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Floor Debate  
February 01, 2011

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[LB18 LB24 LB28 LB53 LB67 LB72 LB81 LB149 LB154 LB158 LB163A LB208 LB211  
LB215 LB229 LB256 LB311 LB396 LB547 LR57 LR58 LR59 LR60]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the nineteenth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator Brasch. Would you all please stand.

SENATOR BRASCH: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Brasch. I now call to order the nineteenth day of the One Hundred Second Legislature, First 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: Your Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, reports LB24 and LB396 to General File. And I have notice of hearings from the Transportation and Telecommunications Committee, those hearings signed by Senator Fischer as Chair. That's all that I have, Mr. President. (Legislative Journal pages 417-418.) [LB24 LB396]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now proceed to the item under legislative confirmation report.

CLERK: Mr. President, Senator Langemeier, Chair of Natural Resources, reports on two appointments to the Nebraska Ethanol Board. (Legislative Journal page 407.)

PRESIDENT SHEEHY: Senator Langemeier, you're recognized to open on the Natural Resources Committee confirmation report.

SENATOR LANGEMEIER: Mr. President and members of the body, I bring two confirmation reports, both to the Nebraska Ethanol Board. The first is Michael Thede who is from Palmer, Nebraska. We had a hearing on January 27, 2011, where he was in attendance. Michael is a reappointment to a seven-member board and is the general

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farming representative and did make it to the hearing. He is engaged in farming activity at Palmer, Nebraska, and he was originally appointed in September 2006 and is the current board chairman. And we'd ask for your adoption. The second individual is Mark McColley who also is to the Nebraska Ethanol Board. He is from Omaha, Nebraska. The hearing was January 27, where he did attend and stand the questioning. Mark is a reappointment to a seven-member board and represents labor. He is currently a business manager of the Steamfitters and Plumbers Local Union 464 and has 36 years of experience in pipe fitting and the service industry. And with that we'd ask for your adoption of the confirmation report.

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening to the Natural Resources Committee confirmation report. Are there members requesting to speak? Seeing none, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the adoption of the Natural Resources Committee confirmation report. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 418.) 40 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT SHEEHY: The confirmation report is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR57, LR58, LR59, and LR60. Mr. Clerk, we will now proceed to the motion to withdraw. [LR57 LR58 LR59 LR60]

CLERK: Mr. President, Senator Cook would move to withdraw LB547. [LB547]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on motion to withdraw LB547. [LB547]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. Senator Cook was unable to be here this morning due to the roads and the condition of the roads, but she did talk to me a little bit before 10:00 and asked me to handle her motion to withdraw LB547. Senator Cook, as a member of the Omaha delegation, is being responsive to the community college that serves her district, the Omaha, Douglas, Sarpy, Washington, Dodge County area. Senator Cook put this bill in to try and help guide the process as it relates to funding for community colleges beyond the current biennium. Basically, what we've done is we've had a conversation with all of the community colleges. We're going to continue the conversation. And at the end of the day Senator Cook, myself, and Senator Adams feel it to be in the best interests of the Legislature and, more importantly, all of the community colleges to have this bill withdrawn and continue to commit ourselves to a process that identifies a funding formula. That's what we have to get to. That's where we want to go. We want to bring

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everybody along. The community colleges were able to put together a two-year funding plan, but we all recognize, long term, that we need a funding formula that can be accepted and adopted and supported by every community college district in the state. And my commitment, and I know that Senator Adams shares this and Senator Cook shares this, is that we're going to work between now and the end of this calendar year to see if we can't put together a funding formula that can be hopefully adopted by this Legislature next session. And so with that, I appreciate Senator Cook's attention to this issue. I appreciate the fact that she was being responsive to her community college and, more than anything, I appreciate her willingness to withdraw this bill to benefit the process. With that, I give the balance of Senator Cook's opening time to Senator Adams. [LB547]

PRESIDENT SHEEHY: Senator Adams, you're given 8 minutes. [LB547]

SENATOR ADAMS: Thank you, Mr. President, Speaker Flood. There's no point. The Speaker has been very articulate on where we're at with this issue. I simply want to be on record as saying that I believe that Senator Cook is really exercising stateswomanship in doing this. She was put in a position that many of us often find ourselves, where her constituency at Metro Community College was asking her to go one way and yet her recognition of the process that we have been working on for two years, and will continue to work on, was in place, and her withdrawing this bill is a recognition of that process. And we'll keep working on it. All six...as I said in a bill we had two weeks ago to establish the formulation for the next two years, all six community college CEOs have worked hard in the last year to get us where we're at. They understand the charge ahead of them and there is no point in complicating the process any more than it already is. The wheels are in motion. We have agreements, we have understandings, we have commitments. And withdrawing this bill simply gets us back on track. Thank you, Mr. President. [LB547]

PRESIDENT SHEEHY: Thank you, Senator Flood. Thank you, Senator Adams. You've heard the opening on the motion to withdraw LB547. Members requesting to speak: Senator Harms. [LB547]

SENATOR HARMS: Thank you, Mr. President and colleagues. I want to take a moment today to thank Senator Cook for withdrawing LB547. You know, colleagues, sometimes it takes courage to make the right decision, and every one of us in this room will be in a situation where we have to make a decision that takes courage to do what is right. This was the right thing to do. I appreciate what Senator Cook has done. I know that the other presidents in the community colleges will be pleased with this decision, because, quite frankly, if this LB547 would have continued we would have found the community college system in a lot of stress and, quite frankly, I think there would have been moves to change that kind of system. We need to keep our community college strong. As you heard me say before on this floor, that the community college is the key to redoing our

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work force for a new, changing world global economy. It gives the opportunity for parents and children and kids who can't afford to go anywhere else, this is the place they go to find themselves. This is the place where they go to get technical education or liberal arts so they can transfer to the university or state colleges. That's why it's so important for us to continue to focus on this issue. And I know that Senator Adams and Senator Flood will do a great job in molding the community college funding formula of the future. So I wanted to thank Senator Cook for her strength and her willingness to make the right decision. Thank you, Mr. President. [LB547]

PRESIDENT SHEEHY: Thank you, Senator Harms. Seeing no additional requests to speak, Senator Flood, you're recognized to close. Senator Flood waives closing. The question before the body is on the motion to withdraw LB547. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB547]

ASSISTANT CLERK: 41 ayes, 0 nays, on the motion to withdraw the bill, Mr. President. [LB547]

PRESIDENT SHEEHY: LB547 is withdrawn. (Visitors and doctor of the day introduced.) Mr. Clerk, we will now move to first item under General File, LB81. [LB547 LB81]

ASSISTANT CLERK: Mr. President, LB81, introduced by Senator Cornett and others. (Read title.) The bill was read for the first time on January 6, referred to Revenue. That committee reported the bill to General File with committee amendments. Those committee amendments are currently pending. (AM14, Legislative Journal page 333.) [LB81]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, would you like to give us a summary of LB81 and the Revenue Committee AM14. [LB81]

SENATOR CORNETT: Good morning, Lieutenant Governor and members of the body. I rise to discuss LB81 again. Yesterday, we came to a compromise and all the senators agreed to some factors with LB81, and I'm going to go over those because they were misrepresented in almost all of the media last night. And a lot of our senators that agreed to this are being portrayed as having caved in to Omaha, and because of that, they're having second thoughts, not about the agreement. No one is backing out from their word, but about timing. And it's very difficult when a senator has to go home to their district and is being portrayed as being weak by the media. The agreement is the commuter tax goes away. No city based on policy will be able to tax outside of its city. They can't reach into Sarpy County. They can't reach into Iowa. They can't reach into Cass County. Let me make that very clear because I've received hundreds of e-mails already this morning from my constituents because it wasn't reported correctly in the media. That is not what the agreement was. The second half of the agreement, this is not again caving to the city of Omaha. This is good policy. Omaha, right or wrong, has

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already been taxing for four or five years in the extraterritorial zoning jurisdiction. They are in the middle of a budget cycle--in the middle. We compromise by taking away half of the money that they had budgeted for with this, approximately, and giving them a year to transition. We are not allowing them with the compromise to continue past 2013--January 1, 2013--to tax into their ETJ. The other part of the compromise is that we start looking at the metropolitan area in regards to transportation as a whole. Whether we do this with a commission, whether we do it with MAPA, that is what we agreed to yesterday to work out on Select File. I am going to file the amendment that does that and I'm going to see where it goes this morning. We, as senators, have made bargains and we have made agreements and we came to a compromise. Just because the media doesn't understand what we do doesn't mean that we back out from what we do. Now whether we adopt this amendment now or we do it on Select File, that's going to be the question today. The city of Omaha apparently doesn't trust us. They're saying if they don't get the amendment for the ETJ now, the bill doesn't go. We have the votes for the bill to go. I want to try and hold the city of Omaha as harmless as possible, but it's going to take compromise and it's going to take cooperation. Thank you. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Cornett. We will now move to discussion on AM14 to LB81. Members requesting to speak: Senator Ashford, followed by Senator Lautenbaugh and Senator Council. Senator Ashford. [LB81]

SENATOR ASHFORD: Thank you. Senator Cornett, now I am...I've been...I'm lost now, which is not unusual. But let me try to see if I understand where we're at. Yesterday, we discussed--and I think numbers of us agreed that the compromise which you've just suggested is the three-mile limit compromise that would allow the wheel tax to continue in the three-mile limit until January 1, 2012, I believe. Isn't that what we discussed? [LB81]

SENATOR CORNETT: Thirteen. [LB81]

SENATOR ASHFORD: Thirteen. I'm sorry. January 1, 2013. Is that correct? [LB81]

SENATOR CORNETT: That is. That gives the city of Omaha one full year to budget for this. They're in the middle of their budget cycle now. [LB81]

SENATOR ASHFORD: Right. And the other discussion was this idea of a commission, and I think that does need to be worked out because... [LB81]

SENATOR CORNETT: That does. That is what we had talked about yesterday on sitting down, you and I, Senator Council, Senator McCoy, representatives from MAPA, possibly the Department of Transportation, to work on figuring out how to implement a metrowide transportation commission. [LB81]

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SENATOR ASHFORD: Okay. And I think some of the confusion in the press was that somehow this was some taxing authority, and that's not what we're talking about. Correct? [LB81]

SENATOR CORNETT: It is not a taxing authority--and that is not the only thing that was misrepresented. [LB81]

SENATOR ASHFORD: Okay. So the misunderstanding in the press was, I think, that there is a sense that this would become a taxing authority and it would be able to levy a tax for an overall transportation plan. And that's not what we're doing. Here's my...I am...the compromise is fine. I think we should...and the amendment that you're talking about is an amendment that will go on General File, is that correct, not without the commission part but we'll have the tax portion of it? [LB81]

SENATOR CORNETT: Here is the dilemma this morning, Senator Ashford. Because of the misrepresentation, a lot of senators are uncomfortable doing the amendment currently, not not doing the amendment, but working on it to include the commission. The original agreement was that we file the amendment, which I have in my hand, that takes away the commuter tax and allows the city of Omaha to phase-out its wheel tax, and that we'd work on the commission or a transportation plan between now and Select File. [LB81]

SENATOR ASHFORD: Okay. And that is what we're...that's your intention today is to do that? [LB81]

SENATOR CORNETT: I am going to file the amendment now. [LB81]

SENATOR ASHFORD: Okay. [LB81]

SENATOR CORNETT: I'm going to...I had everyone's agreement on this yesterday. [LB81]

SENATOR ASHFORD: Okay. [LB81]

SENATOR CORNETT: I understand the political ramifications because I am facing them also. [LB81]

SENATOR ASHFORD: But what are the political ramifications? [LB81]

SENATOR CORNETT: Currently, the way it has been portrayed--and that is part of the reason that I am explaining it very carefully on the mike today--put a number of the senators in a bad position. It was portrayed that we as a Legislature caved to the city of Omaha. And that's very difficult when you're talking about people that don't come from

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the city of Omaha. Please let me finish. Secondly, that the wheel tax was going to remain in place in the ETJ, that it wasn't being removed--the commuter tax wasn't being removed. It seemed that every single form of media reported it differently yesterday. [LB81]

SENATOR ASHFORD: Okay. How much time is there? [LB81]

PRESIDENT SHEEHY: Just over a minute. [LB81]

SENATOR ASHFORD: Okay. And I think the beauty of the compromise yesterday was that...and I don't see...and maybe it was misconstrued by the press. [LB81]

PRESIDENT SHEEHY: One minute. [LB81]

SENATOR ASHFORD: I didn't necessarily read that part of it. But if the...there are two types of collection mechanisms here, and I think at least the first couple of days of discussion that was a big part of it, is that businesses would have to collect the tax outside of Douglas County, and that made it somewhat different from citizens within Douglas County that pay it with their car registration. [LB81]

SENATOR CORNETT: That makes it very different. [LB81]

SENATOR ASHFORD: It is very different. We've acknowledged that in the compromise. But it seems to me that we're not caving into the city in way, shape, or form, inasmuch as the tax is ending. [LB81]

SENATOR CORNETT: And I agree, Senator Ashford. It was not a matter of caving. As you and I have discussed,... [LB81]

SENATOR ASHFORD: Right. [LB81]

SENATOR CORNETT: ...we have the votes to do this. [LB81]

SENATOR ASHFORD: Right. [LB81]

SENATOR CORNETT: We don't want to be punitive to the city of Omaha. [LB81]

SENATOR ASHFORD: Yeah, it's not so much caving. We're just...it seems to me the body is coming together, under your leadership, Senator. [LB81]

SENATOR CORNETT: And it's good policy. [LB81]

SENATOR ASHFORD: Right. It's good policy. We're coming together under your

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leadership. And so whatever the press may or may not have written, it is not a cave in to the city of Omaha in my view, but it is recognizing good tax policy. [LB81]

PRESIDENT SHEEHY: Time, Senator. [LB81]

SENATOR ASHFORD: Thank you, Senator Cornett. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Lautenbaugh, you're recognized. [LB81]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I don't know if this is an opportune time to say some of this or not, but I'll take a pass at it anyway since I didn't do it yesterday. I've heard what's going on here described time and time again as an attack on Omaha; we're singling out Omaha. And I'm a senator from Omaha and I represent other parts outside of Omaha as well, so everybody I represent is affected by this in one way or another. This is not an attack on Omaha. It is Omaha that did the thing to the surrounding communities that spurred action, and this should not be spun as the rest of the body somehow attacking Omaha. We are reacting to something Omaha did, certainly, but that doesn't make this some mean-spirited malevolent attack on Omaha. This is addressing a policy that people in the surrounding communities don't have the ability to redress any other way. And I've heard, well, let them go to court and get it thrown out. Well, that's not good policy. This is our deal. This is something we should be clarifying--not the courts. We should act and set policy, and that's what we're trying to do here with this process. I spoke to a woman last night who works at a business in Omaha, and they are trying to figure out how to comply with collecting the tax from their employees. We have to act on this. This is a disaster for the employers in Omaha. The cost of this, the headache of this, the possible unenforceability of this, it's staggering. And we can sit here and say we didn't think this bill through before we put it out on the floor; I don't think that's true but people are saying it. It's much easier and much more defensible, I think, to say the city council didn't think it through when they put this burden on the employers of Omaha and the surrounding citizens. That is why we're here and that's why we're talking about this. I don't know how I feel about the compromise. I'll be honest, I was troubled about collecting the wheel tax in the three-mile zoning jurisdiction for several years, because those people don't get to vote in Omaha elections. I hear that time and time again from my constituents. That's not something new, so I understand the approach the compromise was taking here. I don't know if I'm on board with it but I understood it. I don't know why we need another commission or committee to come up with a plan. It seems to me we have MAPA who could shed some light on what maybe should be done and what needs to be done. We have a Transportation Committee that seems very well versed in transportation issues. And there's nothing new under the sun. Someone needs to tell us what they want and we'll accommodate if we can or not if we can't. But a commission, a committee, a task force, etcetera, seems to be another way

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of kicking something down the road. And we all know what the problem is here, and it's a lack of funding. Now I do hear from people in the city of Omaha that repealing all of this, passing the bill as it originally--with the first amendment--would have been, would not be some disaster. Omaha would go back to its resurfacing plan and abandon a sort of new stepped-up resurfacing plan. And maybe in this economic environment this is the wrong time to embark on a new stepped-up resurfacing plan. That's their call and we're not going to tell them what to do there. But if we tell them the way they're taxing is impermissible, they have to listen. And I think what we have here is just plain wrong and we have to act. And I salute Senator Cornett for bringing this bill, and it's the kind of thing that we're expected to be heard on and we will be one way or another. Thank you. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Mr. Clerk, you have an amendment to the committee amendment. [LB81]

CLERK: Mr. President, I do. Senator Cornett would move to amend the committee amendment with AM198--AM198. (Legislative Journal pages 419-422.) [LB81]

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on AM198. [LB81]

SENATOR CORNETT: AM198 is what we agreed to yesterday. I'll go over it again very carefully. It would eliminate the ability for any city to tax into another city. That gets rid of the problem of collection. That takes the pressure off the businesses. It also allows the city of Omaha to keep the ETJ until January 1, 2013. The city of Omaha, as we have heard multiple times--and I fully acknowledge, has some serious budgetary issues right now. They have been collecting money in their ETJ for either four or five years, I would have to look, and have used that as a steady revenue stream. They are currently in the middle of a budget cycle. We are taking away about half of the money they had planned. This gives them one year to transition and setup a budget based on not having their ETJ and not being able to tax into another zoning...or to another jurisdiction. The difference between the ETJ and taxing into another municipality is the collection means. If you live in the ETJ, you pay it when you register your vehicle. It puts no hardship on any business. It doesn't effect businesses negatively in regards to finances. It does end the commuter tax. It does allow the city of Omaha a transition period. That was what we agreed to yesterday for General File. On Select File, between now and then, the senators that I mentioned and anyone that wants to join in, we will work on establishing a commission for metropolitan transportation. I urge the body to support this amendment and thank you. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening to the amendment to committee amendment, AM198. Members requesting to speak: Senator Council, followed by Senator McCoy. Senator Council, you're recognized. [LB81]

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SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in support of AM198. And I want to begin by expressing my appreciation to Senator Cornett for filing the bill. I want to thank Senator McCoy, Senator Mello, Senator Krist, and Senator Ashford for working diligently to arrive at an amendment that fairly addresses this issue. You know, as Senator Lautenbaugh referenced, there's been a lot of talk about whether the Legislature was targeting Omaha or was seeking to punish Omaha. This amendment, in my estimation, eliminates a lot of that question. Without this amendment I don't see how this body could say that they were not punishing the city of Omaha. Whether you liked it or not, you didn't say anything about it since 2006. And the city of Omaha has relied on its ability to collect the wheel tax from residents in the ETJ. Now clearly since the expanded areas have been very vocal about it, yeah, I'm sure that some of you who represent residents of the ETJ have been hearing about it. But the question of fairness is that the city of Omaha has relied on the statutory authority to collect this wheel tax from residents within the ETJ and to withdraw that money when the city of Omaha cannot alter its budget, it cannot go in and identify a new funding source. I don't know who's been discussing the issue that this money is to be used for some special, new resurfacing plan, that's certainly not the information that I have had, that it's going to the regular upkeep and maintenance of Omaha city streets that 45 percent of the individuals who use those streets on a daily basis do not reside in the city of Omaha. So in fairness to Omaha, who is accommodating all of these nonresidents who are utilizing their streets and have been relying on this source of revenue from the ETJ, that AM198 recognizes that fairness has to be a criteria that this body considers in developing or implementing any state tax policy. And, yes, the agreement or the discussion that occurred yesterday also involved setting up some type of body to take a look at the best way to address these transportation related issues. No one can disagree with the fact that roads need to be provided, they need to be maintained, in many instances they need to be expanded due to the increase in traffic resulting from individuals who live outside of those areas commuting into the areas. So the compromise in terms of how to address that was to look at, between now and Select File, identifying what form this entity would take. I can't speak for how the media chose to report what was discussed yesterday in an effort to address this issue fairly. But what was discussed and what was agreed to was to allow the city of Omaha to continue to collect the tax that it's been... [LB81]

PRESIDENT SHEEHY: One minute. [LB81]

SENATOR COUNCIL: ...collecting since 2006, and to continue to be allowed to collect that tax and include it in the revenue that it bases its annual budget on until December 31, 2012. And beginning January 1, 2013, unless this body provided some new policy in terms of covering these road tax issues, effective December 31, 2012 the city of Omaha could no longer rely on the ETJ. I think that is fair. And I would urge this body to adopt AM198. Thank you. [LB81]

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PRESIDENT SHEEHY: Thank you, Senator Council. Senator McCoy, you're recognized. [LB81]

SENATOR McCOY: Thank you, Mr. President and members. We're now obviously talking about AM198 to the bill. You know, I originally cosponsored this legislation because I believe that Omaha's wheel tax, if it's unfair to any nonresident, that it's unfair to all nonresidents. And if Senator Campbell would yield for a moment, I'd like to ask her a couple of questions. [LB81]

PRESIDENT SHEEHY: Senator Campbell, would you yield to Senator McCoy? [LB81]

SENATOR CAMPBELL: Yes. [LB81]

SENATOR McCOY: Thank you, Senator Campbell. I assume...it's been my understanding that Lancaster County and the city of Lincoln, a number of years ago, I believe it would have been when you were on the county board, discussed a similar type of taxing structure with a wheel tax outside the city limits of Lincoln. Is that your understanding as well? Maybe you could shed some light on that. Did that happen? [LB81]

SENATOR CAMPBELL: The city of Lincoln does have a wheel tax, the county of Lancaster does not. And in fact, I checked with Larry Dix yesterday. And there's no county in the state that has a wheel tax. At one point, county board members began talking to, and I believe it was with the county attorney. And as we looked at the statute, we looked at a county wheel tax. In Lancaster it's been looked at a number of times. And really, one of the most stalwart people against a county wheel tax was Senator Warner. And I can still remember him lobbying me on that point. But we looked at it. It was our understanding that the county could only take the portion of wheel tax from what I would call where there were no holes in the cheese, in other words, Firth, Waverly, Raymond. If we collected it, we would have to give the money to those jurisdictions. And we could only use the property or the wheel tax where there was unincorporated or ag land. So at that point, the amounts, we began looking at it from a fiscal standpoint. And the amounts weren't really worth it. And I have to tell you that the unincorporated areas and many of our folks in ag land and acreages were very much opposed to it, even if they had a vote for the county board. [LB81]

SENATOR McCOY: Thank you, Senator Campbell. You know, what we talked about yesterday is very different in my view from where we're at this morning. You know, and those of us that may have talked about some sort of grand compromise may have a different perception on what was talked about yesterday. As I said when I first got up here a moment ago, if it's unfair for any nonresident of the city to be charged a wheel tax, then it ought to be unfair for all. You know, it's...I believe we're picking winners and losers with this by doing this and saying, you know, those that...okay, now we've taken

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Sarpy County out of the equation with essentially getting rid of the commuter fee, so we've exempted them. Well, along Harrison Street, the county line between Sarpy and Douglas, we're essentially picking winners and losers. If you live on the Sarpy County side you're not going to have to pay this or the commuter fee, if you live on the Douglas County side and you're in an SID you do. So I think perhaps maybe even it makes this a whole murkier situation than it was before. We talked about this yesterday. What I believe is different... [LB81]

PRESIDENT SHEEHY: One minute. [LB81]

SENATOR McCOY: ...since yesterday is how those that oppose this bill view this as somehow it's been characterized in the press as we're going to allow the city, through this commission that we've yet to figure out how we would put it together, would somehow say that we would be able to have a metrowide wheel tax. That's not at all what was discussed yesterday in any way, shape, or form. And I do not believe that to be an appropriate response to this. You know, we in this Legislature, it would appear from everything through the session so far, that we're committed to not raising taxes. Well, I think the same ought to apply to the city as well. I would oppose the amendment as it currently is constituted, AM198, and support the underlying amendments and the bill. Thank you, Mr. President. [LB81]

PRESIDENT SHEEHY: Thank you, Senator McCoy. Members requesting to speak on AM198: Senator Krist, followed by Senator Council, Senator Ken Haar, Senator Fulton, and Senator Mello. Senator Krist, you're recognized. [LB81]

SENATOR KRIST: Thank you. Colleagues, I know you're going to consider this to be a recording. But I want you to pay attention, particularly those senators that are outside of the metropolitan area. When we talk about the extended areas that are feed and taxed and pay into a community, in a lot of cases we're talking about sanitary improvement districts, SIDs. Now there isn't anybody in the metropolitan area that doesn't have an SID, because that's the way cities in the metropolitan area, in Cass, in Sarpy, and in Douglas plan to expand their city. A developer comes in and sets up a plan, divides the property by 300 lots, enters into a negotiation and a deal with city planning and with the city itself and says, I'm going to build this SID and, by the way, those 300 residents are going to pay back for the improvements, the sanitary improvements, the utilities and everything, and once that SID is paid for, Omaha, La Vista, Papillion, you can then annex those SIDs into your base. So understand that when we're talking about the language in AM198 and keeping those extra areas that are not technically in the city, it's been going on since 2006 all over the metropolitan area. This isn't anything new. Everybody is doing it to a different extent. Every city in the metropolitan area that's trying to grow is sitting with an SID or two or three or four and they're charging back into the city of all classes. The first time I stood up here on this mike I said, this is not about...this should not be about Omaha but it is, this should not be about one city of any

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class in Nebraska, it should be about tax policy and uniform tax policy change across the board. So I think in my way of thinking we have come almost full circle. We have said, not good legislation, let's amend it, let's amend it, let's amend it, let's talk about it, let's talk about the future amendments. But the deal that was struck yesterday, the deal that I spent hours on the phone talking with my constituents, by the way, that deal is back on the table, it's called AM198. If we accept what we have been talking about, what we've been debating on the floor and if we want to move on with life, AM198 puts everything back on the table, in my mind. You're going to have to decide that for yourself. But don't be confused by some that will stand up here and say, you know, that extra territory that they can go out and tax in, that's just bad little Omaha. It's not, it's every city that has an SID in some way is either taxing or "feeing" that little community, that little SID until they annex them. Ask any of the Sarpy County senators and they'll tell you, they have to because, as I described, Maple Street on that virtual tour the other day, if you remember, I'm in the city limits. The people across the street from me in a two-by-four block area, two-by-six block area they weren't in until part of them were annexed. My son lives on 171st and Maple area, when he turns left he goes to Elkhorn, Omaha by any other name. When he turns...I'm sorry, turns right, he goes to Omaha, by any other name Elkhorn. When he turns left he goes into the city proper. He's using the road in between. The SID that sits there is feed. And I also made the point, taxation without representation has a name and it's called an SID within a city, within a planning, within a group that wants to expand the city. [LB81]

PRESIDENT SHEEHY: One minute. [LB81]

SENATOR KRIST: Thank you. I believe that where we're at right now we could move this on and we could fix this because it still needs to be fixed between now and Select. Senator Cornett has given her word, several of us have given our word that we would participate in fixing it. I would like you to support AM198. I would love you to support AM198 because I think it's the only way we're going to get on to this point. Thank you for your time and your attention. And if you wanted any information on the SID, I would invite you to look it up. I'm 100 percent correct on what I have said here on the mike today. It is a situation you may not be familiar with but it is that extra territory that we are talking about. Thank you, Mr. President. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Council, you're recognized. [LB81]

SENATOR COUNCIL: Thank you, Mr. President. I am so disappointed in what I heard from Senator McCoy. Senator McCoy confirmed the suspicion that I had hoped would be unfounded when I left here last night. I was suspicious and I hate that I was suspicious because we're supposed to be colleagues and we're supposed to be able to trust what each other says particular when we add, this is my word. I was raised to believe that someone's word is their word. But I've become so cynical being here that

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when I was making a decision whether to drive back to Omaha last night, I said, I can rely on the word of Senator McCoy and Senator Cornett and Senator Krist and Senator Mello and go home and risk not being able to be present today to discuss this matter and cast a vote. I could rely on their word and if I wasn't going to be here today that those individuals would act on their word. Well, I'm glad I'm not naive because I doubted that people would act on their word and I made sure that I would be here this morning to see if people would follow through on what they said was their word. And either my hearing is affected by some interceptor, but I know what was said yesterday during the discussions on what is now AM198 and I know that Senator McCoy heard the very same thing that I heard. And what I heard was, yes, there is a problem with the issue of taxing outside of your boundaries. But there is also a greater issue of fairness to a political subdivision that was acting completely appropriate, without malice in basing a budget on a revenue source that it has depended upon since 2006. There was a discussion of the recognition that expanding it, the wheel tax, beyond the ETJ would negatively impact employers and that's one of the reasons for AM198. It removes that aspect of the wheel tax imposed by Omaha because it does not extend beyond the ETJ. And it's that area beyond the ETJ that caused problems for employers. That was the deal that was struck last night. And, yes, I know people can change their minds. But be man enough to say you changed your mind. Don't say, that's not the deal I struck, because that was the deal that was struck. And presumably, because that statement has been made, I would venture to say that lobbying has occurred to bring other members of this body around to rejecting AM198. I hope that's not the case. And I really hope that it's not the case that Senator McCoy would vote against AM198 which was crafted based upon... [LB81]

PRESIDENT SHEEHY: One minute. [LB81]

SENATOR COUNCIL: ...his word among the word of other senators. You know, this is what the people of the state of Nebraska expect. If they can't trust our words, whose words are they expected to trust? And to be in a situation, I know this is difficult, but if we want to continue to hide behind, oh, we're not going after Omaha, then all of our actions suggest otherwise. It's not going after Omaha when you agree to an amendment that does not place them in even a greater financial hardship than existed when they decided to expand the tax beyond the ETJ. A vote in favor of AM198... [LB81]

PRESIDENT SHEEHY: Time, Senator. [LB81]

SENATOR COUNCIL: ...media should make it perfectly clear the motive. [LB81]

PRESIDENT SHEEHY: Mr. Clerk, do you have items for the record? [LB81]

CLERK: I do, Mr. President. An announcement first of all. The Redistricting Committee, the Redistricting Committee will meet under the north balcony immediately;

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Redistricting, north balcony immediately. Mr. President, General Affairs Committee, chaired by Senator Karpisek, reports LB256 and LB311 to General File. I have hearing notices from Natural Resources Committee; from the Judiciary Committee; and from the Banking, Commerce and Insurance Committee. And I also have a communication from the Executive Board regarding the appointment of the Redistricting Committee. That's all that I have, Mr. President. (Legislative Journal pages 422-423.) [LB81 LB256 LB311]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Continuing with floor discussion on AM198. Members requesting to speak: Senator Ken Haar followed by Senator Fulton, Senator Lautenbaugh, Senator McCoy, and Senator Council. Senator Haar, you're recognized. [LB81]

SENATOR HAAR: Mr. President, members of the body, in the past few days I've been one that's been generally opposed to LB81. But I rise in support of AM198. I think it's a way to move forward. I would also be interested, I'm not from the Omaha area, but I think other areas also have to deal with this issue that we have to pay for what we use. And I think if people use the streets of Omaha they need to somehow help pay for the maintenance of those streets because it's their use of the streets that help create the potholes and all those other kinds of things. So again, I rise in support of AM198. And I feel the whole issue of taxation without representation is an important one. I also believe that we should pay for what we use, be willing to pay for what we use on a regular basis. Thank you very much. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Fulton, you're recognized. [LB81]

SENATOR FULTON: Thank you, Mr. President, members of the body. I've gone silent on this for the past couple of days. I recognize that this is not necessarily an issue, it's more an issue for Omaha area senators than it is for me. That being said, I still hold a principle. And while I recognize that this compromise has been struck, and for what it's worth I recognize the wisdom that exists in striking this compromise, I was not part of any agreement. And I, for my part, don't like the compromise. I think that we're going the wrong way in not simplifying our tax code. For instance, this amendment...I was confused initially when reading AM198 because I found the term "motor vehicle tax." Now the state collects a motor vehicle tax already. The state collects that tax, takes 18 percent of it and provides it to the General Funds of the cities and 22 percent to the counties, the rest, about 60 percent, got to the school boards. That's different, separate and distinct from the motor vehicle tax that appears in AM198. And so my point here is in explicating what Senator Campbell touched on some days ago, that we have in some places in Nebraska double taxation. I'd submit if we'd look at this by way of the state, which we should as we are state senators, we have triple taxation. And if you want to be technical about it those taxes that we pay when we purchase gas are supposed to go to roads also. We could have quadruple taxation if you were to look at it in those regards.

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Now the way I look at this, there is only one city that's employing...that has put forward policy that necessitates this discussion. And I don't want to be picking on that city, we shouldn't pick on that city. And that's why I recognize some wisdom in what Senator Cornett has done--she's bought some time. But we need to communicate a clear tax policy to the citizens of Nebraska, to the municipalities yes, but to the citizens also. And if we are communicating to them that we are going to allow a motor vehicle tax at one level and a motor vehicle tax at the state level and we're going to have wheel fees and wheel taxes as well as gas taxes, all of which are supposed to be paying for roads, then I ask you, if we can't comprehend and understand all of those differences, how is the average citizen, who does not spend his time studying tax policy and tax laws, how are they supposed to understand our tax policy? So I respect Senator Cornett and those senators who have struck this accord. I do see the wisdom of it. It may be possible to persuade me in the end to accept and to support that accord. But for now I was not part of any deal and I do not like this amendment. So I just want to make that clear, as I may be one of the few that will have a red light up, as to why my light will be red. Thank you, Mr. President. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Lautenbaugh, you're recognized. [LB81]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I've been listening to the debate this morning and there are some things that trouble me about this. I heard one of my colleagues say, we don't think the city of Omaha should raise taxes. Well, no, I'm a citizen of the city of Omaha. I don't want them to raise taxes but that's their prerogative and that is local control. But it must be stated again that the cities are authorized to raise revenue only in the ways that we authorize them to raise revenue. That's how this works. And I believe, because I looked at introducing a similar bill to what Senator Cornett introduced, but I didn't do it because she did. And in my research I thought that it was unclear that the city was even allowed to collect the wheel tax in the three-mile zoning jurisdiction. But to my knowledge it had not been challenged because we're not talking about a lot of money per citizen, if you will, per vehicle and the money isn't there to challenge it would be my supposition. I could be wrong. Maybe it was challenged and found to be fine. But under a strict reading of the statute I didn't think it was clear that they could or couldn't do this. So they did about six years ago. But I don't think that was right. And now here we are trying to decide if we end it now or if we end it two years from now for those people in the three-mile zoning window. I would point out that if this were a court challenge and the court found that what they're doing exceeds the statutory authority, it would end right quick. The court wouldn't say and take a couple of years to get your affairs in order. It would be over for this particular tax. And I was not part of the compromise that may or may not have been arrived at yesterday now the more we hear about it. But I don't think that means that I'm going after the city of Omaha if I don't support this amendment. There's a point at which you can just disagree and there's a point at which you can say we need to stand up and speak and

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make policy here. And it would be just as consistent to end all of the beyond the boundary wheel taxes as it would be to do it in this two-tiered approach. And I don't know again that we need another commission, task force, whatever we're calling it to look at this. I'm comfortable just moving the bill and letting people bring an amendment on Select, but I'm not going to support this amendment as we sit here today. I just can't do it. I understand those who can, I obviously understand better those who can't. If this policy is wrong for the people who live well outside the city of Omaha, it's wrong for the people who live in the three-mile jurisdictional...I'm sorry, extended zoning jurisdiction limit. And that's where I stand on this. Thank you. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator McCoy, you're recognized. [LB81]

SENATOR McCOY: Thank you, Mr. President and members. You know, I want to reiterate again why I oppose this amendment, AM198, but support the other underlying amendments and the bill. You know, we have a number of other issues that are going to have to be resolved on Select File. The yet to be determined commission, how that structure, task force, that Senator Lautenbaugh alluded to, we don't know whether...how exactly that would fit together. There are those in the press, last night and this morning, that have seen fit to try to determine that for us, what that commission would look like and what that commission would be able to do and not do among that taxing ability. I wasn't part of the discussions yesterday. Seems to me there are those outside the glass that have seen fit to try and determine what was discussed in here and tell us what our, quote, unquote, deal or no deal was yesterday. I don't think that's good policy. To me this is about tax policy. If it's fair for one it's fair for all. If it's fair for none, it's fair for none whether you're in that extra taxing zone jurisdiction, that three-mile buffer zone or whether you're someone commuting in from Fremont to Omaha. Again, there are those of us that have districts that border the county line between Sarpy and Douglas. We're now saying if you live in a sanitary improvement district in Douglas County and you're across the street, north of Harrison, you're going to have to pay, and you're in this three-mile buffer zone, which by the way a map was handed out that all of you had. You can just see how large that three-mile buffer zone is in Douglas County. It's a huge portion of the county. Those folks are paying this wheel tax and have since 2006 but yet don't get the same...aren't afforded the ability to enjoy the same city services as those that live in city limits. I believe that's fundamentally unfair. I think the Revenue Committee agreed with that, which is why they voted the bill out as it stands without AM198. If a sunset provision needs to be worked out it can be worked out on Select when we have full time to discuss how that would be implemented, how a commission would be implemented. We have a lot of other issues we have to work out between General and Select on this bill. I would think that those outside the glass would be able to trust us and how we do things in here, in this Chamber, that we can work this issue out given enough time. We have precedent for this. I'm sure Senator Nordquist will remember last year or two years ago, I apologize, I believe it was LB603 for him on

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behavioral health, a behavioral health issue that we brought together a task force amongst us senators that we worked out a lot of different issues between General and Select when the bill likely was in dire jeopardy on General File. Once that task force finished its work, it came back on Select File, it passed, as I recall, unanimously, was signed by the Governor and is now law. We have precedent for this. We don't need to be hasty this morning and adopt this amendment adopting the sunset provision and rush into it when we still have all these other issues that we're going to have to resolve on Select File. We can give this some more time between General and Select. There is a long precedent of that inside this Legislature and I think it's a healthy precedent. That's the nature of my opposition to AM198. These folks inside this extra taxing zone jurisdiction, January 1, 2013 may not be soon enough for them. [LB81]

PRESIDENT SHEEHY: One minute. [LB81]

SENATOR McCOY: They've been unfairly taxed, thank you, Mr. President. They've been unfairly taxed in my view on this since 2006. And now they're saying, wait a second, my neighbors, my friends, my family that live outside the county lines that commute into Omaha, now we're going to let them off the hook, but I don't get let off the hook for two more years? I think that's one of the issues we have to discuss between General and Select. The Revenue Committee passed this out unanimously, LB81 as it stands with AM14, and I believe we should advance it as it is without AM198. Thank you, Mr. President. [LB81]

PRESIDENT SHEEHY: Thank you, Senator McCoy. Any additional requests to speak? Senator Nelson, you're recognized. [LB81]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'm not going to speak long. I just want you to know where I stand on this as a resident of central Omaha. I have to respectfully disagree with my colleague, Senator McCoy. Those in the three-mile zone have been taxed for five or six years and really, so far as I know, there hasn't been that much complaint because they are using our roads, they are receiving services. Some of you may remember, perhaps not, that I had a bill last year that would have allowed the city of Omaha to tax beyond county lines and that did not make it out of Revenue. But that bill was introduced because Omaha is restricted now in its tax base. It has nowhere to go to the south and yet there are a lot of people living in districts south of Harrison Street that consider themselves part of Omaha and I think they still do. I support AM198 because it moves this along and it does the right thing. It's a compromise, I grant you that, but it's fair to everybody. The people that were going to be taxed with the wheel tax down in Sarpy County are not going to be taxed under this amendment. Those that have been taxed in the three-mile zone are going to be taxed for at least another two years and then perhaps not after that. But we have time to work on that through some sort of a commission or whatever we can work out on Select or later on. The city of Omaha is going to lose half of its prospective income under the

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budget from this use tax. But that's the compromise. Life is not fair to everybody, this is not a matter of fairness necessarily because it's taxation without representation. I think Senator Greg Adams started it off by saying this happens all the time. It's more a matter of what is needed to maintain our streets in Omaha for the use not only of the Omaha residents but those that use them all the time, whether they're going out to Elkhorn now Omaha or downtown. So with that I just wanted to stand and say as a resident of Omaha I think this is a fair compromise. I commend Senator Cornett for agreeing to do this, to work this out with AM198. And I would urge all of my colleagues to support it and vote for it. Thank you. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Schumacher, you're recognized. [LB81]

SENATOR SCHUMACHER: Thank you, Mr. President. Would Senator Cornett yield to a question? [LB81]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Schumacher? [LB81]

SENATOR CORNETT: Yes. [LB81]

SENATOR SCHUMACHER: Okay. As I read the amendment, the language says, the city council shall have the power to tax for revenue any person within the limits of the city and require the same by ordinance except as otherwise provided herein, in this section. That would seem to me that it almost is an unlimited grant of taxing authority to tax any person any way as long as they're within the city limits. Is that what's intended? [LB81]

SENATOR CORNETT: No. There are certain areas that are allowed to be taxed under occupation tax. That (inaudible) give them the power to increase sales tax over what the state has set. But they do have...occupation tax is very broad for the municipalities. [LB81]

SENATOR SCHUMACHER: Where is that written that this is limited to an occupation tax? [LB81]

SENATOR CORNETT: I didn't say it was limited to an occupation tax. I said that they are limited in where they can tax and occupation taxes is one of those areas. I can't think of any other, other than the sales tax, your property tax and occupation tax that a municipality has. [LB81]

SENATOR SCHUMACHER: Well, if we say the city council has the power to tax any person within the limits of the city and functionally put the period there, we don't define

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in what manner. The next...there's a sentence later on that says, the city council may raise revenue by levying a...and collecting a tax on occupation or business. But it doesn't say only by...or limited in this particular section. That first sentence seems unmodified as a general grant of taxing authority. [LB81]

SENATOR CORNETT: The general grant of taxing authority is also set in state statute in other areas in regards to what they can and cannot do under occupation tax, what they can and cannot do under sales tax. [LB81]

SENATOR SCHUMACHER: But what... [LB81]

SENATOR CORNETT: They can't impose a higher sales tax on an individual or a person in another area, that is set by statute. Under the occupation tax, though, that is very broad. That is one of the other bills we're looking at later this year. [LB81]

SENATOR SCHUMACHER: But what if Omaha gets creative again and says, well, let's do a corporate transaction tax or let's do a...some form of corporate income tax? I'm bothered by this first sentence not having any limits on it. (Inaudible). [LB81]

SENATOR CORNETT: And they can do that currently. That's why I have another bill that addresses that issue in the Revenue Committee, as does Senator Fischer, looking at telecommunications occupation tax. Those are being looked at this year in the committee. [LB81]

SENATOR SCHUMACHER: So then as this stands, does this or does this not constitute an unlimited grant of taxing authority in all areas? [LB81]

SENATOR CORNETT: As the statute is drafted it does, under occupation tax, grant them very, very broad taxing powers. [LB81]

SENATOR SCHUMACHER: If that were the case, then would it not say, the city council shall have power to tax for revenue an occupation tax on any person? I don't see that limiting language in there. [LB81]

SENATOR CORNETT: No, but the state grants them the power to tax only in certain areas and that area is occupation tax. They have the right for local option sales tax, they have the right to increase their property tax, and they have the right to impose an occupation tax which is a very, very broad taxing power, and that is why we are looking at that also just not in this bill. [LB81]

PRESIDENT SHEEHY: One minute. [LB81]

SENATOR SCHUMACHER: Thank you, Senator Cornett. I simply don't see that that

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language has any limiting factors in it to occupation tax. And reading the first sentence standing alone, it seems to be an unlimited grant of taxing authority. And that really concerns me. Thank you, Mr. President. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Are there additional requests to speak? Seeing none, Senator Cornett, you're recognized to close on AM198. [LB81]

SENATOR CORNETT: Thank you very much, Lieutenant Governor and members of the body. Yesterday, some of the interested parties got together and we worked out an amendment taking into consideration the commuter tax, which this amendment eliminates, allowing the city of Omaha one full budget cycle to transition away from a revenue source they have depended on for five years. It also allows...it regulates that the city of Omaha, after 2013, will not have this revenue source. We came to an agreement yesterday and Senator McCoy was part of that agreement. And yesterday, we agreed that we would do this on General File and then look at how...a metro area transportation idea for Select File. I understand he doesn't feel that that agreement stands this morning and he has his reasons for that. And he's saying do this amendment on Select File. It doesn't matter if we do it on General File or Select File, there are going to be people that don't like it and that's just the way it is. The people in the ETJ who have been being taxed don't want to be taxed. The city of Omaha wants to keep their ETJ. They're not happy. This is what compromise is about, everyone has to give. I urge the body to support AM198 to LB81. Thank you. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of the amendment to committee amendment, AM198 to AM14. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB81]

CLERK: 28 ayes, 11 nays, Mr. President, on the adoption of Senator Cornett's amendment to the committee amendment. [LB81]

PRESIDENT SHEEHY: AM198 is adopted. Mr. Clerk, do you have an amendment to committee amendment? [LB81]

CLERK: Mr. President, Senator Council would move to amend the committee amendments with AM188. [LB81]

PRESIDENT SHEEHY: Senator Council, you're recognized to open on AM188 to AM14. [LB81]

SENATOR COUNCIL: Mr. President, I would withdraw AM188. [LB81]

PRESIDENT SHEEHY: AM188 is withdrawn. [LB81]

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CLERK: I have nothing further pending to the committee amendments at this time, Mr. President. [LB81]

PRESIDENT SHEEHY: We will now return to discussion on Revenue Committee amendment, AM14. Member requesting to speak Senator Council. Are there additional members requesting to speak? Seeing none, Senator Cornett, you're recognized to close on Revenue Committee amendment, AM14. [LB81]

SENATOR CORNETT: I think everybody has heard enough about LB81 over the last three days. I waive. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of Revenue Committee amendment, AM14, to LB81. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB81]

CLERK: 42 ayes, 0 nays, Mr. President, on the adoption of the committee amendments, excuse me. [LB81]

PRESIDENT SHEEHY: Revenue Committee amendment, AM14, is adopted. [LB81]

CLERK: Senator Cornett, I had also pending to the bill AM132, but I had a note, Senator, you wanted to withdraw that at this time? [LB81]

SENATOR CORNETT: Yes. [LB81]

PRESIDENT SHEEHY: AM132 is withdrawn. [LB81]

CLERK: I have nothing further pending on the bill, Mr. President. [LB81]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll return to floor discussion on LB81. Seeing no requests to speak, Senator Cornett, you're recognized to close. [LB81]

SENATOR CORNETT: I just want the body to be very clear, LB81 in its present form removes the commuter wheel tax and allows the city of Omaha until January 1, 2013 to transition from its revenue source in the ETJ. I urge the bodies support of this to implement a good tax policy for all cities. And I misspoke just then. LB81 will limit this taxing ability for all cities. But it will stop what Omaha has been doing. With that, I urge the bodies support and thank you. [LB81]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the advancement of LB81. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB81]

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CLERK: 43 ayes, 0 nays, Mr. President, on the advancement of LB81. [LB81]

PRESIDENT SHEEHY: LB81 advances. Mr. Clerk, we will now proceed to LB211. [LB81 LB211]

CLERK: LB211 is a bill by Senator Cornett. (Read title.) Introduced on January 10 of this year, at that time referred to the Revenue Committee. The bill was advanced to General File. There are Revenue Committee amendments pending, Mr. President. (AM26, Legislative Journal page 334.) [LB211]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB211. [LB211]

SENATOR CORNETT: Thank you very much. I appear before you today on LB211. And I'm going to go into a little bit of what streamlined sales tax is so everyone has a background. It's a little bit of a new concept, not new in that we haven't been doing it but new in a lot of people don't know what it is or don't understand. The Streamlined Sales and Use Tax was created by the National Governors Association and the National Conference of State Legislatures in the fall of 1999 to simplify sales tax collection. According to the 2007 U.S. Census, general sales and gross receipts comprise nearly 32 percent of total sales tax. The sales tax is second only to personal income as the largest source of state revenue. Leaders from NGA and NCSL are members of an advisory commission on electronic commerce that was created when the Internet Tax Freedom Act was passed. As a result of this work, the commission and the leaders of these two organizations were concerned that current...the past sales tax laws would not be relevant in the twenty-first century with sales tax on Internet sales not being in place. As of present, 24 states have joined the streamlined sales tax and have conforming legislation. If you are a state that is a member of streamline and someone purchases something on the Internet from another state that is a member of streamline that sales tax is collected and then remitted to the state of Nebraska. Currently, the state of Nebraska receives about \$12 million a year from streamlined sales tax. What LB211 does is creates conforming language that gives the business community consistency with respect to its definitions. It does not increase what is already being taxed or what should already be being taxed. It simply brings us into confirmation with the streamline agreement. It's very similar to the IRS update bill that we had that this simply brings us into conforming language to remain part of the streamlined compact. With that, I'll be happy to answer any questions. [LB211]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening to LB211. As was noted, there is a committee amendment, AM26. Senator Cornett, you're recognized to open on AM26. [LB211]

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SENATOR CORNETT: Yes, that was to correct a drafting error in regards to the direct mail portion. This was rather new language for my committee and I to work with. And I appreciate the bodies support on AM26 to the Revenue Committee amendment. It corrects an oversight. Thank you. [LB211]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening from the Revenue Committee amendment, AM26. Are there any requests to speak? Seeing none, Senator Cornett, you're recognized to close on Revenue Committee amendment. Senator Cornett waives closing. The question before the body is on the adoption of AM26 to LB211. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB211]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB211]

PRESIDENT SHEEHY: AM26 is adopted. We will now return to floor discussion on LB211. Seeing no requests to speak, Senator Cornett, you're recognized to close. [LB211]

SENATOR CORNETT: Thank you very much, Lieutenant Governor and members of the body. I urge your support on this bill. It keeps us in compliance with a compact that we're already a member of. Thank you very much. [LB211]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the closing. The question before the body is on the advancement of LB211. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB211]

CLERK: 36, 0 nays, Mr. President, on the advancement of LB211. [LB211]

PRESIDENT SHEEHY: LB211 advances. We'll now proceed to LB154. [LB211 LB154]

CLERK: LB154 is a bill by Senator Janssen. (Read title.) Introduced on January 7 of this year, at that time referred to Natural Resources. The bill was advanced to General File. I have no amendments to the bill at this time, Mr. President. [LB154]

PRESIDENT SHEEHY: Senator Janssen, you're recognized to open on LB154. [LB154]

SENATOR JANSSEN: Thank you, Mr. President and members of the Legislature. I don't think this will take nearly as long as LB81, as I've waited about five days to introduce this. LB154 would simply change the process for filling vacancies on Natural Resource District boards. Presently, if a vacancy occurs on the board, the remaining board members select a new member to fill out the remainder of the term. LB154 would change NRD vacancy provisions to mirror the process for state senators. If a person is

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appointed to fill a vacancy in the first or second year of a term, that individual would have to run in the next general election, much like within our own body, I believe Senator Fulton, Lautenbaugh, Krist. I'm probably missing somebody else that was appointed, but much in the same fashion, exactly in the same fashion. NRDs are no longer the little noticed, little publicized public bodies of yesterday. They're making hugely important and sometimes hugely expensive decisions that affect thousands of taxpayers. The property tax levy assessed to each property owner is becoming more and more noticed, and even more scrutinized. Since this is the case, I think it may be time to examine the way we treat vacancies. Appointees to the board should have to face the voters in the next available opportunity in order to ensure that the boards are truly representative of the districts they represent. I think the vacancy provisions currently in place for state senators would also serve the NRD boards well. And essentially, it says if...the way it is right now, if somebody was elected and two months or a month after they were elected they resigned, somebody else would be appointed and they would serve out the remaining, the entirety of that term. There are no term limits in NRD boards. I realize sometimes, in some places, they're difficult to fill, but also in this day and age of term limits where we're at, it gives an opportunity for maybe somebody to get more engaged in the political process and run for it and kind of gets rid of at least that idea of the "good old boys network." I have no specifics of that actually happening, but it gives a chance for many people to run. In fact, the only, actually NRD board member I ever recall before I was elected, is Senator Langemeier when he was on the NRD. And that's the only name I recognized and I believe, and he could correct me if I'm wrong, he ran for it. When he went into the Legislature they appointed somebody, and that person was not reelected. So it actually worked out the way it was supposed to be in the next election. So I'd just like to make it uniform. Again there's some huge taxing authority and some very large budgets. And I know we talk about it quite a bit here in talking about the NRDs, and the decisions they make, and I would appreciate your support of LB154. Thank you. [LB154 LB81]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You've heard the opening to LB154. Are there members wishing to speak? Seeing none, Senator Janssen, you're recognized to close. Senator Janssen waives closing. The question before the body is on the advancement of LB154. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB154]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB154. [LB154]

PRESIDENT SHEEHY: LB154 advances. We will now proceed to LB208. [LB154 LB208]

CLERK: LB208 is a bill by Senator Langemeier. (Read title.) Introduced on January 10 of this year, referred to the Natural Resources Committee. The bill was advanced to General File. At this time I have no amendments. [LB208]

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PRESIDENT SHEEHY: Senator Langemeier, you're recognized to open on LB208. [LB208]

SENATOR LANGEMEIER: Mr. President and members of the body, I thank you. LB208, I'm proud to say, is a cleanup bill for LB1048, our big wind bill last year, and it's very short in its nature. It does two things. The Power Review Board has the authority to do conjunctive relief with any public power entity they deal with. We thought that would carry over to private entities that we created within LB1048. The question was...is let's make sure that's clear. So it clarifies that the Power Review Board does have that power over private wind development in Nebraska to make sure they comply with LB1048. And the second thing it does, it allows the Power Review Board to waive the conditional initial approval hearing for the approval of a wind project. We currently have that available for public power. I don't expect the Power Review Board to do that on any of the applications that are coming in now. I expect that to maybe be used later in life after they've been through a number of the private developers. But we want to make sure that they have that. So it is a cleanup bill and we'd ask for your support of LB208. Thank you. [LB208]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You have heard the opening. Are there members requesting to speak? Seeing none, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the advancement of LB208. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB208]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB208. [LB208]

PRESIDENT SHEEHY: LB208 advances. We'll now proceed to LB72. [LB208 LB72]

CLERK: LB72 is a bill by Senator Pahls. (Read title.) Introduced on January 6 of this year, at that time referred to the Banking, Commerce and Insurance Committee, advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB72]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pahls, you're recognized to open on LB72. [LB72]

SENATOR PAHLS: Thank you, Mr. President and members of the body. Today, I rise to ask for your support of LB72 heard by the Banking, Commerce and Insurance Committee on January 18. LB72, which I introduced at the request of the Department of Insurance, includes a number of insurance topics. A couple of the provisions, but certainly not all of them, are in the nature of housekeeping for the insurance code. The first section I will talk about is the nonpayment of interest penalties. First, under Section

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44-3,143, life insurers must pay interest on life insurance policy proceeds from the date the insurer receives the proof of death. This requirement provides a clear incentive for the life insurer's to pay their claims in a prompt manner. However, the statute does not include a specific penalty. Elsewhere in the statute, such as Section 44-394 sets out a rule, which says that if there's no penalty prescribed for a violation of the insurance code, the violation is a Class III misdemeanor. Obviously, for a violation of a statute of this type, a criminal penalty is very unworkable. So LB72 would specify that a violation is instead treated as an Unfair Claims Insurance Settlement Practice. Under the Unfair Insurance Claims Settlement Practice Act, administrative penalties imposed by our department can range from up to \$1,000 per violation to either revoke or suspend the insurance certificate of authority. This change would not only provide a more appropriate type of penalty, but it would give certainty to the process. Insurers are familiar with the Unfair Insurance Claims Settlement Practice Act process as it is relatively similar from state to state. The second section I'd like to talk about deals with separate accounts. In the area of insurance insolvency regulation, LB72 would tighten up this regulatory oversight of separate accounts. The bill would provide that a domestic life insurance company may establish one or more separate accounts only and I say only upon the approval of the Director of Insurance, rather than upon giving them...the director a notice. Insurance companies use a separate account to segregate a set of assets held and owned by an insurance company from the insurance general account. Separate accounts start as a way to provide investors and policyholders with the investment results of a specific asset portfolio rather than to combine results of the insurance company's general account. Operating on an abundance of caution in order to provide a higher degree of regulatory scrutiny, the director asked us to require domestic life insurance companies to seek approval for the establishment of separate accounts rather than allow the companies to establish them simply upon notice to the director. The third section I'd like to talk about is dealing with netting agreements. Also in the area of solvency regulations, LB72 would adopt recent revisions made by the National Association of Insurance Commissioners in their model insolvency laws. The language of LB72 would clarify the treatment of certain financial instruments in the event of an insurer's insolvency. The bill would bring the treatments of these financial instruments in line under the NAIC Model Act treatment and under the U.S. Bankruptcy Code and the Financial Institution Reform, Recovery and Enforcement Act of 1989. The change will remove a competitive disadvantage under which Nebraska domestic insurers currently operate. LB72 would allow counter parties to certain types of financial transactions to proceed to enforce their contracts, notwithstanding the stay that is in place in insolvency proceedings. The new language would clarify the rights of creditors in the event of an insurance company's insolvency, allowing performance of the contract immediately without having to wait for the larger insolvency to be resolved. LB72 would provide that the actions of creditors who enforce underqualified financial contracts will not be stayed in the event of an insurance company's insolvency. These agreements are used by insurers to offset some of the risks in their investment portfolios where appropriate. These instruments help insurers to manage and diversify instruments to

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provide additional security to their policyholders. Counter parties to these transactions with Nebraska domestic insureds have begun to express concern regarding entering into these instruments due to the uncertainty of the treatment under Nebraska law. Because of the treatment of these contracts, an insolvency setting is not clear. Parties on the other side of the contract may charge a higher price for their participation to make up for that uncertainty or they may simply be unwilling to enter into any of these contracts at all. A number of leading insurance regulatory domiciles, including Connecticut and Iowa as well as Maryland, Michigan, Texas, and Utah have adopted similar legislation. Insurers domiciled in those states have a competitive advantage over Nebraska domestic insurers because the counter parties to these transactions do not charge the same fee to insurers domiciled in those states as they are in states where they do not have this law such as the state of Nebraska. The last section deals with conformity to state and federal statutes. Recent new federal laws have made numerous changes in the landscape of health insurance. Current law requires that policies conform with state law and LB72 would require insurers to include within their form filings on affirmative statements that they will also comply with federal law. Now as part of our department's duty to enforce insurance contracts this provision will allow the department to respond with regard to any policy that is out of conformance with state or federal law, and will provide consistency with existing public policy of the state of Nebraska that an insurance policy must not be misleading. I ask you to advance the Department of Insurance bill to Select File. Thank you. [LB72]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Mr. Clerk, do have an item for the record? [LB72]

CLERK: Mr. President, thank you. Revenue Committee Executive Session immediately under the north balcony; the Revenue Committee, immediately. Thank you. [LB72]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. You have heard the opening to LB72. Member requesting to speak, Senator Carlson, you're recognized. [LB72]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I would like to address Senator Pahls, if he would yield. [LB72]

PRESIDENT SHEEHY: Senator Pahls, would you yield to Senator Carlson? [LB72]

SENATOR PAHLS: Yes, I would. [LB72]

SENATOR CARLSON: Senator Pahls, there's a lot of things in this bill. Would you go to the very first one, payment of the life insurance proceeds. [LB72]

SENATOR PAHLS: Yes. [LB72]

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SENATOR CARLSON: Now it says that there's a requirement for payment of interest on delayed death claims. And I understand that, and it would change how that's treated. And right now, it's a Class III misdemeanor, which no penalty exists. So in this change, can you tell me what the penalty is or is there a penalty and is there...there's probably not a declared interest rate? [LB72]

SENATOR PAHLS: Okay, if they fail to do that, the department can, as I read this, they can charge up to \$1,000 per violation, they can revoke or rescind the person's certificate of authority. That's what the penalty would be. [LB72]

SENATOR CARLSON: A \$1,000 of fine per violation? [LB72]

SENATOR PAHLS: For violation or if it's severe, they could revoke or suspend the insurance certificate of authority. [LB72]

SENATOR CARLSON: Now is that a fine that goes to the Department of Insurance? [LB72]

SENATOR PAHLS: Oh, yes. Right. It's like a number of these fines, they do go to the schools. [LB72]

SENATOR CARLSON: Okay. But the beneficiary doesn't benefit from that, is that correct? [LB72]

SENATOR PAHLS: No, the beneficiary would not, but by having this imposed, that wouldn't...the insurance company would be more likely to resolve it earlier because they would start paying interest if they do not. [LB72]

SENATOR CARLSON: Okay. So there's no damage paid to the beneficiary? [LB72]

SENATOR PAHLS: No. [LB72]

SENATOR CARLSON: Okay. But you feel like that is an improvement on current law? [LB72]

SENATOR PAHLS: Yes, because it is my understanding those people in this field or in this industry, they are very familiar with the Unfair Insurance Claims Settlement Practice Act. And the insurance companies...I think what they're looking for is certainty and clarity, and I think this would be...that would help that come about. [LB72]

SENATOR CARLSON: Thank you, Senator Pahls, for that explanation and I do support LB72. [LB72]

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SENATOR PAHLS: Thank you. [LB72]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Seeing no additional requests to speak, Senator Pahls, you're recognized to close. Senator Pahls waives closing. The question before the body is on the advancement of LB72. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB72]

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB72. [LB72]

PRESIDENT SHEEHY: LB72 advances. Mr. Clerk, we'll now proceed to LB28. [LB72 LB28]

CLERK: Senator Langemeier would offer LB28. (Read title.) Introduced on January 6 of this year, referred to Natural Resources, advanced to General File. I have no amendments to the bill, Mr. President. [LB28]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Langemeier, you're recognized to open on LB28. [LB28]

SENATOR LANGEMEIER: Mr. President and members of the body, LB28 falls within what we would call the LR542 study. It is a reporting requirement brought on behalf of the Natural Resources Districts. Currently, as we apply for a chemigation permit at the NRD, they are required to immediately send that application after approved to the Department of Environmental Quality. This would remove that requirement. The department could at any time make the request to the NRD for a copy of the application, and the NRDs currently have to submit an annual report listing all applications. We're currently approving about 18,000 to 19,000 of these a year, so this would remove that paperwork from going in on a monthly basis or an as applied basis. If you see in the fiscal note, this has a savings to our General Fund of about \$6,000. It's a...we're hoping to over time make this an electronic transfer of data instead of a full piece of paper. It's actually a five-page report that is sent in to DEQ for each one of these. So we're asking for your adoption of LB28 to remove that paperwork from the requirement. It still would have the annual report. It would still make the NRDs liable to hold these applications and make them available at DEQ's request at any time. So with that, I'd ask for your adoption of LB28. [LB28]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening to LB28. Are there members requesting to speak? Seeing none, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the advancement of LB28. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB28]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB28. [LB28]

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PRESIDENT SHEEHY: LB28 advances. Mr. Clerk, you have items for the record?  
[LB28]

CLERK: I do, Mr. President. Enrollment and Review reports LB18, LB67, and LB158 as correctly engrossed. The Redistricting Committee would like to announce that Senator Langemeier has been selected as Chair of the committee and Senator Dubas as Vice Chair. New A bill, 163A by Senator Fischer. (Read by title for the first time.) Name adds: Senator Hansen would add his name to LB149; Senator Christensen to remove his name from LB229; and Senator Howard to add her name to LB53; and Senator Janssen to LB215. Announcement: Exec Board will meet upon adjournment. And a priority motion. I do have one other item: Senator McCoy would like to print an amendment to LB81. (Legislative Journal pages 425-426.) [LB18 LB67 LB158 LB163A LB149 LB229 LB53 LB215 LB81]

Mr. President, a priority motion. Senator Flood would move to adjourn the body until Wednesday morning, February 2, at 10:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Wednesday, February 2, at 10:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.