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Floor Debate
April 19, 2011

[LB22 LB84 LB289A LB289 LB383 LB384A LB449 LB464 LB535 LB665 LB682
LR40CA LR170]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixty-sixth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Pastor Marcellus Howard, Sharon Seventh-Day Adventist Church in Omaha, Senator Council's district. Please rise.

PASTOR HOWARD: (Prayer offered.)

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

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

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

CLERK: I have no corrections.

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

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

SPEAKER FLOOD: (Gavel) Thank you, Mr. Clerk. We will now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Mr. President, LB84 on Select File, no E&Rs. I do have a series of amendments pending. [LB84]

SPEAKER FLOOD: Pursuant to the Speaker's authority under Rule 1, Section 17, I'll be ordering the amendments and motions to this bill in the following order. Mr. Clerk, it is my understanding that we have a number of amendments that have a note that they wish to be withdrawn. Is that the case? [LB84]

CLERK: Yes, sir. [LB84]

SPEAKER FLOOD: We will first proceed with the withdrawal of those motions and then, following that, the first amendment we will take up and debate will be Senator Fischer's amendment, AM1216. The first amendment to that amendment will be from Senator

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Conrad, AM1236. Upon the completion of Senator Conrad's amendment, I will announce the order of the next one or two amendments to be taken up. Senator Conrad, for what purpose do you rise? [LB84]

SENATOR CONRAD: Thank you, Mr. President. I rise to request a point of order on the scheduling for this morning, please. [LB84]

SPEAKER FLOOD: And what is that? [LB84]

SENATOR CONRAD: Mr. President, I believe I have filed a priority motion that is pending to bracket to a date certain, which is January 5 of next year. [LB84]

SPEAKER FLOOD: The Chair acknowledges the receipt of that motion and you would like to challenge the ruling of the Chair as to the application of Rule 1, Section 17? [LB84]

SENATOR CONRAD: That's correct, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Conrad. One moment. By way of background, the Speaker's major proposal rule was adopted in January of 1996 following extensive debate. Rule 1, Section 17(c) clearly suggests that the Speaker does have the power to order both the amendments and/or motions. Language adopted to Rule 7, Section 3, as part of the rules proposal to establish a Speaker's major proposal rule, states that, and I quote, "Such motions," indicating priority motions, "shall have precedence in the order in which they are arranged except as provided for in Rule 1, Section 17." This language...end quote. This language clearly indicates that I, as Speaker, have the authority granted to me to specifically order priority motions, pursuant to Rule 1, Section 17. If you look back at the legislative history dating back to April 1997, during consideration of a Speaker's major proposal, at that time the Legislature clearly established the authority of the Speaker to consider amendments ahead of other priority motions. The conclusion, therefore, and the ruling of the Chair is that based on the custom, tradition, and precedent of this Legislature, dating back to the early ruling in 1997 and based upon the literal, plain language reading of Rule 1, Section 17(c) wherein the Speaker has the power to order the amendments and/or motions, and whereas the major proposal adopted in 1996 is the latest expression of legislative intent in construing the priority status of the amendments and motions, it is the ruling of the Chair that Senator Conrad's motion number 32 shall not be ordered for debate at this time and will be placed at the bottom of the list. Senator Conrad, do you have any additional comments? [LB84]

SENATOR CONRAD: Thank you, Mr. President. As an additional point of information, am I allotted a time certain... [LB84]

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SPEAKER FLOOD: You are. [LB84]

SENATOR CONRAD: ...to visit on this topic, to open on this topic? Okay. [LB84]

SPEAKER FLOOD: You are allotted an opportunity to open on this topic, but I'm going to give you an opportunity now to make your motion and to explain why you're making the motion. [LB84]

SENATOR CONRAD: Thank you, Mr. President. And, colleagues, good morning. To be clear, the Speaker and I have had a chance to visit and dialogue about this issue prior to this morning and we came to an agreement that, indeed, if there is a question on this highly technical, procedural issue that I have decided to bring forward that now is truly the only appropriate time to address it. I anticipate that this procedural issue will be dealt with quickly and efficiently and it is not my intent to prolong the substantive debate on this issue, which I know many are eager to attend to. But, nonetheless, I do believe that there is a issue in terms of the application of this rule in the present circumstance and the gist for that position is really based on well-established principles of statutory interpretation and the canons of construction that go along therewith. There is without question the two issues at the heart of this matter are Rule 1, Section 17(c), which affords the Speaker the ability to set this as a Speaker super priority, and the priority motion and precedent rule set forward in Rule 7, Section 3. As to the first point, the rules must and should be applied according to their clear language and as written. And if you look at both Rule 1, Section 7...or Rule 1, Section 17 in (c), which details and delineates the special components of a Speaker's major proposal, colleagues, this is on page 5 of our rule book, the clear and plain language clearly states the Speaker shall, "Determine the scheduling of the proposal and the order of amendments and motions to be considered." There is no argument from my perspective or any other that the Speaker has the ability under our rules to order these amendments and motions. The next reference to this then, of course, is found in Rule 7, which I noted earlier. And if you look on page 49 of our rule books, "Such motions shall have precedence in the order in which they are arranged except as provided for in Rule 1, Section 17. Motions to postpone indefinitely and amend do not yield to each other." So those two sentences, indeed, are at the heart of the matter. Nothing, nothing in either section indicates that the Speaker has the ability to vitiate or reclassify what is otherwise considered a priority motion. Under both rules, the Speaker only has the ability to arrange, order, and schedule pending amendments and motions but nothing changes the fact that indeed our otherwise...our motions like the one that I have filed to bracket to a time certain is and should be and shall remain a priority motion and should take precedence in this debate. The Speaker correctly notes that there is indeed an ambiguity or a point in need of clarification. Typically, in interpreting statutes or utilizing and applying these canons of construction, you must admit that the rule on its face is void or vague...or is vague or ambiguous. I'm sorry, I misspoke. So once that has been admitted, then you would look to legislative history, custom, or practice. In the first instance, our rules only apply to the

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current Legislature, so looking back to 1997 or indeed any other period that delineates a legislative history on any specific rule is irrelevant. There is no legislative history in the application of this rule that exists for this session. That's the first point. [LB84]

SPEAKER FLOOD: Thank you, Senator Conrad. [LB84]

SENATOR CONRAD: Thank you. [LB84]

SENATOR FLOOD: May we treat that as your opening to your motion to overrule the Chair? [LB84]

SENATOR CONRAD: Yes. [LB84]

SPEAKER FLOOD: Okay. Members, you've heard the opening on Senator Conrad's motion to overrule the ruling of the Chair. We now turn to discussion. A reminder that each member is allowed to speak once. Members may not yield time to one another. Senator Fischer, you are recognized. [LB84]

SENATOR FISCHER: Thank you, Mr. President and members of the body. I will make this short. With regards to the motion to override the Chair, I believe that our Speaker has articulated our rules and put forth not just our current rules but also the past usage of those rules in how they have been applied within this body in his decision. I concur, of course, with his decision and ask that you would vote red on this motion to override. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Fischer. Senator Lautenbaugh, you are recognized. [LB84]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do rise in opposition to the motion to overrule the Chair and I believe, if you'll consult the rule on page 49, there's a specific exception that refers back to the Speaker's major proposal rule that allows for the reordering of such motions. And we do have legislative history that I've become aware of, some of it kind of colorful from, I think, Senator Chambers who said what this rule means is whatever Lola wants, Lola gets, and Lola is the Speaker was how he explained it. And what he was saying in his own way was that this rule was meant to be read broadly and construed broadly authority upon the Speaker to do exactly what has taken place in this particular instance. So for that reason, I do rise in opposition to the motion to overrule the Chair and I'll yield my time back, Mr. President. Thank you. [LB84]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Conrad, there are no lights on. You are recognized to close on your motion. [LB84]

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SENATOR CONRAD: Thank you, Mr. President, not only for your ruling in this issue presently before us but for working with me in preparation for this debate to coordinate efforts to ensure that our legislative business is carried forward in a manner that is efficient and is relevant and that provides a clear insight into the application of this rarely utilized procedural rule and issue. Again, I appreciate what the Speaker has put into the record, what Senator Lautenbaugh, as Chair of the Rules Committee, has stated, and Senator Fischer's comments. Again, colleagues, I did not discuss this issue broadly or coordinate a light strategy to in any way delay debate, but I think that the point is still valid and has been failed and has not been clearly addressed by any of these senators who rose to address their opposition to this motion. The first point, to be clear, and again I appreciate that this is a highly technical point but I think it is important, when you look on page 5 of our rules in Rule 1, Section 17(c), what a designation as a Speaker's major proposal entails is only the ability for the Speaker to schedule the proposal, the order of amendments and motions to be considered. There is no disagreement with that. The next inference to this designation, yes, comes on page 49 in Rule 7 which says, "Such motions shall have precedence in the order in which they are arranged except as provided in Rule 1, Section 17." I agree, that is a specific exception, but clearly and on its face both rules only indicate an ability to schedule, arrange, or order. Nothing in either rule vitiates, reclassifies, or otherwise diminishes what is and what is not considered a priority motion. So taking the rules, both, on their face, the clearest and plainest language thereof, the bracket motion is in order and should be applied first as a priority motion. The Speaker's position and Senator Lautenbaugh's and others' position is they admit that the language itself is ambiguous and vague, and that is why they turn to legislative history to clarify that. Fair enough, that's their position. My position is (A) we do not have a legislative history that is relevant to further illustrate and elucidate that point because our rules are adopted for a two-year period. So looking back to 1997 for a legislative history and applying it to the current rules is irrelevant. I believe that we should move forward with our rules as adopted and should recognize priority motions in the order that they are filed and the rest of the Speaker's ability under Section 1, Rule 17(c) and Section 7 of course should be upheld in his ability to order additional amendments or other motions and move forward with substantive debate. I urge your careful consideration of this matter and I appreciate your time and attention. At the very least, if this motion fails, I do believe that the Rules Committee should look carefully and closely at clarifying this language so that additional questions, concerns, and misapplications do not apply in future years. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the closing on Senator Conrad's motion to overrule the Chair. The question before the body is, shall the Chair be overruled? A yes vote overrules the Chair; a no vote does not overrule the Chair. And the motion pursuant to Rule 1, Section 12 requests 25 votes. We have one member excused at this time. All those in favor of overruling the Chair vote yea; all those opposed to overruling the Chair vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB84]

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CLERK: 6 ayes, 32 nays, Mr. President, on the motion to overrule the Chair. [LB84]

SPEAKER FLOOD: The motion to overrule the Chair is not successful. Mr. Clerk, we have a number of amendments that I understand members would like to withdraw. [LB84]

CLERK: Yes, sir, that is true. Mr. President, with your permission, Senator Fischer, I have first of all AM827 with a note you want to withdrawn. [LB84]

SENATOR FISCHER: Correct. [LB84]

SPEAKER FLOOD: AM827 is withdrawn. [LB84]

CLERK: Senator Flood, FA8. [LB84]

SPEAKER FLOOD: That amendment is withdrawn. [LB84]

CLERK: Senator Fischer, AM916. [LB84]

SPEAKER FLOOD: Senator Fischer. [LB84]

SENATOR FISCHER: Please withdraw. [LB84]

SPEAKER FLOOD: AM916 is withdrawn. [LB84]

CLERK: Senator Fischer, AM940. [LB84]

SPEAKER FLOOD: Senator Fischer. [LB84]

SENATOR FISCHER: Please withdraw. [LB84]

SPEAKER FLOOD: AM940 is withdrawn. [LB84]

CLERK: Senator Conrad, AM962. [LB84]

SPEAKER FLOOD: Senator Conrad. [LB84]

SENATOR CONRAD: Please withdraw. [LB84]

SPEAKER FLOOD: AM962 is withdrawn. [LB84]

CLERK: Senator Utter, AM958. [LB84]

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SPEAKER FLOOD: Senator Utter. [LB84]

SENATOR UTTER: Please withdraw. [LB84]

SPEAKER FLOOD: AM958 is withdrawn. [LB84]

CLERK: Senator Mello, AM974. [LB84]

SPEAKER FLOOD: Senator Mello. [LB84]

SENATOR MELLO: Withdraw. [LB84]

SPEAKER FLOOD: AM974 is withdrawn. [LB84]

CLERK: Senator Louden, AM975. [LB84]

SPEAKER FLOOD: Senator Louden. [LB84]

SENATOR LOUDEN: Withdraw it, if you would, please. [LB84]

SPEAKER FLOOD: AM975 is withdrawn. [LB84]

CLERK: Senator Fischer, FA11. [LB84]

SPEAKER FLOOD: Senator Fischer. [LB84]

SENATOR FISCHER: Please withdraw. [LB84]

SPEAKER FLOOD: FA11 is withdrawn. [LB84]

CLERK: Senator Mello, AM980. [LB84]

SPEAKER FLOOD: Senator Mello. [LB84]

SENATOR MELLO: Please withdraw. [LB84]

SPEAKER FLOOD: AM980 is withdrawn. [LB84]

CLERK: Senator Council, I don't know your intention, Senator, AM968, but that was drafted to an amendment earlier withdrawn so... [LB84]

SPEAKER FLOOD: AM968 is withdrawn. [LB84]

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CLERK: Senator Louden, AM999. [LB84]

SENATOR LOUDEN: Yes, withdraw that one. [LB84]

SPEAKER FLOOD: AM999 is withdrawn. [LB84]

CLERK: Senator Fischer, AM1025. [LB84]

SPEAKER FLOOD: Senator Fischer. [LB84]

SENATOR FISCHER: Please withdraw. [LB84]

SPEAKER FLOOD: AM1025 is withdrawn. [LB84]

CLERK: Excuse me, Mr. President. Senator Louden, AM1093. [LB84]

SPEAKER FLOOD: Senator Louden. [LB84]

SENATOR LOUDEN: Yes, withdraw AM1093. [LB84]

SPEAKER FLOOD: AM1093 is withdrawn. [LB84]

CLERK: Mr. President, then I am back to Senator Fischer's AM1216. (Legislative Journal page 1204.) [LB84]

SPEAKER FLOOD: Senator Fischer, you're recognized to open on AM1216. [LB84]

SENATOR FISCHER: Thank you, Mr. President and members. First of all, I would like to thank many of my colleagues who have worked on this issue for the last two, four, or six years with me and many of our previous colleagues who have been involved in trying to recognize the importance of funding our infrastructure, our highways, and our roads in this state. I'd especially like to recognize the senators that I've worked with over the last couple weeks in drafting AM1216. Senator Campbell has a long history, a long record of understanding highway financing as...in her previous life as a county commissioner here in Lancaster County and, in fact, she has introduced bills in this body that deal with that matter. So I thank Senator Campbell. I also thank Senator Hadley and Senator Pankonin for meeting and working on this. Both are members of the Revenue Committee, Senator Hadley is also Vice Chair of the Transportation Committee, and they are cosponsors of the bill. And I'd like to thank the Speaker and Senator Heidemann for coming forward and spending the time in trying to reach a workable solution that we have come up with on AM1216. This amendment is a solution and it is reasonable and it is workable and it begins to move Nebraska forward in

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building for our future infrastructure needs. Nebraska is not alone in this funding crisis. All of you know that. In a recent newsletter from the NCSL, it was stated that without innovations and new money, roads and bridges will fall further into decline and disrepair. Short-term fixes have been exhausted and long-term options will be politically painful. This is our business, to make decisions that may be politically painful. This amendment designates a quarter-cent sales tax for roads funding at our different levels of government. Fifteen percent of the annual funds generated will be directed to the current Highway Allocation Fund to be evenly split between our cities and our counties for their roads and streets purposes. Twenty-five percent of these annual funds are going to be directed to the State Highway Capital Improvement Fund to be used for the expressway system. The remaining revenue will be used for priority projects as they are determined by the Department of Roads. Under this amendment, the bonding component is removed. Although the original bill outlined a conservative approach to bonding, after listening with many of you and knowing my own reservations regarding bonding, the amendment removes all bonding authority under the bill to ensure that Nebraska remains a pay-as-you-go state. I believe that the amendment is a fair proposal and it makes a good start in addressing some of the highway funding needs of our state. It shows the Legislature's commitment to providing a safe, reliable transportation system for our citizens. I have a chart here and I have not made copies, I would make them available to you if you so wish, but this chart shows that the state funds appropriated for the state highways construction program. Again, you can see the stagnant growth. In this case, a shrinking appropriation has taken place since fiscal year '06. At this time, I'd like to address a point of inaccuracy that has been brought up by the opponents of this bill numerous times. In fact, I received another e-mail this morning outlining this misinformation from an advocacy group. I'm sure you've received these same correspondence. They compare the rankings with state spending for highways based on a 2010 Reason Foundation report, and I had that passed out to you. It is true that the report ranked Nebraska fifth in overall performance for its highway system. This is something we should be proud of, but I believe the number also reflects Nebraska's plan to fund only maintenance the last few years and it further reflects the negative results of transportation funding faced by other states and their decisions, for whatever reasons, to let their roads fall into disrepair. That's why we rank so high. That's why we're fifth. I believe they made poor decisions and they are turning out to be very costly decisions for those states. Also, it troubles me that opponents of LB84 have continuously cited that Nebraska ranks ninth in total disbursements for highways, according to the report, and you see on that sheet that we are ninth. They're correct in that. However, what troubles me is that it appears that not one person who cited this number actually read the report. If they had, they would have seen Nebraska spends the ninth least for total disbursements per state-controlled mile. Nebraska spends about \$63,000 per mile; Missouri, which is 10th place, spends \$64,000; and Iowa, our other neighbor in 16th place, spends \$92,000. New Jersey is in last place but they spend \$1.1 million per mile. So if Nebraska was actually in ninth place, as phrased by the opponents, according to this report, we would be spending \$329,000 per

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state-controlled mile. You know, if they're advocating that the state should spend another \$297,000 per mile on state highways, you know, I'm sorry but even I can't agree with that position. I do encourage everyone to actually read this report and please pay particular attention to our ninth place rating in administrative disbursements at only \$3,278 per mile. We are recognized in this state for spending our citizens' tax dollars wisely when it comes to our highway program. Again, thank you to my colleagues who have worked with me on this important matter. I appreciate your dedication, your hard work, and especially your knowledge and your expertise on this issue. And there's many of you in here who have continued to support this bill. I thank all of you, shout out to Senator Avery. He was giving me a hard time earlier. But I do thank all of you. As we walked around and discussed this amendment with you, we listened to you, we listened to your input, and I thank you for your support. I truly appreciate it. At this time, I would like to yield the remainder of my time to Senator Utter, Mr. President. Thank you. [LB84]

SPEAKER FLOOD: Senator Utter, you have 2 minutes and 30 seconds. [LB84]

SENATOR UTTER: Thank you very much, Mr. President. Good morning, colleagues. As many of you know, in the initial discussion on this bill on General File, I had expressed some reservations with regard to the amount of funding that we were designating to go to the roads project in view of the uncertainty of the revenues that we were going to produce, and I had introduced an amendment early on in this process to put a substantially lower cap on the funding that Senator Fischer had proposed. I will...I want to tell all of you that I truly think that roads funding is one of the state's priorities. We have priorities with regard to education, there's no doubt. We have priorities toward helping those who are unable to help themselves and there's no doubt about that. And you can have a different list of priorities, and I'm sure many of you do, but I think roads funding is in there very high. I'd worked with Senator Fischer to go beyond that initial amendment that I had introduced and the process is what you see before you. I think it's well thought out. It includes the cities and the counties. It will provide some funding for the expressways and it seems to me like this is now a reasonable approach to the overall roads funding problem. I would say that I think it's only a beginning and I'm sure Senator Fischer will agree with me on that, that as we move down the road we're going to see that it's going to take more funds to do the things that we need to do to keep our roads infrastructure in proper shape. Doing that, I think we need to look at user-fee financing in some form. I don't think that we can continue to come back to the Legislature and say, well, we've got a quarter of a cent now, we need... [LB84]

SPEAKER FLOOD: Time, Senator. [LB84]

SENATOR UTTER: ...another quarter of a cent to go with it. So as we move along, I think that's something that we need... [LB84]

SPEAKER FLOOD: Time. [LB84]

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SENATOR UTTER: ...to think about. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Utter, Senator Fischer. Mr. Clerk. [LB84]

CLERK: Mr. President, pursuant to your order, Senator Conrad would offer AM1236 as an amendment to Senator Fischer's AM1216. (Legislative Journal page 1225.) [LB84]

SPEAKER FLOOD: (Visitors introduced.) Now to AM1236 to AM1216, Senator Conrad, you are recognized to open. [LB84]

SENATOR CONRAD: Thank you, Mr. President. Again, good morning, colleagues. AM1236 is a very straightforward and simple amendment. If you pull it up on your computer or print out a copy, you can see that it is indeed brief and to the point, and what it does is provide actual language to ensure flexibility for roads funding now and into the future. It does not indicate any sort of general, philosophical opposition to the diversion of General Funds to roads projects, which indeed there is no disagreement on this floor that critical infrastructure is a state priority and is important for economic development, economic prosperity, growth in jobs; absolutely no disagreement on those key values and those points. At issue though is the lack of flexibility contained in LB84 as amended through the proposal, AM1216, put forward by Senator Fischer this morning. If you look at AM1216, there is really the same substance of the legislation as contained in the original proposal that has been scaled down. So even with this proposed and pending amendment, LB84 represents an earmark of a quarter a cent of existing sales tax from current projects, current obligations to being diverted to roads construction. The earmark would last for 20 years; it would not take effect for two years; and the total earmark would result in a loss to the General Fund in an amount of \$1.3 billion over those 20 years. So even though this proposal and this pending amendment has been scaled down, it still represents fiscally irresponsible public policy. Not only is it unsupported by the facts that remain at issue in terms of our budget process and our economic forecasting, which we must use, it represents just a political compromise from the original proposal that is still unaffordable in this period of fragile economic recovery. We still have not heard anything about the other substantive issues addressed on General File in relation to whether or not this does indeed represent an illegal appropriation, whether or not this is in violation of the well-established prohibition on legislative power emanating from our Nebraska Constitution and interpreted in numerous court cases that a Legislature cannot bind a future Legislature, whether or not it's special legislation, as it identifies and specifies funding for specific roads projects in specific areas. All of these issues are yet to be addressed by proponents. I'm eager to hear their response and comments on those issues. But nonetheless, during General File debate, proponents said over and over and over again that this legislation does not represent competing interests in putting roads against critical human services or putting roads against education or putting roads against public safety, but if the revenues aren't

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there in the future, the Legislature can just simply rescind or repeal this. Well, colleagues, if we're going to be serious and we're going to be intellectually honest about flexibility in this proposal, AM1236 offers you just that. It says we will appropriate up to \$65 million a year for the same period of time contained and contemplated in Senator Fischer's amendment if the revenues allow it. It was noted on General File that we already have this ability but this specifies it and codifies that and ensures that we all make our shared commitment to investing in our critical infrastructure but not doing so at the expense of children, education, critical human services, public safety, and economic development. Our current system of roads funding keeps separate revenue sources for these important purposes for good reason. We should not turn our back on a decades-old practice of providing dedicated revenue to critical infrastructure through our user fee and through our gas tax and utilizing General Funds for our other important and critical state obligations. AM1236 offers flexibility, is fiscally responsible and takes into account the economic realities that we must operate within from a budgetary perspective. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the opening to AM1236 to AM1216. We now begin debate. Senator Nordquist, you are recognized. [LB84]

SENATOR NORDQUIST: Thank you, Mr. Speaker and members. I rise today in opposition to Senator Fischer's AM1216 and to the underlying bill. On General File, one of our colleagues said we get the message, we don't have the money, we don't have the money, we don't have the money. Well, I don't know if the message did get through based on the vote, a supermajority vote on General File, or if this body has just decided to throw caution to the wind and ignore prudent, fiscally responsible approach to budgeting. We don't have the money. Our budget, looking forward right now for our next biennium, based on the decisions the Appropriations Committee has made and you'll be seeing those coming forward, we're \$120 million short right now in the next biennium, if not maybe a little bit more at this point. If you add this on there, we're looking at over \$240 million short, now with only \$65 million in the Cash Reserve. We don't have that to fall back on anymore. We would be nearly \$250 million in the hole in the next biennium with \$65 million in the Cash Reserve. If that doesn't tie your stomach up in knots, I don't know what does, because we've made all the cuts we can, folks. We've cut Medicaid. We've held education flat. These people haven't seen increases in four years. How much longer can we ask them to do that? I don't know how much longer. I don't think much longer. And that number, that \$120 million in the next biennium, is based on the best projections we have right now. That's assuming a revenue increase based on historical averages, based on the information that we get from national consultants that we run regression equations on and come up with our best guess for what's going to happen in Nebraska. Well, this month the organization that we use called Global Insights, to give us their take on the economic picture, put out their monthly report which says our economy is facing twin shocks, and they cut, in a one-month period, cut their

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projected GDP growth nationally, which we use and recalculate for Nebraska, from 3.2 percent for this year to 2.8 percent. In one month, they scaled us back that far. Now I don't know what impact that has when we put it into our equation and calculate its impact for Nebraska, but it sets us back. They cite oil prices. They cite the disaster in Japan, surging food prices, and stagnant wage growth, and we have with the fed moving away from quantitative easing, we're going to see interest rates start to perk up. Our economy is still, still on shaky ground and we are spending and earmarking money into the future that we just don't have at this point in time. I think the Governor made that clear when he made his remarks about this legislation saying we're not Congress, we don't do things like that, we don't spend money two years down the road that we don't know we have. I think, you know, we hear...we heard on General File that this bill does have flexibility. If we're not there, we can just change the bill. Well, I think Senator Conrad's amendment is true flexibility. It gives us that ability to earmark money we have or not. But the idea that we have flexibility under this bill by changing statute kind of runs counter to the argument that we need the predictability of this bill. We say we need predictability so we can do planning but yet, oh, we can change the money if we don't have the money. Those two arguments don't mesh and I think the proponents need to explain their rationale between those two arguments. But ultimately, it comes down to the fiscal situation we're in as a state. [LB84]

SPEAKER FLOOD: One minute. [LB84]

SENATOR NORDQUIST: We're not out of this. Even with the projections we have now, with the money we have in the Cash Reserve, we're not going to be balanced in the next biennium and this will just compound that problem. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Nordquist. (Visitors introduced.) Continuing with discussion on AM1236 to AM1216, Senator Mello, you are recognized. [LB84]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, good morning. As I distinctly remember a very long discussion and debate on General File regarding LB84, I look forward to hearing many of your comments, criticisms, statements of support behind this piece of legislation today, because there is some very undeniable truths that serve as the foundation under LB84. Right now, LB84, as amended by AM1216, earmarks a quarter cent of sales tax instead of half cent of sales tax, roughly on average between \$62 million to \$65 million a year in 2011 dollars. Once again, that amendment, AM1216, does not put a cap on that quarter-cent sales tax, which means that amount will rise as our economy continues to grow. Another key component of AM1216 that...whether you look through it or not, doesn't fully describe how we pay for this. It's based on saying we'll earmark future sales tax, but once again, in the effort of full disclosure of looking through mountains of fiscal information that our Legislative Fiscal Office has provided us both on General File and here for Select, we

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have structural imbalances in our economy right now. We have structural imbalances in our spending, structural imbalances in our revenues. I hate to be the bearer of bad news but for us who consider ourselves to be fiscally responsible and fiscally conservative in regards to spending money and not spending money we don't have, we're turning our backs on that philosophy by adopting AM1216 and LB84 without other amendments. And the reality is, the reason we're doing that is because we can't afford it right now. We just passed, Select File, an education bill that none of us supported but we had to pass it. It eliminates millions, almost hundreds of millions of dollars in education funding that will need to be made up by local school districts or local school districts will have to lay off teachers. Class sizes will increase. This is not a one-year problem, colleagues. This is an ongoing problem we're going to be facing because our Legislative Fiscal Office projects our revenues will not increase to the levels that Senator Fischer believes they will increase that will pay for LB84. We've taken our approach, 2009, when we did the budget, that we would have a modest growth or a modest recovery from what has been known as the great recession. Unfortunately, some of our forecasts and planning were inaccurate. That is why we had a 2009 Special Session, because we took the approach of a moderate recovery and, instead, we had a slow recovery. That slow recovery is still continuing today. We've not fully reached what many consider to be where we should have been two years ago in economic growth. What we're doing under LB84 is we're essentially tossing those fiscal projections and that fiscal analysis aside and we're taking a leap of faith, a leap of faith that we're going to see an unparalleled economic growth over the next year that will pay for roughly \$125 million in new government spending. Call me crazy, call me conservative, I just don't believe that's factual, I don't believe that's the truth. I don't believe we're going to see that. I think we're going to continue to see a slow economic recovery between now and the end of the 2012 fiscal year, which would lead us to not be able to afford LB84. Some of the arguments we made on General File, some of us, is a little concerning that more of our colleagues here either tuned out or just kind of brushed aside, and I fully lean on our colleagues who sit on other committees who have more expertise, and whether it's on Transportation, whether it's on Education, whether it's on HHS, whether it's on Urban Affairs, Judiciary, because that is your expertise. That is what you spend...that's what you spend your time doing two to three days a week, digging into key issues on those committees, learning more about those policy areas. And we had on General File three members of the Appropriations Committee, with essentially the tacit support of our Appropriations Chair, explain we can't afford LB84. Fiscally, we do not have the money in the bank. Fiscally, we do not have the revenue projections to afford this. And fiscally, we will have to raise taxes or we will have to cut education and Medicaid spending... [LB84]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Time. [LB84]

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SENATOR MELLO: ...to afford this. Thank you. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Mello. Senator Conrad, you're recognized. [LB84]

SENATOR CONRAD: Thank you, Mr. President. Again, good morning, colleagues. Just a quick point of clarification for the record, to be responsive to the issue that Senator Fischer noted in relation to the interpretation and use of a report on roads funding from the Reason Foundation. I can't speak for all other senators in terms of what data they utilize when they speak on the floor, but I take great care to cite and footnote the talking points that I create so that I have a record of where I am utilizing my facts from, and on this very point about whether or not Nebraska's infrastructure consistently rates in the top five or ten among states, I looked quickly on my talking points and my footnote points to a World-Herald article, an Omaha World-Herald article written by Paul Hammel in November 9, 2010, and what it does it is directly quotes from a public hearing where the director of the Department of Roads engaged with the Transportation Committee, and the director of the Department of Roads noted that in their annual report we remain in the top ten in terms of infrastructure financing, and they were concerned that we would slip out because of potential imbalances that may arise into the future. So that's where my source is from and if that is indeed incorrect then I anticipate somebody will need to ask for a retraction or correction on that point. Going back to the structural imbalance piece and noted in that article and noted in the Governor's budget and interactions with the Department of Roads on their agency budget with the Appropriations Committee, the...and excuse me while I just make sure that my numbers are indeed the most accurate that they can be, the Nebraska Department of Roads indicates that in 2010 we will have a funding gap of about \$34 million based on the assessment of current needs at \$350 million and the current appropriation, which then was set at \$316 million. Colleagues, in our preliminary budget, which will be advanced to the floor for full debate very shortly, you will see that because of changes in the variable gas tax and because of other budgetary changes within the Department of Roads' budget, they are one of the few if not only agencies that will see an increase in their budget in this budgetary cycle of about \$40 million. And if you remember just a few moments ago, I noted that the 2010 funding gap was a \$34 million gap, so they're going to see a \$40 million increase. They're going to have \$6 million more on top of what their stated needs are without LB84. So LB84, in its present sense or under the pending amendment, represents an overcorrection of this funding, this roads infrastructure shortfall, by over \$65 million a year. That's a fact. Let's remind ourselves where we are in terms of this, of the economic conditions we are weather under presently. In this cycle, in this budgetary cycle we are utilizing an economic revenue growth rate of 5.6 percent. Senator Nordquist, Senator Mello and others who serve on the Appropriations Committee and as we'll have a chance to see when the budget is presented to the full floor for debate and dialogue, we've seen it a little bit on education, we've seen it a little bit on some of the human services bills that have been brought forward that are part of

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the budgetary package. We're making cuts. We are making cuts to critical human services, education, public safety, economic development, and every other important state obligation under 5.6 percent growth, and we've done so for the past many years because of economic conditions. The current forecast created by the Economic Forecasting Board, according to our statutes and rules, which is the only information we have available for the next biennium, is a lower growth rate than we're currently in. That's all we have available. There will be another Forecasting Board meeting actually in a few days, before the end of the month. If there are changes to the out-years' growth rate, then those can be taken into account at that point in time. But no proponent, no proponent has provided any information or data that they are relying upon based upon our statutory obligations to follow the economic forecasting that we can afford LB84, whether it's a \$125-million-a-year earmark... [LB84]

SENATOR LANGEMEIER: Time. [LB84]

SENATOR CONRAD: ...or a \$65 million. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator Hadley, you're recognized. [LB84]

SENATOR HADLEY: Mr. President, members of the body, good morning. I stand in opposition of AM1236 and in support of AM1216, which is the bill. We come here and we're faced with hard decisions every session. And I keep getting a lot of e-mails saying that somehow we're slighting education, we're slighting HHS. We all face the fact that HHS, education, roads--three primary units that deserve funding--our job is to determine the amount of funding. I'm going to tell you that all three of those have unlimited wants. Education could take every penny we give them. Health and Human Services could give every penny we would give them. Roads would get every penny...would take every penny we give them. Our job is to find that balance between the three. I think this bill does that. You can argue that some things are more important than others. Well, if you look at our funding, we have said that education and Health and Human Services are more important. In the last ten years, aid to education by the state has increased 60 percent. Twenty years ago this body made promises for expressways, made promises that they were going to be fulfilled. Guess what's happened; not done. Senator Conrad says how can you bind future Legislatures? Let me explain to you the power of 25 votes. All of us here have learned the lesson of 25 votes. That's what it takes to get something changed. If you think it doesn't take that, sparsity used to be a factor in the TEEOSA funding that helped out-state, rural school districts. You know how that was gotten rid of in the formula--25 votes. So the binding of future Legislatures is just not correct. Anytime you have 25 votes, you can basically change anything you want. We talk about capping roads. Do we want to cap education? Let's pick a number and cap education. Let's pick a number and say the next 20 years this is what we're going to spend on education, just a number. We won't deviate. We don't care how their needs

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change, we don't care what they want; we'll just cap it. Would Senator Nordquist yield to a question? [LB84]

SENATOR LANGEMEIER: Senator Nordquist, would you yield? [LB84]

SENATOR NORDQUIST: Absolutely. [LB84]

SENATOR HADLEY: You made the comment that we've held education funding flat. Is it my understanding that we increased it from like \$810 million or \$811 million to \$822 million and going to \$880 million next year? [LB84]

SENATOR NORDQUIST: And that was in the context of other appropriations as well. I didn't mean to single out education. But I believe...I mean we... [LB84]

SENATOR HADLEY: But your comment was that education was held flat. [LB84]

SENATOR NORDQUIST: I also said Medicaid and other things, and education is what the Governor proposed, and, granted, we advanced a bill that is still pending that would go a little above it, but the Governor's numbers I believe are back to I think '08 or '07 numbers and I'll get that exact. But what he proposed in his initial budget, now granted, we've changed it, that bill is still pending, but he... [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR NORDQUIST: ...would have held us back at '07 or '08 numbers. [LB84]

SENATOR HADLEY: Okay. Thank you. I want to argue that the citizens of Nebraska are not holding education flat. If you go back and look at the formula funding factor, that the citizens of Nebraska in higher property taxes are paying \$126 million more for education this coming year out of their pocketbook, \$126 million more in property taxes to fund K-12 education. So, you know, we say things are being held flat. I know I'm running out of time and I'll press my button again, but one other thing, and I brought it up last time. Hearings are important because that's where we hear input. We had no one show up to oppose this except one individual citizen showed up to oppose this bill in Revenue. Obviously, the... [LB84]

SENATOR LANGEMEIER: Time. [LB84]

SENATOR HADLEY: Thank you, Mr. Senator. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Hadley. Senator Fischer, you're recognized. [LB84]

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SENATOR FISCHER: Thank you, Mr. President and members of the body. I always appreciate Senator Hadley's enthusiasm and his comments. Thank you, Senator. I rise in opposition to Senator Conrad's amendment to my amendment. The language in there says it is the intent of the Legislature. There again, we have no guarantee. Currently, funding for our roads goes through the appropriations process. We aren't seeing the money appropriated. So if we pass this amendment to my amendment that says it's the intent of the Legislature to appropriate the money, do you really believe things are going to change? Do you really believe that? We put intent language in a lot of things and then we pass them and then we move on. We cannot move on any longer without funding roads. This is a danger to our citizens. We're looking at surface conditions that are crumbling. You all have come to me and told me of specific roads in your district that are unsafe. I don't believe our citizens want to travel on unsafe roads, not just concerns to their lives possibly but look at the concerns to their vehicles. I've hit potholes. I've had to pay \$600, \$800 to realign my car. This all adds up. But the main concern is the safety of our public. So I oppose the amendment with only the intent language in there. Secondly, we hear about earmarks, that LB84 is an earmark and how horrible that is. Senator Hadley brought up that this bill had a public hearing and I think every member on the Revenue Committee will agree with me that we had a long public hearing. We have heard from the public on this. We have been studying this, the Transportation Committee. We did our road trip two years ago around the state. Senator Ashford and I hosted a conference on transportation funding in Omaha in August with hundreds of people there, great turnout. I thank all of you who came. This has been very public. This is not an earmark as I define earmarks. This did not come about in a smoke-filled room without the public knowing what was happening. But if you want to call it an earmark, we've done that before too. We could call TEEOSA an earmark. That's state aid to schools, which I support, but we have that set aside every year. We have the Education Committee come up with what they feel is reasonable, what is needed, and then we work from there. We have a bill or we have a proposal in the budget this year dealing with Innovation Campus, \$25 million. I support that. I want to be clear I support that. Some of you have come up to me and said that's an earmark. That's a term that can get emotions going and I don't think we operate that way in Nebraska. We don't decide what's going to happen in smoke-filled rooms. We have public hearings. The Appropriations Committee meets publicly. [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR FISCHER: They send out their budget. It's reviewed. That's how we work. The Education Committee does that on TEEOSA. So I would counter that we don't do earmarks here. We are designating funds for specific purposes all in front of the public, all open. With regards to...that we're binding future Legislature's, again, we do that all the time and you all have examples on that. One we have this year is Senator Mello's sewer bill. It takes effect in two years with the turnback. That advanced off General File, but it doesn't take effect till two years when it hits the budget. We bind future

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Legislatures with the escalator clause in TEEOSA, not that we always fund it, Senator Adams, which we wish we could. [LB84]

SENATOR LANGEMEIER: Time. [LB84]

SENATOR FISCHER: Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Fischer. (Visitors introduced.) Returning to discussion on AM1236 offered to AM1216, those wishing to speak, we have Senator Krist, Senator Ken Haar, Senator Sullivan, Pahls, Mello, Harms, and others. Senator Krist, you're recognized. [LB84]

SENATOR KRIST: Thank you, Mr. President. Good morning, colleagues and visitors. I want to start off by addressing a few of my own concerns and making a point. It is true, and I will follow with an example, it is true that any Legislature with 25 votes can bind a subsequent Legislature, and if you wanted a perfect example it would be the refacing of this beautiful building. That was not a program that could have been accomplished in a single legislative period or in a single budget period. It took years to reface this building, the people's building, and it needed to be done. My second point is...and I've talked about this on the mike before, is the process involved. I think Senator Nordquist, Senator Mello, and Senator Conrad all made valued points, friends all. I want them to understand they talk to us about their expertise, I don't remember which one specifically, that's what they spend their time doing. Well, Transportation spends their time in committee looking at issues dealing with building roads. Who better to bring this forward than the Chair of Transportation who understands the process? So let's speak to that process once again and let me remind you, unless the Department of Transportation has the funds to design and approve and fund the system, fund the project, they cannot proceed past go. This isn't like Monopoly. You have to have the funds in the system, you have to allocate funds, you have to fund the process, and you have to do a design phase to go forward. Now let me remind you again what's been said on the mike many times. Where we have spent our time in this economic challenging time is only maintaining and not doing a great job at that, I would remind you. I'm reminded on a daily basis in my other job how many bridges were out in Senator Sullivan's district because of last year's flooding, people having to drive miles around to get to a town that would take them ten minutes to get to. And let's talk about earmarks. I do think that Innovation Campus is a bit of an earmark although I do support Innovation Campus for what it is and what it represents to this state and moving forward. This has been called in its infancy, when we first heard about LB84, the biggest earmark that this state has ever seen. I would argue that. I would say that the Health Care Cash Fund is probably the biggest earmark that's ever existed and still exists in this state today. In fact, the whole process of setting up the Health Care Cash Fund was done right here on this floor with senators past all deciding that a piece of it needed to go here and there and everywhere, and it continues to go out today to the tune of \$50

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million a year...a session, I'm sorry. So it is not new to this state. It is not a gimmick. It is not something the federal government does. We do earmark things. We have to decide on priorities. These are tough decisions that we need to make. And one other item or one other issue that I'd like to address today: I've been told by constituents and by other people and the lobby that this is kids versus concrete. No, I would say that this is a priority of infrastructure versus all other priorities that we weigh out on a daily basis, hundreds of priorities that come to us and tough decisions about where to invest for our future. So when you look at AM1236, I don't think it meets the standard. I support AM1216. I support LB84. [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR KRIST: I'm sure there will be a great deal of debate leading up to the final vote on LB84, but this is a discussion we need to have. It needs to be representative of statewide requirements and we need to make sure the Department of Roads has the tools and the money to proceed forward with the infrastructure that this state needs to survive. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Krist. Senator Ken Haar, you're recognized. [LB84]

SENATOR HAAR: Mr. President, members of the body, I rise in support of AM1236, in opposition to AM1216. As I look at this bill and putting now a quarter of a percent of the sales tax, it seems to me it's an intent, at best. It's two years in the future and should I decide to run again and if I win I'm going to have to decide whether or not to retain that quarter of a percent of sales tax. I think this is nothing more than a promise. It's a wish. And as the Governor said, spending decisions need to be done during the current two-year budget cycle and not into the future. Many people in this body will not be here in two years simply because of term limits and I think the whole process of setting aside, at this point, a quarter of 1 percent of sales tax for roads again is at best an intent, because in two years, at the time we're talking about the budget for the following two years, we're going to have to decide whether or not that money is available. The way people are going to look at this, and I'll talk about this a little later, is once we put in this AM1216, if it passes, and we don't clearly state that it's an intent, as we do in AM1236, people in the Legislature understand that 25 votes can change it but the cities and counties who are going to get...who are expecting, expecting the road money aren't going to look at that as just something the Legislature is going to change. They're going to count on it. And one of my concerns about doing this is that if we put this into law now, knowing that we can change it, that those who intend to be receiving the money aren't going to look at this simply as something that may be changed in two years. And so I think the whole point...and even if AM1216 passes, I think the clear message to cities and counties needs to be that this is intent, that this is an intent and that the Legislature, if we're still in the same financial bind we're in, that we are now, in two

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years that we can change that. And in fact in two years, even if the economy is much better, we may decide that there's another way that we want to spend that half a cent or a quarter of a percent of sales tax. So I believe it's giving out false hopes and false expectations. Whatever we do, it needs to be very clear to those who expect to receive this money that this is an intent and that's why I like AM1236. It's very plain about this promise we're making. The other thing, of course, that bothers me is that a quarter of a percent of sales tax is not near enough to do what we want to do with the roads, and again, it seems it will be perceived as many people as a promise to fix the roads in the way that we need and we know that it's not near enough money. So having said that, I would like to give the remainder of my time to Senator Conrad, should she choose. Thank you. [LB84]

SENATOR LANGEMEIER: Senator Conrad, 1 minute. [LB84]

SENATOR CONRAD: Okay. Thank you, Mr. President. Quickly, in...and thank you, Senator Haar. In response to Senator Hadley's passionate defense of this legislation, in opposition to the pending amendment which I've put forward, I couldn't agree more. You're exactly right, Senator Hadley. Under our current funding proposals, we're sending less out in state aid to education than we did in 2008. And who's making up the difference? Local property taxpayers to the tune of \$125 million a year. That is the wrong public policy for Nebraska. Nebraska property taxpayers do not need additional burdens. That's what LB84 represents. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Conrad and Senator Haar. Senator Sullivan, you're recognized. [LB84]

SENATOR SULLIVAN: Thank you, Mr. President. Good morning, colleagues. I'm appreciating the discussion that we're having because I truly hope that we can end up with a workable solution. I love roads. I love good roads. I spend a lot of time on roads traveling back and forth to Lincoln and traveling all over my district. I love kids and I want a good education, because not only are roads a link for Nebraska's future, so are kids. And so I have to tell you, I'm struggling with this and I'm trying to find, no pun intended, the middle of the road that I want to travel on. I know that for every action there's a reaction, so I'm trying to work through all this. And in the process, I wonder if Senator Fischer would yield for some questions. [LB84]

SENATOR LANGEMEIER: Senator Fischer, would you yield? [LB84]

SENATOR FISCHER: Certainly. [LB84]

SENATOR SULLIVAN: Thank you, Senator Fischer. And I know in this whole process that you've given this a great deal of thought. You've been around here long enough to know that you don't want to sacrifice good education for roads. But by the same token,

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you have to admit that this pie isn't necessarily getting any bigger. So looking down the road, what do you anticipate will need to take place in what I would perceive to be sort of a reorganization of how we use our General Fund? What's going to have to change? Are we going to need a new state aid formula? What sort of things do you anticipate are going to have to be different? [LB84]

SENATOR FISCHER: Thank you, Senator Sullivan. You know, I viewed this year as a good opportunity for us. It's a stressful year with the economic situation we're in. It's always difficult to make budget cuts because we affect a person's life with every cut that we make. But I truly believe it's an opportunity, and those of us who support a limited government I think view it that way. We've heard on the floor this year a number of times that this is our opportunity to restructure government, to decide what the priorities are. That's what I see beginning with this discussion. It doesn't end when we pass LB84 because we are going to have to look at the programs that government provides, services that government provides and determine if those are core duties of our government. That's what I see happening. When we talked, Senator Sullivan, about state aid, you and I have had a number of conversations that...and with Senator Adams, too, that we need to look at the state aid formula and make those decisions on how we fund education, what truly...what truly gets to the children, what truly benefits the children in this state and how we can help them be educated citizens. I view that as part of the discussion. And when we had our debate on state aid, a number of us stood up and made those comments. So that's what I see coming down the road. [LB84]

SENATOR SULLIVAN: Senator Fischer, you've also always said that if the money is not there two years from now, and I'm sure you've given some thought to this as well even though you won't be here in two years, what's the tipping point of when somebody would have to stand up and say, well, we've got to repeal this because... [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR SULLIVAN: ...the money is not there? [LB84]

SENATOR FISCHER: I said that on General File when we were looking at a half cent. I think we have a workable solution at a quarter cent now, but of course any decision with any legislative body is made at the time and under the current conditions. So if the conditions are stating and in front of your faces that this won't work, then you need to make adjustments, then you need to make the adjustments to it, which we do every year with every program. This isn't something new that this body would have to handle or take a look at, because we do it with every program every year. And so I think it...I have confidence in all of you. I have confidence in you... [LB84]

SENATOR LANGEMEIER: Time. [LB84]

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SENATOR FISCHER: ...that you will be able to balance it. [LB84]

SENATOR SULLIVAN: Thank you. [LB84]

SENATOR FISCHER: Thank you. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Sullivan. Those wishing to speak, we have Senator Pahls, Mello, Harms, Nordquist, Carlson, Wallman, and others. Senator Pahls, you're recognized. [LB84]

SENATOR PAHLS: Good morning, Mr. President, members of the body. I'm going to be one of those people who are not...who will not be here the next time you vote on this issue. I do trust...and to be honest with you, Senator Fischer will not be here, she's in a leadership position; Senator Flood will not be here, he's in a leadership position; Senator Heidemann on Appropriations will not be here. So you're going to be making that decision. So if we make a wrong vote today or this session, you'll have a chance to rectify that. We need roads, we know that. I think Senator Fischer has really indicated of all the hazards of not having more monies for roads. And I see that she has made some concessions on this so that's something to think about. As I've stated earlier, I'm always looking for balance; not fairness, balance. What I find out very interesting today, we talked about earmarks, well, we cannot forget right now there is an earmark for roads. You go up to and you pay your gas, there's a gas tax, so let's not forget we do have a Highway Trust Fund so we do have something already earmarked for that. So when we start talking about in other...in education, etcetera, etcetera, I get a little leery of trying to make those comparisons because we already have that in place. We know we need help in the area of roads and that's why at the moment I see this, we're moving in the right direction. What I'm finding very curious, what I'm very curious about is we need more revenue, and if I drive a car I probably should be responsible for that. Do you need to realize right now if we would take a look at when you trade in your car and you all get a tax exemption, if we would do away with that we'd have \$140 million that we could designate or we could earmark for roads? Now I know that takes also money when you trade in boats and things like that, but it's out there. We have that. I am surprised that really wasn't part of the discussion, although I'm not proposing that because it's probably a little late in the game. But if you drive a car, you pay the gas, you trade your car in, you get some exemptions there, there's enough money out there we could do probably a pretty good job with our roads. That's what I'm saying is a balance. For those people who do not drive cars, trucks and all that, I could see where they would be...you know, they could have some concerns. Pretty simple if we start reflecting on some of the areas of revenue that we are...that we have available to us if we so choose. In fact, that came out of the Syracuse study in the 1980s that we should take a look at. Again, we need money for roads. I do see Senator Fischer has made some concessions here. And again, if we make a mistake on this bill, those of you who will be around in the future to look back and say I told you so. We won't be here to hear you but we'll be out

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there looking in and we'll say, okay, you're right or, hmm, you were wrong. Thank you. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Mello, you're recognized. [LB84]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I rise in support of AM1236. I was...unfortunately, I was cut off the previous time I spoke, and the reason I support the amendment to AM1216 is because I think we heard extensive debate on General File that discussed the need for additional funding. Okay. The reality, though, was based on we needed it to be concrete, we needed to know how much money we were getting every single year so we could do planning. Fair enough. What AM1236 does is that it allows both of those things to still happen, it allows the Governor to appropriate money in his preliminary budget, and it allows the Legislature to appropriate money in their budget up to \$65 million a year. But, ultimately, that issue gets debated every single year similar to the argument Senator Fischer just made about TEEOSA. If we're going to debate education funding, if we're going to debate Medicaid funding every time we do a budget, why are we not debating roads funding then? Because I can tell you this, colleagues, it's not that the Appropriations Committee is not appropriating more money to the roads...Department of Roads. Actually, this preliminary budget has an increase of over \$30 million to the Department of Roads without increasing the gas tax. I think that was a comment that a previous speaker mentioned that we're not doing our job. Well, the reason why, and I'll be frank...to be frank on the mike with you is, I don't support raising the gas tax. My Appropriations Committee colleagues know that. Particularly when we're battling the great recession, I don't think now is the time to be increasing taxes. That is why we have not increased the gas tax over the last two budgets. If that is the answer that Senator Fischer wanted, that is it. That is why we have not done that as a committee. That doesn't mean we haven't increased funding, though. The Department of Roads received an increase of funding both in the 2009 budget and the 2009 Special Session budget. I remind you, we cut everyone else but their construction budget actually increased by \$10 million. And in this preliminary budget we're giving them an additional \$30 million. So colleagues, the false choice that we're not doing enough is exactly that, it's a false choice. The question is, is how do you choose to finance something that has never been financed by General Funds before? I'm taking a leap of faith in AM1236. I fundamentally disagree that we need to be appropriating General Fund dollars to road infrastructure right now, in part because we're battling an ongoing fiscal crisis as a state. We can't take care of our current priorities, why are we trying to appropriate General Funds that do not exist to another priority? If we want to finance it another way, that's another debate. And I think Senator Loudon has an amendment. I think that's the only amendment in the queue right now that provides another option besides AM1236. I have an amendment as well but it's not...it doesn't take immediate effect. So AM1236, colleagues, I think is the responsible fiscal choice we have before us. If you want to see more funding go to the

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Roads Department to build more roads, let's do it in a fiscally conservative and responsible manner which allows the Governor and the Legislature to determine that amount through the budget process. That means every two years we will see people come to the Appropriations Committee, people will lobby the Governor, as we craft budgets to say, we want you to appropriate up to this amount of money. Every year we reappropriate money to agencies such as the Department of Roads. If they don't spend what has been appropriated to them in a two-year span, we allow them... [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR MELLO: ...we reappropriate that money to them. So the issue of planning is completely taken off the table. They can continually plan starting tomorrow, understanding that they have a chance to reappropriate money year after year, and then they have the opportunity like everyone else to come to the Appropriations Committee, to come to the Governor, then come to the Legislature as a whole as we debate our biennial budget, and say, we want more funding. That is the fiscally appropriate and responsible path forward. Anything else, based on the projections that I have seen, based on the projections the Appropriations Committee has seen, based on what you will see when we release a budget in two weeks, you will see we have over a \$100 million projected budget deficit, more than what you see in our preliminary budget, which only further emphasizes, fiscally, we cannot do this. Rarely do I wholeheartedly agree with Governor Heineman. I think we all know that. [LB84]

SENATOR LANGEMEIER: Time. [LB84]

SENATOR MELLO: Get there next time. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Mello. Senator Harms, you're recognized. [LB84]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in opposition to AM1236 and support AM1216 which has become the bill. You know, I have listened to the debate both in General and now on Select. And I tell you, colleagues, we're in control of this. I can tell you right now in the Appropriations Committee if two years from now if it looks like the revenue is not there, I'm sure the Revenue Committee and Appropriations Committee will address that issue. It's no different than what we do right today. We've done that with TEEOSA this year when we looked at TEEOSA and we said, you know what, we cannot...it does not fit into our budget appropriately. We cannot fund it in the increase that it's automatically going to take. I mean our Chair, Senator Lavon Heidemann, what Senator Adams said, you know, we'd like to work with you. We've got to put this in this perspective. We've got to bring this budget down. That would be no different with the Road Department. We're saying that we're going to take money away from education, we're going to take money away from Health and Human

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Services, I don't believe that at all. I do not believe that we will allow that to happen. This is the time for us to make the investment, colleagues. This is the time for us to make the investment for the future. The only way we're going to attract businesses and companies to this great state, you got to have the right infrastructure. You got to have good roads. You got to have telecommunication. You got to have a connection to the outside world. We've got to put these things in place. You don't think Fortune 500 companies aren't already looking at and have been through this crisis about their planning process, and looking at where they're going to go, they're going to make their investment in the future. That's exactly the same thing we have to do in this great state. We cannot sit back and say that the economy is going to turn us away. The economy is going to destroy us. It will not, colleagues, because we're in the position to make a difference. We're in the position to make the appropriate changes here. Now where I live in western Nebraska, we've been working for almost 15 years to commit to the Ports-to-Plain Highway which is an international corridor highway that's going to come from Mexico and go all the way to Canada. North Dakota has made the commitment. South Dakota has made the commitment. Colorado has made the commitment. Texas has made the commitment. Nebraska has not made the commitment. This at least gives us the opportunity in the expressway to say to the federal government that we are ready to make a commitment. At least the dollars will be there for development for expressways. That is critical to rural Nebraska. We must have good strong highways and the expressway is critical to western Nebraska. The Ports-to-Plain Highway is the hopes of the future for western Nebraska. If we ignore this, if we ignore not stepping to the plate, this highway will simply scoot over into Wyoming. Wyoming has the money. Wyoming can make the commitment. They will have the highway, and then Nebraska will lose in all that revenue flow. This is a major, major investment in highway. The federal government has said that this expressway Ports-to-Plain Highway is a top federal priority for them. And they've said to Nebraska, will you put some matching money up, or at least indicate that you have the matching money so we can address the issue and move this highway. Most of the highways now from Canada all the way down are two-lane. So everybody is going to have to address the issue. But this is important. If we want to have jobs in the future, if we want to have better schools in the future, we want to have better higher education, and more dollars to fund those who cannot help themselves, this is part of the key. This is the part of the thing that we have to have done. This expressway where I live is critical. The rest of roads throughout the state of Nebraska are critical. [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR HARMS: Thank you, Mr. President. I have often got criticism in my own community about, well, John, why do they have to have these six-lane highways between Omaha and Lincoln? Well, I've asked them, have you ever driven that highway, that two-lane, four-lane highway? I have and I'm here to tell you, we need that. That's where our growth is. We need to have that highway expanded. We need to have

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it all the way to probably Grand Island because that's where we seem to run into the traffic. We have to prepare for the places that are growing and we have to prepare for the future to help other areas in this great state grow. So, I hope, colleagues, you'll look at this and remember that we are in the driver's seat. We can change this. We can correct whatever we have to. Don't be lulled to sleep with some of this discussion you're having. Thank you, Mr. President and thank you, colleagues. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Harms. (Doctor of the day introduced.) Returning to discussion on AM1236, those wishing to speak, we have Senator Nordquist, Carlson, Wallman, Conrad, McGill, Campbell, Karpisek, and others. Senator Nordquist, you're recognized. [LB84]

SENATOR NORDQUIST: Thank you, Mr. President and members. When I look at the state budget I often think about how I do things in my house and my family budget and the fact of the matter is, in both cases the pie is only so big. I only have so much income, the state only has so much income. And when I look at next month's budget to meet my core needs, and it's showing red, I don't go out today and buy a new car that the payments start next month on. That is fiscal irresponsibility and that is what LB84 does to us. We are not meeting our core needs of government right now and now we're spending more money in the next biennium. The experts that we have that we employ, the best that we have, the Fiscal Office, they do a great job, they are telling us, we won't have the money. I don't know why we're ignoring that. No one has said, why we're ignoring the expert projections that we have available to us because we think it's going to get better. That's fiscal irresponsibility and we can't budget like that. The pie is only so big. That's what the Governor said in his remarks, that this is going to come out of education, healthcare, and other priorities. That's the fact of the matter. And just Senator Hadley and I talked a little bit ago about education dollars. In FY '08-09, we were at \$839 million General Fund dollars. Under the bill we're going forward with, LB235, we're at \$820 million. So we are \$15 million less General Fund dollars than we were three years ago. And Senator Hadley mentioned how property taxes are going up. I don't think that's a good policy. I don't think we should applaud that those property taxes are going up and that money is coming out of the pockets of Nebraskans. This is not a workable solution. It's a fiscally irresponsible solution. We've been saying in the Appropriations Committee, now since January making gut-wrenching decisions, folks, there have been no easy decisions. We are looking...we spent a good half hour talking about eliminating the Crime Stoppers Program in rural Nebraska to save \$13,000. And we had to have a half hour discussion on it. Luckily, I think, if I remember right, we were able to maintain that funding because we think it's important. But those are the types of cuts we're making. The courts, they offered up as a budget reduction possibility we didn't take, closing 31 county courts. Now if our projections come in with the best information we have, projections come in as they are right now, and this bill passes, we're looking at, as I said, a \$250 million shortfall in the next biennium. Closing 30 county courts, that will save us about \$1.5 million a year. That's one step, if you want to

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see the map of the proposed courts from the Supreme Court that's here in front of me. We're eliminating the Child Navigator Program and Child Helpline, those critical programs we put in place after Safe Haven. That will save us about \$2.2 million a year. We have a long ways to go to get to \$250 million. Medical student loan forgiveness to serve in rural Nebraska, \$63,000. Hastings Regional Center, \$2 million a year. We have \$4 million of deferred maintenance at our National Guard facilities. This year we're choosing...we're making a tough decision, which generated a lot of discussion in Appropriations, about reducing our prison population and sending more individuals out into the community. We had a lot of discussion about the public safety implications of that. We're going to have to go further. We have the lowest State Patrol...number of State Patrol officers we've had this century since the turn of the century. It goes...I think we're, if I remember off the top of my head, we're back at a number of the force that they had in the '80s. And we have a lot of passionate people out there who have children with developmental disabilities, people who come to us with stories about the need for services. We have 1,600 Nebraskans on the developmental disability waiting list. We tried to address that and move...I think, we maybe moved a couple hundred with an appropriation two years ago in the budget, but now that list is growing again, we will not be able to address that well into the future, if this bill passes. Those are the tough decisions that we've had to make. And, you know, we haven't had a lot of budget debates on the floor the last couple of years because we've done a good job of building consensus. [LB84]

SENATOR LANGEMEIER: Time. [LB84]

SENATOR NORDQUIST: Thank you. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Nordquist. Senator Carlson, you're recognized. [LB84]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I intend that this will be the only time that I speak on this issue this morning, and I'd like to take a little bit of a different approach and start by having you think about, what are the fundamental purposes of government? And I think first and foremost is provide for public safety, protect us from foreign and domestic threats. I think government should do everything it can to preserve and protect our freedoms while being as small as possible and as nonintrusive as possible. The federal government should refrain from encroaching on state's rights, and as a state, we need to be careful about taking local control away from communities. Government should provide for quality education, K-12. That's what our constitution says, but it leaves a lot of room as to how we go about providing that education. I'll throw in here, I think that we as a state would be better off if at the federal level the Department of Education was done away with. We as the state of Nebraska can decide what our students need to learn and we need to provide that on a better basis than being helped by the federal government. Senator Hadley talked

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about money provided to HHS. And I think as a government, we don't really have a responsibility to provide HHS with anything. Now I don't want Senator Campbell to get upset or worried about this comment. We as a government need to help those who can't help themselves. Those who can care for themselves, but choose not to, we have no responsibility toward, and we need to be careful about that. Government should encourage opportunities for those who desire to be self-sufficient to be able to achieve that. And government should adequately fund roads and other appropriate modes of transportation as necessary. Now where are we today? We know that federal funds for roads are probably dwindling. And those who want...those of us who want serious spending cuts at the federal level have to be okay with that reality. Now the federal government has concluded that we should drill in the Gulf of Mexico. We got to be cautious in Alaska. We don't drill here and we don't drill there. As a result, look at the price at the pump. Now the price of fuel at the pump today doesn't really hamper those with higher incomes and with a lot of assets. They can still do what they want to do. The price at the pump definitely hurts the poor, and it really injures the middle class, that group of people that we pretend to be concerned about. Now fuel tax is a declining source, and I don't believe it's the best way to fund roads anyhow. Is LB84 a charming, feel-good, obvious solution to our roads challenge? No, it's not. But what is good about LB84? It is action. It creates a need to plan for the 2012 and 2013 legislative session. [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR CARLSON: If we want something better than LB84, we must plan for it. Moving LB84 and AM1216 is a step in addressing the roads funding problem. I'm in support, but I'm also interested in studying and finding a better way such as a combination of sales tax and a refund of Nebraska fuel tax paid to Nebraska residents who paid them. But I do stand in support of LB84 and AM1216. Thank you. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Wallman, you're recognized. [LB84]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Good morning, Nebraska. Roads. I've traveled roads from New York City to L.A. to San Francisco. Cement ribbons mainly built under the Eisenhower administration. Had higher taxes, paid for a lot by federal government, and also by state monies and we were willing to pay for things. Seems like now, we're trying to kick the can down the road. This AM1236 looks like at least a little dedication to take care of the problem. And is it easy to vote for LB84? Not if you want immediate help for your roads. You go down Highway 41 to the ethanol plant, in another year like today with muddy roads and everything, you'd probably bounce out of your truck. And it's hard on trailers, it's hard on tractors, as Senator Bloomfield knows, and it's hard on cars. Cars hit these big chuckholes, you're going to have to line your wheels. So we need some kind of monies

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immediately, and I think Senator Loudon has some amendment up. But I'm not against funding roads. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Conrad, you're recognized. [LB84]

SENATOR CONRAD: Thank you, Mr. President and again, good morning, colleagues. I really appreciate hearing a lot of the important commentary information and philosophy that has been brought forward from both proponents and opponents. And I actually want to thank Senator Carlson for his comments because that's at least intellectually honest in my opinion that he acknowledges that we have to provide some sort of minimum amount for education under our constitutional system, but we're not required to pay a penny out in terms of critical human services and so, indeed, one could infer or imply that that's where he will make up the difference. And that is intellectually honest and that is the point that we have been making on General File and again on Select that by diverting through this billion dollar earmark that lasts 20 years into the future, we will put these many important obligations in competition with each other which turns its back on a separate funding stream that has worked for us for decades in terms of ensuring we take care of roads and infrastructure and ensuring we take care of education, human services, public safety, economic development, and other areas. Again I'm disappointed that we still do have in the record any indication, any fact, any data, that says, \$65-million-a-year earmark can be supported under the current economic forecast. If there is other data that exists, please, please bring that forward because it's critical to this debate. I want to talk a little bit more about the process piece that Senator Fischer and Senator Hadley mentioned to a certain extent. Senator Fischer is exactly right and we had a chance to talk about this a little bit on General File. The Transportation Committee conducted an extensive, a comprehensive, a full report on these issues just two years ago when they traveled across the state. It's the LR152 Nebraska Legislature One Hundred First Session, Transportation and Telecommunication Committee report from 2009. In that report from that extensive public dialogue there were put forward 31 funding options to address Nebraska's infrastructure needs. LB84 and a diversion of existing sales tax was not on the table. In fact, it was specifically rejected by the committee and by the public. And I'm quoting, "the first obstacle between utilizing the existing sales tax is there is no direct or indirect correlation between such a tax and highways. The concept of a user fee has always been employed in Nebraska's highway funding system." So what's changed since then? There is an extensive community dialogue just this last summer that Senator Fischer and Senator Ashford hosted that I think almost every single one of us were in attendance at up in Omaha. I know I was there and I found it to be a very informative, very productive, very important dialogue. Senator Mello just passed along the results from that long...from that daylong conference based on roundtable discussions with all of us, those in the industry, local elected officials, and others. What were the solutions that were put forward at that extensive conference? Fuel tax increase, raise user fee on fuel indexed to consumer

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price index, index the gas tax, add 10 cents per gallon to the gas tax, a federal fund exchange, bonding with a dedicated revenue source, issue bonds using existing fuel tax to service the debt, use the state's ability to bond an existing stream to benefit low interest rate to benefit from the low interest rates now, a motor vehicle registration fee increase, a heavy vehicle fee, a heavy vehicle tax. [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR CONRAD: New sales tax, new sales tax option for specific roads projects, design build, and a potential one-time General Fund shift. The new sales tax design build and the one-time General Fund shift received no votes. None, at that conference. It's been noted that proponents or opponents did not do a good job at building a record at the committee level. I don't speak for paid lobbyists on either side of this issue, and if they had an interest in this issue, they should have showed up at the committee level hearing. But that is not our prerogative or responsibility as an individual state senator. But somebody did show up in opposition and that was an individual public citizen. And I think it's wrong for Senator Hadley and other members of the committee to diminish the engagement by a private individual who took the time to come down and engage their Legislature on an important topic. So there was opposition at the committee level. And, thankfully, that citizen had the courage and the foresight to be there. [LB84]

SENATOR LANGEMEIER: Time. [LB84]

SENATOR CONRAD: Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator McGill, you're recognized. [LB84]

SENATOR MCGILL: Thank you, Mr. President and members of the body. On General File I spent a lot of time talking to all of you here in the body about LB84 and alternatives in different dollar amounts perhaps or, you know, I brought up some of the very issues that are on this list of solutions that Senator Mello passed out. For me, I'm not okay with taking money from the General Fund in this way, and as I went around and talked to members of the body, there was a great deal of consensus about wanting a lower dollar amount or wanting to look at different things. And the thing that I heard the most from the majority of people in here was, we've put off funding roads for so long we have to do something. There are a lot of people in this body just voting for this because it's something. It's something here even though in your guts, you don't particularly like this funding mechanism. And I appreciate that Senator Fischer worked between General File and Select File to come up with some sort of alternative to her original plan, but I don't think it's different enough. I'm still interested in looking at other fees, talking about the sales tax here, or the gas tax here in a little bit. I appreciated the things that Senator Carlson said because clearly he also thinks we should be looking at

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other combinations of ideas to get us where we need to be. I believe we do need to have strong commerce and the order to have strong schools and strong services. I think they all do go together which is why I do support finding a way to put more money into roads. But just because I support that concept or the idea of putting more money into roads doesn't mean that I'm going to sit here and vote yes for this bill since this is the only solution here before us. I do plan on continuing to learn more and working over the interim so, hopefully, I can even bring my own bill next year. But I found that for me and my...the fact that I haven't been engaged in roads funding significantly in the past has hindered me from being able to come here today with a complete package that I would rather see instead of LB84. But I'm not going to give up on this issue, and I do know we'll be debating this again next year since it doesn't go into effect for a couple of years. Again just because you believe we need to do something about roads does not mean this is the solution. And I know many of you in here don't believe it's really the best solution. I hope we can continue to work about this, work on this over the next year even before it goes into effect so that we can more fully discuss various options that aren't before us at this very moment, and try to find a way that isn't tying dollars. I mean, I'm not going to sit here and repeat everything you've already been hearing from some of our colleagues about the problems with LB84. You've heard those already both on General File and Select File, but I personally do have a strong commitment to putting more money into roads. I'm willing to vote for some of the unpopular fees or tax increases to do so. I wasn't in the past, but I do...I've evolved and do see the importance of roads and just am looking for that better solution than this. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator McGill. (Visitors introduced.) Senator Campbell, you're recognized. [LB84]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. One of the things that we need to look at when we look at roads is, we need to look forward. What's going to happen in the future? And I think an important aspect that we have come to depend upon, as well as all the states across the country have come to depend upon, has been the gas tax. And I ran across an interesting article that was in the Wall Street Journal on March 31. And the headline was "States hit the gas for road funding." And I actually got called for this article by a reporter who wanted to know what I had thought about my ten cent gas tax increase. And particularly as he was saying, on the East Coast we're looking at potentially gas going to \$5 a gallon by May. And I chatted with him a little bit and explained that the bill had been a mirror to LB84 to see how much it would take in a gas tax increase to get to that. And we had a good conversation and, obviously, I wasn't glib enough because I didn't get quoted in the article. But I want to excerpt for you several comments from that article. Fuel taxes are the primary source of transportation funding for most states with the vehicle registration fees the next biggest. The federal gas tax, of which all but a tiny fraction is devoted to transportation funding, hasn't changed since 1993. Without a new source of revenue spending from

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the Federal Highway Trust Fund, which finances an average 45 percent of a state's highway and transit capital costs, will plunge to \$10.7 billion from a current estimated...and here's the startling figure, \$43 billion in fiscal 2013 according to the American Association of State Highway and Transportation officials. The projected decline in the fund would force states to slash some of their transportation programs. State officials say, however, that traffic congestion and deteriorating roads are increasingly hampering their efforts at economic development, and that a dearth of other ideas in Washington for how to generate more federal funding for infrastructure projects is forcing their hand. Colleagues, one of the things about this article when I finished reading it and talking to the gentleman, I realized that at least...and we need to thank Senator Fischer for bringing forward LB84, we've put a plan on the table for the future. And that, it seems to me, is one of the most important parts of LB84. One of the questions that's been asked on the floor is, well, what would happen in two years, and what if it isn't there, what can happen? Senator Hadley spoke to that, but I want to remind everyone that there is in state statute a requirement that the Transportation Committee and the Appropriations Committee, and generally I think it's in August, that we hear a report from the Department of Roads on the condition of the roads and where we are with the funding. And I have said to a number of colleagues here, that's an important requirement and may become even more important as we look forward to passing AM1216 and LB84 because it will be that joint meeting of the two committees with the expertise and the ongoing look... [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR CAMPBELL: ...to give us the idea of whether we are on track or we aren't. And this meeting is required by statute. It's happened every year, but we haven't necessarily spent as much time on the funding part of it. But I would imagine the Appropriations Committee will make it so. We have an opportunity to seize the effort for ourselves, not...don't look to Washington, but to ourselves in a plan in LB84 that Senator Fischer has brought forward. It's time to make that commitment. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Karpisek, you're recognized. [LB84]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I, too, will not speak more than once on this. Senator Fischer has said that this was not done in smoke-filled rooms, behind closed doors. To put a little levity into this, it couldn't have been because we won't let anyone smoke indoors anymore, so that's probably why that happened. I, too, am not in favor of a gas tax increase. We talk about how this is going to affect poor people or underprivileged people in the state, a gas tax increase does the same thing. The rising price of gas is a horrible expense for them to get to and from work. So I don't think that I could support a gas tax increase for that reason. I do support

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AM1236. I think that it is a good compromise and I do support LB84. It will not go into effect for two years, and I know that there's a lot of concern about what is going to be cut in two years to fund this. Colleagues, I will tell you right now, in two years if anything is going to be cut to fund this, I will be the first one up and stand up and filibuster it. That is not the intent. Senator Fischer has talked to me, we don't want to cut education, we don't want to cut anywhere. This is, hopefully, going to go into effect, there will be more money there. If there is not more money there, then we should not do it. Another part of this is term limits. Senator Fischer has worked on this since she's been here. She will not be here in two years. I understand, she wants to get something done. I think we need to...I need to support it, but I will say that if it is going to cut into any of those other services, you will hear a very loud and resounding no from me when it happens. And I just want to get that out there because I think that there's a lot...I know there's a lot of fear from this bill that it will take away. It better not. That is not what the intent is. I don't want to put words in Senator Fischer's mouth, but I think she has said that numerous times and I will not stand for that to happen either. With that, Mr. President, I'd like to yield the remainder of my time to Senator Conrad. [LB84]

SENATOR LANGEMEIER: Senator Conrad, 2:15. [LB84]

SENATOR CONRAD: Thank you. Thank you, Mr. President, and thank you, Senator Karpisek, for the time. Two quick points that I think are important to note to be responsive to issues that have been addressed this morning. Number one, in regards to Senator Campbell's thoughtful comments in relation to our statutory requirements that we have joint meetings between Transportation and Appropriations to address our infrastructure needs. I couldn't agree more, and that is an important part of our work in conjunction and on these issues. And to be clear, colleagues, again from all sources, we spend over a billion dollars a year on roads and infrastructure needs in Nebraska, and so it's always an important update. But we can't cherry-pick the statutes that we want to follow. We don't have that luxury and it's inappropriate. We also have statutory requirements that we follow our forecast. We also have statutory requirements...conditions in our constitution and in our rules about how we budget. And we can't ignore those. And no one, no one has provided any example of how at \$125 million or \$65 million a year... [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR CONRAD: ...this earmark is supported by the current forecast or the current budget. Two rounds of debate, hours of debate, that remains absent and void. Thank you, Mr. President. The final piece I want to talk about is this promise of expressways. Colleagues, I appreciate how important that is to your home districts, but we must think more broadly as state senators. The expressways proposal was created in 1988 and was based upon a utilization of ever-increasing gas tax. There's nothing in LB84 or the pending amendment that guarantees when those expressways will be completed or

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how. Nothing. It is a false promise. And if you think otherwise, show me where. Where in the legislation does it say, Senator Harms, your expressway will break ground at this point in time? Senator Flood mentioned it during General File. When will your expressway in Norfolk be completed based on LB84 or AM1216? [LB84]

SENATOR LANGEMEIER: Time. [LB84]

SENATOR CONRAD: Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator Gloor, you're recognized. [LB84]

SENATOR GLOOR: Thank you, Mr. President and members. First of all, I'd like to take a moment to thank my voice for returning from vacation (laughter). Wherever it was, it must have had a good time because it came back tired, so I hope it holds up through the five minutes I'm allotted. I rise in opposition to AM1236, support of AM1216, and the underlying legislative bill, LB84. I stated under General File, at a time when I had better voice, that I was supportive with some degree of reservations because since I've been down here I've realized that this institution, the Legislature, has three long-term financial priorities. And it's important that I say long-term financial priorities. One is to try and find some stability in K-12, one is a host of programs that fall under Health and Human Services, and the other has to do with roads. Now I voted for AM...or LB84 to advance. Concerned about the dollar amounts. That's now been addressed. And I tell you that I am comfortable with it as it's now presented although I still had some reservations because of this commitment long term for dollars. I try not to, within this body, go back often to my business experience in making these kinds of decisions. But it's what's driving me now and I think I need to relate that if for no other purpose than the record in my constituency. We would like assurance that the dollars are going to be there in two years. We'd like that assurance. In fact, I'd voted for the motion to bracket last time because in my own mind I thought, another year, information under our belt, we'll feel more comfortable, and then brought myself short by reminding myself, in making business decisions, you can never have enough information. You want to, but it's never there. And sometimes you find yourself procrastinating in making important decisions because you want a little more data. How will we know that we've had that financial turnaround that makes us comfortable making this decision? Do we show up one day and there's a pennant flying from the Capitol building and it announces that, okay, things are looking rosy? Do we expect the Forecasting Board in a couple of weeks to come back and say, everything is clear, make your decisions long-term, we've seen that major economic turnaround? We know and expect they say, you know, revenues are up, things are positive, but they're going to couch their answer. They're going to couch their answer. You will know definitively that we are on an economic turnaround and can safely make this decision when you pick up every major newspaper in this state and beyond and read, experts announce that we had an economic turnaround two years

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ago or three years ago because this sort of thing has only 20-20 hindsight. There's no way we will know for sure that we're in an economic turnaround. My point being, you have to use some common sense. You have to feel this state in its constituency, the business community, a pulse of your communities, and know what's happening. And I think we're in a position to make a decision. I've told Senator Fischer I appreciate her putting the stake in the ground on this as one of the three long-term financial priorities for the state. I'm pleased we'll have added this strategy if we approve AM1216 and LB84, because we'll have that behind us, hopefully. And once we've done that, my hope would be and I plan to devote effort towards looking at ways that we can do the same thing to ensure the long-term financial health of K-12 and from a host of things that fall under human services from long-term care to elder services to developmental disabilities, veteran services, provider rates, and more. [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR GLOOR: Thank you, Mr. President. Decisions, when we make them on those other two categories, will also be fraught with what-ifs. Can we really count on the money being there long-term to make these decisions? It's the nature of these difficult decisions, it's the nature of the difficult decision in front of us today. And my past experience tells me, we need to approve AM1216 and LB84. Thank you, members. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Gloor. Senator Council, you're recognized. [LB84]

SENATOR COUNCIL: Thank you, Mr. President and I sat patiently listening to the debate that has occurred thus far on LB84 and its amendments. And I rise at this time in opposition to LB84 and in opposition to both of the amendments. And I do so, not because I don't share the belief that I hear echoed in the comments of my colleagues that we need to do something to address the roads situation in this state. I believe that. I rise in opposition to LB84 and both amendments because I believe that we have the means to make a significant impact on improving roads in the state of Nebraska currently without the necessity of burdening our General Fund revenue sources. And people have talked about earmarks and whether it is or it isn't, in my opinion it's most assuredly earmarked and cannot be compared to TEEOSA, which is a formula. And if you want to make that comparison and say TEEOSA is a formula, then I would submit to you that the Appropriations Committee needs to go back and find \$400 million for this upcoming biennium, because according to the formula, that is what would be needed to fund state aid to public education under the current formula. That's not what's occurring on LB84. There's no formula. There is a direct earmark of a percentage of the sales tax revenue that the state will generate in the future. And why do I say that we have a way of doing it now? We do. The question is, do we have the political will to do it now? We want to put off for two years something we can do today, if we're serious about it. I had

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an amendment in that I withdrew only because it was an amendment to an amendment that has been withdrawn. I have had that amendment redrafted and I will reintroduce it. If we're serious about addressing roads in the state of Nebraska, there's \$231 million sitting in the Property Tax Credit Fund available for appropriation. And I don't understand why we are unwilling to go to that source when it's clear that if the forecast says that we won't have enough revenue to sustain what's in LB84, what that would result in is further reductions in programs and services that I believe we have an obligation to provide to the citizens of the state of Nebraska, and we will in turn be burdening local property taxpayers, the very people we claim to be protecting through the Property Tax Credit Fund. So if we're going to burden them, why don't we burden them in the appropriate way by eliminating the Property Tax Credit Fund, taking that \$231 million and appropriating it to the Highway Trust Fund now. You don't have to wait two years to begin. You don't risk that the next Legislature at the beginning of the next biennium says, you know what, the forecast isn't even close to what we thought it was going to be, and bill after bill after bill will be introduced that would...if LB84 passes, that would repeal or essentially gut LB84 so that we could fulfill our other obligations to the residents of the state of Nebraska. I listened to my friend and colleague, Senator Carlson, when he kind of...he went through his list of priorities. And one of the priorities of government that he stated was, for those who desire to be self-sufficient for us to provide the means for them to achieve that self-sufficiency. And I listened to that, and I was absent yesterday morning during the debate on LB464 but that measure passed. And with the passage of that measure, we do place at risk the ability for individuals to move from dependency to self-sufficiency, all for the purpose of saving \$3.6 million. Now we can add that up and add that up and add that up and add that up and add that up and it will be a long way before we get to 65... [LB84 LB464]

SENATOR LANGEMEIER: Time. [LB84]

SENATOR COUNCIL: Thank you. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Mello, you're recognized. [LB84]

SENATOR MELLO: Is this my third time, Mr. President? [LB84]

SENATOR LANGEMEIER: It is. [LB84]

SENATOR MELLO: Okay. Thank you. Thank you, Mr. President and members of the Legislature. Unfortunately, I was cut off on my second time speaking, I believe, and I would have at least like to have finished that statement where I think most people in the body understand that very rarely do I wholeheartedly agree with Governor Heineman on any particular issue, but on this issue he was quoted multiple times, through multiple press outlets, specifically he, Governor said this was a risky financial strategy, "any

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reasonable economic forecast doesn't show robust enough recovery by then, what's the rush when the economy is growing. That's when we need to make this decision." Once again, all comments, all arguments, all things that were made on this debate on General File by a number of senators, because right now we can't afford this. And I would draw to your attention a preliminary budget that was released by the Appropriations Committee, this yellow document all of us received, you can download it on nebraskalegislature.gov page 4, you'll see the General Fund financial status. You'll see on the following biennium, the last column, lays out a \$40 million budget deficit at this point. We know from the February forecast that has changed and that has grown with changes that we will release in a preliminary budget. Add on top of this \$40 million right now, AM1216. You add on an additional \$140 million that we will have to cut in two years. To say that the sky is falling, I think is light in the sense of the belief in the body right now that we're just going to find a way to do this. We'll repeal it in two years. Well, colleagues, I think specifically before my time here, we said the same thing about the Property Tax Credit Fund Act. We would repeal that or we would not fund that act when times were bad. Yet myself and a couple of other senators have tried to reform that to make sure that more of that funding goes to Nebraskans instead of out-of-state Nebraskans and out-of-state landowners like Ted Turner, and we can't even get the bill out of committee. So to say that we could just go in and change policy in a couple of years if times get bad, I think our current Property Tax Credit Fund where we desperately need reform right now, we can't even get a change on that let alone try to...even anyone consider repealing that. So that argument that I know has been made by those who support this bill, I think is just intellectually dishonest because we've seen in most recent times, that's not the case with this Legislature. When you put something in statute that allocates or appropriates a significant amount of money to an interest or another, that will not be repealed. And I just drew everyone's attention the General Fund financial status, \$140 million on top of \$40 million equals something we can't afford. Let alone, when you see the preliminary committee...the Appropriations Committee budget we will release in a couple of weeks, that number increases dramatically. There's only so many ways to say it that this bill is something we can't afford this year. I and others have all expressed the need to do something on roads. I think AM1236 is the most responsible path forward if we want to put the Legislature and the Governor in the hot seat every year to talk about this issue. That's something Senator Fischer mentioned was a key priority and a key focal point of LB84. We want the Legislature to debate roads funding every single year. Well, colleagues, under AM1236, that is what you will be doing. Everyone of us. All 49 of us have the equal opportunity through the budget process... [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR MELLO: ...to advocate for roads funding. Yet we also say that we will not tie future Legislatures hands, we will also not dictate in our preliminary budget, or our current financial status, an unobligated financial burden that we can't afford. Colleagues,

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we have had to make tough decisions the last three years and everyone in this body understands that. We have cut programs, we have cut services, we have cut eligibility, and we have cut longstanding property tax relief programs to various entities. The opportunity that lies ahead with AM1236, I think is responsible. It's thoughtful. It's a way of moving forward of doing something on roads funding without going to the extreme, without adding extra financial burden, and spending money we don't have. It allows all of us... [LB84]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Time, Senator. [LB84]

SENATOR MELLO: ...to engage in this. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Mello. Continuing with discussion, Senator Ken Haar, you are recognized. [LB84]

SENATOR HAAR: Mr. President and members of the body, I'd like to start out with a quote here from Sidney Harris: Nothing is as easy to make as a promise this winter to do something next summer. And I think that we have to realize that LB84 is simply a promise. To me what we're saying here is, when the revenues are there, the roads will be financed. So we've heard again and again this morning that we can change it. If the money isn't there in the future, then we can just change this promise and not give the money out. But there are people who are depending on this promise like cities and counties and they will look at this promise not as simply something that can be changed by 25 votes, but something they can expect. And this bothers me a great deal. Obviously, roads are very important. I was just keeping track this morning all the various metaphors that have been used for roads. Coming down the road, middle of the road, fork in the road, kick the can down the road. Roads are important to our society and it's obvious that we are not appropriately funding our roads in this state. But to simply make a promise, which I think will be an empty promise in two years, is not the way to fund roads. Again I believe that...I guess, I'm a little upset in a way that it's easy to make this promise because in two years it's my problem, if I'm reelected. And it's Senator Schumacher's problem, and so on and so forth. But it's up to those of us who will be here in two years to fulfill this promise knowing that if the money isn't there for some other things, that we may not fulfill this promise. I think taxpayers, and especially of those people like cities and counties depending on this money, don't look at this simply as a...as a...it can be changed with 25 votes kind of situation. They are going to look at it as something they're going to put in their budgets, it's something they're going to depend on, and then we're going to be on the hot seat. So that's again what I like about AM1236. It says it's the intent of the Legislature to appropriate this money. If LB84 passes with AM1216 in its current form, I would just like to put myself on record to let cities and counties and the people of Nebraska know that this is simply a promise at this

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point, it's our intent to provide more funding for roads, hopefully, more than one-quarter of a percent of sales tax. And that we all understand in this body that it takes only 25 votes to change that promise if the money isn't there. This, in light of the fact that we've heard this year, we're not funding water appropriately. We're not funding schools appropriately, in my opinion, even though we have given them an increase from the General Fund, we're still, I don't feel, funding schools appropriately. We're not funding water. There are so many needs in this state and I...here's where I agree with the Governor when he's saying that this is something, the funding of roads is something we should consider in two years... [LB84]

SPEAKER FLOOD: One minute. [LB84]

SENATOR HAAR: ...when we're making up the budget for that next two-year period and not now. I think...I predict it's going to be an empty promise, and we're going to have a lot of people disappointed that we don't keep our promises. Thank you so much. [LB84]

SPEAKER FLOOD: Thank you, Senator Ken Haar. Senator Howard, you're recognized. [LB84]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Kids versus concrete. This is really coming to be a catch phrase in this debate. Senator Fischer, who is a very good friend of mine, served on her Valentine school board, and she understands the issues that the schools are facing. She and I have had conversations about children's issues and she's been supportive of my work on these fronts. The question as I see it, is what are we going to put our limited funding into? What are we going to commit our Nebraska taxpayer dollars to? Governor Heineman has made the commitment to improve our child welfare system through privatization and make no doubt about it, this costs money. We can no longer ignore the needs of the children in the private welfare system. And as you know, I worked in that system for many years and it was continually underfunded for decades. The commitment to privatization has now been made. The Governor has also stressed the importance of education in this state. I, like you, have listened to his addresses every January and he's always told us how very important this is. You cannot shortchange our students and our teachers who have made education their lives. I think of Mrs. Willey (phonetic) and Ms. Bird, my third and fourth grade teachers, whenever these debates come up. These two women devoted their lives to teaching the basics of reading, spelling, math, and yes, handwriting, although they preferred to call it penmanship back then. They knew that what they were doing made all the difference in our young lives and in our futures. I drive Interstate 80 every day. Roads are important. When I hit those chuckholes, I think about that we need to be putting more money into roads and yes, I think about Senator Fischer and her campaign to do just that. But I also think about how important it is for us to have educated people in this state, people that can write a complete sentence, people that can make change when the computer goes out at their station. And I'm

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going to remind you that we all stood and applauded the mothers from Heartland Family Services and saw baby Ernie here with his mother and that the Appropriations Committee didn't have the numbers to pass out my request for \$250,000 to keep babies like Ernie out of the welfare system. Baby Ernie is able to stay with his mother while she deals with her drug and her alcohol addiction. And this is what we want. We want him to have a chance to know who he is. We want his mother to parent him safely. Without funding, these mothers go to jail. Make no doubts about it. There's not another program that's going to help them work through this, and when they go to jail, their children go into foster care. I say to you that drug-free babies and educated children are as important as concrete, and I think we need to look at both of these issues and fund them to the best of our ability. Thank you. [LB84]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Nordquist, you're recognized. [LB84]

SENATOR NORDQUIST: Thank you, Mr. President and members. I heard a colleague say as we were debating a little bit ago that, hopefully, in two years this will be behind us, but as the Governor said and I concur, that there are no reasonable economic forecasts that show a robust enough recovery to fund this bill. We are budgeting again on hopes and prayers and dreams that will be there and that is fiscal irresponsibility. And we have to move on beyond that. And I was hopeful that because we have made this bill a Speaker's major priority, and we've reordered the motions, and gotten rid of priority motions, and put these amendments up, I was hopeful we would have substantive debate on the underlying amendment. But quite frankly, it seems like the same debate we had on General File. I've yet to hear the proponents say how we're going to pay for this. And I want to hear the proponents lay out their cuts. If projections, the best we have available to us, the best us, the Governor, the best any of us have available to us comes true, and we are \$250 million short in two years with only \$65 million in the cash reserve, I want the proponents to say where they're going to cut. What are they willing to give up? Are we holding education flat for another two years so they're on the same number they were back in 2008? Are we going to continue to maintain a State Patrol force that was the same size as in the 1980s? Are we going to close 30 county courts including some in many of your districts? I want to see someone raise their hand and say yes, that's fine with me. We want to reduce our prison population more, the public safety concerns that surround that? Senator Howard's issue she brought forward brought a lot of debate in the Appropriations Committee, but we just didn't have the dollars to make it come out. The DD waiting list comes up year after year after year, 1,600 Nebraskans that deserve services. They're the type that Senator Carlson mentioned, those that can't take care of themselves that we need to be there for them. Those are the ones we should be helping. We won't be able to. I want to hear where the cuts are coming from. Are we closing the state college? Are we closing the

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Hastings or Norfolk Regional Centers? Somebody tell me. We haven't had any of that discussion on this floor. We're building our budget on hopes and dreams and prayers. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Nordquist. Senator Pankonin, you're recognized. [LB84]

SENATOR PANKONIN: Thank you, Mr. President. Senator Nordquist, I don't have any specific answers for you but I do want to continue to talk about this issue. And I do think it is interesting to note that Senator Campbell, Chair of the Health and Human Services, I don't think Senator Heidemann has maybe weighed in on what potential cuts may happen if this doesn't work, and we are projecting out in the future somewhat to see what happens and, hopefully, our economy is on the rebound. But this morning it was interesting. I've got a phone message. I went down to my office a little while ago and at 10:39 a.m., Mr. Larry Kersten called my office and he is associated with Kersten Trucking. I've known him for 35 years. He actually lives just across in Senator Price's district, but he wanted me to call back and he didn't say the reason why. So I called him and he said, can you do something about that stretch on Highway 50 from Highway 1 through Louisville? And I drive that...part of that stretch every day twice coming down here and I know what he's talking about and he is the trucking business but he says...and he didn't realize what we were talking about this morning, he is maybe not...he wasn't watching, but I got the phone message and when I called him back he goes, it is so bad and so scary, that stretch, and he's exactly right. He goes, I tell my drivers, don't weave around the chuckholes. You're going to hit somebody with this truck. And he is exactly right. I know where these holes are. They're not cracks, they're not potholes, they're crevices. And the Nebraska Department of Roads is out there every week putting material in them, but with the traffic, they get...the material doesn't last and obviously during the winter with the freeze and thaw, it's gone. But they're out there. They're trying...we're spending a lot of money on maintenance trying to keep this thing going. But he just says, it is so...a concern of his for safety, number one, that cars and trucks are crossing the midline, they're going on the shoulders to avoid these terrible spots in this road where this road is just falling apart. The second thing is, damage to his vehicles. He says, I can't keep tires on the front of my trucks, I can't keep the front ends balanced, spending major money every week. The third thing he wanted to mention, this is a major artery. Highway 50 comes up through Senator Heidemann's district from Kansas and it flows into the four-lane at Springfield and goes on north. He says, are we going to have to close that stretch? Well, I related to him that Senator Lautenbaugh talked about last week I thought one of the most effective speeches on this...on the General File debate that we had earlier was when he said between Blair and Fremont Highway 91, I think he mentioned, you can't drive a truck, a semi-trailer, semi-truck. That's a pretty big deal economically for agriculture, for industry, for all sorts of things if our roads get that bad. This stretch is going to be there pretty soon. Our highway system needs a commitment to additional funding. And how we do it, I think

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LB84 with AM1216 is as good as we have right now. The gas tax is probably unpalatable for people. We need a commitment that this is going to happen so we can start planning for the Nebraska Department of Roads to do something. This issue has come to the forefront. And I know we have concerns about how human beings are affected by this budget, but we're going to have a lot more accidents, a lot more people killed, a lot of economic distress, and a lot of economic potential that's unrealized if we let this infrastructure system fall apart. And I drive this part of the stretch twice a day and it is...he's absolutely true, Mr. Kersten is absolutely true. I did ask him if I could wave his phone message and use his name this morning, and he said, absolutely, this is a crisis. [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR PANKONIN: Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. Senator Schumacher, you're recognized. [LB84]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. Sometimes it's good to put things into a little perspective. Let's look at the money that we're talking about here, roughly \$50 million, \$60 million or so a year. That's a quarter percent of the sales in the state. Eighty-five percent of that goes to a Highway Capital Improvement Fund of which 25 percent goes to the express highways and the federal plan of 1988. That amounts to about \$12 million toward four-lane roads at a million dollars per lane mile that amounts to three, four miles a year. It's kind of scary isn't it? Senator Flood won't be driving in anytime soon between Norfolk to Omaha on a four-lane and I won't be driving in anytime soon to Omaha from Columbus on a four-lane. Put in another context. How much money is this? It's about ten sections of irrigated land in Platte County a year. Over the 20 years it would be about 200 sections or about five townships of territory in a land of 75,000 sections. It's an amount equal to the amount of the public subsidy to the legacy phone companies through the Nebraska Universal Service Fund a year. That's the context of money. Number two, the second point I want to make is that our road system, at least much of it, is based upon an economic model of 1900. That model and the way it's laid out has to recognize that some of those are no longer adaptable to this time in our economy, and some are no longer sustainable. We have to at a point make a decision how much we're willing to invest in the past. The next point I want to make is that Senator Nordquist is absolutely right. Absolutely right. For the last 30 years Republicans and Democrats alike at our national level have ferociously worked to turn this country into the world's greatest debtor country. It had once been the greatest creditor country. Our budget situation is not going to look better in two years. We're going to be struggling four years, ten years out. We are able to make it this go-around by raiding some big funds, including the rainy-day fund. If any of you were listening yesterday, Standard & Poor's began to do

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the saber-rattling about reducing the credit rating of the United States. When that happens, our interest rates will soar, and federal aid will even be more scarce with our burdens coming our way. Now in that gloomy outlook, we have to also recognize something. This state is particularly blessed. It is blessed with 75,000 square miles of extremely fertile land. It is blessed with a cattle industry that is able to produce some of the best steaks in the world, steaks that are going to be high in demand in our banker country of China. We produce so much grain that we can burn it. Now we have got to make a strategic decision whether or not that place has a future, and put what amounts to a miniscule amount of money toward it. Like every businessman knows, when look and you say, okay, this is something worth investing in, this is something we got to have, you got to do the painful thing of reaching into your pocketbook and writing a check. It seems to me that the effort that's been made at LB84 to take it down from \$125 million a year to this level is a reason... [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR SCHUMACHER: ...is a reasonable compromise between the two various positions. That does not mean that it's a solution. We are way short of money. And sometime we're going to have to bite the bullet and figure out a way to creatively take the immense savings of our people and invest it in these things at a return on investment to them in an equity market. We have to take the novel step and we will over the next years just out of necessity of securitizing some of these forms of public infrastructure. But for now, we need to make a little bit of a commitment, dig into our pockets, if necessary, and say, folks, the future is worth investing in and making good commitment to, and roads are a part of that future. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Schumacher. Senator Council, you're recognized. [LB84]

SENATOR COUNCIL: Thank you again, Mr. President. And I'm going to go back to where I ended the last discussion of this. Again, if we are seriously concerned about addressing some of the road issues, for example, that Senator Pankonin referred to, LB84 is not the vehicle to do that because what LB84 says is two years from now assuming that this legislative body doesn't repeal the allocation of a quarter percent of the sales tax, we'll have some additional money to address the roads issue. What I submit to you is, if we're really serious about addressing these very critical road safety issues, then we do it now. We don't wait two years from now. Senator Haar was talking about promises, and I recall Senator Krist speaking earlier about what is all involved in a road improvement project or a road construction project. You pass LB84, you give out hope that there's going to be \$65 million or whatever the amount a quarter percent sales tax represents, you put that amount out that those dollars are going to be there two years from now, and political subdivisions, and maybe even including the state of Nebraska, starts incurring the costs associated with getting a project ready to be

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shovel-ready by July of 2013 and then, oh, boy, what happens if the next Legislature beginning with the next biennium says, we can't afford it. And from all indications, we won't be able to afford it. So I'm submitting to you that let's exercise some political will and do it with money that we know exists right now that could be easily appropriated to the Highway Improvement Fund to begin addressing these issues now. And let's talk about the economic impact. Let's talk about the economic impact of infusing \$115 million a year over the next two years into road and highway improvement projects. Let's talk about the number of jobs that would be created. Let's talk about driving this economic engine, and being able to get our goods to market quicker. And let's talk about the impact that will have on future revenue, and put us in a position two years from now to perhaps see the kind of growth in revenue that we would absolutely need to see in order to sustain LB84. You begin to see that and you could begin to appropriate the amount of money from the General Fund necessary to sustain this. Clearly, the Appropriations Committee saw the need to address roads by providing in their preliminary budget for \$30 million in additional funds. What prevents that from occurring two years from now? And if we do it with the funds that can be utilized today, out of the Property Tax Credit Fund, we eliminate the risk that future Legislatures will feel some obligation to maintain this earmark to the sacrifice of some of our other obligations which we know could lead to the burden just being passed on to property taxpayers. So if we're going to burden property taxpayers... [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR COUNCIL: ...if we're willing to burden property taxpayers, I think this minor burden represented by eliminating the Property Tax Credit Fund, which Senator Mello aptly noted, a significant percentage of which doesn't stay in the state, doesn't add to our economic prosperity. Whereas, allocating the Property Tax Credit Fund to highway improvement stays in our state, turns over in our state, adds to our revenue base. So I would urge all of you to consider opposing LB84 and all of its amendments, or supporting LB84 with the amendment that I will be filing that says let's fund it now, let's use the Property Tax Credit Fund to fund it, we'll have \$115 million of additional funds available to address these very serious road issues and the admitted safety concerns associated with not addressing it now. Thank you. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Council. (Visitors introduced.) Seeing no other lights on, Senator Conrad you're recognized to close on AM1236. [LB84]

SENATOR CONRAD: Thank you, Mr. President, and again, thank you, colleagues, for the thoughtful debate that we've had this morning. I was hoping that Senator Pankonin would still be on the floor because I always really respect his opinion as the conservative business background that he brings to this body and his thoughtful approach to legislating. And, you know, it just really struck me as he was talking, we all know that Senator Pankonin is, like many of us, as a citizen and legislator is very, very

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busy outside of the Legislature as well, and is a banker in his home community, and is in a leadership position at a local bank. And I'm just wondering if the same logic that he applies to LB84 applies in his private business at that bank. For example, if I'm a university student who is scheduled to get a degree in business in May to graduate, can I go into that bank and get a loan based on what I hope my future earnings might be? If so, there's going to be a run on that bank, I imagine. And I'd venture to say that that's not the way that they do business at Senator Pankonin's bank or, in fact, any bank or business across this great state. So we hear frequently that government should run a lot more like a business. In this instance, I definitely agree. And LB84 or AM1216 represents a significant departure from that well-established conservative philosophy. In fact, it turns its back on our proud pay-go history in this state of paying for what we can afford and allocating our resources to what we have available, and utilizing the statutory rule base and constitutional parameters that guide our revenue, tax, and spending proposals. I don't discount for one moment the compelling examples that Senator Pankonin, Senator Lautenbaugh, Senator Janssen, Senator Fischer, have noted in regards to significant public safety issues in terms of our existing infrastructure. But I challenge you, colleagues, just as I noted earlier in regards to the expressway promises that are contained in this legislation, where in AM1216, it's a three-page amendment, I've read it many times, where's the guarantee that that stretch of road that you're concerned about in your community that poses such a great threat will be addressed and when? It does not exist. It delegates that authority to the Department of Roads. Not to mention the fact that we have a billion dollars being invested in critical infrastructure that's meant to take care of maintenance of those existing roads right now. And if those high-priority areas are not being addressed, LB84 is not the solution to that. You need to talk with the Governor, you need to talk to the Department of Roads, you need to figure out why, indeed, those critical safety issues are not being addressed with the billion dollars that's flowing through the state to our roads projects each year. I don't know the answer and I think it's a compelling question that deserves an answer and deserves a response that LB84 and AM1216 provides either. I hope that you will give careful consideration to AM1236. It is a thoughtful amendment meant to provide real flexibility. I want to be solution oriented, and indeed I believe that by casting your vote for our budget, which will be out shortly, you can be solution oriented, too, where we will infuse \$30 million, \$35 million, \$40 million over the next biennium budget into additional roads funding. That's a good thing. [LB84]

SENATOR LANGEMEIER: One minute. [LB84]

SENATOR CONRAD: That's something we can support. LB84 and AM1216 overcorrects that imbalance by the tune of about \$65 million a year for a total 20-year earmark of \$1.3 billion. It remains unaffordable, it remains fiscally irresponsible, and the Nebraska Legislature can do better. In quoting Governor Heineman's quote on this very topic: The Nebraska Legislature should stop engaging in Washington-style budgeting, which is what LB84 represents. I agree with him wholeheartedly and I hope you do as

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well. Thank you, Mr. President. [LB84]

SENATOR LANGEMEIER: Thank you, Senator Conrad. You have heard the closing on AM1236. The question before the body is, shall AM1236 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Senator Conrad, for what purpose do you rise? [LB84]

SENATOR CONRAD: Mr. President, I'd request a record vote, please. [LB84]

SENATOR LANGEMEIER: Thank you. Have all those voted that wish to? Record, Mr. Clerk. [LB84]

CLERK: (Record vote read, Legislative Journal page 1229.) 13 ayes, 18 nays, Mr. President, on the amendment to the amendment. [LB84]

SENATOR LANGEMEIER: AM1236 is not adopted. Speaker Flood for an announcement. [LB84]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. It is time to recess for the day. When we come back...for recess for the lunch period. I should correct myself. (Laughter) When we come back at 1:30, we will take up Senator Louden's AM1228. The next amendment to be ordered is Senator Louden's AM1228. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Speaker Flood. Mr. Clerk. [LB84]

CLERK: Mr. President, just one announcement. Judiciary will hold an Executive Session at noon in Room 1113. [LB84]

Senator Krist would move to recess the body until 1:30 P.M.

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

RECESS

SENATOR CARLSON PRESIDING

SENATOR CARLSON: 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. Mr. Clerk, please record.

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

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

CLERK: I do. Enrollment and Review reports they've examined and reviewed LB289, LB289A, and LB665, and reports those three back to Select File, some having Enrollment and Review amendments attached. That's all that I have, Mr. President. (Legislative Journal page 1230.) [LB289 LB289A LB665]

SENATOR CARLSON: Thank you, Mr. Clerk. We'll proceed to the first item of this afternoon's agenda.

CLERK: Mr. President, continued discussion, LB84. Senator Fischer has pending her amendment AM1216. Per the Speaker's direction, Senator Louden, your amendment AM1228 as an amendment to Senator Fischer's. (Legislative Journal page 1215.) [LB84]

SENATOR CARLSON: Senator Louden, you're recognized to open on your amendment. [LB84]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I introduced AM1228. And as you will look at it, what it does, it actually raises the fuel tax 5 cents a gallon. The reason I chose that 5 cents a gallon, because that would just about offset the same amount as what Senator Fischer's bill, or her amendment, did when she cut the early funding, half in two. She started out \$125 million. Now she's went to a half cent or a quarter cent, and now it's down to about \$65 million, which we discussed all morning. The way this works with AM1228 is it goes back to a user fee. And that's the question on the policy here. Are we going to go to general funding for road repair and construction, or are we going to stay with the user fees as we've done over the period of years? Now you can pick any kind of number you want, but about 1 cent fuel tax raises about \$12 million. So you can come in with any kind of a number you want. I chose the 5. In the bill there, it shows...or in the amendment it shows where it goes up to 12.5 cents, and that raises the one, the regular fuel tax 5 cents, which puts it at 12.5 cents on fuel. Over the years, they've somewhat played around with the formula funding. And so that, depending on the usage, why, they would keep the fuel tax at about the same as what it was from year to year. The last couple or three years, the usage had been down, so that's where their funding has come up in a shortfall. There's been a formula put in, in there, that if it was used correctly, we wouldn't be here discussing this today. Part of the funding with the amendment that I have would start in January 2012. It wouldn't be pushing it off into another Legislature. It would be starting as soon as this session was over with, and it would be put in place in January 1, 2012, when they usually start the revenues, their fiscal year, for the Department of Roads on their fuel tax. That was the reason that date was chosen. And so this is something you wouldn't be pushing off into a future Legislature and waiting to see what would happen. As I've looked at LB84, and

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here the other day I think we had a bill, and they were talking about whether you can push something off into a future Legislature. And it was discussed, and said, and I think it was LB383, that no, we shouldn't push it off into a future Legislature. This is exactly what we're doing with this. I've seen it happen before with our city-county state aid. We worked on that for about three or four years and finally got that through. It was to take effect in July of this year--and it was repealed before it ever happened. This could very well happen with the same thing with this LB84. There's nothing says that it's going to happen in two years from now, depending on whether or not that Legislature feels they're rolling in enough money. Then when you cut down to the \$65,000 that's in there now, or the about \$60,000 with the fuel tax, the part in there for \$15 million for expressway, that didn't change any out of the original LB84 bill. That's still in there. I don't think it's sufficient to do much good, but it is a start. Something like that, if we would have had that in there for time to time, we could have probably earmarked some of those federal funds when they were available. But as it was, we had to put that in the Legislature about two years to have funding for...to match funding for the federal earmarks. And that's what's held up that Heartland Expressway for a long time out in western Nebraska was the Department of Roads kept telling us that they didn't have the funding for the match funding. And once we found the match funding, why, then they had taken so long that the federal people had different guidelines that they had to follow. And so that's been put back behind, and now they're working on to try and fulfill those guidelines. If you would look, I think there's different...as we've had the discussion today, Senator Pankonin mentioned the road needs that he has with the roads falling apart and done. Well, if you go and wait two years before you start working on that or before you start getting any funding, if you don't start getting any funding till 2013, you're talking about 2014, '15, or later, before any road work will be done on that. Senator Flood has an expressway system up there that has some federal earmark money. That hasn't happened. And here a while back, I think when we were discussing this on first round, Senator Lautenbaugh talked about some of the roads that he has in his district that people are actually...it's so dangerous and there are actually people getting killed over it. So with this bill, if you are serious about road funding, then this is the one to have. This is the amendment. This puts 5 cents in there, and this will...the money will start in there in January 1, 2012, which is the end of this session and the beginning of next year. So this is what it's designed to do, to actually see how serious you are about funding roads now. As I've looked at LB84, it always reminds me, as they say, people: It's painting over rust. And that's about what that is with LB84 is you put a little paint over the top of a problem, and at the present time you can't see it, but in a couple years or so, why, it comes right back through to show up and haunt you again. So you could very well be having this same argument again in two years from now on whether or not there's enough money to do that. We've had the discussion on state aid, cut state aid over the years, and so we haven't seen the time that we had, I guess, too much money. It's kind of like having too much fun--there isn't such a thing. They had...when we started out with some of this funding over the years, we had our rainy-day funds as we brought it up. We had put on a half-cent sales tax--I think back there in about 2002 is

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when that was put on. And as soon as we were supposed to get some surplus funding, we were supposed to take that off. And that didn't happen, because about the time we got the surplus funding, the economy went down again. So that didn't happen. We still got the 5.5 percent sales tax. At that time, back there in about 2001 or '02, they lowered the income tax rate. And in 2002 or the early part of...yeah, I think it was in 2003, a special session--they raised that income tax rate back up, and that hasn't went down since then because of the funding. So this is what this is all about. This is a user fee. With LB84, if you're doing a sales tax, when you go buy your kids a happy meal down at McDonald's, why, there will be a percentage of that goes to pay for the roads. Now you can do that or you can use a user fee. And when that trucker comes through, that Old Dominion trucker that comes through, from Boston down our Interstate and it goes across to California, he'll have to pay his user fee. Whereas, if you're using some of your sales tax money, why, he gets the break too. So this is however you want to do it. Any clothes you buy, anything, any consumer goods that you buy that has a sales tax on it, a part of that will actually go into funding roads. In fact, I think with the user fee such as this, you probably, the citizens themselves of Nebraska, will probably have a lower tax bite than by putting it on a sales tax. Because the sales tax, I think Senator Conrad's bill that tied it as \$65 million, didn't pass, so it'll be any kind of a funding out there that's out on the horizon, and we only depending on the amount of sales. I think as we look forward to our funding formulas, we need to address what there is. The Appropriations Committee, if these all fail, then the Appropriations Committee could probably do the same thing and it would still be in there. But our funding formula for road construction has always been a user fees. The other part is the sales tax on motor vehicles and some of the other miscellaneous taxes that come with it to go into the Highway Trust Fund. We've been fortunate that we've protected that Highway Trust Fund over the years. Many states have raided that. Wisconsin for one, raided their Highway Trust Fund a time or two. [LB84 LB383]

SENATOR CARLSON: One minute. [LB84]

SENATOR LOUDEN: And Nebraska has always been fortunate that we've been able to protect that. I remember, in 2003, we fought tooth and nail to keep people from raiding that Highway Trust Fund. And I've always been an advocate of keeping that money separate, because that's what we have to keep our highways up. It's just a case when people play around with the funding formula that we get into some trouble. And with this 5-cent fuel tax it would...it's always, for a period of years, and this is something that would change that. So as I say, this will be a vote to see just how serious anyone is about funding highway work in Nebraska. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Louden. Members, you've heard the opening on AM1228. (Visitors introduced.) Those wishing to speak: Senators Krist, Conrad, Wallman, and Louden. Senator Krist, you're recognized. [LB84]

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SENATOR KRIST: Thank you, Mr. President. I wondered if Senator Fischer would yield to a few questions. [LB84]

SENATOR CARLSON: Okay. Senator Fischer, would you yield? Senator Fischer, would you yield? [LB84]

SENATOR KRIST: While she's coming to the mike, I saved these comments for, these particular comments for this amendment, because I think it's appropriate that we take a look at this particular concept. But if Senator Fischer would yield for just one second. [LB84]

SENATOR CARLSON: Will you yield? [LB84]

SENATOR FISCHER: Yes, I will. [LB84]

SENATOR KRIST: To date, without LB84, what is the standard funding mechanism for the roads in the state of Nebraska? [LB84]

SENATOR FISCHER: The highest percentage going into the Highway Trust Fund from revenue is from the gas tax. [LB84]

SENATOR KRIST: And is there sufficient funds currently in the trust or any other associated mechanism to fund all the projects that the Department of Roads would be involved with or have committed themselves to? [LB84]

SENATOR FISCHER: I hate to put it this way, but it depends on your definition of that, Senator Krist. The Appropriations Committee and the Transportation and Telecommunications Committee have a joint meeting hearing every fall with the department to be updated on their needs assessment. The department is realistic in what the legislative body has been appropriating for their needs, and a lot of the projects that were previously on a one-year or five-year plan, especially the five-year plan, have been removed, because we are not appropriating the needed money for new construction. As I stated on General File, we aren't meeting the current needs just for preservation and maintenance. That's the reason for LB84. [LB84]

SENATOR KRIST: Thank you, Senator. And to that point, if you have not obtained a copy of the 2011-2016 Surface Transportation Program Book, with the five-year plan and those items that have fallen off, you will find that there is a whole series of projects that have indeed fallen off the five-year plan in terms of realistic planning and out-year planning in terms of what maintenance would have to be performed before they would ever get to new programs like superhighways running from Norfolk to Scottsbluff if that were even a possibility. The point I'm making here is that there is not enough money to do what needs to be done in maintenance and the projected new projects that are out

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there. And if you digest this, you'll find out that that is indeed a fact. So what Senator Fischer has tried to do is offer us one opportunity to get over the bump and invest in our infrastructure, and that would be sales tax. Senator Council is talking about another amendment that would offer us a different kind of philosophy or program. Senator Louden has just brought to the table another philosophy. And I think when you hear the words, "How serious are you about this," in that big scope of things that we have to deal with and in the amount of money we can't spend on things, we need to realize that we have not been investing in the infrastructure over the last few years the way we need to. And somehow we're going to have to solve that dilemma, and I think that, given Senator Fischer's investment in this over her terms here in this Legislature, and realizing that she has until 2012 to do something, this is her way of saying that. I'm not sure that Senator Fischer, in terms of thinking through the process, is right or wrong. I think she's right. I don't think that Senator Louden is right or wrong. I think he's right. [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR KRIST: I think it might be at the end of this day we have a combination of things that would add to the investment of the structure of roads that we would be able to invest in our infrastructure. And I'd suggest that you look sharply at these numbers in this program to figure out how badly we are investing in the infrastructure program. And I would say only one thing more with this amendment. What Senator Louden has done is offered us an opportunity to look at an alternative--and others will offer alternatives. We need to talk about those alternatives and we need to talk about the proper investment, and hopefully that will go on today and tomorrow if necessary. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Krist and Senator Fischer. (Visitors introduced.) Senator Conrad, you're recognized. [LB84]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I was hoping that Senator Louden might yield to a question or two. [LB84]

SENATOR CARLSON: Senator Louden, would you yield? [LB84]

SENATOR LOUDEN: Yes, I would. [LB84]

SENATOR CONRAD: Thank you so much, Senator Louden. And I'm going to take a moment, if you don't mind, to get a little bit more insight about what happened at the committee level, a committee, the Telecommunications and Transportation Committee, which I believe you're a member of currently. Is that correct? [LB84]

SENATOR LOUDEN: That's right. [LB84]

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SENATOR CONRAD: And how long, Senator Louden, have you served on that committee for, during your tenure here in the Legislature? [LB84]

SENATOR LOUDEN: Oh, I think...I don't know. Four or five years or so. It's been awhile. [LB84]

SENATOR CONRAD: A couple cycles. [LB84]

SENATOR LOUDEN: Yeah. [LB84]

SENATOR CONRAD: So it's fair to say that you heard a lot of the same information Senator Fischer and others have about the state of our roads and the plans that we need to make and look at as we move forward as a state. Is that about right? [LB84]

SENATOR LOUDEN: Yes, I've been...yeah, we've had that discussion on road funding for quite a while now. [LB84]

SENATOR CONRAD: And, Senator Louden, did you happen to participate, in 2009, in the series of statewide town hall meetings about the roads funding issues that existed in Nebraska and that were paid for with taxpayer dollars? Did you have a chance to participate in those public hearings with the Transportation Committee? [LB84]

SENATOR LOUDEN: Now you're talking about the joint hearing between the Transportation Committee and the Appropriations Committee? [LB84]

SENATOR CONRAD: I'm not actually. I'm talking about a series of interim study public hearings that happened in 2009. [LB84]

SENATOR LOUDEN: Oh, yes. I think that was a year ago last summer we toured the whole state of Nebraska with asking questions of on how to fund our roads. [LB84]

SENATOR CONRAD: Yes, exactly. Thank you for that confirmation, Senator Louden. I think that we've all had a chance to read that very comprehensive and good report from the Transportation Committee that put forward 31 different ideas for how to solve our roads funding issues. And right at the top of the list was through making adjustments to our user tax, our user fee, our gas tax mechanism. And that's what it seems to me like you're bringing forward today, is that right? [LB84]

SENATOR LOUDEN: Yes. And that was part of the reason I brought this amendment, because that was...many of them said 5 cents, and one of the arguments that I always remember came out in some of those hearings was one of the persons said, well, if you're worried about a 5-cent tax on your fuel, when you go in and put 20 gallons of gas in your car, just don't go in the mini mart and buy a bottle of pop, because it would be a

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dollar either way. [LB84]

SENATOR CONRAD: That is a helpful, I think, illustration of what we are talking about in the context of your amendment, Senator Louden. And I, number one, want to applaud you for the intellectual honesty and political courage in bringing forward this proposal, because it preserves and protects the dedicated and separate funding streams we have to meet our different state obligations, but it recognizes a way to move forward and a way that sooner rather than later. And I was wondering, when you put this proposal in, everyone knows that at this point in the economy there are still some advantages to be had by making investments now in terms of being able to leverage those with the cost of materials and labor and otherwise. And so do you feel like if we were to move and take action now with your proposal, that we could even get some added benefit to that investment? [LB84]

SENATOR LOUDEN: Well, yes, with the inflation. I mean any time whatever you can do sooner than later, is farther ahead, because same way with our Heartland Expressway out there. We've had that \$20 million setting there for nearly ten years now, and by now, that isn't as big a value as it was several years ago. [LB84]

SENATOR CONRAD: That's absolutely right, Senator Louden. And then just the final point that you mentioned in your example about what this costs or average costs or additional burden on Nebraska taxpayers would be, you equated it to an extra trip into the mini mart. And we've had those same conversations in the Appropriations Committee about the relative tax burden upon our citizenry if we were to look... [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR CONRAD: Thank you, Mr. President...if we were to look at an option like this. And I was wondering, when you visit with constituents or when you heard from people around the state during that extensive public hearing process, were Nebraskans most concerned about gas tax or most concerned about property taxes? [LB84]

SENATOR LOUDEN: Well, when we were on that deal, they were concerned about keeping the highways up in good shape, because if you...and Senator Hadley could answer that. He blew a tire going to one of those meetings. It probably cost him 200 bucks for that tire. And if he had had a good road, why, he would probably have been a lot less...he could have bought, what, several thousand gallon of gas for the taxes that went into it for that tire as an example. [LB84]

SENATOR CONRAD: Thank you, Senator Louden. And again that's another great example that what you're going to cost...what the charge is going to be to the individual citizen if you have to get a realignment or a new tire or some other sort of mechanism to address those issues caused by the roads to your car, it's going to be a lot more

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expensive... [LB84]

SENATOR CARLSON: Time. [LB84]

SENATOR CONRAD: ...than what the average citizen will pay under your proposals that...thank you. [LB84]

SENATOR CARLSON: Thank you, Senator Conrad and Senator Louden. Senator Wallman, you're recognized. [LB84]

SENATOR WALLMAN: Thank you, Mr. President. I appreciate the comments, Senator Louden, and I do like his amendment. And regarding the property tax issue with schools, TEEOSA funding, part of that was caused by here, rules and regulations we passed, not the feds, we passed--assessments, special ed things, some of these things we passed. And I'm not saying they're good or bad but we did that, so we did affect property taxes out of here, and they tell me that at the local county board meetings and the school board meetings. So do we pay now or pay later? We have a great society that likes to pay later. Kick the can down the road and let your great-grandkids pay for it. Federal government: do we want to go down that road as a state government? Why would we? Why wouldn't we want to be an example for other states? We are pretty conservative as far as saving our money. And I didn't hear a single complaint when gas prices shot up 10, 20, 25, 30 cents. We ought to be telling our suppliers, which we should do, it's strictly speculation. Nothing to do about the price of oil at the Gulf. My brother used to be in the oil business. He'll tell you that the last time the price shot up, nothing about shortages, nothing about Middle East oil; it's strictly speculation. So is this speculation on this gas tax thing? Senator Louden had courage here to bring this up, and I'd yield the rest of my time to Senator Louden. [LB84]

SENATOR CARLSON: Senator Louden, 3 minutes. [LB84]

SENATOR LOUDEN: Yeah, thank you, Mr. President, and thank you, Senator Wallman. When we talk about our gas tax and fuel tax and what we're paying for that, I said two weeks ago I was in Alliance and I paid 20 cents a gallon less for gas out there than we were here in Lincoln. Now that's across the state. So the gas...the price of fuel or fuel and gasoline is variable across the states, and it's way more than this 5 cents or so. What you have to remember is the bite out of the average person that walks down the street. If you're going to have a sales tax on there, they're going to pay it whether they drive a car or whatever they do. Sure, they probably have their goods delivered on rubber tires of some sort, but nonetheless, the bite is considerably more than if you have a user fee. And that's what has always been the reason or how we've funded our roads is with a user fee. And this is changing policy. LB84 changes policy if you put it on a sale tax. That's something different. That's got to come out of General Fund. We've never done that for...since back there in the '60s or whenever we changed that fuel tax,

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or the Highway Trust Fund, that's been the method ever since then. There's nothing wrong with that if it's used properly. And as far as increasing the fuel tax, sure, right now gas is high, but that doesn't mean that next year perhaps we'll be down some. We don't know where it's going to be. It may be higher. Because you want to remember, we have a federal energy czar that has said publicly that he would like to see fuel ratchet up a little bit more so people would be more conservative. So we have to overlook some of that stuff. Sure, it's going to be high. The question is: Do you want to have decent roads to drive your cars on? And this is what it's all about is we're trying to repair the roads, keep them in good shape, and we're going to have to have some funding to do it. There's no cheap way to do it. If you let it deteriorate, then it's going to cost us way more to do it in the future. Thank you, Mr. President. Thank you, Senator Wallman. [LB84]

SENATOR CARLSON: Thank you, Senator Louden and Senator Wallman. And now Senator Louden, it is your light. You're recognized. [LB84]

SENATOR LOUDEN: Thank you, Mr. Speaker. As we've had these discussions, sometimes they talk about we're going to have more electric cars; there's going to be less gallons used, more efficiency. And sure, there's going to be more efficiency, because that's what it's all about. Your diesel engines nowadays, we're already getting some of the literature out that we can have add-ons on these diesel engines and get nearly twice the gas mileage out of these big trucks that we're getting now. So that's going to come about. There are various ways that that can be done. Now when you talk about electric cars, if any of you want to do the research on your little machine and go into the Internet, find out what it takes to power an electric car. It takes some lithium batteries and some cobalt batteries and that sort of stuff. And then when you're in your machine, look and see where the lithium comes from. Most of it comes out of China. The United States doesn't make any. The United States doesn't have any cobalt. So we're going to...whether we're going to trade oil for some kind of rare elements, that remains to be seen. But electric cars are going to be around up to a point, but they won't...there's not going to be that many of them around because you're just buying into something else that's more harder to come by than what your oil is. And there is plenty of material and research out there to show that where the rare minerals come from isn't the United States. As we work our way through finding ways to fund roads, there probably has never been a better way than the way Nebraska has done it. When you look at other states that have used funding, they'll use bonding. I think Michigan up and sold all their roads to some outfit out of Australia a few years ago, and they put in a bunch of toll roads. Sold it for \$3 billion, and it was worth \$11 billion. And then after about two or three years, that corporation didn't want to fix their roads anymore, so they're in worse shape than what they were to start with. And in Nebraska we've never done that. We don't toll roads. We've had our user fees. We've protected the Highway Trust Fund, and this is where we need to continue to add to that Highway Trust Fund and find ways to continually fund our work on the roads. There's...our sales on motor

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vehicles, some of that sales tax goes into the road funds, and there's also some of that money goes back to the counties and cities for work on their roads. As we've come through the process of our interim study here a year ago, we didn't find any place that the people didn't say: Well, raise the fuel tax, raise the user fees, do something like that to keep the roads up; we can't afford to let them deteriorate. Ask any in the trucking industry. They don't want to have chuckholes in those roads. It costs something fierce if you have bad roads and have to drive over chuckholes, or if you hit something like that and ruin a line-up job or ruin tires and that sort of thing. The cost is prohibitive by not...by doing something like that. And as I say again, are you going to use your sales tax that you have when you go down and buy your happy meal or you buy your clothes or you buy your shoes, anything like that? All of those sales, all of that will come about from everyone contributing to it. Your user fees are the ones that use it. Whenever you buy anything, if there's a user fee in there, that's usually added on to it. A few years ago, when diesel fuel got quite high-priced, whenever we had anything delivered to the ranch or anything, there was always a fuel surcharge on it. So it comes out through the price,... [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR LOUDEN: ...through the price of that fuel and into our...into the way we fund our road system. So really, to me, I think the most best way and the businesslike way, if you're running a business, you would certainly use the money that was coming in on that revenue stream rather than go hunt up and rob some other revenue stream that you have which would fund something else. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Louden. Senator Conrad, you're recognized. [LB84]

SENATOR CONRAD: Thank you, Mr. President. I was hoping that Senator Louden might yield to a few more questions. [LB84]

SENATOR CARLSON: Senator Louden, would you yield? [LB84]

SENATOR LOUDEN: Yes, I would. [LB84]

SENATOR CONRAD: Thank you, Senator Louden. And I'm sorry to belabor the point, but you offer a unique position of expertise sitting on the Transportation Committee, which obviously, as a member of the Appropriations Committee, I just don't have. And I think it's helpful and necessary to include in the record. And there's...I'm sure you were here, because I've seen you be actively listening during each stage of this debate. There's been a few people who have noted that no one really came in to testify in opposition to this bill, and so that's a good enough reason why we should just move it forward. Is that kind of how you feel about the proposal, or...? [LB84]

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SENATOR LOUDEN: Well, one thing, Senator Fischer had this big meeting here in Omaha last summer, and there was different ways of come up with funding. People came in from Missouri and they talked about their bonding, how Missouri found their revenue stream, and Kansas found a revenue stream to fund their bonding. I said, and I told Senator Fischer that when she took the bonding out of here, that's when I mentioned the other day, the good, bad, and the ugly with this bill was, is the bonding was probably some of the stuff that I could have supported. If you would have had a small revenue stream to fund bonding, then we could have probably went on with it. But the way it's worked around now, now we're using just General Fund money to maintain roads. And I don't know as anybody testified against that bill, but it moved out of committee mostly for discussion, and I think it...I didn't look and see what the vote came out, but I think it came out with everybody pushing the thing out of committee to see where it would go. We all agree we've got to do something about roads. There's no denying that. [LB84]

SENATOR CONRAD: I appreciate that. Thank you, Senator Louden. And I was wondering, because I only know what my e-mail in-box looks like and the messages that come into my office, but I know Senator Howard mentioned it during General File debate. Since this issue has come to the forefront of the public dialogue through lengthy debate on this in General File and on Select File, I literally received hundreds of communications from everyday citizens that are concerned about the fiscal irresponsibility contained in LB84. And as an alternative, many of them put forward a plea to look at modernizing the gas tax if we need to do anything this year to address our roads funding needs. And I think it's important, even if maybe folks, everyday folks, can't make it down to the committee level to testify in support or opposition to a bill, that we at least take a moment to respect citizen engagement on a topic. And have you received any sort of communications in your office about how your constituents feel about this proposal? [LB84]

SENATOR LOUDEN: Well, I've had people all say support LB84, but I don't know if they realize that they're going to be supporting LB84 when they go buy their happy meals for their grandkids or not. I don't know if they realize that. But that's what it's all about. Some people don't realize where they're going to get that sales tax from, but everything you buy nowadays is subject to a sales tax. So that's the people that contribute to the roads. If you want to go that route, then that's...I guess that's up to the Legislature if they think they want to go that route. [LB84]

SENATOR CONRAD: I agree, Senator Louden, and that is a policy choice for this body. And maybe...I'm sorry. Sometimes I have a tendency to ask my questions a little bit too...in a wordy manner. That's a problem that I think comes with a law school diploma. But the basic bottom line principle that I'm trying to get at is, have you received any communications from constituents since this came out of committee that think it's a bad

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idea? [LB84]

SENATOR LOUDEN: Very few as far as a bad idea, because most of the people that sent in something to support this are...they want roads. They want roads. They want something built and we have to do something about it. And most of them are under the...on the understanding that we don't have enough... [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR LOUDEN: ...enough road funding. I'm sorry, but if the formula was used correctly, there would be enough funding in the roads. [LB84]

SENATOR CONRAD: Thank you so much, Senator Louden. And that is helpful and important to this debate, because again I don't know what comes into your office; I only know what comes into my office and what Senator Howard, I think, mentioned during General File debate. But I've literally received hundreds of communications from everyday citizens that are concerned about this proposal, whether it's at \$125 million or \$140 million a year or at \$65 million a year. And they call, clearly, upon this Legislature to take heed to what Governor Heineman has deemed to be a fiscally irresponsible approach to dealing with roads and dealing with budgeting. And I sure hope that fellow senators...while, of course, we don't have a tally that we say, well, we've got this many calls or e-mails in support and this many against and that's how we're going to vote, we'll at least takes those sincere communications... [LB84]

SENATOR CARLSON: Time. [LB84]

SENATOR CONRAD: Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Conrad and Senator Louden. Senator Hadley, you're recognized. [LB84]

SENATOR HADLEY: Mr. President and members of the body, I wasn't going to say anything, but something just clicked. I did just a little number crunching, and a 5-cent per gallon increase, the average car is 15,000 miles a year, so that works out to about \$30 a year increase for the driver. And we heard a bill on sewer separation where we said \$30 is about \$30 a year, and we had to pass a bill because that was so onerous on the people in Omaha that we have to give that sales tax back. So I'm trying to figure out how it's okay to increase the gas tax \$30 a year, but a bill for sewer separation the state of Nebraska has to give back the sales tax because it was so onerous--and it was about \$30 a year. So I was just curious as to how it's okay on one end to tax, and on the other hand we have to give the money back. So I guess that's just curiosity I had, Mr. President. Thank you. [LB84]

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SENATOR CARLSON: Thank you, Senator Hadley. Senator Conrad, you're recognized. This is your third time. [LB84]

SENATOR CONRAD: Thank you, Mr. President. Just a quick follow-up on the point I didn't get to finish on my second time on the mike was that I hope that senators take to heart the sincere communications that everyday citizens have sent to your offices in regards to this issue. There's no question about it, a lot of those folks don't have high-powered lobbyists whose only job is to show up at a committee hearing and to push their clients' interests, which they're well paid to do and they have every right to do. That's a part of our process. Those are protected speech and association issues which I'm not diminishing. That's a fact. That's a clear part of our process, and those that are good at their jobs and true to their word are an important part of our dialogue. But I think that when I travel around, whether it's at a town hall or any other sort of public meeting, I always encourage citizens if they have an opinion about an issue, to weigh in, to send an e-mail, to make a phone call, to write a letter, because I take those communications sincerely and to heart, and I hope other senators do as well. And I know that they do. I know that they care deeply about what their constituents and citizens think about these issues. Finally, just on a quick point to be responsive to what Senator Hadley brought forward. Senator Hadley, as you know, I was not an active participant in the debate on the sewer separation issue or the turnback issue, but I did actively listen. And if memory serves, I think that the proposed tax increase that was at issue there was estimated to be about \$50 a month per user. And as you noted, I think that an estimated gas tax according to what Senator Louden is proposing would be about \$30 a year--so I think that there is a dramatic difference there. And if I misheard what those figures were during that separate and distinct debate, I'll stand corrected, because again I wasn't an active participant in that debate but was, rather, listening. So I think that it's a fair analogy to bring into the dialogue. But I think in terms of impact to the individual taxpayer, \$30 a year versus \$50 a month, you can do the math. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Conrad. Senator Fischer, you're recognized. [LB84]

SENATOR FISCHER: Thank you, Mr. President and members. I appreciate the discussion on the bill. I appreciate the ideas that are being put forward. I agree with Senator Louden in his response to Senator Conrad. The e-mails, the majority that I've received that have been from constituents, that have been sent by individuals, they are e-mails in support of the bill. The e-mails that I have also received in a position against the bill, in many cases are form e-mails, which there's nothing wrong in that. It shows an interest by constituents and by people in this state sending out e-mails. What troubles me, though, many of the e-mails that I have received from opponents of the bill, they want us to use user fees. They want us to use fees or taxes that are associated with roads, and they're coming from people who are associated with the Center for People in

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Need, with Nebraska Appleseed. When I write back to those people, I always ask if they understand what that really means, what they're asking for, because when you're asking for user fees, in our current situation that would be Senator Louden's amendment here; that would be a 5-cent increase in gas tax. I can't go there and I don't believe that the people who are sending me those e-mails want us to increase the gas tax 5 cents. I don't think they want us to increase motor vehicle registration fees. Another point. Currently we have a motor vehicle tax. Part of that \$120 million that goes to education. I'm not looking to take that money. But when I get e-mails from my teachers in my district, I try and point that out to them. If you're really talking about roads should use only money associated in your mind directly with that, that would include that motor vehicle tax. The gas tax, in my opinion, is no longer sustainable. Senator Campbell made an excellent point this morning when she brought up that we are not being funded at the level we have been in the past by the federal government. And it's been made plain in the last couple weeks that the federal government will not be sending dollars to the states for roads. We're seeing a decrease in fuel consumption. When I travel my district and I have been fortunate to speak across the state, and I ask if people want a gas tax increase, I have a few hands go up, but not many. Gas prices are going up. That increases the prices in many of our other necessities that we have. I think I've offered a reasonable alternative, one that will be sustainable, one that will see growth in the future, and I hope that you will support my proposal. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Fischer. Those still wishing to speak include Hadley, Louden, Wallman, and McGill. Senator Hadley, you're recognized. [LB84]

SENATOR HADLEY: Mr. President and members of the body, I guess I might have been confused, but the sewer separation, it's a \$50 fee per month that will be charged to the individual household. What we were talking about was the state sales tax that was going to be rebated. So \$50 a month times 5.5 percent is \$2.75 a month times 12 months is \$33. It is not \$50 a month. It is \$33 a year. So we were told that we had to rebate this to the city, the taxpayers of Omaha, because that was such a large tax increase to them, and we're going to turn around and talk about passing a \$30 tax increase in sales tax to everyone who drives a car or a truck or a vehicle in Nebraska. So I guess I again don't see the difference. Should we then pass some kind of tax rebate to every vehicle owner to take care of this \$33 increase that they're going to be paying across the state? It seems to me that if we're going to do it for one area for a particular thing, we ought to do it for another area if we're going to raise their taxes. The last thing, Senator Campbell was dead on. I did, just did some work last night in looking at projected miles per gallon and what the government says we must mandate. They're looking at 40 miles to the gallon, soon, for new cars. As they increase that, the number of gallons goes down, the dollars go down. So when you're dealing with gas tax, you're constantly going to be looking at raising the gas fee as the usage, the number of gallons you have. The ideal situation is some kind of fee that is based on the miles driven. They

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were going to use that. They were going to do a sample in Portland, Oregon. The Department of Transportation head, in Washington, D.C., had approved that type of experiment. President Obama said no. He did not want to go that route, so they stopped the experiment in Portland, Oregon, of doing a type where any time you pulled in to fill up gas they could tell how many miles you had driven since the last fill-up, and your tax was based on the number of miles that you drove. The President stopped that particular project in the Department of Transportation. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Hadley. Senator Louden, you're recognized. [LB84]

SENATOR LOUDEN: Thank you, Mr. President. And Senator Hadley, you know, he's got a doctor's degree in number crunching, and I certainly would go with his numbers. One thing that I would point out when they talk about that \$30, I think as he's mentioned, but if that's the case then that that quarter percent, anyone that spends \$12,000 in a year's time, which is \$1,000 a month, would pay the \$30 on your sales tax towards contributing to the road. Now that's at 25...at a quarter of a percent. And that's everybody. That isn't just those that are using the roads, so everyone that uses that roads. And I think he's right when you say if you drive 15,000 miles a year, and you have a nickel extra sales tax...or fuel tax, you would pay \$30. I would go with these numbers on that. Now how many people don't drive 15,000 miles a year? In fact, I have an insurance policy that if you have cars that are under 7,000 miles or something like that, you get a discount on your insurance policy. So there's a lot of people that don't drive 15,000 miles a year, so they would...but most people buy clothes and buy food. So you have no choice there. With a user fee, if you don't drive, you don't pay it. With your sales tax, if you try and make a living, why, you're probably going to pay the sales tax on that. That was the part that I'd mentioned. When you talk about the fuel, as the cars get more efficient in the future and better gas mileage--and we've seen that already. Back in the '70s, we had cars that were doing 14 miles to the gallon, and now we have cars that are doing 30. There was probably more cars on the road now than there was back then. So when you say there's going to be less fuel used, that remains to be seen. It depends on how many cars are out there and how well "upkept" your roads are to bring them. Also if any of you are old enough to remember, back in the '80s there was a surcharge on diesel cars and diesel pickups that burned diesel fuel if you had on-farm storage, because that was before we had dyed diesel fuel. And there was a surcharge, and I think it was about \$75 just in order to have a diesel car or a diesel pickup. So that's been handled before and I don't remember that even being put in statute, but I know it went away when we had dyed diesel fuel. And then the Department of Roads then would check these fuel tanks on your trucks and stuff to see whether or not they had dyed fuel, because the fuel that we use on the farms and ranches that isn't taxable is dyed pink color, and the fuel that you use on vehicles that are to be used on highways is clear. So a lot of those issues can be addressed as time goes on because they have been addressed before. It's nothing new. We're talking about our user fees and what

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are we going to do to fund roads. This is what this amendment is all about and this is what it's up to the Legislature to see how serious they are about funding roads. Now are you going to put it out two years in 2013 or are you going to do something here starting in 2012? That's another issue that this amendment brings. It's..what is it they say?...it's my money and I want it now. And that's what this is all about. We can start the process a year sooner than we otherwise would with LB84. So I think this is something that everyone has to consider. If the Legislature, it'll put you on the spot, because when I do call for a count, I'm going to have a roll call vote and I'm going to have a record vote, so everyone will know how someone voted and so we'll know how serious you are about keeping roads up and taking care of the Highway Trust Fund in Nebraska. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Louden. Senator Wallman, you're recognized. [LB84]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Senator Louden makes a lot of sense here. And would Senator Bloomfield answer a question? [LB84]

SENATOR CARLSON: Senator Bloomfield, will you yield? [LB84]

SENATOR BLOOMFIELD: Yes, I will. [LB84]

SENATOR WALLMAN: Thank you, Senator. When fuel prices get over a certain...you're a truck driver ride, had a truck? [LB84]

SENATOR BLOOMFIELD: Yes. [LB84]

SENATOR WALLMAN: When they got over a certain price, did you get a fuel surcharge? [LB84]

SENATOR BLOOMFIELD: Yes. [LB84]

SENATOR WALLMAN: Thank you. And that was figured in for trucking. And so I had a diesel car, a diesel pickup. I'm diesel crazy, but you can't get them unless you buy a Mercedes. But we paid the fine. We paid that extra charge what Louden was, I think it was \$85 for a pickup, \$75 for a car, and glad to pay it, because that way we could have on-farm storage fuel. So this tax business, nobody likes a tax. I, too, went to cafes, bars, restaurants. I asked people, I don't know if they would quite go for a nickel, but about all of them said it probably should be on the fuel tax. Those who drive, pay. People in nursing homes, assisted living, all these people, they don't have cars. And so if you put it on the sales, General Fund sales tax, they're paying tax to use the highways. So is that right? There isn't any tax that's absolutely fair. But I appreciate this amendment and

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I will vote for it. And if you would give Senator Louden the rest of my time. [LB84]

SENATOR CARLSON: Thank you, Senator Wallman. Senator Louden, 3 minutes. [LB84]

SENATOR LOUDEN: Thank you, Mr. President, and thank you, Senator Wallman. We get back to talking about the sales tax and who pays sales tax. I don't know if any of you noticed but, you know, when you go down to some of these baseball games and something like that and you buy your little batch of nachos and stuff, why, you pay sales tax on that. If you go in and buy your shoes or you go into Target or anybody like that, whatever you buy in there, you pay a sales tax on it, whether it's personal items, clothes, whatever. So when we look it over, if you would figure up the amount of sales tax that you pay per person per year, if there's a family of four, every one of...whenever any one of those people spends some money, most of the time, for consumer goods, there's a sales tax on it. There are some sales...some things are sold without a sales tax that are exempt. Most of that has to do with manufacturing or production or someplace along the line. But the average consumer has very few ways of getting around not paying sales tax. Groceries that you take home and prepare yourself are about the only thing that the average consumer can get by and not pay sales tax on. Otherwise they pay it on everything. And some of those people, a lot of elderly people in assisted livings and in nursing homes in different places like that, would have to pay a sales tax on some of the personal items that they have to get. So everybody pays a sales tax. That's the reason the quarter of a percent would raise \$60 million that they were talking about. When the bill first came out in there, it was a half cent and it was \$125 million a year. So there's a lot of money when you start with sales tax. The reason that people like to put on a sales tax is because it's a hidden tax. Nobody realizes how much they're paying a few cents at a time. You look on your bill, you go down to your restaurant, and you pay everything, and you look down there and there's a little...down there at the bottom there, there's a sales tax or an occupation tax on there. Nobody realizes if you would save all of them and add them up at the end of the month, you'd be surprised how much taxes you're paying with that. So I think, as I say again, this is what this is all about. This is a policy shift. Does the Legislature want to go to start funding roads by General Funds or do we want to stay with the user fee? [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR LOUDEN: Thank you, Mr. President, and thank you, Senator Wallman. [LB84]

SENATOR CARLSON: Thank you, Senator Louden. The Chair recognizes Speaker Flood for an announcement. [LB84]

SPEAKER FLOOD: I'll wait until after the vote. [LB84]

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SENATOR CARLSON: Okay. Thank you. Senator McGill, you're recognized. [LB84]

SENATOR MCGILL: Thank you, Mr. President and members of the body. I'd like to talk a little bit about some of the correspondence we've been getting from folks. And Senator Fischer mentioned that, yes, for all the e-mails we're getting from people who don't want to take money from education and other places, that those people also wouldn't want to raise fees or gas tax increase. But my response back would be that people, if given the options, okay, would you like to fund roads through this current option, which does very potentially take money away from education or other sources, people would say, no, we don't want to do that. So do you want to fund roads through sales tax or a fee increase? No, we don't want to do that. They would prioritize education and these other things over it, and just let roads be roads. They would likely tell us to do what they tell us to do on every other issue, which is to find the money somehow, cut costs, and just make it happen somehow. No matter how we fund roads, it's not going to be popular. I mean Senator Fischer said that this is the plan, that her plan is the one that's sustainable and supports growth in the future. But yet several people have gotten up here today to talk about how flexible this plan is, and that in two years we can come back and make changes if the revenues aren't as they are. So this could end up being the most unsustainable plan of anything we hear today. I realize, like everyone else, that the gas tax may not be the ultimate solution in the long run. In fact, I actually had a friend tell me that the solution is investing in hover car technology, really thinking about the future and not hurting our roads and deteriorating them in the future. Well, obviously, that's a joke. We do need to look for different ways, but I am still not sold that LB84 and the amendment are the ways to do that, because we'll have to raise taxes in the future if we want to meet the needs of this and education and other priorities that we're currently using. People out there do not put roads on their top priority list. Whether they should or shouldn't, it's just not emotionally a sexy thing people want to invest in. They don't like paying for infrastructure. Whether it be roads or sewer systems, people don't like paying for those things. If you're taking a survey, education and other human services would rank up there before roads. I've done it myself before with my own constituents. That's how it is. So we need to make tough decisions on our own part and with our own free-thinking minds to find ways to best fund roads in a way that makes sense. I know I've talked to Senator Fulton about that motor vehicle tax, that so much of it goes to schools. And I think we need to rearrange that. I think we need to find a different way to put money into schools and let that motor vehicle tax go towards roads. And even when we're trying to make the pitch to the public about increasing a gas tax or increasing the sales tax to fund a program, they would much rather be funding education. So why don't we move that money that's going to education from motor vehicle tax? Let that money go to, as it should, to roads, what makes the most sense, and be making a pitch here today about how to make that up through education. Personally, I think that would sell a lot better. It makes a lot more sense to the public and to me to have that roads being funded from a roads-related source. You know, I expect this amendment will likely fail,

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but I am glad that we're up and able to talk about these other alternatives because I think the real solution lies in some other form of an alternative. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator McGill. Senator Council, you're recognized. [LB84]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. And I...again I've been listening to the debate rather intently. And with all due respect to my colleague and, hopefully, still my friend, Senator Hadley, I respectfully disagree with the comparison of the initiative reflected in LB84 and what is the initiative reflected in the combined sewer overflow situation, and that is the additional sales tax generated from that fee. I mean we could always go back into the debate about a tax on a tax. But in the absence of that federal mandate, the state would not be receiving those additional sales taxes. In this instance, this and LB84, that is a part of the sales tax, is a part of what the state relies on as a part of its revenue stream. And with that said, I just want to quickly, on Senator Louden's proposal, I certainly respect and appreciate the reason and the rationale behind introduction of AM1228, because of my research on how the state has dealt with roads funding over the years, that it has been on a user-fee basis relying on the gas tax. But in this instance, I have to respectfully rise in opposition to AM1228, because there is absolutely no necessity at this time to raise the gas tax. And I'm going to beat this drum as long as it exists, and that drum is, there is \$231 million in the Property Tax Credit Fund. And you want to talk about sales tax revenue, you talk about the sales tax revenue we would generate if we infused \$231 million into our economy during these next two years instead of waiting until 2013, where the likelihood that these funds won't be available, even though the current Property Tax Credit Fund law says we would only grant it if the funds were available, I'm still mystified as to why we think we can continue to provide that when we're here cutting every other program that's funded by state government. But maybe I'm the only one that's stuck with that dilemma. And when I look at what the forecasts say, I look back, and like I said, I did some research on, you know, what's been said and done on this subject over the years. And the last time there was an effort to take money from the General Fund, just money from the General Fund for roads and road infrastructure improvements, our now-Chair of the Appropriations Committee violently and vehemently opposed it. And one of the reasons he opposed it and I quote: That money is going to have to come from someplace. During a shortfall, you're either going because of that extra \$80 million obligation--in this case, extra \$65 million a year obligation--you're going to have to cut other programs or you're going to have to raise taxes; there's just no other way to do that. Now my question to you, colleagues, is what's different now than when that debate occurred about three years ago? I suggest to you there's nothing different now. In fact, the only thing different now is that our financial outlook is worse than it was three years ago. [LB84]

SENATOR CARLSON: One minute. [LB84]

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SENATOR COUNCIL: And with that, I'll yield the balance of my time to Senator Conrad. [LB84]

SENATOR CARLSON: Senator Conrad, 50 seconds. [LB84]

SENATOR CONRAD: Thank you, Mr. President, and thank you, Senator Council. And as noted in earlier commentary, Senator Hadley, I stand corrected. Thank you for clarifying the numbers that we're talking about, whether it was in relation to the sewer separation bill or this proposal. And I'm exactly...you're exactly right. I was wrong. It shouldn't be compared at a \$50 per month increase. It should be compared at the sales tax increase on that which, as you know, it would be about the same. Senator Louden's proposal would see about a \$30 per year additional tax burden on those who utilize our roads and infrastructure. And I think that a user fee is the appropriate way to go for a variety of reasons: (a) It preserves and protects our current system, and (b) it helps us to provide additional investments and move into the future, which is critical for jobs and economic development, and which I've always had a... [LB84]

SENATOR CARLSON: Time. [LB84]

SENATOR CONRAD: Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Conrad and Senator Council. Senator Mello, you're recognized. [LB84]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Unfortunately, I appreciate what Senator Louden is trying to do under AM1228, of trying to stir up, I think, a different debate in regards to what should be our priorities in regards to financing of our infrastructure. Unfortunately, I also am going to have to rise in opposition to the amendment because, as I stated earlier, I've been vehemently opposed to raising the gas tax in the Appropriations Committee the last three years, because we can't afford to do that. The fact is, is that gas is at an all-time high. Everyday working Nebraskans are having a day-in and day-out struggle to pay for the basic necessities they need in what is known as the great recession. The last thing I have felt over the last three years is that we need to increase taxes, primarily taxes that we know working-class and middle-class Nebraskans have to pay day in and day out to get to work to increase those taxes. I think once again an amendment I have up after Senator Louden's is the most fiscally responsible approach to provide additional funding to infrastructure while also maintaining a sustainable fiscal path that reins in long-term spending. We'll get to that amendment after Senator Louden's. But I think some of the comments on the floor today, unfortunately, regarding trying to associate LB682, which in all due respect to my friend and colleague Senator Hadley, is a completely different bill with a completely different purpose and a completely different issue at heart, has no

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relation at all to what Senator Louden is trying to do. I agree and understand that for longstanding fiscal policy of this state regarding infrastructure financing, has relied on fees and on the gas tax. I think right now this year, right now, is not the time to raise the gas tax, but it's because in part my underlying belief that we don't need LB84 today. We don't need LB84 this year because we have a fragile economy where we have mistakenly assumed an increased growth that's never been there. Senator Fischer even admitted that her projections on the success of LB84 in the future is based on growth that is not laid out anywhere in the Appropriations Committee fiscal analysis. So colleagues, I think right now LB84 doesn't need to move forward as amended. All due respect to my friend and colleague Senator Louden, I don't support raising the gas tax at this point. I haven't supported raising the gas tax the last three years, because it's now is not the time to do that. If we want to have that conversation and have the debate, let's look and see where the economy is at in the future, and let's have a longer term solution to find out how we're going to finance our infrastructure. Because the arguments that were made today on Senator Louden's amendment are very short-sighted and to the point that we have a changing global economy that is shifting away from gasoline vehicles to electric vehicles. That alone should start a new conversation. Earmarking existing state funds is the easy way out, colleagues. That's an easy way not to have a conversation. We're just going to take from someone else and we're going to throw it in our budget and call it good. All due respect, that is the easiest way I've seen this Legislature contemplate dealing with what is a very difficult, challenging situation. Nebraskans deserve better of looking to a long-term solution to ongoing financing needs. We provided one today with Senator Conrad's amendment that allowed the Appropriations Committee, the Governor, and the Legislature as a whole, to debate this issue, every year, through the budget process. I have an amendment up next that will provide a fiscally sustainable way to move forward in regards to controlling spending long term, as well as providing additional funding to the Roads Department--when we have the money; when we don't put other programs such as education, higher education, Medicaid, as well as our basic government operations at stake and in opposition against a very nontransparent Roads Department right now. I think that is the real argument and real debate that we want to have. Because today, the debate has not been there. We have been billing this issue on a Select File LB84...thank you, Mr. President. Is my time up? [LB84 LB682]

SENATOR CARLSON: No. [LB84]

SENATOR MELLO: Okay. [LB84]

SENATOR CARLSON: You have 1 minute. [LB84]

SENATOR MELLO: Thank you. We have been billing this Select File LB84 debate as the great policy debate we were going to have. We were going to have a lot of ideas thrown out. We were going to be debating multiple ways to look to tackle an ongoing

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large issue. Pretty much what we've discussed today is Senator Conrad's amendment which changes the underlying purpose of Senator Fischer's amendment, which doesn't earmark money, doesn't set aside money. It allows us to debate that issue every single year--and this body wildly rejected that idea. I have a feeling, as I will vote no on AM1228, the body will not support raising gas taxes right now either. I envision that my amendment, which is once again another way to look at government spending as well as prioritizing infrastructure, the body will question that as well. Because the easy way to deal with this issue is to take money from someone else and hope that it gets better. Hope is not a public policy, my colleagues. It's not a good fiscal policy. I urge you to vote no on AM1228 and let us continue a real debate. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Mello. (Visitors introduced.) There are no other senators wishing to speak. Senator Louden, you're recognized to close on your amendment. [LB84]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. And thank you for the discussion we've had here for the last hour and a half or two hours or so. And that's what this is all about, is we have to have a discussion on how we're going to fund roads in the state of Nebraska. We've always done it by user fees, and now that we've had LB84 introduced, it is a different policy. You're going to try to put it onto a sales tax, your general revenue, someplace where else you're going to bring money that that general revenue is used for something else. Now over the years, whenever there was more than enough on a sales tax, that sales tax was always...was cut down; it was lowered. We haven't lowered that since I've been down year for the last nine years. It used to be that would be lowered about ever so often, whenever we would start to have some General Fund. So that looks like that will be the end of ever lowering the sales tax if LB84 passes, because now you're using the sales tax to fund something else, and that would probably perhaps be the road funding. Some of the other things as we brought this about with this bill, and Senator Mello talked about it, and I'm sorry to say that he doesn't support this because he says we've got to do something about roads and he hasn't figured it out in the last three years what we're going to do about roads. And there's never a good time to raise the taxes. There never is one. I've seen it over the years, and there's always some reason that we really shouldn't do that because it will affect somebody. But as you heard Senator Hadley, with his numbers-crunching, it's \$30 if you drive 15,000 miles. Now how many people in your district will that put the bite on for that 30 bucks for a year's time that drive 15,000 miles? How many of them don't drive that far? How many of them probably don't drive half that much in their district? But yet, with their sales tax on, they will stay pay the sales tax for the support of the roads. What about Crete Carrier out here with their hundreds of trucks all over the place? When you put this on to a sales tax and all these people that don't have cars or anything or go downtown to buy your clothes, you're giving them the tax advantage because they're the ones that use the roads. This is where your user fees come in. You're always worried about your local residents that are probably driving to and from

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jobs that probably don't drive over 40 miles in a day's time. This isn't where the money that is spent on these and the wear comes in on your roads. This is your across-the-road heavy-duty equipment that's being...these trucks and that sort of thing. Interstate 80, that's the reason our usage didn't go down in last December. We got Interstate 80 across there. If you've ever been on that thing, the amount of trucks that are going coast to coast, sometimes look and see where the trucks are from. They're from all over North America driving down that. Now, if you want to give them the advantage, why, that's what it's up to the Legislature to decide today on this. Or do you want to have those that use the roads pay a more of a user fee and go with it? And as far as the price of the fuel, it could be higher next year; it could be lower. But as I said before, I don't think it will ever get that much lower, because at the present time we have the federal energy czar stated the other day that we need to ratchet up the price of fuel and energy so that we will be a little bit more conservative. So that's the reason we don't have any drilling going on or looking for more oil. Right at the present time, in western Nebraska and eastern Wyoming, there's a big oil push going on to...and they're selling some of those oil leases at an ungodly figure. The same way up in your North Dakota in the Bakken field area, there's a lot of that all up in those areas. There is oil there that if they had... [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR LOUDEN: ...had permission to drill, why, they probably would lower the price of fuel. So with that, I would ask you to vote for AM1228 to LB84 or to the AM1216. I think this is a viable way to fund our road system. And as we had our interim studies here a year ago, this is what most of the people wanted. Thank you, Mr. President. I'd ask for a call of the house and a roll call vote. [LB84]

SENATOR CARLSON: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; opposed vote nay. Record, Mr. Clerk. [LB84]

CLERK: 37 ayes, 0 nays, Mr. President, to place the house under call. [LB84]

SENATOR CARLSON: Thank you. The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Cornett, Burke Harr, Larson, McCoy, the house is under call. Senator Larson, the house is under call. All senators are accounted for. Members, you've heard the closing on AM1228. The question is, shall the amendment be adopted? And we have a roll call vote. Please proceed, Mr. Clerk. [LB84]

CLERK: (Roll call vote taken, Legislative Journal pages 1230-1231.) 4 ayes, 38 nays, Mr. President, on the amendment. [LB84]

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SENATOR CARLSON: The amendment is not adopted. Speaker Flood for an announcement. The call is raised. [LB84]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. The next amendment that we're going to take up comes from Senator Mello. It is AM1229 written to amend AM1216. Again, the next amendment to be ordered is AM 1-2-2-9. Thank you, Mr. President.

SENATOR CARLSON: Mr. Clerk. [LB84]

CLERK: Mr. President, if I may right before we proceed, Senator Fulton offers a new resolution, LR170. That will be laid over. (Legislative Journal pages 1231-1232.) [LR170]

Senator Mello, I now have, Senator, AM1229. (Legislative Journal page 1219.) [LB84]

SENATOR CARLSON: Senator Mello, you're recognized to open on your amendment. [LB84]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. AM1229 is an innovative concept in regards to how we control spending, long term, as a state, and also how we provide financing to roads infrastructure when we have healthy economic years. Essentially the premise of AM1229 is based on when the state receives an excess of revenue over the Forecasting Board's projections. All of that additional revenue goes immediately to the Cash Reserve. Under AM1229, instead of all 100 percent of that additional revenue that is above our forecast, instead of all of that going into the Cash Reserve, that money will be split 50 percent between the Cash Reserve and 50 percent between the Highway Trust Fund. You should have received a handout that I passed out that gives roughly an almost 28-year or 27-year history of the state's Cash Reserve Fund. If you take a look from 2001, Fiscal Year 2001-2002, all the way to Fiscal Year 2009-2010, you would see the automatic transfers that I'm talking about generated over \$938 million. That \$938 million went to the Cash Reserve. As some of us recall, that money was spent mostly on a tax cut that was given in 2007; some of that funding was given out in increased spending to new programs; and over the last couple years we've used a good amount of that money in regards to balance our state's budget. What AM1229 does is takes half of the money that we would have received over that decade and kept that in the Cash Reserve, and half of that funding would have went to the state Highway Trust Fund. If we would have enacted AM1229, essentially becoming what is LB84, in 2001, our state would have seen an increase of over \$469 million to the state's Highway Trust Fund. That's roughly on average about \$47 million a year that would have been spent in additional roads funding, all while ensuring that it wasn't putting other programs at stake, because it would have made

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sure that the Legislature, through the budgeting process, would of had to chose priorities similar to how we do now where we do not incorporate existing funds out of the General Fund to pay for roads. Under LB84, we would have to automatically take money out of the existing General Fund and make these budget cuts. This is based on when we have good years, when we have excess revenue that instead of that General Funds going to the Cash Reserve, only half of it does, which still...which I believe still is good fiscal policy. We're trying to build the Cash Reserve when we have good economic times, when the state receives revenues that we normally would never expect to receive because of good economic times. Revenues exceeded the Forecasting Board projections, thus they were never taken into consideration as we build a budget. What AM1229 does, simply, is not only provides another sustainable path I think of providing additional roads funding, but it does so in the sense of not breaking the bank of other budget priorities, because it's based on when we have the money. It's based on when we have good years and good revenues coming in above forecast, you see an increase in funding that goes to the Roads Department. The argument that I'm sure some will say this is not good enough, because it doesn't allow the Department of Roads to plan. Well, colleagues, the Department of Roads is not planning right now. If we pass LB84 with Senator Fischer's AM1216, they're still not going to be able to plan because they're not going to guarantee to get the money. There is a conversation potentially of trying to do a ballot initiative which only would defer their ability to do any real planning. If we want to provide roads funding without raising taxes right now, this is the path to do it, because what it says is that when we have the additional funds, when we have additional money that comes into the state because we had better economic years than our Forecasting Board had planned on us to have, we're making that commitment off the bat to our infrastructure. Also, the added benefit is that it provides more sustainability in regards to controlling long-term spending at the state. We know if we do not have a \$938 million Cash Reserve, and instead would have only had a \$469 million Cash Reserve, that means we will probably have to do a little bit more work on the Appropriations Committee. As a Legislature and as a Governor, we're probably going to have to streamline government a little bit more. This, colleagues, is a conservative approach to long-term government spending, as well as prioritizing infrastructure financing. It's a little different though. It's a little innovative. It's not just earmarking existing General Fund dollars, because we can't guarantee there's a set amount of money every year, because we can't forecast, to a T, how much state revenue we're going to receive every given year. They are projections. Sometimes they're more, sometimes they're less. What AM1229 hopes to do and tries to do is it continues to allow us to build up our Cash Reserve when we have good years. But it also says in those good economic times, we're prioritizing roads infrastructure ahead of everything else--exactly what Senator Loudon closed on his previous amendment--that we have to find a solution to deal with this. This is a solution to deal with roads infrastructure financing. Is it perfect? I don't think any solution is ever perfect. But does this help us solve part of a big problem? Absolutely. And it does it in a very fiscally responsible way. It doesn't pit education, it doesn't pit Medicaid, doesn't pit other programs or agencies against the Department of

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Roads. What it does is it allows us to be able to continue our budgeting process, as is; allow the Legislature to utilize the Cash Reserve as we continue to rebuild that, but provides needed funding to our Department of Roads when that time is right, when the time is fiscally right for our state to do so. And if we want to go back and explore other financing mechanisms, if we want to go back and explore fee increases, if we want to go back and explore a better way to finance our roads infrastructure because of our depleting gas tax, we have time to do that. The Legislature can come back next year and do that. We can come back the year after that and do that. This was not a problem that was caused overnight, colleagues, and we're not going to solve it overnight. I think Senator Fischer agreed to that comment. AM1229 is a step in the right direction. And if we want to go back and revisit dedicating other sources of state revenue to roads infrastructure funding when the time is right economically, when fiscally it's the responsible thing to do, we're allowed to do that. And we can still move forward with AM1229, which becomes LB84. Provides an opportunity to increase a significant amount of money to our Department of Roads and our state Highway Trust Fund but also does so in a long-term fiscal-sustainable method. I encourage you to adopt AM1229. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Mello. Members, you've heard the opening on AM1229. The floor is now open for debate. Senator Nordquist, you're recognized. [LB84]

SENATOR NORDQUIST: Thank you, Mr. President and members. I rise in support of AM1229. It'll divert a significant portion of funds in the good times, when we're seeing above-forecast receipts into our state, to roads--to the Highway Trust Fund. Now, it certainly will give adequate resources to move forward. Granted, the planning component may not be there, but as we were talking before--and that this promise of flexibility that is LB84, that 25 votes can change it--it's not guaranteed to be there for them under that plan either. So this will generate a significant amount of money, nearly \$500 million over the last ten years, if we look back historically, to highway construction. I think that would be a win. I think it's a reasonable approach that doesn't take away from our current core budget obligations, and it doesn't raise taxes at the gas pump. This method will allow us to continue to move forward in a fiscally responsible method by taking those--some of the top-line dollars off when we're seeing robust economic activity and diverting them at that point. So then we're not seeing the deep cuts in the low points, and that will allow us to sustain our budget. And, for me, the whole discussion here is about protecting our moral obligations that we have as a state. A budget is a moral document. It is about our priorities as a state. What are our priorities? We have a moral obligation to meet the needs--the healthcare needs of children in poverty; we have a moral obligation to ensure that seniors are cared for in nursing homes in communities in our state. Those are our moral obligations--to make sure our children can meet their God-given potential. Those are our moral obligations. And that's what our budget is about. And this bill allows us to continue to protect those moral

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obligations in our budget--this amendment does--and meet our core roads funding needs when the additional tax receipts are available, during robust economic times. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Nordquist. Are there other senators wishing to speak? Senator Conrad, you're recognized. [LB84]

SENATOR CONRAD: Thank you, Mr. President. Again, colleagues, good afternoon. I rise in support of this amendment and thank Senator Mello for bringing forward this solution-oriented option to address infrastructure funding issues and to take into account the real and significant needs in relation to our state's cash reserve and a sound financial future, which, again, I think are principles and concepts that we all agree with, just as we all agree with the importance of funding and making investments in our infrastructure. We have disagreement about the funding mechanism. So like most things in the legislative arena, there's far more areas of common ground than there are differences. And where there are differences, there are sincere policy differences. And having zealous advocates on any side or for every side of any given issue is important to finding and identifying and crafting common ground and compromise and a middle point so that we can move forward and do the best job we can in terms of the proposals that are before us. I think Senator Mello's--the real heart of the proposal that he brings forward is about ensuring a responsibility to the integrity of our Cash Reserve Fund, which we've heard a lot about in recent years and has been, really, a godsend to this state in terms of helping to balance a budget during very, very precarious economic conditions. And I contend that not only has the hard work that the Appropriations Committee in concert with this body done over the past few budget cycles to put forward a balanced budget and to be fiscally responsible--not only has that helped us to weather these difficult economic times, but even more so years ago when I was new to the Legislature and the committee worked very hard to protect and shore up the cash reserve so that we would have it for a eventual or potential downturn like we have now. And that restraint and fiscal responsibility when times were good have allowed us to weather this storm so, so much better, so much more soundly than many of our sister states, who are also making difficult, painful decisions and cuts across the spectrum, from education to human services to public safety to economic development. We, of course, too, colleagues, are making those cuts right now. You've heard it many times; you'll hear it more during the course of the budgetary debate, which will ensue in a few weeks. But under our current economic conditions, we are making cuts. We are making cuts to education; we are making cuts to human services; we are making cuts to public safety; we are making cuts to the court system. Pick an agency, almost any agency, we are making cuts right now. What are we not cutting? Funding for the Department of Roads. So if we're going to move forward and say this is indeed a priority for our state, which I think it should be--but it should be funded in a way that does not put critical state obligations in competition with each other. This proposal allows us a clear opportunity to provide more investments for infrastructure when the economy indeed does improve.

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It's not based on a hope; it's not based on a gut feeling; it's not based on an instinct. It's based on an economic reality that simply states when times improve, when revenues increase, we will make a commitment to provide an additional investment in this area. We will also continue to make a commitment to our cash reserve. Those are excellent points... [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR CONRAD: ...that we should--thank you, Mr. President--that we should have at the forefront of this debate, at our budget debate, and indeed any public policy dialogue that contemplates taxing or spending, revenue growth or reductions. Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Conrad. Those still wishing to speak include Wallman, Mello, and Ken Haar. Senator Wallman, you're recognized. [LB84]

SENATOR WALLMAN: Thank you, Mr. President. I'm for this amendment; I think it's part of the solution. And if we're going to be serious about funding roads, we ought to have some kind of numbers in statute. And this is part of the solution, I feel. And I'd yield the rest of my time to Senator Mello. [LB84]

SENATOR CARLSON: Senator Mello, 4 minutes and 30 seconds. [LB84]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. And thank you, Senator Wallman, for supporting this amendment as well as for providing me your time. Mr. President, would Senator Heidemann yield to a question? [LB84]

SENATOR CARLSON: Senator Heidemann, would you yield? [LB84]

SENATOR HEIDEMANN: Yes. [LB84]

SENATOR MELLO: Senator Heidemann, this--obviously--amendment would have an impact, I think, long term in regard to the revenues that the Appropriations Committee, the Governor, and the Legislature utilizes in regard to new spending or projected spending as well as existing spending, because it involves the cash reserve. What, in your opinion--what does this do long term if we adopt AM1229, in regard to splitting up the excess revenues, or automatic transfers as you would call them, to the cash reserve between the general cash reserve and--it's the State Highway Capital Fund? [LB84]

SENATOR HEIDEMANN: Well, I mean, it's pretty obvious; it's just going to put less money into cash reserve. One of the proudest things that I've been...of this Legislature was the ability for it to build up \$600 million in the cash reserve so that when times got tough we actually could pull that money and use it for General Fund purposes--for

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education and health and human services and things like this. It's always very important to remember that the cash reserve is General Fund money. [LB84]

SENATOR MELLO: So ultimately, this would be when we have good times, then. [LB84]

SENATOR HEIDEMANN: There is a good component, that. I mean, it's only going to take money out of that when we're above forecast, which usually is, then, good times, unless the Forecasting Board has just missed its mark during a downturn. But that is the good component about AM1229. I mean, it's just only during good times that it's going to happen. [LB84]

SENATOR MELLO: Would AM1229 also essentially limit long-term spending growth? Because if you have less money in the cash reserve for new spending priorities, you ultimately--you're going to have less money, if that's the...or I should say, if that's the priority of the Legislature--is to continue to build up a cash reserve--wouldn't that also then limit long-term spending growth? Because we won't have as much money in the cash reserve because it will be going to the State Highway Capital Fund? [LB84]

SENATOR HEIDEMANN: It would have the same effect that LB84, then--that's what you're arguing. If it's a good proposal under AM1229, it's no different than LB84, then, if you want to limit spending. [LB84]

SENATOR MELLO: Actually, is it limiting spending through making other cuts, for the underlying amendment of AM1216? Or is it limiting long-term growth because we don't have the additional money for additional new spending, which is the premise of LB84? That's new, additional spending, where the new spending only comes when we have additional funds come--AM1229. [LB84]

SENATOR HEIDEMANN: Unless I'm not understanding your question--I mean, it's all General Fund money. So whether you take it in one fashion or another, it has the same effect--if I'm understanding you right. And that's--would be my opinion, then. [LB84]

SENATOR MELLO: So your opinion and your assessment is, then, so I--so we can get this clear for the record, is that AM1229 has the same long-term fiscal impact as AM1216, in the sense that both, in your perspective, control spending the same amount... [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR MELLO: ...and cost the same amount. [LB84]

SENATOR HEIDEMANN: But you don't know how much money is going to flow into the cash reserve and this new fund now underneath AM1229, because you never know

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how fast the forecast...how close the Forecast Board is going to...how accurate they're going to be. [LB84]

SENATOR MELLO: A better question, Senator Heidemann, as someone who utilizes the fiscal--the general financial status that is essentially the document that the Appropriations Committee and the Legislature operates from: How would the adoption of AM1229 change our fiscal status sheet compared to AM1216? [LB84]

SENATOR HEIDEMANN: In two years--it won't for the first two years, but in the next two years, as revenue comes in over forecast, there won't be so much money in the cash reserve. [LB84]

SENATOR MELLO: But we would also not see a projected budget deficit. Correct. Because that would not be...the additional funds would not add to the budget deficit. It would be...it's a separate line item that is there for us to potentially... [LB84]

SENATOR CARLSON: Time. [LB84]

SENATOR MELLO: ...use, if we choose to. [LB84]

SENATOR CARLSON: Senator Mello, you're now on your time. [LB84]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Would Senator Heidemann yield again for this dialogue? [LB84]

SENATOR CARLSON: Senator Heidemann, would you yield? [LB84]

SENATOR MELLO: Senator Heidemann, to kind of clarify, I guess, my question, to make sure we're very, crystal clear, I think on page 3 or page 4 of the preliminary committee--Appropriations Committee budget status--page 4, the General Fund Financial Status, it lists right now in 2013-14/'14-15 fiscal years--we have a projected budget deficit of \$40 million. Is that correct? [LB84]

SENATOR HEIDEMANN: Just pulling it up, yes, as we see it now. This will change as we report to the floor, though, as you well know. [LB84]

SENATOR MELLO: If we adopt AM1216, Senator Fischer's underlying bill, what will happen to that column, on fiscal year 2014-15, that ending--that "Excess from Minimum Reserve," line 27 essentially, our bottom line--what will happen? [LB84]

SENATOR HEIDEMANN: If nothing else changed with the action from the committee's preliminary budget recommendation, that figure would grow by about \$140 million, approximately. [LB84]

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SENATOR MELLO: If we adopt...now, that \$140 million--is that on top of the committee's preliminary, or is that with just us adopting AM1216, thus becoming LB84? [LB84]

SENATOR HEIDEMANN: That would be adopting AM1216, because there should be in the out-years a cost of about \$140 million. [LB84]

SENATOR MELLO: Okay. So adopting AM1216, which essentially is LB84--by us adopting that, we add \$140 million to our projected budget deficit for the next biennium. [LB84]

SENATOR HEIDEMANN: Couldn't argue with that. Yes, that's...that would be my...my thoughts. [LB84]

SENATOR MELLO: If we adopt AM1229 instead of the underlying amendment, AM1216, what does that do to line 27, the following biennial budget bottom line? [LB84]

SENATOR HEIDEMANN: Nothing. [LB84]

SENATOR MELLO: Exactly. What does it do...well, we only go--I guess we only go out--budget two years out in our preliminary financial status. But I think--the thought being, is that they don't serve the same long-term spending growth or the same financing mechanism, because AM1229 does not have an immediate impact on projected budget deficits that we're facing, because we only get the funding when we don't have...when we, essentially, when we get the money--when we get the excess automatic transfers, correct? [LB84]

SENATOR HEIDEMANN: Well, my argument being, though, Senator--I know what you're trying to argue, but during bad times, then, when we start pulling that cash reserve money back to the General Fund, thus becoming General Fund, which it already is, you're going to limit spending at that time, because you're diverting it out of the cash reserve instead of out of the General Fund. [LB84]

SENATOR MELLO: So what you're...so essentially what we're doing is, in good times we're essentially limiting the growth of the cash reserve by adopting AM1229. [LB84]

SENATOR HEIDEMANN: Correct... [LB84]

SENATOR MELLO: Correct. Thus we have less money to use long term if we do have potential budget problems that we have to face. [LB84]

SENATOR HEIDEMANN: I would have to say that (inaudible) underneath AM1229

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you're going to limit growth in spending but not as much underneath LB84, because you don't have a consistent, constant flow as you do underneath LB84. You have no idea how much money you're going to reduce underneath AM1229. [LB84]

SENATOR MELLO: Under...to some extent, though, long-term growth spending under AM1226 is new spending, correct? [LB84]

SENATOR HEIDEMANN: Twelve twenty...? [LB84]

SENATOR MELLO: AM1216. Sorry. That's the underlying amendment. That's new spending, correct? [LB84]

SENATOR HEIDEMANN: Yes. [LB84]

SENATOR MELLO: Consistently--annual new spending. [LB84]

SENATOR HEIDEMANN: Yes. [LB84]

SENATOR MELLO: How can the argument be made that by adopting AM1216 instead of AM1229 that you're actually limiting longer-term growth when you're spending a significant amount of more money long term? [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR HEIDEMANN: I mean, my argument: How much money would have gone into this roads fund underneath AM1229 over the last three years? I think absolutely none. [LB84]

SENATOR MELLO: Zero. Because the economic times would say we couldn't afford it, correct? [LB84]

SENATOR HEIDEMANN: Yes. [LB84]

SENATOR MELLO: Which, once again, AM1229 ultimately limits long-term growth in a more responsible, sustainable way because it's not new spending; it's only additional transfers when the additional funds are there--thus less money over the long term but another source of funding. Correct? [LB84]

SENATOR HEIDEMANN: Yes. But I mean, what's the ultimate goal underneath LB84? I don't want to argue on Senator Fischer's side either, but, I mean, the ultimate goal is to get money for roads. Underneath the last three years, you wouldn't do that underneath AM1229. [LB84]

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SENATOR MELLO: Under--I guess, Senator Heidemann, under AM1229, if we adopt this amendment, there will be additional funds... [LB84]

SENATOR CARLSON: Time. [LB84]

SENATOR MELLO: Thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Mello and Senator Heidemann. Senator Ken Haar, you're recognized. [LB84]

SENATOR HAAR: Mr. President and members of the body, the thing that continues to bother me about LB84: It really takes the Appropriations Committee out of the loop. I'm trying to digest AM1229, and I congratulate Senator Mello for some creative thinking. Something--his plan is something we haven't heard of before, and I'm sure that we need to pursue it further, if not this year, next year. But, again, as I see LB84, it's an attempt--although it doesn't go near far enough to fund roads, and it's just kicking the can down the road. I would like to respond a little bit to Senator Hadley, because I'm sort of a technology buff and I found a report from the Council of State Governments, March 2010, that talks about vehicle-miles-traveled fees. And that's the concept of charging--instead of a gas tax, you charge for the number of miles driven, when they're driven, and where they're driven. It gives a great deal of flexibility. And this has been tried in Oregon. And 13 other states have, in addition to Oregon, have already tried pilot programs. And in Oregon they decided that this is something that's actually possible with current technology. Obviously, there are some problems yet, but it's something that I think will happen. Now, distance-based user charges are already in place for trucks in Germany, Austria, Switzerland, and the Czech Republic. And in those countries every truck has to have--it's basically a GPS unit. It collects on-board data that records the vehicle mileage and the route, and every month the data is transmitted to the Swiss customs authority either by mail or over the Internet. The data is used to bill the truck owner. And right now there are 60,000 trucks that have this device installed. And the Netherlands is even going further, and they're expected to become the international leader in vehicle-miles-traveled fees. And in 2008 the Dutch parliament approved the Dutch Mobility Plan, for both passenger cars and freight vehicles. The kilometer fees vary by time of day, route taken, congestion levels, and emissions a vehicle produces. So you also--you can incent at the same time that you're charging a user fee. So there are still some problems with it. There are a lot of states actually carrying out...as Senator Hadley did say, it's not a priority. And it's not being pushed by the Obama administration, but it certainly is still being played with, it's being experimented with, it's something that's coming. And I think it is kind of an ultimate solution, because it treats the care and maintenance of highways and the construction of new roadways through what I think should be user fees by the people who use those roads. And with that, I would give any additional time I have to Senator Mello. I'm very interested in his idea. Thank you. [LB84]

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SENATOR CARLSON: Thank you, Senator Haar. Senator Mello, 1 minute. [LB84]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. And thank you, Senator Haar. I was just talking with Senator Heidemann off the mike, and I think I--I think we ended where my argument and the logic behind AM1229 was intended to go, which is: long term, my amendment, which essentially becomes LB84, provides a dedicated source of funding when the time is good, but it also limits long-term spending, because it limits the size of our cash reserve--thus new programs. Or if for some reason or another we hit an economic bump in the road, we then have to figure out a way to deal with our budget concerns and problems similar to how we've done the last two years, because we would not have a massive cash reserve to backfill the loss of revenues. It's a more conservative approach to what LB84 is trying to do. It means we only spend the money when we have it. And it limits long-term government spending, because we don't spend the additional... [LB84]

SENATOR CARLSON: Time. [LB84]

SENATOR MELLO: ...\$60 million to \$100 million--thank you, Mr. President. [LB84]

SENATOR CARLSON: Thank you, Senator Mello. Those still wishing to speak: Nordquist, Mello, and Fischer. Senator Nordquist, you're recognized. [LB84]

SENATOR NORDQUIST: Thank you, Mr. President and members. I guess Senator Heidemann's question that he was asking Senator Mello really got me thinking--is: How much would have gone in over the last three years? Well, hearing the proponents say, when times are bad, LB84--we can just suspend it for a couple years or whatever. I would hope that no proponent would say any money would go in over the last three years, because there is--I couldn't find another \$67 million a year, with the cuts to our budget, if that was in our budget the last three years. So I would assume the same thing would happen there, that we wouldn't have put any money in the last three years, under LB84. Now, granted, that would take 25 votes on the floor. And Senator--I think it was Karpisek earlier said: You know, if we get in a situation like that again, I'll be the first to filibuster. Well, the problem is, I think it's actually the reverse of that. If we get into a problem like that--and I've been around this body since 2004--with an earmark like this in the state budget, I guarantee you would have to overcome a filibuster to remove this language. It's not just stopping it; you have to go in and change statute over a filibuster to remove this earmark. I think--and I was speaking to a couple members' questions on this, and I think Senator Mello has done a good job being crystal clear about it, but I'll just again, to make sure that we're on the same page what we're talking about here...the Economic Forecasting Board over the course of the year sets projections. And at the end of the fiscal year, right now the revenues that come in over their projection goes to the Cash Reserve Fund. Under Senator Mello's, half of that would be transferred

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directly to the Highway Trust Fund and half would remain in the Cash Reserve Fund. If you look at the historical sheet Senator Mello handed out, fiscal '05 through fiscal year '09, when our economy was kind of roaring along for the most part, coming out of the previous economic downturn, we saw substantial revenues above the projections by the Economic Forecasting Board. We were generating more economic activity and more revenues for the state at that time than they were projecting, each fiscal year. So if you add that up, as Senator Mello said, that's well over \$450 million, nearly \$500 million, that would have gone towards road construction. So when we're coming out of these things and we're seeing that economic activity, we probably can afford to do more for roads at that time. But when this thing nosedives, like it did in early '09, it doesn't tie our hands like LB84 does. I think we come out the same way, and, as Senator Mello said, I also think it will lead to more fiscal responsibility. Again, I've been here since 2004; and during those years when we saw a robust cash reserve, every member of the Legislature pointed to that when they were talking about new spending programs and said: Oh, we're sitting on \$800 million, \$600 million worth of cash reserve; we can afford this; why can't we afford this at this point in time? So I think it'll--by controlling the amount that's in the cash reserve a little more, it'll lead to a little more fiscal--being more fiscally prudent, and also this will generate a substantial amount of money in the times that we can afford it. So I think it's a good policy. If Senator Fischer would yield to a quick question... [LB84]

SENATOR CARLSON: Senator Fischer, would you yield? [LB84]

SENATOR FISCHER: Yes. [LB84]

SENATOR NORDQUIST: Just, I guess, I mentioned Senator Heidemann's question. He asked: On this specific proposal, how much would've gone in over the last three years? You've said that, under LB84, if times are tough, we could suspend it and not move forward with it. If LB84... [LB84]

SENATOR CARLSON: One minute. [LB84]

SENATOR NORDQUIST: ...was in place over the last three years, would you have supported suspending it at that point in time? [LB84]

SENATOR FISCHER: Senator Nordquist, I would have looked at all of the programs and look at a balance that we need to do with every decision that we make. I think it would be presumptuous of me or for you to say that we would do this or do that until we're faced with the situation that we're dealing with at the current time. [LB84]

SENATOR NORDQUIST: Thank you, Senator Fischer. Well, I know that we all supported a balanced budget on this floor; we all made tough decisions. If anyone at that point in time had recommendations for an additional \$67 million worth of reductions

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that we could have squeezed out of that budget, I would have liked to have known them at that point in time. No one came forward with those, so I think it just wouldn't have happened. I mean, we would have been squeezing programs to the bare bones over the last three years. So I would assume, under LB84, if I take some of the other proponents' statements, that if we were in that situation again, that they would lead the charge to suspend... [LB84]

SENATOR CARLSON: Time. [LB84]

SENATOR NORDQUIST: ...these provisions. Thank you. [LB84]

SENATOR CARLSON: Thank you, Senator Nordquist and Senator Fischer. Senator Fischer, your light is on. [LB84]

SENATOR FISCHER: Thank you, Mr. President and members. I had a couple colleagues come up to me and ask me where I stand on this amendment, so I thought I'd better stand up and let you know. I am opposed to Senator Mello's amendment. I think it's been noted that his amendment is dealing with General Fund dollars. It's just a different way to access the money. We lose the predictability that we need with regard to roads funding. And I'm also concerned because I don't think the transparency is there any longer with this amendment. I think we're being very up-front with LB84 with AM1216, that we're saying we want to use a quarter-cent of sales tax for roads. We're being very open, very up-front with that. Under Senator Mello's amendment, we don't know how much money is coming in every year or if any money is coming in every year. I think that's an important item to note in our discussions. We are being open; we are being honest with each other in here as we debate and also with the public that's listening to this debate. AM1216/LB84 is designating a quarter-cent of sales tax to the Highway Allocation Fund and to our new Capital Improvement Fund to be used for road construction that is needed in the state. Thank you, Mr. President. [LB84]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Fischer. Senator Utter, you are recognized. [LB84]

SENATOR UTTER: Thank you very much, Mr. President. And I'll try to be brief. I stand before you now just a little bit confused, to be honest with you. I think having Senator Mello move back to the back row with me has been a positive influence, because he is calling himself a conservative. And I--so I feel like I'm having great influence on him. The problem is I think I would label him a selective conservative, because I don't see that same conservative posture in everything that he does. I just wanted to...and I respect Senator Mello, and he's a good friend of mine, and--but occasionally I just want to point out the direction that we need to go, Senator Mello. Looking at this bill, LB84, in

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its original form, I had serious reservations about the bill and the impact that it might have. But fortunately, as with all legislation, why, the members of this body work together and try to put together something that may work. And I think in the process of working on this bill between General File and today, we have put together something that really works, on this bill. I stand before you this afternoon in support of the quarter-cent sales tax designation to go to roads. I stand opposed to Senator Mello's amendment. And because of the uncertainty of it, it strikes me that it's almost like the defined benefit pension plan: some years it'll be great, and then other years will--we'll be in a deep hole with it. I hope that you all support AM1216, the amendment to LB84. I think that represents a reasonable approach. I don't think it solves the problem. But, hopefully, as we move forth from this starting point, we can solve the problem and recognize that we are dealing with the priorities and that this is not a "concrete versus kids" proposal. Certainly this is not a proposal that I think reduces the importance of the programs in HHS that we are all--know that we have to do. And I think it also recognizes the importance of our roads infrastructure and what's happening to the funding of that particular problem as we move forward. So I would urge you all to support AM1216, to oppose AM1229, and to move the amended LB84 forward. Thank you, Mr. President. [LB84]

SENATOR COASH: Thank you, Senator Utter. Seeing no other lights, Senator Mello, you are recognized to close on your amendment to the amendment. [LB84]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I was just having a little laugh with my colleague here, Senator Utter. And to some extent, he is right. I think that's the beauty of the Unicameral, that none of us are wedded to one ideology, none of us are wedded to one political party in this body. You can be conservative on one issue; you can be progressive on another; you can be moderate most times, if you choose to. This particular instance, I believe in the fiscal conservative side of what I believe is our budget and our budgeting process--that we don't spend money we don't have. Under AM1229, that's what we do: we only spend the money when we have the money, when it comes in above projected revenue forecasts that are set by a nonpartisan board, the Economic Forecasting Board. What AM1229 does--it simply changes the financing mechanism. I would beg to differ with Senator Fischer, that it's not less transparent. It's the equivalent bill; it just changes the different way we finance it. Instead of earmarking a quarter-cent sales tax, we're instead taking half of the money that would normally go to the cash reserve in very healthy economic years. So I would beg to differ that it's a less transparent way of moving forward with roads funding. I think it's just a different way of financing it. But I think the bigger question and the underlying foundation of what AM1229 is, is whether or not we feel we should be spending money we don't have long term--which is what the underlying premise of the bill does--or when we have the money, when we have the money in good economic times, and instead of building up a cash reserve of \$500 million to \$600 million we instead split that right off the bat. We can still use that money if our budget essentially

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becomes--and hits roadblocks or hits potholes, so to speak. But also we know that half of that money is going to infrastructure financing, that that becomes a priority of our state government. And it doesn't become a priority every single year; it becomes a priority when we know we can afford it. That, colleagues, is good fiscal policy. That, colleagues, is actually conservative fiscal policy, because we're not raising taxes and we're only spending money we have. This debate, I think, is--we're starting, I think, to realize that the debate on LB84 is winding down, that it appears that there is a tide moving forward, that we want to spend more money--we want to spend more money on roads; and LB84, if we adopt AM1216, is the path to do that. Senator Conrad gave us a different path, one that wouldn't raise taxes, one that would allow us to debate the appropriateness of funding for roads infrastructure every single year, through the budget process. The Governor would also be involved in this process, because he also, too, would have to determine if roads funding was a priority of his. We did not adopt that amendment. AM1229 is a different take, a different approach, somewhat similar in the sense that it automatically appropriates funds, similar to what Senator Fischer would like to see get done. It's flexible in the sense that we only spend money when we know we're going to have an excess of it; so there's no need to raise taxes to pay for roads, because we know we're getting new money that we normally wouldn't get. And the one argument, the only argument, that I've heard anyone generally discuss of why AM1229 is not sufficient is regarding the planning. We need to give our Department of Roads adequate time to plan projects; and if you don't give them a minimum of \$65 million a year, they can't plan. Colleagues, I think we understand the general, I think, reciprocity of what AM1216 does in regard to the timing--is that it doesn't take effect for two years. So for at least two years, the Department of Roads will do no real planning, because they can't guarantee next year there won't be a bill to repeal it, or they can't guarantee next year there won't be a... [LB84]

SENATOR COASH: One minute. [LB84]

SENATOR MELLO: ...ballot initiative to repeal that. Colleagues, I've tried to provide what I think is a solution to deal with roads funding in our state. Some might agree with it; some might not. If you would take this bill and enacted it ten years ago, our Department of Roads would have spent over \$468 million more in highway construction. That would be the largest increase that any state agency would have seen. But, apparently, it's not good enough right now. Instead, we are going to roll the dice on an uncertain economic future, with troubling budget problems this year and next year, and hope it gets better. I urge the body to reconsider that. That's not good fiscal policy; that's not good public policy. I believe AM1229 is both good fiscally for the long term as well as it prioritizes something that all of us can agree is a priority, which is roads infrastructure financing. Thank you, Mr. President. [LB84]

SENATOR COASH: Thank you, Senator Mello. Members, you have heard the closing to AM1229 to AM1216. The question is, shall AM1229 to AM1216 be adopted? Senator

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Mello. [LB84]

SENATOR MELLO: Mr. President, could I get a call of the house and a roll call vote, please? [LB84]

SENATOR COASH: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor, vote aye; all those opposed, vote nay. Record, Mr. Clerk. [LB84]

CLERK: 28 ayes, 0 nays, Mr. President, to place the house under call. [LB84]

SENATOR COASH: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators Council and Carlson, please return to the Chamber, record your presence. Senator Lathrop, please return to the Chamber and record your presence. Senator Council, please return to the Chamber and record your presence. The house is under call. Mr. Clerk, there has been a request for a roll call vote. Members, the question before the body is, shall AM1229 to AM1216 be adopted? Mr. Clerk. [LB84]

CLERK: (Roll call vote taken, Legislative Journal page 1232.) 10 ayes, 33 nays, Mr. President. [LB84]

SENATOR COASH: The amendment is not adopted. I raise the call. Speaker Flood. [LB84]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. The next amendment we will take up is Senator Council's AM1248 to AM1216. Again, the next amendment will be from Senator Council, AM1248. Thank you.

SENATOR COASH: Mr. Clerk, for some items.

CLERK: Thank you, Mr. President. Enrollment and Review reports LB535, LB449, and LR40CA to Select File. Senator Cornett offers a new A bill, LB384A. (Read by title for the first time.) (Legislative Journal page 1233-1239.) [LB535 LB449 LR40CA LB384A]

Senator Council, I now have, Senator, AM1248. (Legislative Journal page 1239.) [LB84]

SENATOR COASH: Senator Council, you are recognized to open on your amendment. [LB84]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. And AM1248 provides a very simple amendment, and it's one that I have discussed every opportunity that I've

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had to be on the mike on LB84. And I want to make it clear to the introducer of LB84, Senator Fischer, as well as my other colleagues that I did not file AM1248 in any attempt to filibuster LB84. I introduced AM1248 as a genuine amendment to provide a way to address what I think everyone in here agrees is a serious state issue that deserves some prioritization, and that is the development and maintenance of our road system in the state of Nebraska. I have listened intently to the debate. Senator Louden's amendment, looking to a gas tax increase...and I appreciated what prompted Senator Louden to do that, because that has been this state's policy for decades, in terms of the methodology for funding roads, and that has been a user fee. And that user fee being principally the gas tax and then vehicle registration. I appreciate that there is not an inclination on the part of this body to raise taxes. And I agree with that. And that's the reason I did not support Senator Louden's amendment. But I want it to be clear that Senator Louden's amendment was consistent with what this state's policy has been on funding roads. And in recognition of the need to provide additional funding, Senator Louden looked to increasing the source that the policy has provided for us to utilize in the past. LB84 goes a different route. LB84 goes to sales tax, which has never been the policy of this state in terms of providing funding for roads maintenance, and improvement, and expansion. In fact, proponents of LB84 in the past have expressly and unequivocally opposed the use of sales tax for road improvement and maintenance. So what AM1248 is--provides what I believe to be a very viable option for us to utilize to address the immediate needs of this state in terms of road improvement and maintenance. And that is to transfer what the Appropriations Committee has set out from the General Fund, and that is the Property Tax Credit Fund. And I look at that because that's \$231 million over the next two years that could be immediately applied to road improvement and road maintenance in the state of Nebraska, beginning with \$115 million during the upcoming fiscal year--an impact that would not adversely affect the General Fund in succeeding bienniums, because, as has been stated, the \$231 million has been set aside from the General Fund appropriations. It has been already factored into what the expected budget shortfall would be at the beginning of the next biennium. So it wouldn't add any additional pressure onto any budget deficit that we'd be looking at at the beginning of 2013 but instead would provide an opportunity for us to immediately infuse \$115 million into the state's economy, create jobs, increase income tax revenue, increase sales tax revenue, and, most importantly, address the urgent needs of this state to maintain and improve our road infrastructure. I firmly believe that this is an opportunity that we need to take advantage of. Because, quite frankly, if the Property Tax Credit Fund can be provided during the upcoming biennium, that is a tacit statement by this Legislature that those funds are available; and if those funds are available, then I believe that those funds are better used and should be allocated toward roads. I voted for Senator Conrad's amendment because I felt that it meshed perfectly with AM1248. And how it meshed was--AM1248 says we will appropriate \$115 million each year for the next two years, and that \$115 million comes from the Property Tax Credit Fund. And then beginning in 2013 it is the intent of the Legislature to allocate and appropriate up to \$65 million if the funds are available. To me, that is a sound and a

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reasonable financial approach to dealing with this roads issue. Senator Mello made note of the fact--and I haven't obtained the actual percentages--but the percentage of the property tax credit refund that goes outside the state of Nebraska does not provide for any boost in the state's economy. Where providing this property tax credit refund amount to roads would have a direct and immediate impact on the Nebraska economy--again, I would submit to you--would provide for additional income tax revenues and sales tax revenues. So we'd be turning the dollars over in our state while addressing a very critical funding obligation of the state. I believe use of the Property Tax Credit Fund is far wiser than using sales tax. It's far wiser than seeking to increase the gas tax at a point in time in our history where, whether you agree with it or not, our technology is moving us away from vehicles being propelled by gasoline. So we're going to have to look at other sources of revenue to provide for the use of this state's road system. For the short term, I believe that we can very easily allocate--reallocate the Property Tax Credit Fund dollars to the Highway Improvement Fund and get us light-years ahead of where we would be under LB84, with or without AM1216. Because with or without AM1216, LB84 doesn't provide for any increase beyond what the Appropriations Committee is recommending for roads until July of 2013. And even then there's no guarantee that those dollars would actually be appropriated in July of 2013, because the next Legislature could--and everyone agrees--could repeal LB84 if it is enacted. I believe AM1248 gets us to the point where everybody, I believe, thinks that the state needs to be, and that's providing a boost to our roads program. This would be a...it wouldn't be a one-time infusion two years from now if the funds are available, because they must be available if we're continuing to fund the Property Tax Credit Fund--to look at utilizing those dollars again as a continuing source of income and revenue to our roads and our road improvement and expansion efforts. So with that, I genuinely ask that you give serious... [LB84]

SENATOR COASH: One minute. [LB84]

SENATOR COUNCIL: ...consideration to advancing AM1248 as a means of funding our road maintenance and improvement efforts. Again, we've never considered sales tax in the past; we don't want to increase the gas tax; I believe that this is the only viable option for us to take some meaningful action on this very critical issue. Thank you. [LB84]

SENATOR COASH: Thank you, Senator Council. We now turn to discussion on AM1248. Those wishing to speak: Senators Ashford, Wallman, and Loudon. Senator Ashford, you are recognized. [LB84]

SENATOR ASHFORD: Thank you, Mr. President. And I support this amendment. I've been listening to the...I'm going to vote for the bill, Senator Fischer's bill, because I think we do need to address, as many of us have said today, the issue. The preferable method, in my view, is to pay for it. And we've heard from members of the

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Appropriations Committee who are opposed to the bill suggest that this is not the appropriate way to budget for roads. The appropriate way to do so would be to pay for them. And we should pay for them. When we...when this property tax amendment--or bill was adopted several years ago--Senator Adams has already spoken to the issue on a couple of occasions--there were some of us who felt that the better, appropriate use for these funds was education and lowering the lid on property tax. But the body at that time did not see fit to take that option, and the property tax credit was adopted. But clearly, it is unequivocally clear to me that the property tax credit is just that; it is a credit available to be paid out to taxpayers when there's sufficient funds in the budget to make the payment. And to decrease the credit or even eliminate it in a biennium is not a tax increase, in my mind. A tax increase would be raising the sales tax, raising income tax, raising taxes we have control over. But the credit is just that; it is a credit that we have available to us. In fact, as we all know, it's funded through the appropriations process and not through the Revenue Committee process. So just on its face, it's not a tax or tax increase. But it is a way of returning dollars back to the taxpayers who own property. It is clear to me that this body wants to do something with roads. Obviously, the vote the other day and the votes today would indicate that it is a high priority for all Nebraskans or many Nebraskans--and I would say all Nebraskans, probably--not to have deteriorating roads and unsafe highways. And I agree: it is. But the appropriate way to deal with the issue is as Senator Council suggests: funding them--funding them with dollars that we know are available and avoiding the pitfalls or the, really, the cliff, I think, another sort of cliff that Senator Mello and Senator Conrad are talking about in utilizing funds two years from now that we may or may not have. The prudent, the conservative, the appropriate way to deal with roads is to pay for the roads. And if we believe that the needs are greater than the current appropriation--I think we do, based on all the comments today--then I think Senator Council has given us an opportunity to be legislators, to legislate based on what's in front of us today. And I'm appreciative that she's brought us this amendment. Sure, there are a lot of our neighbors who would like to continue to see this property tax credit. I get that. But there are a commensurate number of people across the state that want better roads. And we have to weigh those things. But I think where this body is coming down is... [LB84]

SENATOR COASH: One minute. [LB84]

SENATOR ASHFORD: ...is on the side of improving the roads. I certainly agree. I mean...and, sure, it's tough to...these are the kinds of...these are the tough choices, in actuality. These are the really critical choices. If we make the decision to follow Senator Council's lead here, it will free up other dollars to meet the needs that Senator Nordquist has talked about, Senator Conrad, who sit in the Appropriations Committee, and they see those needs. So again, I support Senator Fischer's bill, but I really do support this effort to pay for them in an appropriate manner. Thank you. [LB84]

SENATOR COASH: Thank you, Senator Ashford. Senator Wallman, you are

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recognized. [LB84]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, appreciate Senator Fischer's work on this roads bill, because I know nobody wants to pay taxes. We want to kick the can down the road. And that's the way the federal government has operated for years. Do we want to do that as a state? No. I appreciate Senator Council's amendment here. Some of us get property tax credits but not everybody. So do I want that? Sure. But do I want to pay for the roads? Yes. Go to 41--highway, like I said; go to Adams, Nebraska, ethanol plant. And if we wait a couple years, that will no longer be a blacktop road; it'll be a mud road, because it's going to pieces. So we can't keep kicking this down the road, folks. Road repair should be on the agenda. The state department knows which roads needs fixed. And I really appreciate our state Department of Roads workers in the winter. They put forth extra effort, and they do a good job. They try to get the snow, to protect the roads. But they can't do it all the time, with constant milling, thin layer of asphalt. Eventually, you don't have a road, an asphalt road. So I can see people are reluctant to pay. But, folks, you got to pay. We have to pay. As a society, we have to pay for things. That's economic development--roads. I've heard it said before: roads--economic development. I live along an expressway; that's pretty nice. Not everybody does. But in the next...maybe we don't need to build any more six-lane highways, I'm not saying. You go to New York, New Jersey, L.A., San Francisco--folks, we don't have traffic in Nebraska; we just don't have it, compared to there. You don't go 5 miles an hour for an hour. So--but we have to fix our roads, the potholes. And like Senator Loudon says, these big potholes nowadays, with today's low cars, you ruin your front thing, that plastic thing under there, or under your pickups; you'll find out what it costs. So thank you, Senator Council, for this amendment, and if you'd want some more time, I'd yield to you. [LB84]

SENATOR COASH: Senator Council, you're yielded 2 minutes 30 seconds. [LB84]

SENATOR COUNCIL: Thank you, Senator Wallman, and I certainly appreciate your comments. And I guess I need to clarify the point that AM1248 was originally drafted as an amendment to AM--I think it was AM940, which was withdrawn. And AM940, in its form, still provided for half percent of the sales tax, which would generate about \$125 million a year, it was estimated. So AM1248 was originally drafted to provide as close to an amount equal to what the half-cent sales tax would provide. Now that AM1216 goes down to a quarter of a percent, most certainly--and I would not have any objection if the body wanted to further amend AM1248 to reduce the amount that would be required to be transferred from the Property Tax Credit Fund to equal the amount of a quarter-percent of the sales tax, which is about \$65 million a year. That would leave about \$40 million... [LB84]

SENATOR COASH: One minute. [LB84]

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SENATOR COUNCIL: ...a year available for either property tax credit or to provide us with funds to address some of the other needs of this state that have had to suffer and experience cuts. I did indicate during the discussion of LB235, the state aid to education bill, that we could avoid any cuts to state aid if we looked at the Property Tax Credit Fund. So there are opportunities available to the body if the decision is not to use all of the Property Tax Credit Fund and to scale it back to make it comparable to the amount of dollars required under AM1216 and have available for property tax credit relief, or to assist us in meeting some of the other needs of the state, the balance that would be in the Property Tax Credit fund. [LB84]

SENATOR COASH: Time, Senator. [LB84]

SENATOR COUNCIL: Thank you. [LB84]

SENATOR COASH: Thank you, Senator Council. Senator Louden, you are recognized. [LB84]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Would Senator Council yield for questions? [LB84]

SENATOR COASH: Senator Council, will you yield? [LB84]

SENATOR COUNCIL: Yes, sir. [LB84]

SENATOR LOUDEN: Yes, Senator Council. Yes, I appreciate what you're doing here by finding another revenue source besides sales tax. And you've answered some of my questions just now on how many dollars are involved here. And as you've stated, there's probably about \$55 million or \$60 million could be used if we go the route that the AM1216 uses, is that correct? [LB84]

SENATOR COUNCIL: Yeah. If you use the AM1216 figure, which I understand computes out to about \$65 million a year, that would still leave about \$50 million a year in the Property Tax Credit Fund. [LB84]

SENATOR LOUDEN: Okay. Now, as I notice, your amendment has the emergency clause on it, so, actually, this could be started in the fall or something--I mean, that money would be available very soon, because that money is already in that fund, is that right? [LB84]

SENATOR COUNCIL: Yes. Yes, that's my intent, Senator Louden. [LB84]

SENATOR LOUDEN: Yeah. Now, in the future--I mean, I understand how this next year and the year after...how long will you have this run? Will it be as long as AM1216 talks

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about? Or what happens in year two and three and four by doing your--the way you have it outlined here? [LB84]

SENATOR COUNCIL: Yeah, well--and I'm operating on assumptions, Senator Louden. As the Property Tax Credit Fund was originally established, it was to be for fiscal year '07-08, and anything after that would be dependent upon funds being available. [LB84]

SENATOR LOUDEN: Okay. [LB84]

SENATOR COUNCIL: And it has continued notwithstanding whether or not funds were available. So the intent would be that as long as there's a Property Tax Credit Fund, those dollars would be made available--would be transferred over to the Highway Improvement Fund. [LB84]

SENATOR LOUDEN: And that would be decided by the Legislature literally every year or every biennium... [LB84]

SENATOR COUNCIL: Every biennium. [LB84]

SENATOR LOUDEN: ...or something like that. So then we're...this isn't a long--what would you say, a long-term system set up; this is something to get some construction going now. And, of course, I agree that road construction is probably the best thing you can do to jolt an economy forwards, because it's work, and it's usually local work, because that's where the road is, is built locally. And I understand that. So that was my questions on how we would go into the future and how long this would last and how much money is involved. And I understand that it'd mostly be from a year-to-year basis. With that, I thank you for bringing this amendment forwards. And if Senator Council would like the rest of my time, I'll yield it to her. [LB84]

SENATOR COASH: Senator Council, 2 minutes. [LB84]

SENATOR COUNCIL: Yes, and thank you, Senator Louden. And if I can reiterate, I believe that AM1248 would have meshed perfectly with Senator Conrad's amendment that provided that beginning in 2013 it would be the Legislature's intent to appropriate up to \$65 million. So--and that amendment carried through the entire 20-year period. So it would provide a kick-start, for lack of a better descriptor--that AM1248 provides that kick-start to get the state moving forward in a very serious manner in addressing some of these critical road needs and then beginning with the 2013 biennium look to... [LB84]

SENATOR COASH: One minute. [LB84]

SENATOR COUNCIL: ...General Fund appropriations or, if necessary, gas tax increases. But it would give us that two-year period of time to further evaluate the best

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way to provide for road funding. And I submit to you that whether it's a \$130 million kick-start or a \$230 million kick-start, combine that with a \$30 million additional appropriation that the Appropriations Committee is already proposing, I think that, instead of kicking the can down the road, moves us quite a ways towards addressing these critical road needs. Thank you. [LB84]

SENATOR COASH: Thank you, Senator Council. Senator Dubas, you are recognized. [LB84]

SENATOR DUBAS: Thank you, Mr. President and colleagues. I truly do appreciate Senator Council bringing this amendment forward. And even though I like it at this point in time, I won't be supporting it. But it's very, very important that we are discussing this program. It's been around awhile. I know, in visiting with some of my constituents around the district, I'm not really sure how many people fully understand what this credit is and how much it amounts to for them, but--so, again, I think having this public discussion is good. I do agree with the points that Senator Council has raised: this is immediate money; this has the potential to provide a real spark for our economy. As Senator Loudon just said, there's no better way to get the economy going across the state than to get roads projects going; it sparks the economy and provides great infrastructure for us at the same time. I guess my hesitancy in voting for this amendment at this time is I really want to make sure that our citizens are fully engaged in this debate and understand what it would mean if and when we would shift the property tax rebate program into roads infrastructure. I think we have to understand the full ramifications of what diverting those dollars would really mean. I'd like to have the opportunity to fully understand what those dollars have done as far as paying dividends to our citizens through property taxes versus what type of dividends or returns we would see by putting this money into our roads infrastructure. There's not a single one of us in here who haven't heard about the importance of property tax relief. We know it personally as well as what we hear from our constituents. And that's important. And so I would not want to take money away from a program that maybe is providing more benefits than we fully realize at this point in time. But again, I'd like to have the opportunity to engage my constituents as well as citizens across the state about what their understanding is of this program, how much they truly do feel it's benefiting them in the past and now, and really have an extended dialogue with them, get their attention, get the feedback, you know, with the potential of coming back next year and coming forward with a serious bill that we would have buy-in not only from the public but from this body as well. Because I think we all would recognize maybe there's not as much understanding of this program out among our citizens right now. But you can bet if we tried to take this away, there certainly would be media attention as well as other attention given to the fact that, okay, now we're taking the property tax credit away from citizens. And I wouldn't want to approach this particular issue in that fashion. I think it needs to be done in a very responsible way--that we're engaging our citizens in constructive dialogue, not making them feel like it's just one more thing that we are

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taking away from them. I think it's important enough that we need to have that dialogue and do appreciate Senator Council bringing the amendment forward, getting that dialogue going. Thank you, Mr. President. [LB84]

SENATOR COASH: Thank you, Senator Dubas. Senator Council, there are no other lights on. Would you like to close on AM1248? [LB84]

SENATOR COUNCIL: Yeah, thank you, Mr. President. As coincidence would have it, I was responding to a constituent that just sent me an e-mail. The constituent--well, he's not my constituent; he's from the Omaha area, doesn't live in my district, who'd been following the debate--and he, like several other e-mails that I've received since the debate on LB84 began this morning and I began floating the proposition of using the Property Tax Credit Fund--the overwhelming majority of the e-mails that I have received are supportive of utilizing the Property Tax Credit Fund as a source of funding the roads improvement and maintenance that's required in the state. I've even gotten some suggestions on how we could leverage the \$115 million annually--how we could leverage that up to even more dollars being available on an annual basis. So the support that...at least my e-mails are--they're not supportive of the sales tax. In fact, I haven't received one that's supportive of the sales tax. It's probably been 85 percent using the Property Tax Credit Fund and the other 15 percent using user fees, i.e., the gas tax increase. Again, I believe that this provides us with a unique opportunity to address our critical roads maintenance and improvement needs, provides an opportunity to boost our economy through the jobs that would be created, the equipment that would be purchased, the income and sales tax that would be generated that would stay in the state, as compared to the significant percentage of the property tax credit that goes outside of the state. And interestingly enough, Senator Dubas hit on a point. I did a less-than-unscientific poll last year asking people about the property tax credit; 90 percent of them didn't know what I was talking about. And I don't know whether each county handles it differently. Because one of the e-mails I received today indicated that after the individual had paid their annual property tax, they received a check for the property tax credit. That's not the case in Douglas County; it's factored into your total property tax, and it's not even identified as a line item. So the average person doesn't know how much they receive in terms of the property tax credit. But here they would know that this amount of money is being dedicated to addressing the serious road issues. And I believe that if we're serious about taking some immediate action to address these issues, if we're going to accept the admonition that we've received about the current state of some highways in our state and how unsafe they are, then I believe that AM1248 provides us with the avenue to address those in a effective and efficient and, I think, financially responsible manner. So I would urge the body to advance AM1248. And, Mr. President, I would request a call of the house on the vote and then a vote in roll call order--regular order. [LB84]

SPEAKER FLOOD PRESIDING

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SPEAKER FLOOD: Thank you, Senator Council. Members, you've heard the closing on AM1248 to AM1216. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor, vote aye; all those opposed, vote nay. Mr. Clerk, please record. [LB84]

CLERK: 31 ayes, 0 nays to place the house under call. [LB84]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators Christensen, Carlson, Fulton, Pankonin, Lathrop, Gloor, Larson, Cornett, please return to the Chamber and record your presence. The house is under call. Senators Fulton, Larson, Lathrop, please return to the Chamber and record your presence. The house is under call. Senator Larson, Senator Lathrop, please return to the Chamber and record your presence. The house is under call. Senator Larson. Senator Council, all senators are present or otherwise accounted for. How did you want to proceed? A roll call vote in regular order has been requested. Members, the question is, shall AM1248 to AM1216 be adopted? All those in favor, vote aye; all those opposed, vote nay. Mr. Clerk, please read the roll. [LB84]

CLERK: (Roll call vote taken, Legislative Journal page 1240.) 5 ayes, 32 nays, Mr. President. [LB84]

SPEAKER FLOOD: AM1248 is not adopted. I do raise the call. Mr. Clerk, the next amendment to be ordered is AM1231 from Senator Mello. [LB84]

CLERK: AM1231--Senator, I have a note you want to withdraw that particular amendment. [LB84]

SPEAKER FLOOD: Senator Mello. [LB84]

SENATOR MELLO: Yes, Mr. President, I'd like to withdraw AM1231. [LB84]

SPEAKER FLOOD: AM1231 is now withdrawn. Mr. Clerk, the next amendment to be ordered is AM1230 to AM1216 from Senator Mello. [LB84]

CLERK: Senator, I have now AM1230 as an amendment to Senator Fischer's AM1216. (Legislative Journal page 1220.) [LB84]

SENATOR MELLO: Yes, that would be correct. [LB84]

SPEAKER FLOOD: Okay, one moment. Senator Fischer, what purpose do you rise?

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[LB84]

SENATOR FISCHER: Mr. President, I would question the germaneness of this amendment. [LB84]

SPEAKER FLOOD: Senator Fischer, I'm going to rule your challenge out of order. Senator Mello should have the opportunity to open on his amendment, and then we'll take your point of order. [LB84]

SENATOR FISCHER: Thank you. [LB84]

SPEAKER FLOOD: Senator Mello, you are recognized. [LB84]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. And I assume that my colleague Senator Fischer would rule that it was out of order, not germane. But if you read what is AM1230, essentially it opens up--Senator Fischer's underlying amendment, AM1216, opens up our existing sales tax statutes, which--my amendment, AM1230, essentially says if we're going to open up the sales tax statutes, I would prefer to see a quarter-cent of existing sales tax be dedicated to a homestead exemption of all Nebraska residential homesteads to the tune of property tax relief. That would equate to roughly \$250 per residential homeowner in the state of Nebraska with my amendment, AM1230. Many of you probably remember this issue was debated back in 2007, when the Legislature passed the largest tax cut in Nebraska history. You created the Property Tax Credit Fund, which we just had a debate with Council's amendment, which would strike that fund and move that money to pay for roads. I take a different tack. I believe that that fund--and I've always fundamentally believed--that fund needs to be altered and reformed, because the money essentially goes, a significant portion, to out-of-state landowners. We are sending Nebraska sales and incomes taxes to out-of-state landowners, and that's something that both...the last session I supported us trying to reform that program. And with AM1230 we take a different tack; we instead provide an additional \$250 in property tax relief to all Nebraska residential homesteads. If we believe financing roads is that important--I posed the question earlier this session that I think property tax relief is more important; it's more important, because we chose to reduce funding to K-12 education, we eliminated all of the aid to local city, counties--or cities and NRDs, which both are property-tax-levying authorities--thus raising property taxes. We have a chance to change that by adopting AM1230, which would change the underlying focus of the bill from a roads bill to a property tax relief bill. I fully understand Senator Fischer will rise in opposition and will rise to question the germaneness of this. But I will beg to differ--that because when you open up a sales tax statute and you earmark money for a certain purpose, you can change that sales tax statute to earmark it to any purpose we as a Legislature full deems. I chose not to go on other potential tax relief packages that would have targeted middle class income or corporate taxes. I feel that ultimately the

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votes aren't there right now. But property taxes is a very relevant issue, because we've dealt with it all session long, in part because of the choices we've made regarding education funding and aid to local counties, cities, and NRDs. I believe AM1230 is good public policy. It moves us towards the path of ultimately reforming what Senator Council just said we need to do. We need to reform the Property Tax Credit Act, some point in time. This is a chance to start doing that, by adopting AM1230. With that, I urge the body to support AM1230. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Mello. Senator Fischer, for what purpose do you now rise? [LB84]

SENATOR FISCHER: Mr. President, I question the germaneness of Senator Mello's amendment. [LB84]

SPEAKER FLOOD: I'll give you an opportunity to share your thoughts regarding Rule 7, Section 3(d), with the body. [LB84]

SENATOR FISCHER: Thank you very much, Mr. President and members. The underlying bill in AM1216 specifically deal with highways and the transportation system. This amendment does not speak to the roads issue but rather delves into a completely separate issue in homestead exemptions and the Property Tax Relief Act, as Senator Mello acknowledged. LB84 is about solving the highway funding issue of this state, and AM1230 does not attempt to accomplish that in any form. Under Rule 7, Section 3(d), this amendment does not relate to the details of the specific subject of the bill and is not a natural and logical sequence to the subject matter. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Fischer. Senator Mello, I'll give you an opportunity to respond. [LB84]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I believe that AM1230 is germane. Because in the underlying substance of what is AM1216 in LB84 is sales tax policy. It's earmarking where our sales taxes are going, and the underlying bill focuses on where we are spending, or earmarking, existing tax revenue. AM1230 simply changes where we choose to earmark our existing sales tax from the Highway Capital Project Fund and the Highway Trust Fund to the newly created Property Tax Relief Act. I believe it is germane because the underlying purpose of the bill is dealing with sales tax policy, which AM1230 does as well. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Mello. The Legislature will stand at ease while this is reviewed. Senator Fischer, Senator Mello, would you please come forward. [LB84]

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EASE

SPEAKER FLOOD: After having an opportunity to review Section (sic) 7, Section 3(d), of the Rules of the Nebraska Legislature and taking into consideration LB84, Senator Fischer's amendment, AM1216, Senator Fischer's amendment does dedicate a quarter-cent of 1 percent of the state sales tax to a newly created fund for highway capital improvement in the state of Nebraska. Senator Mello's amendment, AM1230, would add to the roads construction and maintenance provisions of AM1216 a new act creating a general homestead exemption of the first \$13,000 of all homesteads in Nebraska beginning in tax year 2013. Additionally, the amendment strikes the sales tax funding for roads as outlined in the underlying amendment and directs it to the general homestead exemption program created by AM1230. The primary objective of the Fischer amendment to LB84 is for the establishment of a funding source for roads construction. The primary objective of AM1230 addresses funding for a property tax relief program, and it does not have any direct relation to the purpose of AM1216, that being roads funding. Therefore, it is the ruling of the Chair that AM1230 does not relate to the details of AM1216 to LB84 and is not a natural and logical sequence to the subject matter of the Build Nebraska Act and therefore is not germane to AM1216 under our rules. Senator Mello, for what purpose do you rise? [LB84]

SENATOR MELLO: Mr. President, I rise to challenge the ruling of the Chair. [LB84]

SPEAKER FLOOD: The ruling of the Chair has been challenged. Each member is allowed to speak once to the issue. Members may not yield time to one another. Senator Mello, you are recognized to speak. [LB84]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, I rise to overrule the Chair on this germaneness issue in part because the President was able to lay out essentially my argument as he was laying out the purpose of AM1216. AM1216 creates a new fund, and it dedicates a quarter-cent of our existing sales tax to that fund. AM1230 creates a new fund as well and instead dedicates that quarter-cent of sales tax to the new fund. Ultimately, the underlying purpose of LB84 is sales tax policy. It came out of the Revenue Committee and not the Transportation and Telecommunications Committee, which most roads bills come out of. I believe the Chair has...there was an oversight, I believe, by the Chair in the sense of the general nature of what LB84 is trying to do. It is a roads...it is a, quote, unquote, roads funding bill, where in actuality it's a sales tax bill that designates sales tax to a certain fund. That is exactly what AM1230 does. It's a sales tax bill that designates the same exact sales tax to simply a different fund, thus eliminating the need for the previous fund under AM1216. I urge the body to consider these facts, as it sets a dangerous precedent, I believe, when we discuss future tax policy. Anytime we open up a statute in the future that remotely involves sales tax, income tax, or corporate taxes, I believe the ruling by the Chair today will future dictate and set a precedent that we will no longer be able to change anything that

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comes with the original bill or original amendment that invokes the usage of those taxes. Thus, a senator may bring a sales tax bill or an income tax bill in the future and if a senator wishes to make a change of where that money may go in the future, it would be deemed out of order or not germane because of the ruling of the Chair today. It's a dangerous precedent, colleagues. When we talk about sales tax or any other tax and we open up the statutes and we focus on earmarking money in that tax bracket or that tax system for creation of a new fund, it shouldn't matter what that new fund is. It may be a fund for agriculture, may be a fund for education, and, in this case, may be a fund for property tax relief. I urge you to reconsider the Chair's ruling, as I believe not only is AM1230 germane but I believe the Chair's ruling sets a dangerous precedent as we discuss and debate future tax policy in this state. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Mello. Members, you've heard the opening to Senator Mello's motion. Senator Fischer, you are recognized. [LB84]

SENATOR FISCHER: Thank you, Mr. President and members of the body. With all due respect to my friend Senator Mello, I do rise in opposition to his motion to overrule the Chair. To clarify a point, roads funding bills always go to the Revenue Committee because with roads funding it's always a tax issue so those always go to Revenue Committee, whether it's the gas tax or, in this case, the sales tax. This is not a sales tax bill. We have not been discussing the sales tax today nor did we discuss it on General File. We have been discussing roads funding. In fact, the opponents of the bill today have offered their suggestions on how to fund roads. Only one dealt with a tax. Senator Loudon had a gas tax; the rest did not. We're discussing roads funding. We are not discussing sales tax. Roads funding is the issue, we all know that. I believe the Speaker was very clear and precise in his ruling on the germaneness issue and I would ask that you vote red, that you vote against Senator Mello's motion to overrule the Chair. Thank you, Mr. Speaker. [LB84]

SPEAKER FLOOD: Thank you, Senator Fischer. Senator Nordquist, you are recognized. [LB84]

SENATOR NORDQUIST: Thank you, Mr. President. I rise in support of the motion to overrule the Chair. I think it's...to say that a bill that earmarks sales tax isn't related to sales tax just defies logic, defies what's on the text. I mean this is about where this money is going and I think we need to have a debate on it. I think we need to have a debate about priorities. I know from my district I hear more about property tax than anything else. I hear more about it, certainly more than roads funding, certainly more than other priorities, and that's why I, in Appropriations Committee, fought hard to protect the property tax relief credit, had to oppose Senator Council's amendment and support this. I think this body, in the debate on General File and advancing to that point and obviously through the discussion this morning, obviously has found a new optimism about our economy. I didn't know we were filled with so many idealists around here that

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we're going to be...have such a strong economy in the future that we're at least hopeful for that. It's a new wild-eyed optimism that we're just going to abandon the old pay-go system and that we're going to hope for the future that we're going to have that money there. And if that money is there, I think we need to have a talk about all the priorities that should be on the table and this is one of them. So I think by voting against the motion to overrule the Chair, you're going to stifle debate on a discussion about priorities that I know from my constituents and I know many of you, too, have told me that property tax relief is number one. You're going to have to go home to them and say, we didn't even have that debate because we decided to stand with the motion, we decided to not even discuss the importance of property tax relief. That's what you're going to have to tell your constituents. For me, I want to have that debate. I want to talk about those priorities. That's why I support the motion to overrule the Chair. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Nordquist. There are no other lights on. Senator Mello, you are recognized to close on your motion to overrule the Chair. [LB84]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, I won't go on much further than I think what my opening was, which essentially I believe the Chair's ruling sets a dangerous precedent, a dangerous precedent that any future tax policy bill that we may discuss regardless of the source--sales, income or corporate--that we will no longer as a Legislature and individual senators be able to offer amendments if we change where that money may be earmarked to go to in the future. A senator may choose to earmark corporate income taxes to a certain fund, a new fund, and we as a Legislature would be unable to change where that money goes on the floor of the Legislature through any substantial amendments because of this ruling by the Chair, which the underlying bill focuses on the sales tax statutes. It dictates where that sales tax money goes, which goes to roads, where some of us have argued today that we feel that there's other ways to finance roads and not utilize the quarter cent sales tax which is the mechanism for what is AM1216 and LB84. I urge the body to strongly consider the future impact of the ruling of the Chair on this amendment because any potential tax policy amendment that comes forward will have to go through this same Chair's ruling, thus limiting all senators, regardless of your perspective on any particular issue, the ability to challenge or to offer substantial amendments on the state's tax policy and where those taxes should go. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Mello. Members, you've heard the closing from Senator Mello. The question is...well, first of all, this motion will require 19 votes to be adopted. The question is the adoption of the motion to overrule the Chair. A yes vote overrules the Chair; a no vote does not overrule the Chair. All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB84]

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CLERK: 5 ayes, 20 nays, Mr. president, on the motion to overrule the Chair. [LB84]

SPEAKER FLOOD: The Chair is not overruled. Mr. Clerk, we now proceed to the next amendment or motion to be ordered and that is Senator Conrad's motion 32. [LB84]

CLERK: Mr. President, Senator Conrad would move to bracket LB84 until January 5, 2012. [LB84]

SPEAKER FLOOD: Senator Conrad, you're recognized to open on your motion. [LB84]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. Think this will probably be the last open I have today on this issue and, again, a sincere thank you to all who have weighed in with their thoughtful comments, points, policy issues, ideas and otherwise in this, what I consider to be indeed a monumental debate. This LB84 and AM1216 represents a dramatic departure from a decades long separated and distinct funding stream that has served both our roads well and our other critical obligations like education, human services, public safety, economic development, and many, many others. Somehow it seems to me that this bracket motion coming late in the day is a most poetic justice. It brings us full circle to where we started with this debate on General File. After hours, hours of debate on General File, after hours and hours of debate today on LB84 and the proposed amendment, AM1216 by Senator Fischer, the substantive issues, the substantive questions, the substantive concerns remain and have yet to be addressed by proponents. We have not heard one proponent provide concrete evidence, data information or fact about what they're basing their hope our economic recovery will rise to, to support this legislation. Almost, what, 16 hours of debate and we still have no answer to that fundamental question. That's what makes LB84 and AM1216 unaffordable and fiscally irresponsible. The bracket motion provides us one last option to say let's wait and see, let's wait and see where the economy is in a year, let's wait and see what other constituents and other interests have to say about the different options and proposals that were part of this serious and thoughtful debate and whether or not those should be workable or included. Senator Hadley noted very, very correctly, and I've tried to follow all of the data and information on infrastructure funding during my five years here, that there has been efforts to look at a shift that recognizes miles traveled in other states and even nationally, and I think that those kinds of user-based ideas should be part of the dialogue and we have time to develop those. Again, colleagues, this legislation in its original form and with the pending amendment represents an earmark. That is not to provide any judgment as to the political or emotional connotation with that word. If you look in Black's Law Dictionary as to what an earmark is, it's a designated amount for a designated project, pure and simple. So I think we can all agree that this is, in fact, an earmark. There are other earmarks in other aspects of our public policy and it's up to each individual member to decide whether or not to support those based on their merit. But what's different about this earmark is that it's not specified. We don't have a clear understanding of exactly

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how much we're going to see invested. It takes place over a 20-year period with no parameters or benchmarks to determine success. What if the economy doesn't improve? Well, there's no triggers to peel this back. What if this moves forward and is initiated and the roads funding that you're hoping happens and the construction that you're hoping happens in the districts that you've talked about during the course of this debate doesn't come to fruition, what benchmarks exist for us to go back and say, wait a minute, we need to rework this program? This is an open-ended \$1.3 billion earmark for roads funding on top of the \$1 billion dedicated to that source each year from all sources in Nebraska. Nebraska has a proud history of paying for things as we go. That's what we should continue to do. The bracket motion not only mirrors the position of opponents in this debate but also mirrors the position of our Governor, who has been quoted numerous times in numerous press reports stating: We should delay this conversation for a year if not longer; I don't know why there's a rush to judgment to decide today. It's an April 14 World-Herald story. The Governor goes on to further say he knows of only one other legislative body that acts like this, that turns its back on economic data and reality, and he says that's the United States Congress. We don't act like that in Nebraska, I agree. Questions remain on the table and have yet to be answered not only on the basis of the unknown economic forecast data proponents are utilizing to push this forward but also about whether or not this violates the well-established prohibition of binding future Legislatures. It provides no flexibility to ensure if our economic recovery is not robust we will not...the only choices are clear. We will make deep cuts to education, human services, and public safety or we will increase taxes. Those are the wrong choices in a fragile economic recovery. I believe that this is an illegal appropriation and that it violates numerous provisions of our statutory framework and those that emanate from the Nebraska Constitution, most notably under Article III, Section 1 and Article III, Section 22 and the budget process contained in our rules, Rule 5 and 8. Proponents have yet to address any of those concerns that have been brought forward numerous, numerous times on both General File and Select File. I want to talk again about the gravity of this price tag and forget for a moment that it's not supported by the economic forecast, which it's not, but what is \$65 million? Sixty-five million dollars is all we're going to have left in the Cash Reserve at the end of this biennial budget, every penny, and we're going to devote more than that each and every year for 20 years to a system that's the only agency in state government seeing a significant increase while every other critical human...critical state obligation is experiencing deep cuts. And if you don't believe they're seeing deep cuts, ask your constituents. How many providers have been lost in rural Nebraska? What happens in terms of school consolidation when there are less resources available in the future? These are questions that deserve answers. I agree that roads are important to our economic prosperity, growth, and jobs. My record on that is clear and I stand by those votes. I think we need to go back and look at the fact that Nebraska taxpayers picked up the tab for the Transportation Committee to travel around the state and hold public hearings about how to solve the roads funding crisis and they came up with 31 options. None of those options were in LB84. We had a comprehensive funding

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conference this summer. I was at it. Senator Nordquist was at it. Senator Fischer was at it. Senator Ashford helped lead it. Almost every senator was there. There were five options presented. This option was not presented. In fact, it was rejected by conference organizers. So we do have other options on the table. We do need to be solution oriented, but we need to do so in a way that is responsible and we need to follow the Nebraska way, which is to maintain our fiscal integrity, maintain our fiscal responsibility, and ensure that we can meet the obligations we have now and into the future. If you adopt the bracket motion, no one wins and no one loses. We have time to gather more information, which is never a bad thing when the stakes are this high and the economic uncertainty is so very great. Thank you, Mr. President. [LB84]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the opening to Senator Conrad's bracket motion. Senator Gloor, you are recognized. [LB84]

SENATOR GLOOR: Thank you, Mr. President. I'm pleased to be here at the end of the day with a voice to be able to speak some. This has been an interesting day. This has been...and it's probably appropriate this week, this seems to be a bill of hosannas, and appropriate in this week that it's a bill of hosannas. Hosannas, by definition as I recall, is a comment that says save us, help us, help us, I pray. That's what hosanna supposedly means. And so we're talking about tax bills and we're talking about the future and we're talking about solutions. We've had amendments that say let's take a look at increasing the gas tax. That's a better amendment than AM1216, even though use of gas is going down, even though the expectation is that gas usage will go down which means tax revenues will go down. But let's have a gas tax now. Hosanna. Hosanna to the gas tax. We talk about steering money from tax credits and addressing it that way because that may be a solution to our problem, we hope, hosanna, hosanna. We say let's bracket it and I have to admit at the first go-round on this on General File I was a supporter or bracketing this motion, thinking another year under our belts may make me a little more comfortable making this decision. And then I am reminded as I visit with other senators and just was talking to Senator Schumacher that you never have quite enough information to make you feel absolutely comfortable making these important decisions. Well, maybe one more year would be better. Maybe we'd have a little more financial information. Maybe the experts would be a little more forthcoming telling us we're out of the slump. Hosanna, we can always hope for that, hosanna. We'll have more information. And so I can't support this bracket motion because it's just a continuation of hosannas. Frankly, so is LB84, as has been pointed out by its critics, and AM1216, which says two years from now we'll be able to take money from sales tax. There is a pray, help us in both the bill and the amendment, AM1216, clearly there is, but I go back to comments I've made both on General File and this morning on Select File, and that is I believe what we hear from our constituency, what we know from our constituency and see within our districts, which is strong economic growth, steady, not overwhelming. I think what we'll hear from other experts in the upcoming week and months before we adjourn from here continues to be good news and I think we need to put a stake in the

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ground when it comes to one of the three financial priorities that I've heard constantly since I have been down here and that is K-12 financing long term, the myriad of Health and Human Services programs that require additional funding, funding that's growing, and roads, and this is a stake in the ground as relates to roads. And I can get comfortable with that hosanna. Thank you, Mr. president. [LB84]

SPEAKER FLOOD: Thank you, Senator Gloor. Senator Nordquist, you are recognized. [LB84]

SENATOR NORDQUIST: Thank you, Mr. President and members. You know, I think we have to come back to the fiscal reality here, folks. We need to put aside the wide-eyed optimism that we're hearing about the future being so rosy and get down to the numbers that we're looking at in the future. We are coming out with a budget that shows a shortfall in the next biennium of \$120 million, assuming, assuming we have 5 percent revenue growth, which according to some of our national experts this thing may be going south on us or slowing down at least, and 5 percent may be tough to get. So that's assuming we hit those projections, first of all. Then we add this on top of it. Again, puts us at \$240 million to \$250 million short in the next biennium and \$65 million in the Cash Reserve. Ultimately, we can't go much lower than that in the Cash Reserve to ensure cash flow. We can't transfer anything else. So we're going to be looking, the next biennium, \$250 million short with no safety net to turn to. For us in this body, that may be eliminating some of our staff even further than where we've been. For the Supreme Court, it's closing county courts. For HHS, it's not addressing the developmental disability list. It's probably another 5 percent provider rate cut on top of what we've done, and that's nursing homes closing in western Nebraska and the Panhandle. That's what that means. These decisions have real consequences. That's what that means. We are going to see school consolidations. This has serious consequences for the future of our state and the opponents have not...the proponents have not addressed how it's going to be paid for, even if our projections come in as we are projecting. No one has explained how we would pay for that. No one certainly has explained how we pay for it if those projections come in a little short. No one has said how their cuts are. The other thing I want to address is the expressways. I know that's gotten a lot of support from a lot of members in here about that. I asked the legal counsel for the Transportation Committee what's the cost of that--\$800 million to over \$1 billion. I can't remember if he said \$1.3 billion or \$1.5 billion. That's the total cost of the expressways. And if my calculations are wrong here, I'd be welcome to be corrected. But 25 percent of the money we're talking about here, that's \$16 million a year. I think if any of you are hearing from constituents about the expressways, I hope you're being honest with them that this is \$16 million a year starting in 2013 on an \$800 million to a \$1.3 billion project, that even if this goes forward for 20 years like it's laid out in the bill you're maybe on the low end of the projected costs, which we know construction costs go up, you're maybe going to get a third of the way there. I hope you're all being honest with your constituents about that, about the impact that this has, and I hope you're being honest

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with yourselves about the fiscal reality that we're in, in this state. Thank you, Mr. Speaker. [LB84]

SPEAKER FLOOD: Thank you, Senator Nordquist. Mr. Clerk, items for the record? [LB84]

CLERK: Mr. President, I have but one item. Senator Conrad would like to print an amendment to LB22. (Legislative Journal page 1241.) [LB22]

And I do have a priority motion, Mr. President. Senator Coash would move to adjourn the body until Wednesday morning, April 20, at 9:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)