250 mineral leases. In 1998, school lands in the state of Nebraska, total valuation of \$390 million; 2008, ten years later, that value had gone up to \$677 million. That even includes the 52 million acres that were sold as mostly as a result of what this body did. They said to divest themselves of some of these acres, but there's still a lot of...a lot of acres out there left in school leases. But I did also want to have Senator Haar understand that in 1897 the state took over these lands from the United States government as an endowment for the future schools as a sacred trust. Between 2006 and 2008, \$64 million have been brought into that trust. Now we talk about new money, and if this is new money it's not the first source of new money. Some of the other sources of new money might be minimum tillage on those acres that have been farmed. Minimum tillage increases production, increases...so, therefore, increases the rate of return to the school land. That's new money there too. Another item that we might do in the grazing area of school lands is rotational grazing. It increases the value

Floor Debate  
March 10, 2010

---

of the land and increases the value of the return to the renter so the rent goes up. That's new money also. Hunting leases, like I spoke earlier, that's a potential that's out there for new money. And then teacher pay for performance. I think this is new money. I would have to assume that this is new money too. But the rotational grazing, the minimum tillage all goes back into the trust. It goes back into the sacred trust and endowment for the future of schools. I still stand opposed to this bill. I think that it's not the right way to do it. If Senator Conrad says that we need to come up with something new for teacher pay for performance, I think that's great, but I think it needs done on the local level instead of statewide. If we talk about the east-west split, I don't think it's an east-west split. It's just a split of where the educational lands are at. Every year when we pay a lease, some part of that lease comes back to the county as in lieu of taxes, and I'm not sure, I'm still researching what percentage that is. I don't think it's 100 percent... [LB1014]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR HANSEN: ...of comparable land, but there is a payment, comes back to the county, to the schools in the county for and in lieu of taxes. If this is new money, I think it needs to go back into the trust. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Dierks, you're recognized. [LB1014]

SENATOR DIERKS: Thank you, Mr. President, members. I was interested in the figures and dates that Senator Hansen came up with. And I remember, I think sometime in the middle nineties, we got the law passed that required them to sell school land, and that pressure was put on...I was on the Education Committee at the time and the pressure was put on by landowners. They were tired of going and having to bid on this land and having to pay a bonus to get to keep it and then they'd have to go back in six years or ten years, whenever the lease was up, and do it again. So they wanted to buy...they wanted the school lands and funds to put the land up for auction and the bill was passed that required that. I think that what happened, and I've been to several school land leases to...oh, in the last five or six years, to watch exactly how they do it and they have a price preestablished on that land, what it's worth. So when you come in there to renew your lease, there's already a set price for the land. If you want to buy it, you can do that. But the price is set so high nobody does it, so then they go back and do the auction again. I'm not sure how that was regulated but that was done within the school lands and funds. And I guess I was surprised at what Senator Loudon said about the in lieu of taxes going into a General Fund. I thought myself that it came back to the school district that the land was in. I think at one time that was the way that it happened. And the taxes were just the same as they were on your own property. They had...they went

Floor Debate  
March 10, 2010

---

through the same valuation and those taxes came back to that school district. Now evidently that isn't so anymore. So that's a new part of the whole process that was not familiar to me. The bonus is still a very big part of the auction at that sale and at that lease, and we have a section of school land on the west side of our place and a section of school land on the north side and I went to watch them auction those pieces off. Each one of them brought over 10,000 acres for a bonus. That was good for six years. Then they had to come back in six years and do it again. And I think the one piece actually brought \$12,000. It can be self-limiting because when people are not making any money off those things, pretty soon it's hard for them to get them to bid on it. So I just offer that for some information I've had recently myself and I think that the intention originally was, as who I think Senator Hansen said it or maybe it was Senator Adams, every section 16 and 36 across Nebraska anyway was designated school land and its sole purpose was to provide funding for the children of this state. I think that we've had a lot of politics got involved with it over the years and a lot of bills were passed and so things have changed and that's just part of the process. Well, I think I'll be supporting the Education amendment. I'm having some difficulty with the bill. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Christensen, you're recognized. [LB1014]

SENATOR CHRISTENSEN: Thank you, Mr. President. I want to clarify one statement I made earlier on the school lands and for lands fund director Dick Endacott is in charge now. He has been there for a little over a year. And I guess I would like to clarify, he has told me he's going to get some more land sold and I don't want anybody to think I'm picking on him because I'm going to give him some more time to make sure they accomplish what the Legislature set out for them to do years ago when the previous director was here. So I want to make sure people understand I'm not hammering on Dick because he has said he plans to live up to what the Legislature stated years ago and I'm going to give him some more time. I know one year I don't feel like is sufficient time for him to have to step up and take care of this issue. You know, I think what we got to discuss here is the advantage...or maybe I'll back up. The advantage of this bill is it gets the performance-based pay discussions going within the schools. I'm a firm believer we need to do that and I believe they need to set up a mechanism. I think the real discussion comes in, is this the best approach or is the approach they can already do it, we just somehow got to get them all going with it? And they may not do it without a bill like this. So I think that's where this debate really comes down to is, are they going to ever get started with performance based if we don't have this bill? You know if you think about the funds, they're going to go to the schools either way, whether we do it through performance or it just falls under the previous rules and be distributed. So again, I emphasize the point comes down, is this the best approach or does somebody have another suggestion to accomplish what we need to do? I don't know if I can answer that. That's the difficult part of it I have. I don't like the school lands fund system.

Floor Debate  
March 10, 2010

---

I don't like them, period, and I don't like what they've done with them in the past and I don't like they haven't followed through with it. That has nothing to do with this bill. I probably shouldn't bring it up but I like to rant and rave on that whenever it does. And I have even had a bill to get rid of school lands funds before. It's not very popular. But I do expect they follow the recommendations of this Legislature and that's why I wanted to clarify that I'm a firm believer that Dick is going to follow through and I don't want anybody to think that I am picking on him, because I am not, previous guy I will. So again, I know there's not everyone out here. I appreciate the discussion we're having. I think we need to continue to push towards performance base for teachers and I think part of it comes down to the final decision of this body, whether this is the right approach or not. And, you know, I hope if there's other ideas, they come up, that we get them out here so we can have a discussion on all of them. Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Members requesting to speak on AM1979 to LB1014, we have Senator Utter, followed by Senator Fischer, Senator Louden, and Senator Haar. Senator Utter, you're recognized. [LB1014]

SENATOR UTTER: Thank you very much, Mr. President and colleagues. I thought maybe I was done talking about this bill, but I get the urge to just do it one more time. I just want to remind you what we're doing when we start designating funds to go specific places and particularly in this instance where we're designating monies to come into a fund of an unknown amount. We don't have any idea whether there will be enough to do the job or I guess everybody would probably agree that there probably won't be too much to do the job when it's all said and done. But I think we're setting a dangerous precedent as a body and I know the cliches that we've talked about, the slippery slope and the camel's nose under the tent and all of these type of things. But I think there is some danger in what we're doing here from a precedent standpoint, that if we begin earmarking these funds because of the argument, and obviously there is an argument from the discussion that we've had this morning, because of the argument that these are brand new monies, but they are still rents. They're rents from a different source. And certainly they will probably represent additional income if the wind power generation thing develops as everybody hopes that it will, but I am really hesitant to start earmarking these funds, even though I do agree with the idea that performance pay for teachers is something that this state needs to look at and become proactive in developing. It's just that we're having...that we're...it's that we're tying these two issues together, is what really bothers me, and I guess after all of the discussion that we've had this morning, I still am forced to vote no on LB1014 for that matter, for that reason, because that we're not...that I think we're setting a real dangerous precedent when we start earmarking funds for specific purposes. Thank you. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Utter. Senator Fischer, you're recognized. [LB1014]

Floor Debate  
March 10, 2010

---

SENATOR FISCHER: Thank you, Mr. President and members. I do get a kick out of Senator Christensen when...and I don't want to embarrass him here, but some of his comments on school lands, that does reflect the feeling of many of my constituents, too, and all you have to do is look at a map on school lands and you'll understand why. In Cherry County, we have over 180,000 acres of school lands. In Holt County, there's 64,000; in Keya Paha County, 21,000; Brown, 38,000; Rock, 30,000; and it goes on, 48,000 in Custer County. Those are counties in my legislative district and my constituents get frustrated when they have to deal with the Board of Educational Lands and Funds. And if you remember an earlier conversation when Senator Adams was on the mike and we were discussing the system that ranchers and farmers go through in order to get those leases, a floor is set. The price is set where the bidding starts and it's usually 25 percent higher, I think Senator Stuthman can probably address that, but I think it's usually 25 percent higher than the assessed value of land in that area. So when people bid on that, they're already paying more than the land is assessed at, and then they pay this bonus fee on top of it. So when those of us that have hundreds of thousands of acres of school land in our districts get a little worked up over this issue, hopefully the rest of you can understand why, because it is an issue for us, it's an issue for our constituents. It has nothing to do with how the money is used. It has nothing to do with the fact that this money goes into a fund that is used for educating the children in this state. That's a benefit of this school fund and the people across the state of Nebraska recognize that. The problem many of us have is the process that is used in determining leases on that land that is held. Another problem is that those lands were supposed to be sold down and that bill was passed in 1996, as I mentioned earlier, that those lands were supposed to be sold down. Another issue that Senator Utter just brought up was earmarks. You know, we have a number of funds in the state of Nebraska, and you folks have certainly heard me talk about one a lot and that's the Highway Trust Fund, and we use the Highway Trust Fund for highways. But it is set up with user fees. It's not set up with money coming from leases on wind turbines. It's set up with our gas tax, it's set up with fees on our registration fees, on sales tax on motor vehicles, so those are user fees that directly go to that trust fund for use on the roads. So I can understand why Senator Utter... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR FISCHER: ...feels that having these earmarked for this fund, it could be a stretch because it's not necessarily a user fee in this case for teacher salaries for performance pay. And then I question establishing a fund for performance pay for teacher salaries. As I said, I support the school lands fund. My constituents support that school land fund and it's constituents in our area of the state that pay into that fund. But that money goes for the children in the state and it goes directly to them, and I don't think we should lose sight of that. I don't think we should lose sight of why school lands were set up in the first place. So I hope you will consider that as we move on this bill.

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

Floor Debate  
March 10, 2010

---

[LB1014]

PRESIDENT SHEEHY: Time, Senator. [LB1014]

SENATOR FISCHER: Thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Fischer. (Visitors introduced.) Continuing with floor discussion on AM1979 to LB1014, members requesting to speak: Senator Louden, followed by Senator Haar, Senator Lautenbaugh, and Senator Hansen. Senator Louden, you're recognized. [LB1014]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. As we talk about the school lands and what they were for, at the present time the K-12 school trust portfolio has 63.8 percent of it is in land valued at about a little over \$688 million; 36 percent of it is in stocks and bonds valued at \$391.5 million, and that's as of June 30 of 2009. Also on those deeded...on those...that land, in the 63 percent of it which is land, there's about 1,631,000 acres of school land in the state of Nebraska. Now that land is set aside to draw income for your state apportionment or for it to educate children in the state of Nebraska. So whether it's...whatever you use that land for, certain amount of it comes from mineral leases, most of it is agricultural leases, some of it's bonus, gravel, gravel minerals and various leases like that. All of that goes in together as a source of revenue to educate children in the state of Nebraska. If at the present time there's a need, which I'm sure there is, to have some type of teacher incentive fund, that could come out from the districts on their own if they so wish to take this money out of the Board of Educational Lands and Funds and use it themselves. That's their state apportionment. They can do whatever they want to with it. I think earlier you heard Senator Adams say they can pay for the buses, they can pay for the lights, they can pay for the heat. If they want to take a percentage of the state apportionment money every year and set it aside and use it for teacher incentive, that could be their prerogative. But this is something that we've never done before, is start earmarking the money, as Senator Utter points out, earmarking before it ever gets to the schools and to the districts. We're starting to short circle the amount of money that comes out of these revenue from these Board of Educational Lands and Funds. That's what it was set aside for. Senator Cap Dierks mentioned that it was sections 16 and 36 across the state of Nebraska. Some of that where I live out there, in one of the townships that I live next to, there was also, I think, section 15 and I think section 9 was also set aside because some of the districts had already...some of the townships already had their land all occupied in eastern Nebraska by the time this went into effect back there in the 1800s. So there were more than just 16...section 16 and 36 in every township set aside in some areas. Some places had...townships had four and five sections in them. So it was...the land was set aside originally for that. Over the years, they've been asked to sell part of that land because of the amount of land they had in their portfolio and over the years, I don't remember what the statute was at the time,

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

Floor Debate  
March 10, 2010

---

whether they were supposed to get their portfolio down to 50 percent of it in land and 50 percent in stocks and bonds, but I remember as they were proceeding to sell land back here in about, oh, nearly 20 years ago now, the valuation of the land went up. And as they were selling it, they still had about the same percentage in their portfolio as what they had after they'd sold some. So that's the reason we still come up with about 64 percent of the land of the portfolio is in real estate and land... [LB1014]

PRESIDENT SHEEHY: One minute. [LB1014]

SENATOR LOUDEN: ...and 36 percent of it is in stocks and bonds. Of course over the years, as you've noticed, and that's been the question about whether or not they should ever have sold the land and I've heard that argument many a time, because most of that land is in your western rural areas and it isn't in the eastern part of the state. And as we talk about an east-west situation, that's what would bring that up, is the fact that the bonus money, the lease money and everything comes from your rural ag areas and most of that is probably all west of Broken Bow. With that, thank you, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Haar, you're recognized. [LB1014]

SENATOR HAAR: Like to call the question, please. [LB1014]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on AM1979? All those in favor vote yea; opposed, nay. Senator Haar. [LB1014]

SENATOR HAAR: Yes, I'd ask for a call to the house...or would...yeah, call of the house. Roll call vote, yes, in reverse order, please. [LB1014]

PRESIDENT SHEEHY: There has been a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014]

CLERK: 35 ayes, 0 nays to place the house under call. [LB1014]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Haar, all members are present or accounted for. Senator Haar is accepting call-ins. Mr. Clerk. [LB1014]

CLERK: Senator White voting yes. Senator Ashford voting yes. [LB1014]

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

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB1014]

CLERK: 25 ayes, 8 nays to cease debate, Mr. President. [LB1014]

PRESIDENT SHEEHY: Debate does cease. Senator Adams, you're recognized to close on AM1979. [LB1014]

SENATOR ADAMS: Thank you, Mr. President. Members, what the committee amendment does is, in effect, say that if this fund is created and the money is distributed that it comes in as a resource to the school district and the same amount shows up on the needs side, all right? So if there's \$15,000 coming to the district, it will show as \$15,000 as a resource, it will show as \$15,000 on the needs side of the aid formula. The other thing that it does, currently on January 15, the State Treasurer presents an exhibit of the monies in the land fund and what we're going to do in this amendment is harmonize and say that the State Treasurer, for purposes of this bill as well as just the State Treasurer's regular report on what's in the fund, will occur on the third Monday in January. That's the amendment, Mr. President. [LB1014]

PRESIDENT SHEEHY: Thank you, Senator Adams. You have heard the closing. The question before the body is on the adoption of AM1979 to LB1014. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1014]

CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB1014]

PRESIDENT SHEEHY: AM1979 is adopted. The call is raised. Mr. Clerk, do you have items for the record? [LB1014]

CLERK: I do, Mr. President. Judiciary Committee, chaired by Senator Ashford, reports LB801, LB1094, and LB1105 to General File with committee amendments attached. Resolutions: Senator Carlson offers LR368, Senator Howard LR369; both will be laid over. Senator Pirsch would like to add his name to LB817. (Legislative Journal pages 802-805.) [LB801 LB1094 LB1105 LR368 LR369 LB817]

Speaker Flood would move to recess the body until 1:30 p.m., Mr. President.

PRESIDENT SHEEHY: You have heard the motion to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We stand at recess.

RECESS

PRESIDENT SHEEHY PRESIDING

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

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: 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. Please record, Mr. Clerk.

ASSISTANT CLERK: There is a quorum present, Mr. President.

PRESIDENT SHEEHY: Are there items for the record?

ASSISTANT CLERK: Not at this time.

PRESIDENT SHEEHY: This is to announce that Senator Haar is turning 21 again today. In honor of his birthday, you will be receiving a windmill cookie and there is popcorn back in the coffee area. Happy birthday, Senator Haar. (Visitors introduced.) We will now proceed to the 1:30 p.m. General File, 2010 senator priority bills, Avery division, LB1081. [LB1081]

ASSISTANT CLERK: Mr. President, LB1081 was introduced by Senator Cornett. (Read title.) The bill was read for the first time on January 21 of this year, referred to the Revenue Committee, that committee placed the bill on General File with committee amendments attached. (AM1930, Legislative Journal page 603.) [LB1081]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB1081. [LB1081]

SENATOR CORNETT: Good afternoon, Lieutenant Governor and members of the Legislature. It is the intent of LB1081 to provide job training incentives to companies that employ teleworkers who work from their own homes. LB1081 would be the next step towards recognizing the enormous benefit to Nebraska citizens of teleworkers working from their home. This legislation presents an overdue recognition of the realities of job creation in rural Nebraska and our areas of high poverty in our cities. Historically, this body has structured incentives around the goal of attracting and retaining companies which will invest at least a threshold amount of jobs, capital investment, or both. These programs, such as LB775 and LB312, have been successful throughout Nebraska. In fact, the company that brought LB1081 to me has relied upon LB775 to build a world-class business with thousands of employees in Omaha. The fact is, however, these programs cannot be expected to address all of the economic development needs of our state. The population, demographics, and economics in certain areas simply do not support the capital or job threshold requirements for these programs. Also, it has been 23 years since this body passed LB775 and 5 years since we passed the Nebraska Advantage. Job availability and technologies have changed. This legislation recognizes the demographics and economic realities. This legislation would allow a company, that employs teleworkers in their home and trains those teleworkers, to

Floor Debate  
March 10, 2010

---

qualify for benefits under our job training program. It would not require capital investment, however, it does require an investment in our citizens. A Nebraska company today already employs home teleworkers throughout our state. Over 800 citizens from across the state work from their homes in 2009 for this company alone. The West Corporation is a Nebraska company. They're headquartered in Nebraska; they were founded in Nebraska by Nebraskans. West has indicated they want to employ more people throughout our state. West competes with companies who hire teleworkers in India, Mexico, and the Philippines. Our citizens must be able to compete. This legislation is designed to train our citizens for this world market. This legislation will provide an almost immediate impact on the families and towns in our state. I am assured that if we pass LB1081 it will mean within the next 12 months over 1,000 people will be hired, people in towns throughout rural Nebraska and in cities. These positions will pay on an average of over \$8 an hour following training, and many agents will have the opportunity to earn \$12 to \$14 an hour. Not only will these jobs support our communities but they will support our families and our way of life. Mothers can be at home with their children when they go and return from school. Farmers will be able to work in the fields and ranches and return in the evening to work from their home. The disabled will have their jobs come to them. The cost of gas, the long drive to the nearest town will no longer limit the opportunities of these families. The paychecks that are earned by a mom in Ainsworth or by a rancher in Burwell will be spent right there in their local grocery store, church, school, restaurant, and hardware store. This, my fellow members of the Legislature, is the reason I agreed to carry this legislation. During testimony before the committee, we heard testimony that indicated these positions can almost immediately be opened up to Nebraskans and the list of qualified applicants for these positions in Nebraska already exceeds 700 individuals. We have heard testimony from one woman who is disabled and unable to continue work in her previous position. With the work-at-home program that was pioneered, and what we are talking about here, she has been able to continue work in her home and provide resources to her family. I believe you should join me in supporting the advancement of LB1081 from General File so Nebraska can continue to be a leader in supporting the people and the technology that will fuel both the urban and rural economies in the twenty-first century. At this time, I'd also like to thank Senator Mello for prioritizing this bill, and we do have a committee amendment. Thank you. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Cornett. (Visitors introduced.) You have heard the opening to LB1081. As stated, there is a Revenue Committee amendment, AM1930. Senator Cornett, you're recognized to open. [LB1081]

SENATOR CORNETT: Yes, I'm going to take a little time on the amendment because it rewrites the entire bill. The Revenue Committee amendment, AM1930, would rewrite the original bill by striking all of its original sections, including the tax credit provision, and inserting 12 new sections to adopt the Teleworker Job Creation Act, which will provide a job training reimbursement program administered by the Department of

Floor Debate  
March 10, 2010

---

Economic Development for qualified employer to provide qualified job training for workers who reside in Nebraska and perform work in their homes. Section 1 creates the Teleworker Job Creation Act. Section 2 states legislative findings and declarations, including current economic conditions in Nebraska, have resulted in unemployment, loss of jobs, and difficulty attracting new jobs. It states policy to revise Nebraska job training structure to encourage businesses to promote creating and training for new jobs that can be performed at home in Nebraska. Section 3 defines nine key terms, including the definition of employer, qualified employee, qualified training program, and teleworker. Employer means a specified type of entity, including a corporation and members of a unity group that employ teleworkers for which the job training reimbursements are applied under the TJCA. A qualified employee is a teleworker who has nine specified characteristics including the teleworker is an employee of the employer, a resident of Nebraska on the date of his or her application, completes a qualified training program, is not a base-year employee of the employer, is not required to purchase a computer from the employer, pass job-related tests required by the qualified training program, has passed a criminal background check as required by the employer, and completes the hiring process from the home, except for any drug testing and notarized proof of identity which can be performed at a location directed by the employer. A qualified program must have five specified features, including training to become a teleworker, at least 15 hours of in-home instruction per trainee. Trainee must be paid at least the federal minimum wage per hour of training, and trainees must pass a job-related test established by the employer. Section 4 specifies the condition, the ability of an employer to earn job training reimbursements under this act on the employer's filing of an application for agreement with the director of the DED; specifies the required contents of the application, including a \$500 application fee; requires the director of the DED to approve an application and authorize the total amount of job training reimbursement expected to be earned as a result of the project if she or he is satisfied with...that the plan defines a project that meets the project's eligibility requirements and those requirements will be met within 365 calendar days after the date of application was filed; rural areas in Nebraska or areas of high concentration of property...of poverty within the corporate limits of a city or village that has one or more contiguous census tracts which contain a percentage of persons below the poverty line of greater than 30 percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent decennial census. Section 4 also prohibits the DED from approving application once the director has approved seven projects applications during a fiscal year and the expected job training reimbursement from the approved projects total \$1,050,000 in fiscal year 2010 through '11. Applications must be approved in the order which they are received for the purpose of that limitation, but the \$500 application fee must be refunded if the applicant is not approved because the expected reimbursement from approved projects exceeds that amount. It also permits the director of the DED to enter into agreements for one or more projects, up to a total of five approved project applications filed in fiscal year 2010-11, and those projects can be sequential or concurrent, but no new qualified employee can be included in more than

Floor Debate  
March 10, 2010

---

one project for the purpose of meeting project requirements or creating job training reimbursement. The employer can specify which project employment belongs when the project overlaps and the plans do not clearly specify which project the employment belongs to. The employer must designate which project a qualifying employee belongs until its income or franchise tax return filing date for the application year, and the employer cannot receive job training reimbursements for a qualified employee until the employer designates on a form approved and filed with the DED. Section 5 requires an employer to submit a description of the training program to the DED for review in order for the employer to be eligible to file an application. If the training program meets the requirements of a qualified training program, the DED must approve the program and issue an approval letter to the employer. A copy of the approval letter must be attached with the employer's application for the agreement with the DED under this act. Section 5 also requires the DED to approve or refuse to approve a training program, but the employer must receive DED's decision within 30 days after the employer submits the training program for review. The training program...however, if the 30-day period or extended period lapses without the employer having received DED decision approving or denying the training program, the employer is authorized to file its application for an agreement with the DED under this with a statement signed by corporate officers. Section 6 states the job reimbursement must be made to any employer who has an approved application under this act, who trains at least 400 qualified employees in a qualifying job training program within 365 days from the application filing date, and offers employment to those qualifying employees to work for the employer as a teleworker, and such jobs pay a wage that is at least equal to the then-required minimum hourly wage under federal law. With respect to the requirement that at least 400 qualifying employees must be trained and offered employment as a teleworker, Section 6 of AM1930 also requires, to the extent of the available job positions, the employer to give hiring priority preference over other similar qualified applicants to those who: one, reside in Nebraska counties with a population of less than 100,000 inhabitants, as determined by the most recent federal census, reside in an area of high concentration of poverty within the corporate limits of a city or village consisting of one or more contiguous census tracts, as determined by the federal census; and two, the amount of job training reimbursement allowed is equal to \$300 for each new qualified employee hired by the employer after the application filing date. There are a couple other sections that we can discuss later if we need to, but, with that, I would urge the body to approve the committee amendment and the underlying bill. Thank you.

[LB1081]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening of AM1930 to LB1081. Mr. Clerk, do you have an amendment to committee amendment?  
[LB1081]

ASSISTANT CLERK: Mr. President, Senator Cornett would offer AM2026 to the committee amendments. (Legislative Journal page 708.) [LB1081]

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on AM2026 to AM1930. [LB1081]

SENATOR CORNETT: Yes. This amendment is primarily technical changes and to correct some grammatical errors. It does give the right to the job training reimbursement agreement and to the teleworker job creation shall not be transferable within...except within a project covered by an agreement that is transferred by sale or lease of another employer or an acquisition of assets. Basically, this is a technical amendment to correct some oversights in the committee amendment. Thank you. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening of AM2026 to the Revenue Committee amendment, AM1930. Members requesting to speak: Senator Mello, followed by Senator Hadley, Senator Lautenbaugh, and Senator White. Senator Mello, you're recognized. [LB1081]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I'd like to thank Senator Cornett for introducing LB1081, my priority bill, and I rise in support of the committee amendment, AM1930. I prioritized LB1081 for a simple concept that can be summed up in one word--jobs. Jobs are what LB1081 is all about. If adopted, LB1081 will provide over 1,000 new jobs in Nebraska over the next 12 months. In an economy where the national unemployment rate is over 9 percent and our local state rate is at 4.6 percent, the time is now to work in cooperation with our local businesses to spur economic development in our cities and in parts of our state where job losses sting even harder--our smaller counties and our high poverty areas. Just since January of this year, 607 more Nebraskans have become unemployed. The loss of jobs in Omaha and Lincoln hurts, but in our rural counties, a job that pays \$9 to \$14 a hour can allow Nebraska residents to continue working and providing for their families and help keep Nebraska companies to remain open for business. We're compelled to work cooperatively with businesses that have the technology to provide good jobs not only in Omaha and Lincoln but across the state. West Corporation has a program that I had the opportunity to observe last summer with a group of our colleagues at their headquarters in Omaha. West has provided us with an opportunity to expand its program and spread these jobs across the state. These jobs could benefit a mother returning to the work force in my district or an unemployed worker in Scotts Bluff County. This legislation creates jobs and Nebraskans who will fill these jobs will be able to do so from their homes on a schedule that fits their lifestyle and their family demands. One of the additional benefits of LB1081 is that it does not require the use of General Fund dollars. The job training funds that are already appropriated at the Department of Economic Development will be utilized for this purpose instead. The dollars that these jobs will generate will benefit the community at large and will be spent on groceries, gas, and many other goods in the community. This will provide an immediate boost to our local economies. In addition, I'm told by West officials that for every 125 of these new jobs

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

Floor Debate  
March 10, 2010

---

we'll create and drive \$1 million in new payroll. That means when these 1,000 new jobs are up and running, we will be driving an additional \$8 million in payroll by this time next year. As I mentioned before, I visited West Corporation's headquarters during the interim and was very excited by what I had learned. I truly believe that this program is the future of high-tech jobs, not just for one part of Nebraska but for all of Nebraska, and I urge you to support both AM2026 and AM1930, the Revenue Committee amendment, and move it to Select File. Thank you, Mr. President. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Hadley, you're recognized. [LB1081]

SENATOR HADLEY: Mr. President and members of the body, good afternoon. I rise in support of both amendments and LB1081. I want to thank Senator Cornett for bringing the bill and I want to thank Senator Mello for prioritizing it. I think this is a very important bill. These are the kind of jobs that can be done anyplace in the United States, they can be done anyplace in the world. When we talked to the West company about this, when they came and interviewed...or, I'm sorry, when they came for the hearing, they talked about the fact that they have more applicants for these jobs than they have jobs because they have the ability to use people from all over the United States. I think this bill does a great job at getting West company and other companies like the West company to use the workers in Nebraska. Some of the things that have been talked about I want to reiterate and try and put them in plain language that a school teacher from Kearney can understand. First, the pay: you know, it would be great to get nothing but \$60,000 and \$70,000 and \$80,000 a year jobs, but you know for a lot of people \$10, \$12, \$14, \$15 a year...an hour jobs that they can do at home are really important because a job that you can do at home cuts down on your other expenses. It cuts down on the time that you have to travel to a job. It cuts down on the gas you use. It cuts down on the clothing that you might have to buy. So there is a lot of expenses that are saved by being able to work at your home. I think for most of these positions the hours are very flexible. That means the stay-at-home parent can work around the children, can work around the spouse. And so it's important that we have these kinds of jobs. My understanding, a lot of these jobs are in-bound jobs, meaning that they're answering calls and questions about different companies from around the world. Again, I stand in support of this. This is something that if we don't do it in Nebraska some other state is going to do this and the 1,000 jobs we're talking about will go someplace else. I think it's important that you vote for both amendments and you vote for LB1081. With that, I would yield any remaining time to Senator Cornett, if she wishes it. [LB1081]

PRESIDENT SHEEHY: Senator Cornett, you're yielded 2 minutes 25 seconds. [LB1081]

SENATOR CORNETT: Thank you very much, Senator Hadley. I think Senator Hadley summed it up, pretty much what I was going to say. I have my light on. These are jobs that we are targeting in the rural area and in the area where people may be less likely to

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

Floor Debate  
March 10, 2010

---

have transportation to work or be unable to afford transportation to work or day care. In the rural areas, people have to drive sometimes 25-30 miles at least for a job, and if it pays the same amount as these jobs do, they are way ahead by being able to stay home and work. People have expressed concerns about the entry level being at minimum wage. The people are allowed to pick what time slots they work. Yes, they can pick a time slot that pays minimum wage but, if they choose, they can also pick a time slot that pays \$14 or \$15 an hour, which is not bad money at all for rural areas or for people that are in poverty areas. I would urge the body's support of the amendment and the underlying bill, and thank you for your time. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Thank you, Senator Cornett. Senator Lautenbaugh, you're recognized. [LB1081]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of this bill and the various amendments. I think this is the kind of smart, forward-looking type of thing we need to do in this environment to bring jobs to rural Nebraska, keep jobs elsewhere in Nebraska, and I won't belabor the point. I'll yield the rest of my time to Senator Mello, if he'd like it, but I do support this bill. And he's on the phone so he doesn't know I'm yielding him time but...and so I'll talk a little more. Really, I guess that's all I have to say so I'll go ahead and yield my time to Senator Mello, but I do support this bill and the amendments. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Mello, you're yielded 4 minutes 20 seconds. [LB1081]

SENATOR MELLO: Thank you, Mr. President. Thank you, Senator Lautenbaugh. Senator McCoy and myself were just having a conversation about the bill and I'm sorry I wasn't able to get you right off the bat. I think, without wanting to speak too much in trying to overkill a bill, I think what Senator Hadley mentioned, as well as what Senator Cornett alluded to with his yielded time, is that these are jobs that right now are currently not in our state. These are new jobs that are going to be available to Nebraskans from multiple counties, as well as high-poverty areas both in Omaha and Lincoln, that right now while, yes, there is a...the issue has been brought forward to me and I think Senator Cornett as well regarding the starting training wage, once again, these jobs have an opportunity to grow in wage depending upon the individual campaign, calling campaign that the worker chooses to engage in, as well as that worker's schedule. But once again, the most important aspect is that we're creating or look to create new jobs that are family friendly and in an ever-changing economy where family demands, whether it's childcare, whether it's education, whether it's transportation concerns, these are exactly the kind of jobs that we need more of in this state that would allow working Nebraskans to be able to balance that fine line between family and work. I think it's something that will be done under both the committee amendment and the underlying AM2026. I appreciate Senator Lautenbaugh's time.

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

Floor Debate  
March 10, 2010

---

Thank you, Mr. President. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Mello. Thank you, Senator Lautenbaugh. Senator White, you're recognized. [LB1081]

SENATOR WHITE: Thank you, Mr. President. I was wondering if Senator Cornett would have a little conversation with me. [LB1081]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator White? [LB1081]

SENATOR CORNETT: I'd be happy to. [LB1081]

SENATOR WHITE: Is this the kind of bill that will help bring jobs to, let's say, District 22, Senator Stuthman's district? [LB1081]

SENATOR CORNETT: Yes. [LB1081]

SENATOR WHITE: And it actually is finally actually coming through on the promise of the Internet, that jobs won't be dependent on where you are located or in your town but brings the entire economy to wherever you happen to make your home. [LB1081]

SENATOR CORNETT: Yes, it is. [LB1081]

SENATOR WHITE: And on that I do want everyone to know I fully support this. We had hoped and talked for decade or more in this state about the plight of rural Nebraska and lack of jobs and we hoped that the Internet would change that equation. This is the clearest indication that it may in fact turn it around. Thank you for your courtesy. I yield the rest of my time to Senator Cornett. [LB1081]

PRESIDENT SHEEHY: Senator Cornett, you're yielded 4 minutes. [LB1081]

SENATOR CORNETT: Thank you, Senator White. I wanted to stress that we did target this for rural populations and populations with higher levels of poverty because these are the people that most need jobs and most need to be able to work from home. When this idea came before the Revenue Committee my first year, it was kind of pushed to the back burner or to the side--oh, people don't need to work from home. And my argument at the time six years ago was when my, you know, a lot of women want to stay home with their children but they can't afford to do so, but they're put in the position where they can't afford to go to work either because of the cost of day care and that if we incentivize people to work from their home that they could work around their schedules and actually continue to support their family without having to pay the cost of day care and transportation and not have that separation that a lot of particularly new mothers feel. This bill finally has seen the light of day and I appreciate everyone's

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

Floor Debate  
March 10, 2010

---

support on it. Thank you. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Thank you, Senator White. Senator Carlson, you're recognized. [LB1081]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address some questions to Senator Cornett, if she would yield. [LB1081]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Carlson? [LB1081]

SENATOR CORNETT: I'd be happy to. [LB1081]

SENATOR CARLSON: And, Senator Cornett, I certainly am in support of LB1081 and the amendments, so your answers to my questions won't change that. What kind of skills are required for these jobs? [LB1081]

SENATOR CORNETT: They require basic computer literacy, they have to...but they're trained on the majority. They have to have their own computer. Part of it is we wanted to make sure that they would not be required to purchase any equipment to attain these jobs. So they already have to have the capability of accessing the Internet and they have to have a basic understanding of how a computer operates. Beyond that, we will train them. And they do have to pass a criminal background check, if the company requires it. [LB1081]

SENATOR CARLSON: Okay. Now there's been mention about flexible hours and the salary for these hours, anywhere from \$8 to \$15. What makes the difference? [LB1081]

SENATOR CORNETT: Well, basically if...and this is the way it was described to me and I actually called one of the companies that uses this service through West and it's called ProFlowers. It was explained to me that on holidays they pay a higher rate. If it's overnights, because these are 24-hour-a-day, in-bound only phone calls, that they pay a higher rate depending on which shift you pick. If you want to work during the daytime, during a specific block, it may pay less than if you want to work in the evening, and your highest one will probably be overnight for like a shift differential. But holidays, weekends, overnights have the higher pay generally. [LB1081]

SENATOR CARLSON: Okay. Thank you. How many hours would be possible for the typical employee? [LB1081]

SENATOR CORNETT: The average is about 20 hours a week and that's about what the company has found they want to work. They can work more than that if they choose to, but the average is about 20 hours. [LB1081]

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

Floor Debate  
March 10, 2010

---

SENATOR CARLSON: Could they become full-time if they wanted to? [LB1081]

SENATOR CORNETT: I do not believe so. [LB1081]

SENATOR CARLSON: Okay, so... [LB1081]

SENATOR CORNETT: I do not believe like 40 hours a week. I think they...I would have to look into that but they would not be considered a full-time employee. [LB1081]

SENATOR CARLSON: Okay, and I figured that might be the case so, therefore, benefits don't enter the picture at any point. [LB1081]

SENATOR CORNETT: Correct. [LB1081]

SENATOR CARLSON: Okay. Well, another thing, and you know this because it's been so far back for me I don't know what's...if we had a mother that had some children at home and worked out of the home instead of hiring a baby-sitter, what's the typical baby-sitter's fee today? [LB1081]

SENATOR CORNETT: Between my day care, right now I pay about \$1,200 a month in day care. [LB1081]

SENATOR CARLSON: What's that figure out to an hour? [LB1081]

SENATOR CORNETT: For three kids, probably about \$6 an hour, \$7 an hour. [LB1081]

SENATOR CARLSON: So an \$8...an \$8... [LB1081]

SENATOR CORNETT: And that's per child so I'd have to...most day care runs between...is either a set rate per day or per hour, and the per hour usually starts at around \$6 an hour per child. [LB1081]

SENATOR CARLSON: So an \$8 salary at home is worth \$14 or \$15. [LB1081]

SENATOR CORNETT: It's worth quite a bit. [LB1081]

SENATOR CARLSON: Okay. Thank you. Thank you, Senator Cornett. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Members requesting to speak on AM2026 to AM1930 are Senator McCoy, followed by Senator Council, and Senator Wightman. Senator McCoy, you're recognized. [LB1081]

SENATOR McCOY: Thank you, Mr. President and members. I stand in support of the

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

Floor Debate  
March 10, 2010

---

underlying amendments or the amendments and the underlying bill, LB1081, and I'd like to applaud Senator Cornett for introducing this legislation and also Senator Mello for prioritizing it. Senator Mello and I worked together on the newly put in place Planning Committee, and one of the things that we discuss at great length during our meetings is what can be done new and creatively to generate new jobs in Nebraska, particularly in our rural areas that are becoming more and more sparsely populated, as all of you well know. And I stand in support of this legislation. I think this is a great step forward to creating those new jobs, particularly in an economic time that we desperately need them as a state. And I would yield the remainder of my time to Senator Mello, if he would so wish it. [LB1081]

PRESIDENT SHEEHY: Senator Mello, you're yielded...Senator Mello waives. Senator Council, you're recognized. [LB1081]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise to state my support for any measure that is designed to improve the economic conditions of residents of the state of Nebraska, and one of the things that I wanted to point out in connection with LB1081, that LB1081 is just one of a couple of measures that have been introduced this year designed to address those issues where we find the greatest need, and the greatest need in the state currently is in our rural areas and in areas of high concentration of poverty. Now one of the aspects of LB1081 that could be very beneficial to residents in my district, as you know, who suffer among the highest rates of poverty not only in the state of Nebraska but the nation, are the issues surrounding childcare, transportation, and I think we do need to consider those expenses, avoided expenses by virtue of being able to work from one's home, because that had been a concern expressed by many who looked at it and saw what the wage rate was. But certainly I appreciate the fact that the committee, the sponsor, and the prioritizing senator has set out how these jobs can grow, how the wages can grow, and hopefully place this particular line of work in a position where we will, you know, ultimately see hundreds of these jobs being created in the state of Nebraska. But the other point that I wanted to make is that this is operating out of the Job Training Cash Fund. There is a subaccount of the Job Training Cash Fund and I just want to make sure that all of my colleagues are aware of that fact and appreciate that LB1081 does not deal or affect the subaccount. And I will ask Senator Cornett to yield to a question on that point, if you would. [LB1081]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Council? [LB1081]

SENATOR CORNETT: Yes. [LB1081]

SENATOR COUNCIL: This LB1081 deals with the total Job Training Cash Fund, not the subaccount that's been routinely referred to as the rural advantage portion of the Job Training Cash Fund. [LB1081]

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

Floor Debate  
March 10, 2010

---

SENATOR CORNETT: Yes, with the amendments. And just to clarify, that subaccount is funded with the interest off the primary account. [LB1081]

SENATOR COUNCIL: And so there would be eligibility for accessing the subaccount if the job is created in a rural area or an area of high concentration of poverty? [LB1081]

SENATOR CORNETT: I believe so, yes. [LB1081]

SENATOR COUNCIL: Okay. [LB1081]

SENATOR CORNETT: It's supposed to be that way. I'd have to read the amendment again. (Laugh) [LB1081]

SENATOR COUNCIL: Okay, and I need to read the amendment again as well because Senator Schilz and I have been working diligently on a bill, LB961, which has been advanced from the committee and designated as a committee priority that deals with utilization of those subaccount Job Training Cash Funds for preemployment job training. And the opportunities with regard to the preemployment job training that would be permitted under LB961 is subject to the existing terms and conditions with regard to employer access... [LB1081 LB961]

PRESIDENT SHEEHY: One minute. [LB1081]

SENATOR COUNCIL: ...to those funds in terms of the types of jobs that must be created. They cannot be retail jobs. They have to be jobs that fit the definition of producing a product that's exportable, and it gauges and sets wages according to the local prevailing wage. And my final question to you, Senator Cornett: Do you see any conflict between LB1081 and LB961? [LB1081 LB961]

SENATOR CORNETT: No. [LB1081]

SENATOR COUNCIL: And I think that's important to note and I would hope that this bill passes and that we would have equal support for LB961 when it reaches the floor on General File. Thank you. [LB1081 LB961]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Wightman, you're recognized. [LB1081]

SENATOR WIGHTMAN: Thank you, Mr. President. I'll try to make mine short. I do rise in support of the bill and the amendment. I do have a couple of questions of Senator Cornett, if she would yield. [LB1081]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Wightman?

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

Floor Debate  
March 10, 2010

---

[LB1081]

SENATOR CORNETT: Yes. [LB1081]

SENATOR WIGHTMAN: Senator Cornett, when the bill started, it appears that it was 25,000 limitation and it was increased to 100,000. Is that correct? The green copy was counties less than 25,000. [LB1081]

SENATOR CORNETT: The green copy was pretty much completely gutted because it dealt with tax credits and had a fiscal note. We went back in and took the same idea that we had for being able to help with job training and looked at it from a different angle and went to the Job Training Fund to be able to do that so we would not have a fiscal note. [LB1081]

SENATOR WIGHTMAN: Thank you. At any rate, today it is counties under 100,000, is that correct, or...? [LB1081]

SENATOR CORNETT: It is counties for under 100,000 and/or areas with poverty... [LB1081]

SENATOR WIGHTMAN: So... [LB1081]

SENATOR CORNETT: ...and that's based on the census tracts. [LB1081]

SENATOR WIGHTMAN: So there are only three counties that are in excess of 100,000. They could have high...all of those could have high poverty areas within them. Is that right? [LB1081]

SENATOR CORNETT: Yes. Douglas County is 6.3 percent of the total population lives within...more than 30 percent live below the poverty line, and 19.9 percent of the total population live within the census tract of poverty. Lancaster is about 5.1 percent or a total of 28.1, and Sarpy County with about 10.8 percent. [LB1081]

SENATOR WIGHTMAN: Okay. Thank you. Thank you for those answers. I think it is a good bill and it is a good possibility that we can employ people. As Senator Carlson suggests, an effectively higher rate in that they will be able to save childcare expenses in many instances, and I think that will be a plus, so I think his figures could be right that it could be \$13, \$14, \$15 an hour effective rate if you compared it to working outside their home. So with that, thank you, Senator Cornett. Thank you, Mr. President. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Seeing no additional requests to speak, Senator Cornett, you're recognized to close on AM2026. [LB1081]

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

Floor Debate  
March 10, 2010

---

SENATOR CORNETT: I just want to remind the body that AM2026 is a technical amendment dealing with some grammatical and punctuation things that we needed to change. I would urge the body's support of that. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of AM2026 to AM1930. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1081]

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of the amendment to the committee amendments, Mr. President. [LB1081]

PRESIDENT SHEEHY: AM2026 is adopted. We will now return to floor discussion on AM1930. Seeing no requests to speak, Senator Cornett, you're recognized to close on the Revenue Committee amendment, AM1930. [LB1081]

SENATOR CORNETT: AM1930 rewrites the underlying bill and moves it from a tax credit to being funded out of the Job Training Fund. The intent of both the amendment and the underlying bill were to create jobs in Nebraska where we most need them. I would urge the body's support of AM1930 and the underlying bill, LB1081. [LB1081]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of the Revenue Committee amendment, AM1930, to LB1081. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1081]

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of committee amendments. [LB1081]

PRESIDENT SHEEHY: AM1930 is adopted. We will now return to floor discussion on LB1081. Seeing no requests to speak, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question before the body is on the advancement of LB1081. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1081]

ASSISTANT CLERK: 34 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB1081]

PRESIDENT SHEEHY: LB1081 advances. We will now proceed to LB948. [LB1081 LB948]

ASSISTANT CLERK: Mr. President, LB948 was introduced by Senator Avery. (Read title.) The bill was read for the first time on January 14, referred to the Government Committee, placed on General File with committee amendments attached. (AM1921,

Floor Debate  
March 10, 2010

---

Legislative Journal page 624.) [LB948]

PRESIDENT SHEEHY: Senator Avery, you're recognized to open on LB948. [LB948]

SENATOR AVERY: Thank you, Mr. President. LB948 came out of an interim study conducted by the Government, Military and Veterans Affairs Committee this past summer and the study looked at the competitive bidding statutes for the purchase of machinery and equipment by the state. The study included consideration of the total costs of ownership during the competitive bidding process. The total cost of ownership is sometimes referred to as life costing...or life-cycle costing. Life-cycle costing considers all of the owning and operating expenses throughout a machine's working life, including the initial purchase price, scheduled maintenance costs, repair costs, and resale value. Current law in the state of Nebraska governing state purchasing, which does include machinery among other items, provides that all purchases that require competitive bids are to be made to the lowest responsible bidder, taken into consideration the best interests of the state, the quality or performance of the property proposed to be supplied, its conformity with specifications, and the times of delivery. That is in current law. The law also outlines several other elements that are given consideration which includes the life costs of the property. LB948 expands the language of current law regarding life-costing. The bill provides that the Department of Administrative Services, in determining the lowest responsible bidder for purchases requiring competitive bids, will give consideration to the life-cycle costs of all classes of equipment, evidence of expected life and resale value, repair and maintenance costs, energy consumption including fuel on a per year basis. Let me repeat that. LB948 expands the language regarding life-costing mostly to say that the Department of Administrative Services will give consideration to life cost, life-cycle costing. The bill also requires bidders to provide data relating to life-cycle costs for heavy equipment, including but not limited to motor graders, wheel loaders, paving equipment, and backhoe loaders. Currently, DAS will consider information on life-cycle costing when it is furnished by the bidder. With this bill, bidders will be required to provide this information on life-cycle costs for heavy equipment. This bill, I believe, has the potential to save the state significant money over the life of machinery acquisitions. It also can be an important tool to help some Nebraska suppliers and will encourage purchases from within our own state. These, I think, are good reasons to advance this bill. I would tell you that during the public hearing on the bill we heard testimony that said that the state currently, when making these kinds of purchases, virtually always goes for the lowest bid. One testifier even suggested that the lowest bidders sometimes would trump consistency in meeting specifications. That sounded to me as unwise policy. Now life-cycle cost estimates are not routinely requested, nor are they routinely factored into decisions, and, in fact, most...many, I should say, of the bidders do not offer life-cycle cost information, so they are not part of the bid process for the most part. LB948, however, will require that this data be a part of the bids. It doesn't seem to me to be unreasonable to do this, nor is it too costly. Companies that resist doing this, I would

Floor Debate  
March 10, 2010

---

suggest, might not have full confidence in their ability to compete if they have to do so with life-cycle costing. The bill does not, and I emphasize does not, require the state to buy Nebraska; it does not require the state to elevate life cost...life-cycle cost estimates to the top of the list. It simply says that they must...it must be a part of the bid process and that they must give consideration to it. I see this as giving companies in Nebraska a fighting chance for the contract. So, in my mind, this bill is a double win for the state, saving the state money over the life of the product but also perhaps providing more business for some of Nebraska's companies. There is an amendment that I will talk to you about in a few minutes that I believe will answer some of the questions that many of you might have. Certainly it deals with the implement dealers that have raised some issues. Let me thank Senator Scott Price for selecting this as his priority bill. And with that, I will stop and answer questions as needed throughout the course of the discussion. Thank you, Mr. President. [LB948]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening to LB948. As was noted, there is a Government, Military and Veterans Affairs Committee amendment, AM1921. Senator Avery, you're recognized to open. [LB948]

SENATOR AVERY: Thank you, Mr. President. This amendment, AM1921, makes three changes to the original bill. First change eliminates the phrase "but not limited to" in the definition of heavy equipment. That's important because this is...this means that the implement dealers will not be included. With this change it clarifies the definition of heavy equipment, including those things listed in the bill itself and it does not go beyond that. Second change requires the Materiel Division to consider the data relating to life-cycle costing provided by the bidders on heavy equipment to ensure that a responsible purchase is made by the state. This is to reemphasize the importance of life-cycle costing material being a part of the bid and it is to reemphasize our intent that the state look seriously at this information. The final change removes resale value from the list of items to be given consideration in life-cycle costing. Resale value is being removed from this bill because the state uses the state auction process to sell used equipment and this term is not needed. The committee advanced the bill as amended on a 7 to 0 vote with 1 member being absent. This amendment, I believe, is important and necessary and I would urge you to adopt it. Thank you, Mr. President. [LB948]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the opening to AM1921 to LB948. Members requesting to speak are Senator Fulton, followed by Senator Stuthman, Senator Langemeier, Senator Campbell, and others. Senator Fulton, you're recognized. [LB948]

SENATOR FULTON: Thank you, Mr. President, members of the body. I've taken a little interest in this because I used to bid these large projects where we'd have to provide our own life-cycle analysis as part of a public bid opening. To that end, I'd like to see if Senator Avery would yield to a question. [LB948]

Floor Debate  
March 10, 2010

---

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Fulton? [LB948]

SENATOR AVERY: I will. [LB948]

SENATOR FULTON: Senator, can you tell us what the practice is presently? Is it that companies are not providing life-cycle cost analysis? [LB948]

SENATOR AVERY: Some companies are but most do not, and the department is under no obligation to ask for that information, nor are they under any obligation to take it into consideration. [LB948]

SENATOR FULTON: Does the department take it into consider...does the department look at life-cycle costs presently? [LB948]

SENATOR AVERY: They may do so if the information is provided, according to current law. [LB948]

SENATOR FULTON: Okay. Would this be...explain to me, are we making...we're putting this forward in statute so it becomes mandatory. Are we saying that it becomes mandatory that the decisions made in a purchase are based on the life-cycle cost analysis? [LB948]

SENATOR AVERY: No. What we're saying is that the DAS must take it into account in deciding the most responsible bid. [LB948]

SENATOR FULTON: Okay. [LB948]

SENATOR AVERY: It's toughening up the language a little bit, Senator Fulton. [LB948]

SENATOR FULTON: Okay. I have not had...I'm going to look at the existing statute as it relates to how life-cycle analyses are done. I can tell you though, in my own experience, that how one calculates what the life cycle...what the future value of a project is based on its life cycle, how that gets calculated is we...it's numbers, and I can make my product...the product we used to sell is large, big, multimillion-dollar projects and you can make that life-cycle cost come out in order to win a bid. Now I'm saying that for the private sector. I don't know if that's the case. If we have a very tight bid specification requirement in the statute, perhaps that's not what happens. But that we ask for a life-cycle cost analysis does not mean that one is as good as the next. The bidder who brings forward his bid can dress up the life-cycle cost analysis in such a way as to give him a favorable reflection. Now if I'm hearing this correctly, that is not necessarily any different than what occurs today. This bill, I think Senator Avery is saying, simply requires that the life-cycle cost analysis be considered, but I think it's important to point

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

Floor Debate  
March 10, 2010

---

out that one is not necessarily as good as the next. So I don't have any more to add on this until I've looked at the statute and how we actually statutorily require these life-cycle cost analyses, but it's something we need to be aware of. So thank you, Mr. President. [LB948]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Stuthman, you're recognized. [LB948]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I have developed a little interest in this bill and I would like to ask a question of Senator Avery. [LB948]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Stuthman? [LB948]

SENATOR AVERY: I will. [LB948]

SENATOR STUTHMAN: Senator Avery, does this bill only deal with the state purchasing equipment or does it also deal with counties purchasing equipment too? [LB948]

SENATOR AVERY: This is...deals only with the state. [LB948]

SENATOR STUTHMAN: This only deals with the state. [LB948]

SENATOR AVERY: That is correct. [LB948]

SENATOR STUTHMAN: So it...it doesn't involve any county purchases of heavy equipment or anything like that. [LB948]

SENATOR AVERY: No. Senator, it's my understanding that counties do this, that most counties...at least many counties already do life-cycle costing. [LB948]

SENATOR STUTHMAN: Well, this could be a possibility, but in my experience, and the reason I've developed an interest in this bill is because of the fact that the bidder, the individual with the equipment trying to sell the equipment, you know, it states in there the bidder too is required to provide the data. What we did in the county where I came from when we bought equipment like that, we kept the information on all of the equipment that we owned in the county as far as how many gallons of fuel it used, how many hours are put on, how much maintenance cost was that. And we had that information and that is how we determined what equipment to purchase. We, you know, we would not necessarily use the low bid and we maybe wouldn't necessarily use the high bid, but we utilized that information. But that information was acquired by our own employees. I just have a real fear in the fact that, you know, the one that is selling the

Floor Debate  
March 10, 2010

---

equipment giving the data of their perfection equipment that they're trying to sell is going to be a little bit skewed for the fact that, you know, nothing is going to happen to that piece of equipment. Also, the life-cycle cost is an issue that we dealt with in our county, but depending upon the operator of that piece of equipment made one heck of a lot of difference in the repair bill, in the repair costs, in the amount of fuel used in that piece of equipment. You know, some of the equipment lasted, you know, 10,000 hours with very little maintenance, depending upon the operator of that piece of equipment. In our operation at home, you know, the first tractor that my dad purchased in 1949, I still have that tractor. The first tractor that I purchased new in 1972, I still have that tractor. It's on the feed wagon every morning and every night. It depends upon how you handle the equipment. That is the issue, in my opinion, that you can...a company that is putting a bid in for a piece of equipment can put any type of figure on that. But depending upon the operator of how he utilized that equipment, how abusive he is to that equipment...I've seen equipment that is set in the shop every other day until the operator was relieved of his duty. And this needs to be taken into consideration also. You know, that is some of the...those are some of the issues that I am really concerned about. I feel that the state should have enough past history on their equipment, as far as the maintenance, the daily cost of it, fuel cost, the hours. I think they should have that information and rely on that information instead of the information given to them... [LB948]

PRESIDENT SHEEHY: One minute. [LB948]

SENATOR STUTHMAN: ...by the manufacturer of a piece of equipment. They can put anything they want to down on a piece of paper and say this Caterpillar or this dirt mover will perform like this. It may, but it may not. Those are the issues that I have. I would sooner see the fact that the purchaser that's letting out for bids for equipment would have their in-house information on the different types of equipment that they presently have and what it costs them as far as maintenance is concerned, daily cost, and longevity and life cycle, and they should be able to make the decision on to what piece of equipment to buy. Thank you, Mr. President. [LB948]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. (Visitors introduced.) Continuing with floor discussion of AM1921 to LB948, members requesting to speak are Senator Campbell, followed by Senator Price, Senator McCoy, Senator Langemeier, Senator Krist, and others. Senator Campbell, you're recognized. [LB948]

SENATOR CAMPBELL: Thank you, Mr. President, and good afternoon, colleagues. One of the first things that I learned when I became a county commissioner is how much county commissioners like to talk about equipment, and so I really enjoyed Senator Stuthman's comments and thought, oh, if I should follow him, I'm going to be talking about equipment too. But it was an item that we all had to learn about, whether we knew very much about equipment going into the job, and it was important to us to

Floor Debate  
March 10, 2010

---

look at life-cycle costs of equipment. And I agree with Senator Stuthman that your own data often forms a basis, but we used our own data to also cross-check and look at the information that we had on bids. The equipment is not the everyday equipment. In fact, I just checked with the county engineer and in Lancaster they are still using life-cycle costs but on equipment that's over \$200,000, so you're really talking large equipment, motor graders, in order to give you a basis of comparison. And I think we found that as you looked at companies and you said, provide data to us, that data just couldn't be anecdotal and, gee, we're the best and we last the longest and you've got the best resale value, but they would provide to us some of the data that they had in equipment with other counties or other areas. I think this is a particular piece of legislation and its amendment that could serve the state very well. Life-cycle costs are important to know when you buy that expensive of a piece of equipment and have it for that long, the data that you can use in the bids could give you valuable information. So the old county commissioners just love getting up and talking about equipment. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN PRESIDING

SENATOR WIGHTMAN: Thank you, Senator Campbell. Senator Price, you are next and you are recognized. [LB948]

SENATOR PRICE: Thank you, Mr. President and members of the body. Obviously, I rise in support of the bill and the amendments, as it is my priority designation on there, and I'd like to share with you for a few moments about acquisitions. For those people in the committee, I guess it's a rehash and they're probably going to groan a little bit, but the issue is, is that I had to do a lot of acquisitions and I did it for the government. I did it for the federal government. I understand the federal government is somewhat different than the state government, but I'd like to start the journey from the experience I have and we'll discuss it along the way. But first, I'd like for you to know that there is an executive order, Section 401 of Executive Order 13123, that requires agencies shall use life-cycle cost analysis in making decisions about investments in products, services, and construction, and other projects to lower the federal government's cost and to reduce energy and water consumption. And the reason I want to bring that forward is, what are we getting out of this? What is the goal? And the goal, the goal, and I would hope that every member here has somewhere in all their ideas and missions, the concept of stewardship. This truly is a bill that talks to stewardship--are we going to be good stewards of the taxpayers' dollars, particularly in these fiscally constrained times? Now we're going to probably hear a lot of debate and that's great. We get to work things out. But some of the debate will be about the inability or the unavailability of information, and what I'd like to tell you is in the committee we had a hearing and we had our own county individuals show up and they testified how they use this data right now to make their critical decisions. And what I found very interesting was I guess there is some highway allocations that are made to counties from the federal government or the highway

Floor Debate  
March 10, 2010

---

allocations, and particularly in years gone by, and it is a requirement that they maintain these data points that are within the life-cycle cost arena. So this data is already collected. It's already mandated to be collected. You don't get your funding at this point in time if you didn't do it. And we had people testify, say they use that data to make their next purchase. And let's say that piece of equipment they don't have data for, they call the county next to them. Now I would submit to you that the resources at the state level are at least as capable as all those fine people in our counties who are making these decisions and buying these large pieces of equipment that you don't buy every day. So I wanted to be sure that the body understood this, that when you hear testimony, I think the data is available. It's readily available. And I would contest if you were a salesperson and you were selling something and this one sale was an \$85,000 to \$150,000 piece of equipment and someone said, I need you to go out and do 15-20 minutes worth of background research to get these life-cycle costs, I'll bet you'd come up with it. I bet you if you want to make that \$85,000 sale you'd do it, because you probably don't sell a lot of them. If you go out and you look at an manufacturer, an OEM, original equipment manufacturer's Web site, or you ask them, they will tell you how much does it cost to put a grease fitting on or change the oil. This data is readily available and it goes again to stewardship. And you know, along the way we heard a lot of people talk and testify to us and they told us how they're doing it in other states, and I had a piece of paperwork sent around to everybody... [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR PRICE: Thank you. And I had a piece of paperwork packet sent to everybody, and it showed how another state did a bid that used life-cycle costs. What we're asking here is not something that is unattainable. It is not something that is burdensome. Does it take work? Sure. But do you want to go back to your constituents and say, well, stewardship wasn't as important? What we want to maintain a focus on here is the stewardship of our tax dollars and making sure that we're not doing anything that would be misrepresented as not being good stewardship and not taking care of the precious resources we have. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Price. Mr. Speaker, you are recognized for an announcement. [LB948]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. A quick note on the agenda: You'll note at 3:00 the agenda states that we are going to a motion made by the Appropriations Committee to suspend Rule 8, Section 5. That was to allow the Appropriations Committee a little extra time beyond the 40-day deadline when they have to submit their budget. I have good news for you and some people to acknowledge. The Appropriations Committee has completed their work in the committee on the budget. The Fiscal staff has worked tirelessly the last couple of days to get it in fine form, and the Bill Drafters upstairs have bent over backward to make sure this is

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

Floor Debate  
March 10, 2010

---

done in a timely manner. This is yet another example of folks in our branch working very hard to meet the mission and the rule, and that motion to suspend the rules is not necessary and will be stricken from the agenda and will not be taken up at 3:00. We'll continue on with debate on LB948. So again, that motion comes off. Thank you to the Appropriations Committee, the Fiscal Office, and the Bill Drafters. Thank you.

SENATOR WIGHTMAN: Thank you, Speaker Flood. Items for the record, Mr. Clerk? [LB948]

CLERK: Thank you, Mr. President. Business and Labor reports LB709 and LB925 and LB961 to General File with committee amendments attached. Enrollment and Review reports LB888A as correctly engrossed; LR295CA as correctly engrossed. And LR284CA and LB937A are reported to Select File. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 807-810.) [LB709 LB925 LB961 LB888A LR295CA LR284CA LB937A]

SENATOR WIGHTMAN: Thank you, Mr. Clerk. Next up, Senator McCoy, followed by Senator Krist, Senator Carlson, Senator Gay, Senator Fulton, Senator Hadley, and others. Senator McCoy, you are recognized. [LB948]

SENATOR McCOY: Thank you, Mr. President, members of the body. Would Senator Avery yield to a question? [LB948]

SENATOR AVERY: I will. [LB948]

SENATOR WIGHTMAN: Senator Avery, will you yield to a question from Senator McCoy? [LB948]

SENATOR AVERY: I will. [LB948]

SENATOR McCOY: Thank you, Senator Avery, and thank you for your interest in this issue. I think it's an important one. A question for you, if I could: As we talk about this issue, are independently verified life-cycle data costs available on all of the different types of heavy equipment that's listed in this legislation? [LB948]

SENATOR AVERY: You know, Senator McCoy, quite honestly, this is not a perfect science in determining the life-cycle costs. Manufacturers provide this information. I think you have to have some faith in the manufacturers, understanding that they're going to put the best face on their data that they can. Independent verification is possible when you do what Senator Stuthman was talking about, where the county maintains their own life-cycle cost records. That's what seems to me to be a very good way to provide a check on the numbers you get from the manufacturers. I would like to correct one comment that I made before. I said this only applies to the state. It mainly

Floor Debate  
March 10, 2010

---

applies to the state, but existing law says that other political subdivisions may use these procedures. I just want to clarify that. Thank you. [LB948]

SENATOR McCOY: Thank you, Senator Avery. And that actually was one of the things that I was going to address. If I could direct the members' attention to page 4 of the green copy of the bill, lines 1 and 2, current statute says that "All political subdivisions may follow the procurement principles set forth in this section if they are deemed applicable by the official authorized to make purchases for such political subdivision." So I think Senator Stuthman's question is particularly germane to this issue, that political subdivisions in the state can and a lot of them do follow the procurement strategies that are employed by the state, and certainly one of those that's in...be item (6) on line 10 of page 3 of your green copy is life-cycle cost. So I appreciate Senator Avery clarifying that point from earlier in the discussion. And I guess, if you wouldn't mind, Senator Avery, you had mentioned earlier, how would...in your opening comments, how would...I'm curious to know, maybe you could flush this out briefly and we can, as we continue this discussion, can go into this. But briefly, if you could, how would this provide additional benefit to Nebraska companies? [LB948]

SENATOR AVERY: Well, my understanding is that there are companies located in Nebraska that routinely lose out on the competitive bidding process because they have an additional cost at the point of purchase, but their argument is that they do a much better job over the long cycle or over the life of the product where the savings are, and if you take that into account then they would be more competitive. [LB948]

SENATOR McCOY: Do they...I'm curious, do they, in your words, lose out on these contracts to out-of-state companies or other in-state companies? Do you know? [LB948]

SENATOR AVERY: Probably both. I do...one thing that came up in the hearing, Senator McCoy, that I found rather compelling and that was the... [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR AVERY: ...charge that one testifier made that many times specifications are devalued and the lowest cost is elevated to the point where that sometimes the bid goes or the contract goes to a company that doesn't even meet the specifications because they had a low bid. [LB948]

SENATOR McCOY: Thank you, Senator Avery. I would think that, to follow up what Senator Stuthman mentioned earlier, is the reason that a lot of counties and other political subdivisions in our state use life-cycle cost data in their purchasing decisions is because it's already in state statute. Again, that's item (6) of page 3. So with that, thank you, Mr. President. [LB948]

Floor Debate  
March 10, 2010

---

SENATOR WIGHTMAN: Thank you, Senator McCoy. Senator Krist, you are recognized. [LB948]

SENATOR KRIST: Thank you, Chair and fellow colleagues. I am on the committee and I listened to the testimony. Many of you know I come from a different background and have some, again, federal experience in this area. And to coin a phrase, I guess, I would like to define what the definition of "is" is. Life-cycle cost can be applied to many different concepts. The existing life-cycle cost that we are currently using is, in the testimony that was presented to us and in my life experiences, are not the current state of art in the application of life-cycle costs. The definition of life-cycle cost is the sum of all recurring and one-time costs over the full life span or a specific period of good service, structure, or system. It includes purchase price, installation cost if applicable, operating cost, maintenance cost, upgrade cost, remaining and residual or resale or salvage cost. Now I will tell you in testimony that we were told at the state level that they don't consider maintenance cost because those were sunk fees. We have a motor pool. They fix the equipment. We don't consider that as part of life-cycle costs. Folks, that's lunacy. Maintenance, recurring maintenance, as Senator Stuthman eloquently put it, tracking how much you put into a piece of equipment, is essential to finding out if you are throwing good money after bad in a piece of equipment. I would contend that we're using the term "life-cycle cost" but we are not at a standard in the application of life-cycle cost that the industry can afford us. We heard over and over again that we couldn't take life-cycle costs that were provided by the manufacturer because they may be jaded or they may tip to advantage on a particular piece of equipment by a particular manufacturer. You don't do that. In today's standard in life-cycle costs you don't use the equipment manufacturer or the selling point; you use an independent source. We heard testimony from a gentleman who had been in the industry for over 35 years who was doing business in Missouri, in St. Louis area, and he said this is the industry standard, this is the Bible, we don't use company X or company Y, we use the comparative value of life-cycle cost that is established in industry standard. I think this bill is good. I think the amendment is good. I think it's a good first step to saving the state an incredible amount of money because it's not just a particular manufacturer's bill, as it's been referred to on many occasions. It's not just a particular manufacturer's bill. It is a bill across the board that will allow for a piece of equipment that will give us the best service at the best rate over the life span of the piece of equipment. That's what it's all about. And if we jade it and say that in the particular system that we're using right now that we're using the term "life-cycle cost" in the current industry standard, I would argue that not be the case. I don't want to pick on Senator Wallman but I would bet that his first vehicle and my first vehicle were light-years apart and that his life-cycle costs for the first one he bought and the one...first one that I bought were different considerations. It's the technical piece of equipment. It's how long you can use it. It's...and you heard the definition so... [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

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

Floor Debate  
March 10, 2010

---

SENATOR KRIST: ...I don't need to go back into it again. Thank you. Do we consider all of the values in life-cycle costs? I would argue not. Should we take this first step and try to save the state some money? Absolutely, and I'll give you one quick example. The United States government no longer buys the vehicles that they use. If you go to Offutt Air Force Base, every one of those are GSA lease approved vehicles. They save an incredible amount of money. It's proven. It's part of life-cycle costing, which we are not to that standard in the state. Thanks for your time. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Krist. Senator Carlson, you are recognized. [LB948]

SENATOR CARLSON: Mr. President and members of the Legislature. I would like to address a couple of questions to Senator Avery, if he would yield. [LB948]

SENATOR WIGHTMAN: Senator Avery, would you yield? [LB948]

SENATOR AVERY: I will. [LB948]

SENATOR CARLSON: Senator Avery, in the hearing, DAS opposed the bill. And why was that? [LB948]

SENATOR AVERY: Their argument was that this was unnecessary because they already do it and that they do not always take the lowest bid. And it is true, they do not always take the lowest bid, but we don't know why those bids didn't go to the lowest bidder. It could be that of the inability of the manufacturer to deliver on time or it could be that it didn't meet some other criterion that the state has. We didn't get that information. But I think that essentially that was the reason why they opposed it. [LB948]

SENATOR CARLSON: And in considering all that, that may have gotten down to not fitting into the lowest responsible bid maybe. [LB948]

SENATOR AVERY: That is true, it could be that, but the current law requires them to take into account a number of things and one of those is the ability of the provider to deliver the product on time. [LB948]

SENATOR CARLSON: Okay. Now I don't have any argument with this basic process. I do have a question, though. In statute, and you have to have the bidder provide life-cycle costs, what happens with a new product or a new company? [LB948]

SENATOR AVERY: That's a good question. I've been asked that many times and I did a little research. There are companies that provide software to help you in determining that life-cycle cost for your product, particularly if it's a new one. There are companies

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

Floor Debate  
March 10, 2010

---

also that will do this for you. I think, though, it's probably an expensive contract for a company that might do that. It's not impossible to make reasonable and good faith estimates about the life-cycle costs of a product. If your product is so new that you don't know if it's going to last ten days or ten years, then perhaps the state shouldn't be taking a look at that product until they get a better track record. [LB948]

SENATOR CARLSON: All right. I'm going to ask something else here. Senator Krist made an interesting comment: comparative value of life-cycle costs. And so we talk about this bill and this gets into statute and part of that process is evaluating the comparative value of life-cycle costs. To me, that still ends up fitting into the responsibility or the...to take the lowest responsible bidder, which takes some other things into effect. And so... [LB948]

SENATOR AVERY: Uh-huh. [LB948]

SENATOR CARLSON: ...would you agree that regardless of what's in statute here the final decision rests with the idea of lowest responsible bidder and we may end up throwing out what appears to be the best buy in terms of life-cycle costs? There still should remain that much leeway, I think, and would you agree that that's still there? [LB948]

SENATOR AVERY: I do... [LB948]

SENATOR CARLSON: Thank you. [LB948]

SENATOR AVERY: ...think it is still there. Thank you, Senator. [LB948]

SENATOR CARLSON: Thank you, Senator Avery. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Carlson. Senator Fulton, you are recognized. Is Senator Fulton here? Okay. [LB948]

SENATOR FULTON: Thank you, Mr. President. You're very accommodating today. Here's...I've had a chance to look through this a little bit more and here's my concern. We already have in the statute on page 3, (6), page 3, line 10. If you look at the green copy of your bill it says, "life-cycle costs of the personal property in relation to the purchase price and specific use of the item." Already exists in the statute. Line 19 on page 2, there's that word "shall" so "All purchases, leases, or contracts which by law are required to be based on competitive bids shall be made to the lowest responsible bidder, taking into consideration," etcetera, etcetera, etcetera, "(6) The life-cycle costs of the personal property in relation to the purchase price." So this is where my concern is. It already exists in the statute. By putting forward specificity in the law, identifying motor graders, wheel loaders, paving equipment, and backhoe loaders, etcetera, it

Floor Debate  
March 10, 2010

---

seems to me that we're providing deference toward those who sell these types of items. If that's the case, that's not what the law is for. Now, why did I get involved with this? Because I said earlier, I used to bid these projects. Not backhoe and paving equipment, etcetera, but projects that were for large power generation equipment. We bid them to municipalities and colleges and whatnot. And as part of the public bid requirement, we had to provide a low...our best bid, our price, and then whatever else we could provide in order to support that price. Oftentimes we would utilize a life-cycle cost analysis. And I can tell you from experience that the way that you present that life-cycle cost analysis is not uniform. In fact, the best engineers were the ones who could make their life-cycle costs analysis conform to reason and to the objective order while getting their number to be lowest. So how do we...we would be faced with a situation where we have one bidder who says \$10, another bidder who says \$5, but the one bidder who says \$10, in order for him to win the project, the only way he could win the project is to say, ah, but look at my life-cycle costs. And, of course, he's going to go to work to get his life-cycle costs to come out less than the bidder who bid \$5. That's the way this works. I'm saying this from...this is...now, it doesn't have to be just me saying it. That's the way this works. If we had an objective standard, either in the statute or in the bid documents or in the specification for the bid documents that said, this is how you shall calculate your life-cycle cost analysis, that would be better. But that's not the way the industry operates. Maybe I'm wrong. Maybe we have some specific objective guideline that all bidders have to utilize when calculating their life-cycle costs. But I can tell you that's not what occurred when I did this. So I'm left with the question, if we already have in the statute that life-cycle costs shall be considered, then why would we put it into the statute again with added specificity to these enumerated or these specific pieces of equipment? So I'm going to yield the rest of my time to Senator Avery. He's been listening. He's heard what I've said and I'll give him the opportunity to respond, Senator Avery. Mr. President, if I could yield to Senator Avery. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Fulton. Senator Avery, you have 1 minute and 1 second. [LB948]

SENATOR AVERY: Thank you, Mr. President and thank you, Senator Fulton. I want to commend Senator Fulton for reading the bill carefully. He is not wrong in what he said. Current law does specify exactly the points that he made. I would point out to you, though, that the problem that we're trying to fix does exist with respect to heavy equipment producers. It seems that the experience that we've had over the course of the years, many years with the state, is that particularly when it comes to heavy equipment, there is a tendency for the DAS to go with the lowest bid without giving much emphasis to life-cycle costs. Now, what we're trying to do here is to tighten that language or you might even say we're broadening the language a bit, but we're being more...certainly being more specific with respect to... [LB948]

SENATOR WIGHTMAN: Time. [LB948]

Floor Debate  
March 10, 2010

---

SENATOR AVERY: ...listing the types of equipment and we're asking or requiring the state to take it into account, not just go for the lowest bid when it comes to these particular items. [LB948]

SENATOR WIGHTMAN: Time. [LB948]

SENATOR AVERY: Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Fulton, Senator Avery. Senator Hadley, you're recognized. [LB948]

SENATOR HADLEY: Mr. President and members of the body, I stand in favor of the amendment and the underlying bill. One of the problems that I think we've seen the last few years in business and industry, financial markets and such as that, is that we've had a real emphasis on short-term results to the detriment of long-term results. We've had managers, executives rewarded by making short-term decisions that ultimately are not the best from the long-term standpoint. So I'm always concerned when we start using low bids and such as that when we use only purchase price. Earlier it was a talk about a product for \$10 versus \$5. A lot of times if we reward people by saying, oh, yes, we want you to buy the \$5 product because it saves \$5. It's a short-term concept. But I think life-cycle costing actually says, let's take a look at the long term and try to figure out what is best in the long term and to make sure that we reward people making decisions based on long-term consequences, just not short-term consequences. Why do we use life-cycle costing? Well, because there are many different perspectives when people look at things. You have a project engineer who wants to minimize capital costs. You have maintenance engineering who want to minimize repair hours. Production wants to maximize uptime hours. Reliable engineering wants to avoid failures as the only criteria. Your accounting department wants to maximize present value. The citizens of the state want us to decrease taxes by decreasing spending. So we have all of these different areas concerned about the item we purchase. So we need to have a system that allows us to bring that together. I would argue that most successful businesses use life-cycle costing. I have to admit, I did have a previous life where I did teach some accounting. We taught this all the time. We taught capital budgeting, we talked about capital...we talked about net present value of cash flows of the future. That's how we made decisions about which product to purchase. And I'm going to argue that the people in our DAS are smart enough to figure out the appropriate cost to use. And you know what, if they have a manufacturer or an agent or a dealer who kind of takes it to them once, I think they have a long memory. I don't think you're going to find that they're going to believe that person the second time. It's like anytime we deal with each other in here. You can get by fibbing to a person once but you can't do it the second time. I think that's what will happen here. So I stand in favor of the underlying amendment and the bill. I think this is good business. I think it's good to have this in statute, and I think it will

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

Floor Debate  
March 10, 2010

---

ultimately save money for the state of Nebraska. Thank you. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Avery, or excuse me, Senator Hadley. Senator Avery, you're recognized. [LB948]

SENATOR AVERY: I'm up? Thank you, Mr. President. You caught me napping there. I would like to answer again the point made about what counties do and what the state does. If you refer to state statute under county governments and officers, Section 23 of our law, Section 23-3110 deals with competitive bidding. Counties actually have in statute essentially the same thing that we're talking about here. They take into account life-cycle costing and I don't see that what we are proposing here would have any significant impact on counties. They may adopt the same procedures as we're proposing. They would not be required to do that, but my guess is that they would want to. The point here is that we have the potential and the opportunity to save the state some money over the life of these products. What we're trying to do with this bill is simply to try to give a particular class of manufacturers a fighting chance. They have by repeated experience found that life-cycle costing that did a pretty good job of...put their products in good light didn't seem to matter much to DAS because of the repeated bids going to the lowest bid rather than looking at these other factors. Now again, we're not saying that DAS can't do it any other way. We're saying that, number one, they must have the information and they must take it into account. We're not saying that if you don't use that as your sole criterion that you're going to be in violation of the law. That's not what we're doing at all. We're saying that the bidders must provide the information and that the state must take it into account. That does not mean that the lowest bidder will not win out because they'll also be providing life-cycle costing. This seems to me to be, as Senator Scott Price said, a question of stewardship. What is our proper role as state senators? Our role as state senators is to protect taxpayers, to protect the resources of the state, to give every opportunity to our Nebraska businesses to compete on an equal basis with other companies, and to give the taxpayers the opportunity to get the best value for every purchase made. I believe this bill will help do that. We're talking about whole life cost. The total cost of ownership over the life of an asset, sometimes referred to as cradle-to-the-grave costing or womb-to-the-tomb costing. But this is sound business practice. It is sound practice for the state of Nebraska. I believe that current law does not do quite the job that we would like for it to do. It does not specify heavy equipment. That's where the complaints are coming, from the heavy equipment producers. And this is where the problem exists. And I'll go back to that testimony that we had in committee. I was stunned... [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR AVERY: ...when one of the suppliers said that they had observed lowest bidder winning out in many of these contracts even when they didn't meet the specifications. I think that's alarming. So I think that you ought to pass this amendment

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

Floor Debate  
March 10, 2010

---

and the underlying bill. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Avery. Next is Senator Price followed by Senator McCoy, Senator Stuthman, and Senator Langemeier. Senator Price, you are recognized. [LB948]

SENATOR PRICE: Thank you, Mr. President and members of the body. This is a...can be a dry subject for many people and I can understand as you're listening with one ear about this. But I'm listening to some of the questions being brought about and some of the things and it made me wonder. One of the things they talk about something we call IVV, independent verified data, and this independent verified data, this is information that you go to another source. Let's say your car gets...you go to the dealer and the car...and the dealer says you get 30 miles to the gallon but if you go to EPA, EPA may say you get 28 miles to the gallon. What happens is, you went to an independent source and you got that information. Well, the requirement for the independently verified information is not statutory. That's an interoffice process, for one. For two, we heard it said that, well, a bidder might not have that information or what is a life-cycle cost. Ladies and gentlemen, the life-cycle cost can be as simple as the maintenance schedule provided with the equipment. So if you buy a brand new \$200,000 piece of equipment and you are a government agent, I should hope you got a maintenance book for it and that you understand there's a maintenance schedule for it. And that, you know, you have to change oil at 5,000 miles, and you have to do the belts at this time. We're not asking for the most complex pieces of material that you would use for a nuclear power plant or something like that. What we're talking about are graders and tractors and loaders. We're talking about a first step. So again, the question that we can't get this data or it's not independently verified, well, independently verified is self-limiting in and of itself. Second, it can be gotten because you can get it from another source, all the other counties. That's what they do now. I mean, we already have one element of government doing it so I submit that you can do that. And Senator Fulton, again, I do, just as Senator Avery said, appreciate him being very careful in his reading. I mean, he talked about the bid specifications and he's absolutely correct. Ladies and gentlemen, in acquisitions, the way I should see that it would be going and then Senator Krist may be able to weigh in on it, but you have to have a requirement. What do I need? And then a department has a need and then you say...let's go, Department of Roads, I have a need. And then you have to have that need validated. Do you really need it? The people who control the department, they're going to say, yes, we need this piece of equipment. So you have a validated need. The next thing you should be doing as you go to your acquisition professional or your buyer is there should be a market survey. Does the piece of equipment I need, and we've validated that we need, does it exist? And you should go out to industry and ask industry what are the best practices for this equipment? All of this should be done well before you let the RFP and RFQ. The playing ground should be well set before you do this. You should tell them what you're expecting. And I would submit and challenge that any salesman worth their salt will be

Floor Debate  
March 10, 2010

---

able to find the data that is readily available from the OEMs, the equipment manufacturers. They will be able to go to industry trade magazines and find this information. They will be able to put it into a format. And if you look at the package I sent around where we saw it was in a format so that leaves less massaging of data. You know, Senator Fulton was correct, you know, you can get what you want out of figures if you just let them be figures. But if you give them a template, I want to know at 5,000 miles, I want to know at 10 fittings, the belts' costs, the oil costs, the labor costs. Taking into consideration the warranty. You can put all that as an element of the acquisition. Then the bidders can fill it out. But right now, what we have, as I interpret the current regulations, we have a shall consider. That's kind of like a jumbo shrimp. Can someone help me with a shall consider? I will look at maybe. [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR PRICE: So what we're trying to say is, that shall consider shall become more of a shall. And what we're...thank you, Mr. President. And what I'm also saying here is we have to move forward in our acquisition model and the maturation of that model. We met with DAS. We've talked with them. We were working...we want to move forward in the interim and other things but we also know it's important right now. Right now when we buy equipment, we have to be careful to buy the best. Do you want to buy a piece of equipment that costs you twice as much? If the tool you use puts food on the table, if it's the way you make your living, are you going to buy something that costs you more to own it than it will earn for you? That's the question before us today. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Price. Senator McCoy, you're recognized. [LB948]

SENATOR McCOY: Thank you, Mr. President. I just handed out to you a spreadsheet of information that I requested from the Department of Administrative Services on some of the most recent heavy equipment purchases by the state. I think if, members, if you take a moment to study this information you'll find it very enlightening I hope. I certainly did. What you'll discover on it is that Department of Administrative Services is currently procuring heavy equipment using life-cycle data which is currently in statute, of course, as we've already said. Past Legislatures have obviously found that of value. And this data that I provided to you shows you that in these...some of these most recent heavy equipment purchases actually not once were these contracts awarded to the lowest bidder. I find as I study the green copy of the bill in current statute that it would certainly appear that the department purchased these items of equipment as the statute directed them to do. And that's using life-cycle cost data. If you go through each one of these pieces of equipment, there's six individual pieces of equipment here, and again not one of them went to the lowest bidder, would certainly appear that as the statute directs they were awarded to the lowest responsible bidder. I think that's an important point to make.

Floor Debate  
March 10, 2010

---

I think another point that should be made at this particular juncture of the discussion is that I would doubt that there is a one of us here in the body that would disagree that life-cycle data is important. It's already in statute as it's been said. I think what is important to note is that independently verified life-cycle data is not available all of the time in all pieces of heavy equipment. Some of them have very specialized uses as you can see from the data I provided to you--all the way from a vibratory roller to rubber tire excavator. There are a number of different specialized pieces of equipment that the state needs to buy from time to time. They have very specialized purposes And as Senator Price mentioned, with automobiles you can go to EPA. The EPA is an independent source to determine miles per gallon. There does not currently exist to my knowledge in the research that I've done, an agency or an organization or a way to obtain independently verified data. So as it's listed in statute with the 11 different steps that have to be gone through by the department in purchasing equipment, life-cycle data costing is a very important one, but it's one of those 11 steps, thresholds, hurdles, whatever you will that have to be gone through in order for a purchase to be made. And I find it very important that we look at how to help Nebraska companies. I think we just got done talking about a bill, LB1081, that had to do with, hopefully, creating jobs in Nebraska, bringing jobs to Nebraska. Certainly, I very much value... [LB948 LB1081]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR McCOY: ...not only the companies here in Nebraska primarily, but across the country that provide jobs to our state. I have constituents in my district that brought concerns about this legislation to me in the last few weeks and as I started to look into it, I began to understand a little bit of what their concerns were. And I find this data that I asked the department for, that again I passed out to you, to be very enlightening in this discussion. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator McCoy. Senator Stuthman, followed by Senator Langemeier. Senator Stuthman, you are recognized. [LB948]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I'm not going to take a lot of time this time in the debate. One thing that I wanted to get on the record was the fact that I have a constituent that builds heavy trailers that hauls heavy payloaders and stuff like that. And he builds them very, very strong. They're heavy duty. They're dual tandems. And the fact is, is he never has the opportunity to be rewarded the bid for his equipment on the Department of Roads bidding process. He claims to me, and this just comes from him, he says, you know, they are buying the lowest priced ones, the trailers that are, you know, not built as strong, and he says the majority of the trailers, according to him, he states that the fact is that they're in the pile of, you know, junk within a year. The frames are twisted. They're buckled. They're beat up. And this was an issue and because of this bill I've kind of taken an interest in it as far as, you know, the one purchasing the equipment should take that into consideration. But

Floor Debate  
March 10, 2010

---

according to my constituent they are not. They're just looking at buying the least cost equipment to haul their payloaders and equipment around for the Department of Roads. So I just wanted to surface the issue. Maybe I can direct some attention to the Department of Roads and hopefully I can get an answer back as to what is happening and why they are going with that type of a scenario to purchase equipment that, you know, the duration is very short-lived on that equipment. And hopefully that I can get an answer. Hopefully, this surfaces something. So that is all I have at the present time and I'd like to yield the balance of my time to Senator Price. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Stuthman. Senator Price you have 2 minutes and 57 seconds. [LB948]

SENATOR PRICE: Thank you, Mr. President and thank you very much, Senator Stuthman. Ladies and gentlemen, I was just now out in the hallway and I want to make sure we understand here, no way are we saying that DAS never does something that is foolhardy. Yes, they do. I would say they always make the most responsible bid because that's what they're told to do and I'm sure that they follow the law. We're just asking to have something included in that. I would also say that I doubt very often, if ever, because they would be in court forever if they were not following the tenets of the acquisition. Now, just was out there and I appreciate Senator McCoy going out and doing the legwork to find out how many bids have been done because obviously they're following the law. The law says that they'll do it and they are doing something. But here's an interesting thing. As you read through the bill and the requirement that a bidder in (9), I believe Section 3 there, says that if a bidder provides the life-cycle cost. So let's have a scenario. I have five bidders who are bidding on a contract and the requirement in the beginning stipulates life-cycle costs shall be provided and in this manner. Those five bidders bid and four of the bidders do not provide life-cycle costs. Only one bidder provides it. What will most likely happen is, that acquisition is cancelled. They withdraw it. They take it off the streets. Nobody gets it. Then they relet that bid and they take out the requirement for life-cycle cost to be provided. So on one hand we see lots and lots of bids where they consider life-cycle costs because they're not rescinding bids every day. [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR PRICE: Thank you. And on the other hand we say if we don't have enough people providing them, they pull it out to let it out and say that life-cycle costs do not rise to a level of need because a contractor says, I can't provide them. But again, life-cycle costs are merely and can be merely nothing more than the maintenance schedule provided by the manufacturer. So let's be clear here, ladies and gentlemen, life-cycle costs can be provided. If they're not, if there isn't enough for competition they throw it out, and it would be a requirement in the front, front-loaded, just as Senator Fulton said. Thank you, Mr. President. [LB948]

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

Floor Debate  
March 10, 2010

---

SENATOR WIGHTMAN: Thank you, Senator Price. Mr. Clerk. [LB948]

CLERK: Mr. President, I have an amendment to the committee amendment. Senator McCoy would move to amend with AM2131. (Legislative Journal page 810.) [LB948]

SENATOR WIGHTMAN: Senator McCoy, you're recognized to open on AM2131. [LB948]

SENATOR McCOY: Thank you, Mr. President. Colleagues, I offer to you this afternoon this amendment that may clarify a few things that I see as issues to the bill and to the underlying committee amendment. One of the things that you'll find in line 20 of page 2, it talks about starting, well in line, yes starting in line 20 that purchases need to be made "to the lowest possible bidder, taking into consideration the best interests of the state." And then you also see that it's talked about a responsible purchase needs to be made. I don't see anywhere in the committee amendment or the green copy of the original bill a definition of what a responsible purchase is. I've endeavored to try to determine that and I don't see where that is. I think this amendment may help clarify by using language that's already in existing statute that such a purchase, if we're to go down the road of advancing this legislation, that such a purchase will be made in the best interests of the state using language that's currently in statute rather than the, a responsible purchase, which does not have a definition of what that is. And in my mind leaves that up to an arbitrary determination of what such a responsible purchase would be since such a definition isn't outlined. The other item that's found in my amendment, AM2131, is again on page 1, line 3, of the bill, "shall" is struck and inserted "may." You know and I find this important to determine because there may be, and we talked about the value of which I believe in very much, the value of Nebraska companies and purchasing if possible, and if applicable, equipment from companies here in Nebraska. But when we require bidders to provide such data, especially if they may be a new company or a new model of equipment and such data isn't available, what I don't want to see have happen here is that we shut off business to newer companies or smaller companies that may not be able to produce this data. Such equipment might be of great value to the state of Nebraska and might provide a great cost-savings to taxpayers while at the same time may provide great life-cycle data outputs as well. But by using the word "shall" instead of "may" we relinquish that opportunity. And those companies may not be able to partake in these bids, in these contracts. And I think that's a definite concern. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator McCoy. Senator Langemeier, you're next and you're recognized. [LB948]

SENATOR LANGEMEIER: Mr. President, thank you, and members of the body. As I look around the room the interest for this bill is pretty null and void. I think there's more

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

Floor Debate  
March 10, 2010

---

lobbyists out there working this bill than there are people in the Chamber listening to the discussion. Senator Avery, would you yield to a question? [LB948]

SENATOR WIGHTMAN: Senator Avery, would you yield to a question from Senator Langemeier? [LB948]

SENATOR AVERY: Yes, I will. [LB948]

SENATOR LANGEMEIER: Senator Avery, as many of us are, we're having a tough time engaging in this. Senator Price mentioned it: It is not a real stellar topic before us. But you talked a little bit about in the start of your speech that this was an interim study offered by Government, Military and Veterans Affairs, is that correct? [LB948]

SENATOR AVERY: That's correct. [LB948]

SENATOR LANGEMEIER: How did that become an interim study to study just how we bid out heavy machinery and not anything else? [LB948]

SENATOR AVERY: Well, like most interim studies, somebody identifies a problem and they realized the problem needs study and there is not enough information available without the study and the request comes to a senator or to a committee and the decision is made either to go forward with the study or not. [LB948]

SENATOR LANGEMEIER: Okay. [LB948]

SENATOR AVERY: That's how this developed. [LB948]

SENATOR LANGEMEIER: Okay. And that request was brought to you? You introduced the interim study? [LB948]

SENATOR AVERY: It was brought to me. [LB948]

SENATOR LANGEMEIER: Okay. Thank you. And we've had a lot of good discussion here. We talk about this life-costing. That my understanding is that is determined by the manufacturer, correct? [LB948]

SENATOR AVERY: Well, the manufacturer usually determines the life-costing but Senator Stuthman made the point that in his county, the county actually keeps records and they determine life-costing as well. There are companies that do this for producers as well. [LB948]

SENATOR LANGEMEIER: Okay. And with that life-costing there's no warranty. We hold them not responsible for that data that they provide us at the end of a term when that

Floor Debate  
March 10, 2010

---

piece of equipment is ready to be sold or expired, there's no liability held back to those companies to actually guarantee that it was right? [LB948]

SENATOR AVERY: No, the warranty is standard, I think, like most warranties for a limited period of time. And there is no way that, currently, that you can go back and say, well, you missed your estimate by five months and therefore, you know, you're held liable. These are estimates for life-cycle costing. [LB948]

SENATOR LANGEMEIER: Okay. So life-cycle costs on a Caterpillar payloader, is that put on a particular piece of machinery based on how that piece of machinery was made or is it scheduled to how that piece of machinery is going to be used? [LB948]

SENATOR AVERY: It's based upon the evidence that a manufacturer has about that class of equipment. If it's a motor grader, they know how long you can go before you have to maintain, they know what the repair record is, they know what the fuel costs are, that kind of stuff. [LB948]

SENATOR LANGEMEIER: So...and the reason I'm questioning that, I had the opportunity to go to Kansas City Saturday and I watched one of these particular Cat payloaders digging out some pretty good rocks around the Kansas City speedway where they're going to build a building. And that thing was getting pretty heavy use compared to one used here in Nebraska to move dirt along I-80 as it clears out. Some extreme different uses there. So I'm curious if that life-cycle is the same. Now, here's my question with this bill and I really am kind of torn whether to support this or not. I think anytime you gather more information it's very important in the bidding process. But my concern is, is and Senator Stuthman brought it up earlier today is... [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR LANGEMEIER: ...thank you...when he talked about and I'm very familiar with the company he was talking about and the trailers. My concern is that this may be a deeper problem into the fact we're not bidding for the right type of equipment. If these trailers aren't lasting a year and they're getting torn up, are we not doing our job as a state in bidding for the right equipment making this a bigger issue than just the life-costing that is proposed in this bill? My concern is, is we may need to look at this in a little more light and I had hoped that you did an interim study we would have got to that point, but we didn't. My concern is, is with this change we start to try and drive our bidding process to what equipment is out there and not setting our bids to what we need. And so I find that troublesome. I wish in, in Senator Stuthman's, I'm very familiar with the trailers. Matter of fact I own one of them. They're built better than anything else we've ever had. But I... [LB948]

SENATOR WIGHTMAN: Time. [LB948]

Floor Debate  
March 10, 2010

---

SENATOR LANGEMEIER: ...wish our department... [LB948]

SENATOR WIGHTMAN: Time. [LB948]

SENATOR LANGEMEIER: ...would start to bid to what they need. Thanks. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Langemeier and Senator Avery. (Visitors introduced.) We have Senator Price, followed by Senator Avery, Senator McCoy, and Senator Hadley. Senator Price, you're recognized. [LB948]

SENATOR PRICE: Thank you, Mr. President and members of the body. I appreciated what Senator Langemeier had to say when he said that it doesn't seem to have a lot of interest and I can understand that. But why wouldn't stewardship be interesting? Why would you want to spend extra money on something? I don't know, maybe some people it doesn't rise to that level but to me it rises to that level because we're talking again about stewardship. And you know, when Senator Langemeier mentioned the acquisition process being driven by the availability of resources rather than the needs, again that talks to exactly what we probably are very much in agreement on. The needs need to be validated in the beginning. But to get to the point of this amendment, I stand against this amendment. This amendment basically is trying to put us back to jumbo shrimp. That's what we're getting, the oxymorons, if you would. What we're getting back to here is, you know, maybe, maybe we should consider. I mean, let's look at the body of work that the department has done and what they operate by. They want to do life-cycle costs. They're charged to do life-cycle costs. The challenge comes in when you read throughout the statute. If you depend through an interoffice memo policy that you have to have independent verified data and if you depend that a bidder needs to provide the data, and if you say, well, if you don't provide it, I don't have to consider it, we've just basically done a little dance around the Maypole that says, maybe could of, would of, should of, but sorry, didn't. Where is the harm, where is the harm for the taxpayers to advocate for these life-cycle costs? Where is the harm to say we need to have the fuel consumption or the cost for doing grease fittings? You know, I tried to do my homework on this and I found a lot of good articles in government magazines of where they all talk about this all over the place as we get more and more fiscally constrained, but here's some questions I would ask you. Why wouldn't you want to be able to budget and plan in advance for the large cost of machinery repairs? See, if you don't do this, if you don't collect life-cycle costs, you can't budget and plan. So why wouldn't you want to budget and plan? I don't understand. How about, why wouldn't you want to know the cost per meter or yard or ton or time it takes to do a job? What type of people are running the economics of this state that you wouldn't want to know that? All right. Why wouldn't you want to be able to produce accurate costs and pricing estimates for machinery and reinvestment in that machinery? Those are the questions you have to ask. You know, more and more as I work on this bill, I grow concerned that the focus isn't on

Floor Debate  
March 10, 2010

---

stewardship, but the focus is rather on maybe doing business as usual or not being concerned with at the level I would like us to be concerned, at the total cost of operating something. I mean, sure, I'll agree with you, people may all want to buy a Porsche or a Mercedes, okay. And maybe you can't afford a Porsche or Mercedes and Ford has made a really good living not being Porsche and Mercedes. And we can't always afford the best tool. But the question I would beg the body to ask is, why would you not want to get the best deal? You don't buy this heavy equipment because I have an eight-month project. [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR PRICE: You don't buy this equipment because I'm going to have it sit in a hangar or have it sitting in a warehouse somewhere. You buy this equipment to grade your roads. Why would you not want your citizens...we had a testifier come up and say during this brutal weather they used life-cycle cost for the acquisition of the equipment they use to maintain their roads. And during this brutal weather and inclement times, they were able, while having to pay \$44,000 in overtime, that wasn't for equipment failures. So basically what we had is our people, the population, requires of us to keep our roads clear if they can. But can you do that if your snowplow is down being repaired because you bought a piece of equipment that won't hold up? You take that to your voters. And every time that's happened in the state so far, the voters have agreed life-cycle costs were important. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Price. Senator Avery, you're recognized. [LB948]

SENATOR AVERY: Thank you, Mr. President. I have two things I want to address. Number one is the amendment, AM2131. I think if you look at that amendment and then compare that to the amendment that I presented, you will see that AM2131 disembowels the bill. It weakens it to a mere recommendation and it won't change anything. I think it is...it's not a friendly amendment, that's for sure. It's a killer amendment and I would urge you to vote against it. Now I do want to also address the handout that Senator McCoy passed around. If you look at this carefully, you'll see that there are six examples here of where DAS did not go with the lowest bidder. Six out of how many? Six out of five thousand? Two thousand? One Thousand? I don't know. That's not provided. It's incomplete. Also what is not provided here is the why. Did NMC get the contract over Rose Equipment because Rose Equipment didn't meet specifications? Or Rose Equipment could not provide delivery in a timely manner? I don't know. Senator McCoy suggested that it was life-cycle costing but I don't think he knows that either. So these examples here of bids that don't go to the lowest bidder are interesting but they don't tell us much. They don't tell us why and they don't tell us what percentage of total purchases these six represent. With that, I'm going to yield the remainder of my time to Senator Hadley. [LB948]

Floor Debate  
March 10, 2010

---

SENATOR WIGHTMAN: Senator Hadley, you would have 2 minutes and 59 seconds. [LB948]

SENATOR HADLEY: Thank you, Mr. President. Thank you, Senator Avery. Senator Avery did steal a little bit of what I was going to say because I had the same concerns that these are six items that go back to 2006. If there are only six times that we didn't take the low bidder, how many times did we? And again, there isn't information as to why we did or did not take it. We have a dual purpose here. We're owners of a business and we're executives of the same business. We're owners of the state of Nebraska along with about what, 1.7 million, whatever it is, owners. We're also executives charged with making this the most efficient, cost-effective business that we can make it from a long-term basis. I'm sorry, I can't support AM2131 because that would be like going out to Microsoft and having a Microsoft executive tell their purchasing department, well, you don't have to use life-cycle costing all the time. You may do it if you want to. You may not. I don't think they would do that. They would expect them to do this all the time. Secondly, these are not completely unique types of equipment that we're buying. It isn't...the state of Nebraska isn't buying a one of a kind piece of equipment that is being made to a specific order. I can't imagine any of these companies of any significance that have these types of equipment that do not have life-cycle costs. I would tell you that most businesses, if you went to a company and said we want to buy a half a million dollar piece of equipment, what are your life-cycle costs, and they said, we don't know, I would run as far as I could from them. [LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR HADLEY: That's the expectation in the business now. People expect you to have information on life-cycle costing. And I think it weakens it completely to go from "shall" to "may." I think that weakens the bill considerably if we do that. I think this is what we expect the state of Nebraska and other governmental components to do. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Hadley. Senator McCoy, you're recognized. [LB948]

SENATOR McCOY: Thank you, Mr. President. I believe stewardship of our resources is also very important. I think it's a good point, Senator Price made. I think the importance of my amendment to this, it goes back to not the discussion over the value of life-cycle costs, but over the value of independently verified life-cycle costs. And the reason that I believe that it is so important with my amendment that we strike the "shall" and insert "may" consider such data, is because we don't specify, the committee amendment nor the bill, the green copy of the bill, specify whether the life-cycle data cost provided by...life-cycle data provided by the bidder is independently verified data or whether it's

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

Floor Debate  
March 10, 2010

---

data that's provided by the manufacturer. So when an agency's hands or a department's hands are tied to say "shall" consider such data, we're telling them that they have to consider data that's provided by a manufacturer unless we've specified that they "shall" take into account data only if it's independently verified. The committee amendment or the green copy of the bill don't make that definition or draw that distinction. That's why I believe that this is so critically important. If it's independently verified life-cycle data, that's an altogether different story. I believe that's why that this is very important because clearly life-cycle data is important. That's why it's already in statute, as I've said before. You know, and as I've asked the Department of Administrative Services, I've been told they're not aware of any instance, any instance in the history of their procuring whereby a contract was awarded to a bidder that did not meet the specifications. So I guess if Senator Price would yield to a question, please. [LB948]

SENATOR WIGHTMAN: Senator Price, would you yield? [LB948]

SENATOR PRICE: Yes. [LB948]

SENATOR McCOY: Senator Price, thank you. Are you aware of or can you give me an example or provide us any examples of any purchases by DAS of heavy equipment that cost too much over time because of life-cycle costs wasn't considered in making the award? [LB948]

SENATOR PRICE: Well, I would say, Senator McCoy, that we can't do that because they're not required to collect that data and provide it. I mean, what you're asking me is, did something cost too much, if you don't make it as a point of your requirement to collect that and it's not one, then I don't see that you can determine that. But I would submit that if you were to look at a industry standard you would see that. You could see it displayed as easily as what's the bulk of the equipment you see being used by people who depend on it for their living. [LB948]

SENATOR McCOY: And another question for you. Are you aware of or do have any examples of any cases where Department of Administrative Services purchased anything that was of an inferior quality, heavy equipment, because life-cycle costs wasn't considered? [LB948]

SENATOR PRICE: Well, Senator McCoy, I'd be very careful before I'd disparage any manufacturer of having inferior quality. It isn't a question of inferior. It's a question of the cost to operate it. It may well be that a piece of equipment requires more oil changes. It may be that you have to change a fitting more often on that. That doesn't talk necessarily of quality of the item. That's just a going in cost. You know going into it how much it's going to cost you to maintain it and you assume that responsibility. So it's not about disparaging someone about the quality. But to be specific, again, if I don't have the data available right now because we don't collect it and we don't do that because we

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

Floor Debate  
March 10, 2010

---

have a "may" instead of a "shall," we can't really answer that question definitively.  
[LB948]

SENATOR WIGHTMAN: One minute. [LB948]

SENATOR McCOY: Thank you, Senator Price. Well, I would still go back to the fact that (6) of page 3 of the green copy says the life-cycle costs must be taken into account. So as the data indicates that I passed out to the members, clearly as it's been talked about, purchases aren't being made currently under the lowest price. It's the lowest responsible bidder already. Senator Price agreed with that point earlier in the discussion. So I would go back to why I believe that my amendment is necessary is because we have in the committee amendment a statement of a responsible purchase is made by the state without a definition of what such a responsible purchase might be. And I believe that's a very, very important point. [LB948]

SENATOR WIGHTMAN: Time. [LB948]

SENATOR McCOY: Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator McCoy. Senator Wallman, you're recognized. [LB948]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. I appreciate Senator Price's bill and also I'm against the last amendment. But I used to be on a school board and we kept track of everything, different engines, different buses, so we knew life-cycle costs of those buses. And some drivers, of course, are worse than others. But also you go to a state sale, I've been to quite a few state sales. You'll see the life-cycle cost stuff that doesn't last. Do they factor that in? I don't know. But different brands do not bring near as much money as others and part of that is life-cycle costs. So you should figure that in, I think. But...so if this is another vehicle to save us money, we're going to go through some tough times so we got to look at how to save money. And then also we got to figure downtime like Senator Price mentioned. If your snowplow breaks down, that's downtime. Somebody else has to make it up or you hire a private contractor who has a different brand of equipment maybe. You don't know. But that happened in our area. You know, they had to hire contractors. So there's lots to figure in here, life-cycle costs, downtime, all these things. It figures into the eventual cost of the product. So why wouldn't you want to figure this in? And thank you, Mr. President.  
[LB948]

SENATOR WIGHTMAN: Thank you, Senator Wallman. There are no other lights on. Senator McCoy, you're recognized to close on your amendment, AM2131, to AM1921.  
[LB948]

Floor Debate  
March 10, 2010

---

SENATOR McCOY: Thank you, Mr. President. As I've mentioned, again I believe the value of this amendment is that it puts back into statute a definition of purchase as purchases made in the best interest of the state which is existing statute, rather than an ambiguous definition of responsible or we should say without a definition of responsible that's in the committee amendment. That would be part one of the importance, I believe, of AM2131. And point two goes back to the discussion that we continued to have for the last hour and a half or so, and that is I don't believe anyone is making the argument. I agree with Senator Price. I agree with Senator Avery and other proponents of the bill that life-cycle costing is important. I think it has value, absolutely. But I think the problem lies in whether it's independently verified or not. I believe that's a very important distinction. And when we're asking an agency to make very, very expensive purchases, in most cases on behalf of the taxpayers of Nebraska using taxpayer dollars, I completely appreciate Senator Avery and Senator Price's deep interest in this issue of stewardship and of wise buying decisions for the state of Nebraska and I agree with that. And I agree with it so much that I believe that this amendment, contrary to their opposition to it, although I understand it, is important because we need to define what we're doing here. If we're going to use taxpayer dollars of hardworking Nebraskans to make purchases of this heavy equipment, it needs to be with all of the information possible out there. And we need to be able to take into account and know that of the 11 points in statute of thresholds and hurdles that the department has to go through before a contract is awarded or it goes into the bidding process in awarding a contract process, are we saying the life-cycle data is more important or has a higher priority than any one of those other points? My contention is, we need to be careful where this information is coming from. And if we're relying on manufacturer provided life-cycle data, we need to be making sure that we're using taxpayer dollars in a wise way. And it's my belief that we need to either have independently verified information, if that's available and have that in statute or if it's not, and it's my belief that it's not at this current time for heavy equipment, then we need to have "may" instead of "shall" so that we allow the department to take into account the full scope, the full 11 points in statute on this issue so that a wise decision can be made for the citizens of Nebraska. That's why I believe that this amendment is important. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator McCoy. You have heard the closing on the amendment, AM2131, to AM1921. The question is, shall AM2131 be adopted as an amendment to committee amendment, AM1921? All those in favor vote aye; all those opposed vote nay. Senator McCoy, you're recognized. [LB948]

SENATOR McCOY: I'd like to request a call of the house, please, Mr. President. [LB948]

SENATOR WIGHTMAN: There's been a request for a call of the house. All those in favor vote aye; those opposed, nay. Please record, Mr. Clerk. [LB948]

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

Floor Debate  
March 10, 2010

---

CLERK: 36 ayes, 0 nays, Mr. President, to place the house under call. [LB948]

SENATOR WIGHTMAN: Motion carried. 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 Cornett, Senator White, Senator Council, Senator Christensen, please report. There has been a request for a roll call vote in regular order. Senator Cornett and Senator White. Everyone is present and accounted for. Mr. Clerk, roll call vote and will you call the roll in regular order. [LB948]

CLERK: (Roll call vote taken, Legislative Journal page 810-811.) 15 ayes, 25 nays, Mr. President, on the amendment. [LB948]

SENATOR WIGHTMAN: The amendment fails. Returning to debate on the committee amendment, AM1921, I see no lights on. Anyone wishing to speak? If not, Senator Avery, as Chair of the Governmental Affairs and Military Committee, you are entitled to close. [LB948]

SENATOR AVERY: Thank you, Mr. President. This amendment actually makes the bill better because it makes very clear that it...the bill itself applies to heavy equipment. It is not intended to include equipment dealers or implement dealers. And that, of course, is by eliminating the words, "but not limited to." It also eliminates the resale value language on page 3, line 19, because the state of Nebraska does not use any other method of dispensing with used equipment except the auction and so we're consistent there. I appreciate the vote that we received on the last amendment. I hope that you will vote for this one that we can move on to passing the bill. Thank you, Mr. President. [LB948]

SENATOR WIGHTMAN: Thank you, Senator Avery. You've heard the closing on the committee amendment, AM1921. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to vote? Please record, Mr. Clerk. [LB948]

CLERK: 33 ayes, 1 nay, Mr. President, on the motion to adopt committee amendments. [LB948]

SENATOR WIGHTMAN: Motion is adopted. [LB948]

CLERK: I have nothing further on the bill, Mr. President. [LB948]

SENATOR WIGHTMAN: We'll return to debate on LB948. Senator Pankonin, you are recognized. [LB948]

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

Floor Debate  
March 10, 2010

---

SENATOR PANKONIN: Thank you, Mr. President. The reason I didn't speak earlier is that before we pass that amendment it could have something to do with farm equipment dealers. I've never gotten a bid from the state of Nebraska in my 35-year career, but I didn't want to speak on it before that amendment because it eliminated it. I've got a couple questions for Senator Avery, if he would answer. [LB948]

SENATOR WIGHTMAN: I raise the call. Senator Avery, you had a question? [LB948]

SENATOR AVERY: No, I'm going to accept his questions, once you recognize me. [LB948]

SENATOR WIGHTMAN: Okay, Senator Avery. [LB948]

SENATOR PANKONIN: Senator Avery, did an equipment association bring this bill to you? [LB948]

SENATOR AVERY: No, it was not an association. I talked to some Nebraska businessmen. [LB948]

SENATOR PANKONIN: Did the state of Nebraska bring this bill? I see that they spoke in opposition at the hearing. [LB948]

SENATOR AVERY: No, the state of Nebraska did not. [LB948]

SENATOR PANKONIN: You said some businesspeople brought this to you. Was it one group or through a lobbyist or how...specifically, who brought it? [LB948]

SENATOR AVERY: The genesis, I think, was through the lobby and it was a representation made to me that an entire category or class of equipment was largely being excluded from the bidding process because of the failure on the part of DAS to give very much emphasis to life-cycle costing. [LB948]

SENATOR PANKONIN: Senator, the reason I ask these questions, is that from just listening to the debate today I think it's important. I think one of the things you look at is, where does a bill come from? And I think we have to be very careful here because some of this data is...can be subjective. Is it one group that wanted this versus an association of the dealers that sell this heavy equipment? Did the state of Nebraska bring it to us? No, they spoke in opposition. DAS was opposed to this bill. I think you need to be thinking very carefully whether this is a good policy and I'm concerned that if it passes here, you know, if one group wants to maybe tilt the bid process in their favor, this is what you may be doing here. So I just...that's why I didn't speak until now. But I think you have to be very careful on how you look at this and where this bill came from. Thank you. [LB948]

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

Floor Debate  
March 10, 2010

---

SENATOR WIGHTMAN: Thank you, Senator Pankonin. Mr. Clerk, items for the record. [LB948]

CLERK: I do, Mr. President, thank you. Judiciary Committee, chaired by Senator Ashford, reports LB939 to General File and LB507 to General File with amendments. Senator Carlson would like to print an amendment to LB1057; Senator Schilz to LB919; Senator Nordquist to LB1106A. Senator Wallman would like to add his name to LB1077 as cointroducer. (Legislative Journal pages 811-816.) [LB939 LB507 LB1057 LB919 LB1106A LB1077]

And a priority motion. Senator Flood would move to adjourn the body until Thursday morning, March 11, at 9:00 a.m.

SENATOR WIGHTMAN: Thank you, Mr. Clerk. We have a motion to adjourn. All those in favor say aye. Opposed, nay. Motion carried.