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Floor Debate
February 03, 2012

[LB269 LB357 LB470 LB536 LB677 LB725 LB770 LB771 LB828 LB862A LB873 LB879
LB946 LB959 LB976 LR389]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-first day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Pastor Penny Schulz from Dunbar Presbyterian Church in Dunbar, Senator Heidemann's district. Would you all please rise.

PASTOR SCHULZ: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Schulz. I now call to order the twenty-first day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB946 as correctly engrossed. Hearing notices from the Agriculture Committee, the Government Committee, the Health and Human Services Committee, the Judiciary Committee, and the Transportation and Telecommunications Committee, those signed by their respective Chairs. Report of registered lobbyists for this week to be inserted in the Legislative Journal. A series of reports from various state agencies have been received, will be acknowledged, and on file in the Clerk's Office. And finally, Mr. President, a Reference report with certain gubernatorial appointees. That's all that I have at this time. (Legislative Journal pages 425-429.) [LB946]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Speaker Flood, you're recognized for an announcement. (Gavel)

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. A quick note as it relates to today's agenda: We will pass over LB646 and LB540. Again, this morning we'll be passing over LB646 and LB540. Thank you.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, we'll move to the first

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

Floor Debate
February 03, 2012

item under General File, LB536. [LB536]

CLERK: Mr. President, LB536 is a bill originally introduced by Senator Wightman. (Read title.) Introduced on January 18 of last year. Senator Wightman presented his bill to the Legislature yesterday. The committee amendments have not been offered as of yet, Mr. President. (AM1668, Legislative Journal page 310.) [LB536]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Wightman, would you like to give us a brief summary of LB536. [LB536]

SENATOR WIGHTMAN: Thank you, Mr. President. Members of the body, we just got into the opening yesterday. Well, we opened pretty much on the bill. LB536 would enact the Nebraska Uniform Real Property Transfer on Death Act. It...this operates only on real estate. It mirrors the Uniform Real Property Transfer on Death Act promulgated by the Uniform Law Commission in 2009. A lot of work has been done on the bill in preparing it for where it is today and did not come out of committee until some of these compromises were reached. One was that... [LB536]

PRESIDENT SHEEHY: (Gavel) [LB536]

SENATOR WIGHTMAN: ...first was a concern of the Health and Human Services Department with regard to retaining liens that they might have on this property. They were satisfied with the amendments that are proposed. And then the next one was the county officials were concerned with regard to whether inheritance tax would be enforceable against this property. Again, we've made some changes and specifically built that into the act so that it is clear that inheritance taxes would remain on this property under the Nebraska inheritance tax law. So those changes have both been addressed. I had said that this is certainly not much different than many estate planning tools that are available to the practitioner in the area of law that currently exist. For example, this would just allow you to do the same thing you would do with a transfer on death designation on any bank accounts. If you had a brokerage account with a particular brokerage firm, you could do exactly the same thing just by designating a beneficiary. We have in the real estate law, that is used frequently by practitioners, a transfer of the remainder interest, retaining a life estate, and this would basically do the same thing. So we believe that we've addressed most of the issues, if not all of the issues, in getting the bill to this stage. Thank you, Mr. President. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Wightman. As was noted, there is a Judiciary Committee amendment, AM1668. Senator Ashford, you're recognized to open. [LB536]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. Good morning, everyone. Senator Wightman has in the last couple of days gone through this bill and the

Floor Debate
February 03, 2012

amendment in some detail and the amendment does become the bill. As Senator Wightman said, this work is the result of three years of effort by the bar, by law professors, Senator Wightman's team, and the committee amendment is the result of that. The one issue that is...was clearly...we dealt with and it has an impact on the counties, and Senator Wightman has described it, is the requirement in the amendment that there must be a Form 521 filed before a transfer of property so that the county is informed for tax purposes that this transfer has occurred when there is a transfer pursuant to this act. And the intent of the change is to give the counties additional notice beyond what they would have already have received of the transfer, and the counties have...as Senator Wightman suggested, the counties do agree to...that this provision is sufficient for them to have adequate notice. There are numbers of other technical changes and I'm going to defer to Senator Wightman on those. He is, as we all know, the expert beyond all experts on this topic, and so rather than go through and read the detail of the bill, I'm going to defer to Senator Wightman. Thank you. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening of the Judiciary Committee amendment, AM1668. Members requesting to speak: Senator Flood, followed by Senator Dubas, Senator Wightman, and Senator Schumacher. Senator Flood. [LB536]

SPEAKER FLOOD: Thank you, Mr. President and members. I have for some time had concerns about the transfer on death deed bill that Senator Wightman has put forward. And to put my concerns in context, I want to talk about where I think this could be used for mischief. Think about Grandma in the nursing home, relying on caregivers and loving every minute that her son or daughter shows up to see her in a care facility. And when somebody comes to see her, she's delighted. They bring her food. They bring her knitting materials. They take her out on a day trip. They bring the grandkids in. They do all sorts of things. It's Grandma's day, it's Grandma's world, it's what she cares about the most in the sunset of her life. What I fear about a transfer of death deed is that you'll get Grandma to sign something, and in the bill's current form, you know, you don't have to have witnesses, and I think Senator Wightman recognizes that that's a necessary step. But what you really have to protect is a person's ability to make a decision that they know and have the competency to make what they're doing. They have...Grandma has to know that she's giving the farm and we have a lot of millionaires in this state that happen to be landowners. They don't have much in their bank, but they own a quarter of ground and it's been in the family for a long time. And they don't consider themselves rich because that family (sic) is what they want to pass on to those that follow them. But the reality is, especially with today's land values, that land is worth a lot of money, and that deed is the single biggest asset of Grandma's estate. And when it passes through a process that is not a will...and I understand you can grant a life estate, you know, to yourself, and then give the land to your kids through a deed. That is also something that you've got to be careful of. But a transfer on death deed is a pretty powerful instrument used to transfer real estate. And yes, other states are doing it. Where I want to go on

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

Floor Debate
February 03, 2012

this is, Senator Wightman has said, okay, we have to have two witnesses on the deed. At a minimum, that's necessary. Both witnesses, in my opinion, should be disinterested in the real estate. Neither of those two witnesses should be a grantee of the real estate. And, furthermore, as soon as Grandma signs that deed, or when she's signing it... [LB536]

PRESIDENT SHEEHY: (Gavel) [LB536]

SPEAKER FLOOD: ...those other potential grantees or interested family members should leave the room. And Grandma should have a chance to ask questions without them being present. One of the benefits of going through the will process is you have 100 years of case law that modifies the behavior of lawyers and testators and witnesses and notaries during the execution of that last will and testament or power of attorney or whatever it is. What I'm suggesting here, and I'm going to let Senator Wightman respond to this, is, okay, if you want a transfer on death deed, have two witnesses that are disinterested sign the will. Also have them, while they're signing as witnesses...there should be an affidavit. And this is a high hurdle and it's something that you may not want to do. There should be an affidavit that says that the witnesses believe, to the best of their ability, recognizing they're not medical professionals, that Grandma is competent. And I'd even like it to go a step further and say that, to the best of their ability, there's no undue influence. Before I have somebody sign a will, I have everybody else leave the room and I say, okay, has anybody twisted your arm today to do what you want to do in your will? And if the answer is no, we proceed. Have you had a chance to review this will and have we talked about it? Yes. [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SPEAKER FLOOD: Have you had a chance to tell me what your assets are and your liabilities? Yes. I guess the whole point of this affidavit piece on the deed is basically two witnesses that have to go in there and be more than just witnesses. They have to sit down with Grandma, they have to have the interested folks leave the room, and they have to say, okay, Mildred, I don't know you very well, or I know you very well, has anybody been pressuring you to do this? Do you feel like you have to do this for any reason? Is this something you want to do of your own free will? Because let me tell you, you're going to have fights on fights on fights if you've got the undue influence or the duress argument a couple of months down the road. And that piece of ground is the family's crown jewel. And there's a lot of mischief that happens in the sunset of one's life from people that are very close to Grandma. So what I want are two signatures, disinterested, and I'd like them, as part of that deed, to sign an affidavit. [LB536]

PRESIDENT SHEEHY: Time, Senator. [LB536]

SPEAKER FLOOD: Thank you, Mr. President. [LB536]

Floor Debate
February 03, 2012

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Dubas. [LB536]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. Senator Flood has just outlined a lot of the concerns that I've had as I've read through this with the help of my legislative aide to understand it because for the layman person it's pretty difficult to make your way through this amendment and really know what's going on. But would Senator Wightman yield to some questions, please? [LB536]

PRESIDENT SHEEHY: Senator Wightman, would you yield to Senator Dubas? [LB536]

SENATOR WIGHTMAN: Certainly. [LB536]

SENATOR DUBAS: Thank you, Senator Wightman. And it sounds like there's been some conversation about adding witnesses to this and that was a concern that I had, so I would hope that's a direction we could go. The question I would have is, after the transfer is made, any liens that are on this property, are those still in place? What happens to liens or anything...any encumbrances on the land after the transfer? [LB536]

SENATOR WIGHTMAN: Well, as far as a current lien, I don't think there's any question but what that lien, if under the law that's in effect at the time was a good lien, it will still be a good lien. Now, general creditors may be quite a different thing. But as far as something that is a lien, such as a deed of trust, a mortgage, a statutory lien as a result of maybe special assessments, those are still going to be liens against the property because they are liens against the real estate, not against...well, in addition to being a lien against the transferor. [LB536]

SENATOR DUBAS: So the liens would stay intact but you said something about there could be a different story for creditors? Is that correct? [LB536]

SENATOR WIGHTMAN: General creditors is what I'm saying, Senator Dubas. [LB536]

SENATOR DUBAS: Okay. Okay. And I know there's a lot of warnings in here and I think that's good. Is there any warning or is there any language in here that I may have missed that really helps the person who is signing this understand that this supersedes any other documents, like wills or anything like that, that they may have already had in place? [LB536]

SENATOR WIGHTMAN: Well, you know, I'll address that in light of what other documents, that are similarly used, do. For example, if you place your CDs, and I mentioned that earlier, investments accounts, say you have a brokerage account with an investor, could have a million dollars in it. And basically, all you're required to do in that instance is probably have a notarized statement and you can transfer a million

Floor Debate
February 03, 2012

dollars in the same way we're looking at maybe transferring a house, and in some instances it could be a million dollars. I'll certainly agree with that. But we also have the deed, and I referred to that, I don't know if you're familiar with them, a deed of a remainder interest in real estate in which you retain the life interest. We use those all the time, well, not all the time but frequently as an estate planning tool. Those probably have more problems than these in that you can't change those later. Once you record that deed, it has created a vested interest in the grantee of that deed, whereas, here you've designated a beneficiary that can be changed at any time during your lifetime as long as you're competent. [LB536]

SENATOR DUBAS: Thank you, Senator Wightman. And I think my last question will be, it appears in here that there's a lot of references to the Department of Health and Human Services and involvement of Medicaid, etcetera, etcetera. It appears to me, and maybe this is pretty standard, but that we're giving DHHS a lot of power in here. You know, if this transfer of deed happens and it's really the intent of this person to make sure that that land stays in the family, you know, they don't want it to go anywhere else, and then Medicaid issues come into play and they're forced to sell this land, that seems that that could go against the intent of the person who initiated this transfer of deed. I guess what I'm asking, is this typical language? [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SENATOR DUBAS: Does DHHS have that type of power in other situations? [LB536]

SENATOR WIGHTMAN: We probably maybe have given them more rights here than they would have under a legal life estate. But, you know....I don't know whether we have or not because I'd really have to study their rules and regulations more than I have now. Normally, that requires a five-year waiting period even if you were to transfer land outright for less than full consideration. So there's a look-back rule of five years under both federal and state law that perhaps does not apply to this. I'm not sure how that would be interpreted, probably wouldn't know until the court interpreted it, but. [LB536]

PRESIDENT SHEEHY: Time, Senator. [LB536]

SENATOR DUBAS: Thank you. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Wightman. [LB536]

SENATOR WIGHTMAN: Yes, I did want to speak to the amendment. The committee amendment, as I had stated earlier, is a product of three years of work with interested parties. I will address some of the major changes made to address those concerns that have been raised and addressed in AM1668. In order to address concerns raised by the Department of Health and Human Services, two changes were made. Section 20 was

Floor Debate
February 03, 2012

added, which will be found on page 10 of the amended bill or amendment, which is now the bill. Lines 15 through 19 provides that the department may require the revocation of a transfer on death deed by a transferor in order for the transferor to qualify for Medicaid assistance. It is not the intent of this act that it be used to circumvent recovery of sum spent for Medicaid assistance on behalf of the transferor, and a warning must be given about the ability of the Department of Social (sic) Services to require revocation of the transfer on death deed be contained in the transfer on death deed. This change is made on page 3, lines 20 through 23. Also we attempted to address the concerns of the county officials, and Douglas County, Lancaster County, and maybe one or two other counties contacted us, were concerned over the inheritance tax lien. There's no question that the inheritance tax does stay and is maintained as a lien against this property. That's true almost any way you pass property, as long as you've had the enjoyment of that property, the right to the income, the right to live in it, or whatever it might be, during your lifetime. And that's true under federal estate tax law and state income tax law. Language has been added to page 21 to clarify the effect of recording a transfer on death deed. An additional stamp tax exemption has been added on page 24 for death certificates, which will now be statutorily required to be filed to effectuate certain transfers of property but will not themselves transfer the property. And that's true even if you have a deed to a remainder interest and the transferor...which we have in effect now, you still have to record a deed of...or a death certificate to show that the transferor is now deceased. Otherwise, a title examiner is going to be wondering where the transferor is since it would be required that he sign the property, he or she. Additionally, the Department of Revenue has requested this language on page 24, line 21, specifies which death certificates are exempt from the documentary stamp tax. As I say, we're still working with Senator Flood and some of his concerns with regard to an amendment to AM1668. But I do want to address a couple of those issues if I might. One of the things, particularly the disinterested witnesses, probably we have no problem with that, but to try to make a determination as to whether the transferor was under undue influence is beyond what a will requires; it's beyond what any of these other transfer requires. If somebody comes in and puts the property in joint tenancy with one of the children, that's not required there. If...we talked about the retained life interest and the transfer of a remainder interest, it's not required in that situation, nor is it required... [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SENATOR WIGHTMAN: ...if the person walks into the bank, or a brokerage firm that had most of the assets of this person, and says, I want to put that in joint tenancy or I want to make a payable on death account out of it. So some of these would be going way beyond what we now have as far as, particularly, with regard to the undue influence issue. Thank you, Mr. President. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Schumacher, followed

Floor Debate
February 03, 2012

by Senator Flood, and Senator Pirsch. Senator Schumacher. [LB536]

SENATOR SCHUMACHER: Thank you, Mr. President. Members of the body, a brief, maybe, review of real estate history might help us all understand what's going on here. Real estate is often thought of as a bundle of rights. And it starts out with a right that is absolute and they call that fee simple absolute, the whole enchilada--every right that possibly could be associated with the land. And that bundle of rights can be broken up. You can give out parcels of that right. You can give out the mineral rights; you can give out the rights to a future interest; you can...any one of the imaginable rights in that piece of real estate can be given out and broken up. And that in today's day is done by things usually called a deed, a deed of trust, a mortgage, and things like that. The act of delivering real estate to another party is a big deal. In fact, in...500 years ago the only way you could do it was by going to the four corners of the land and dancing around and throwing dirt in the air in a ceremony called livery of seisin. That has been abbreviated now through a series of long history where all you have to do is sign a very simple paper that says who the grantor was, or who the person giving the interest was, who the recipient is, and describing whatever the interest it is. And, traditionally, today that is done very simply with a piece of paper usually drawn up by a lawyer and usually in an attorney's presence to try to keep things a little bit on the up and up. That being the case, I do have some questions for Senator Wightman, if he'd yield. [LB536]

PRESIDENT SHEEHY: Senator Wightman, would you yield to Senator Schumacher? [LB536]

SENATOR WIGHTMAN: Yes, I will. [LB536]

SENATOR SCHUMACHER: Senator, this particular transfer on death, does that...can that be the rights of a quitclaim deed, a special warranty deed, a warranty deed, any of the various subdivisions of instruments transferring real estate? [LB536]

SENATOR WIGHTMAN: Senator Schumacher, I question that it could be a quitclaim deed from the standpoint that you really haven't quitclaimed it all, you've just designated a beneficiary. With regard to an estate for years, I think certainly it could. With regard to...well, a life estate would end anyway by the time this particular document would take effect. So in those instance it would not, but an estate for years I would think it would. [LB536]

SENATOR SCHUMACHER: So a quitclaim...I couldn't give a quitclaim deed effective on death if I was pretty sure I had title to the property but didn't want to guarantee anything by warranty deed? [LB536]

SENATOR WIGHTMAN: Oh, well, you may be able to do that, but I'm saying you aren't going to be transferring very much in a quitclaim deed since it doesn't take effect until

Floor Debate
February 03, 2012

death. But, yeah, if you had...say, all you had was a remainder interest, I suppose you could quitclaim that interest. [LB536]

SENATOR SCHUMACHER: So this mechanism can be used to transfer any one of the bundle of rights or the entire bundle of rights on death. Is that... [LB536]

SENATOR WIGHTMAN: Well, certainly most of them. I guess I'd have to think through whether it's all of them,... [LB536]

SENATOR SCHUMACHER: Okay. [LB536]

SENATOR WIGHTMAN: ...but probably almost anything. [LB536]

SENATOR SCHUMACHER: Thank you, Senator Wightman. Senator Flood, would you yield to a question if you're on the floor? [LB536]

PRESIDENT SHEEHY: Senator Flood, would you yield to Senator Schumacher? [LB536]

SPEAKER FLOOD: Yes. [LB536]

SENATOR SCHUMACHER: As a prelude to that question, Senator Flood raises some very interesting and valid points, at least from what I've been able to learn the last 30 years practicing law. We are coming into a rather unique time in that our agricultural properties are of extreme value. We have, generally, in the generation inheriting, large families. [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SENATOR SCHUMACHER: Not surprisingly, there may be people in those families who are more eager than others to get property. Senator Flood, how is there more danger that you see here than just the standard situation where somebody might go into the nursing home, get a parent who is marginally competent, and just get them to sign just a plain old deed to the whole thing? [LB536]

SPEAKER FLOOD: Well, I hate to sound trite about it but, you know, a deed is just one piece of paper. And when you sign a will, you're looking at sometimes 10, sometimes 30 pages in a trust or whatever it is. And I think it's just one easy piece of paper to put in front of Mom with a notary, get her to sign it, get a notary to put a stamp on it, you know. If there's mischief, you say, hey, Mom, I need you to sign this, she signs it, and, you know, you have a notary in the room, she stamps it, you take it to the courthouse, you file it and you're in business. I guess I want to make that transfer a bigger deal. [LB536]

Floor Debate
February 03, 2012

PRESIDENT SHEEHY: Time, Senator. [LB536]

SENATOR SCHUMACHER: Thank you. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Flood. [LB536]

SPEAKER FLOOD: Thank you, Mr. President. I'd like to have a discussion with Senator Wightman, if I may. [LB536]

PRESIDENT SHEEHY: Senator Wightman, would you yield to Senator Flood? [LB536]

SENATOR WIGHTMAN: Yes, I will. [LB536]

SPEAKER FLOOD: Senator Wightman, I appreciate where you're going with AM1858, that amendment that you haven't filed yet. It talks about having the two witnesses. Would you be willing...I'm just going to ask you a series of questions to try to sort through this on the floor. Would you be willing to make those two "disinterested" witnesses? [LB536]

SENATOR WIGHTMAN: I believe we can do that. [LB536]

SPEAKER FLOOD: Okay. Would you be willing to require that those witnesses, outside of the presence of any of the grantees, sit down with the grantor or grantors and ask some questions and those questions would be something like...and I don't know how you would put this in statute, but the questions would be like, hey, Mildred, has anybody tried to twist your arm to do this today, you know? What year is it? Who is the President, you know? How you doing? Where do you live at, you know? How many acres do you have? Tell me a little bit more about the property so that they could then sign, as part of their witnessing duties, a statement that said they were disinterested, they were not grantees, which is the same thing. To the best of their ability, Mildred seems competent today and she was oriented at the time, she knew where she was, she was oriented to time, place, and all that stuff, and then have them sign under oath as witnesses so that when Mildred signs it, they can say, well, I did sit down with her and asked her some questions. Would you be okay with something like that? [LB536]

SENATOR WIGHTMAN: Well, that part, particularly so far as...insofar as it goes to trying to determine whether that person had been subject to undue influence, I think is just very, very difficult to make work and to, in fact, put it in practice. I have no problem with the disinterested witnesses. It's been suggested to me by one of the attorneys on the floor here today that the more we put in, the more we are probably guaranteeing a lawsuit in trying to enforce one of these at all. The disinterested witnesses doesn't bother me, particularly, but to sit down and determine what they need to ask...these witnesses need to ask ahead of time, I do have some problems with that. [LB536]

Floor Debate
February 03, 2012

SPEAKER FLOOD: And just to be clear, Senator Wightman and members, I'm not asking that any statute that we draw has a...has anything more than just a legislative history. I'm not suggesting we put in the statute they have to be oriented to time, place and, you know, and know the number of acres they have or who the President is or any of that stuff. But I think we should expect something from those witnesses that basically say, yes, in my opinion, she knew what she was doing and nobody was twisting her arm. So when they sign that as a witness...because that's going to be the question that you're going to have to sort through when you go to court on an undue influence claim. They're going to sit those witnesses down; they're going to say, did Mildred know what she was doing when she signed this? And I guess by requiring those witnesses to sign a sworn statement that says, yes, she did, you put a burden on the witness to at least sit down and ask her. You know, a lot of times, you want to get the family, the grantees out of the room, the family members, and say, Mildred, you know you're giving your farm to your son, and your other son isn't going to get the farm. Is that what you want to do? Well, no, I want everybody to have the same thing. I want them...well, you know, you're just giving it to John, you're not giving it to Robert; is that what you want? And you want to catch that there before that turns into a ten-year fight. Because that simple deed sounds like a simple deal, but let me tell you when Robert finds out that John got the entire farm, that witness is going to be sitting on a stand somewhere and is going to be... [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SPEAKER FLOOD: ...have their deposition taken. I'm just saying, let's be up-front about what they're signing. And if you want to be a witness, then let's go ahead and make sure the witness asks some basic questions. Now if you ask Mom, and maybe this is what Mildred would say, well, yeah, I know I want John to have the farm and, you know, I'm doing other things for Robert or I don't want Robert to have the farm. If she knows what she's doing, that's great evidence for the fight that's coming in the county court when they fight over that estate. I just say, let's be up-front about solving the problem before it starts and let's expect something from those witnesses. And do witnesses do that now on wills? No. I think a lot of attorneys will say, you know, has anybody twisted your arm today? And if they say, yes, the whole process stops so that we can wait and make sure we have their true intent in that will. So, I guess, for me I've got to have the affidavit. If you do the two disinterested and some kind of an affidavit, I'll be there. [LB536]

PRESIDENT SHEEHY: Time, Senator. [LB536]

SPEAKER FLOOD: Thanks. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Flood. Members requesting to speak on the

Floor Debate
February 03, 2012

amendment, AM1668, we have Senator Pirsch, followed by Senator Wightman, Senator Burke Harr, Senator Carlson, Senator Langemeier. Senator Pirsch. [LB536]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I wonder if Senator Flood may yield to a quick question. [LB536]

PRESIDENT SHEEHY: Senator Flood, would you yield to Senator Pirsch? [LB536]

SPEAKER FLOOD: Yes. [LB536]

SENATOR PIRSCH: And I appreciate your concern in this area. This is...this concept is one that I have been looking at for a number of years but had this similar kind of concerns about making sure that it is not one in which would be a vehicle for fraudulent type of activity. How would you envision then these two disinterested witnesses? What sort of documentation and what sort of steps would...is there any sort of parallel type of documentation or steps in some other way, or is this going to be kind of a novel approach to this that's not currently utilized in...well, obviously, we're not using this in wills or any other way. But is there some sort of paradigm to look to for this? [LB536]

SPEAKER FLOOD: Well, Senator, I don't think we can expect witnesses to perform a medical exam or make a medical evaluation as to someone's competence. That's reserved for doctors. But let me put two situations together. Grandma is in the nursing home and you walk in and she's not able to get out bed, she's not able to write her name, and you're a witness. And you're watching somebody sign a deed and somebody has got their hand on her hand and they're helping her draw her signature. And she's not...I mean, what I'm trying to catch is gross situations where she has no business making any financial decision at the time she signs the deed. [LB536]

SENATOR PIRSCH: Yeah. With respect to that, hopefully, even if that was the case with somebody using Grandma's hand on a will or whatnot, hopefully, that would...there's an existing process. But this additional safeguard then would be supposedly usable in situations where Grandma is able to write herself. It's just a matter of some sort of garnering and indication of what is on Grandmother's mind or what... [LB536]

SPEAKER FLOOD: Yeah. [LB536]

SENATOR PIRSCH: ...her mental status is. So I'm wondering, in terms of what you foresee, what types of attestation that the witnesses will be...where do you see the language that's going to exist on this document that will give you that indicia of reliability that Grandmother was both in her proper mental faculties as well as understood the implications of what she was signing? [LB536]

Floor Debate
February 03, 2012

SPEAKER FLOOD: Well, and you're right, that's the tough part. You know, what I'd prefer to see is, you know, listen, I'm a witness. I'm disinterested in that I'm not a grantee or I'm not a grantee's husband or anything like that. [LB536]

SENATOR PIRSCH: Sure. [LB536]

SPEAKER FLOOD: So that's one thing you'd want in there. [LB536]

SENATOR PIRSCH: Sure. [LB536]

SPEAKER FLOOD: The second thing would be, at the time I met her I thought she was competent, which calls for a subjective judgment that could be difficult to make. And she knew what she was doing. She knew that by signing this document, you know, Ronald was getting the farm. [LB536]

SENATOR PIRSCH: Yeah. [LB536]

SPEAKER FLOOD: That's all that I'm looking for. [LB536]

SENATOR PIRSCH: The one hard part is that a lot of these, you know, and my experience is, a lot of these witnesses are people who have not necessarily met Grandmother in the past and have that background. I mean, I suppose it could be but, as you mentioned, it may well not be. And so having a baseline understanding of what Grandmother was or, you know, should be, I guess that's...it's the particular language that I guess is...and the way to document. I think the end goal is laudable. I'm just wondering if there's particular language... [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SENATOR PIRSCH: ...or how you would foresee structuring that to get at the potential problem. So I'll yield the balance of my time to Speaker Flood. [LB536]

PRESIDENT SHEEHY: Senator Flood, 50 seconds. [LB536]

SPEAKER FLOOD: Thank you, Senator Pirsch. You know, that's the devil is in the detail and if I felt this place wanted to require someone on an affidavit I'd go to work on putting the language together. But let me give you another example. Okay, Grandma gives her son the power of attorney and it includes the power to transfer real estate. And now, you know, powers of attorney can't go in and change Grandma's will. Grandma's will says, the farm goes to all three kids in equal shares with the right by representation to any deceased child's children. Okay, so now Ronald is the POA and he's got a right to transfer real estate. He says, well, absent her intent in the will, Mom told me she wanted me to have the farm. [LB536]

Floor Debate
February 03, 2012

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Pirsch. Thank you, Senator Flood. Senator Wightman. [LB536]

SENATOR WIGHTMAN: Thank you, Mr. President. I would like to make a few comments, and then if Senator Flood is still here, would like to ask him some questions and engage in some conversation with him. As I had said earlier, I have no problem with saying that the witnesses have got to be shown to be disinterested parties. Probably of the states that have adopted this, which is a substantial number, I think somewhere between 15 and 25, maybe others have it under consideration now, almost...many of them have engrafted their own legislation or their own statutory language different from the uniform bill. And from our study, it appears that the state of Illinois probably has the most stringent, and I would like to read to you what they say with regard to the witnesses that would require in addition to notary public. Section 75 of their law says, signing attestation and acknowledgement. Every transfer on death instrument shall be signed by the owner or by some person in his or her presence and by his or her direction and shall be attested in writing by two or more credible witnesses whose signatures along with the owner's signature shall be acknowledged by a notary public. The witnesses shall attest in writing that on the date thereof, the owner executed the transfer on death instrument in their presence as his or her own free and voluntary act and deed, and that at the time of the execution the witnesses believed the owner to be of sound mind and memory. And I will concede that that when it says "own free and voluntary act," that that may impose some duty to see that there was not undue influence. But on the other hand, I would also like...and I think we could probably agree to that language. On the other hand, I would like to point out some other instances in which billions...and I don't know anyone that has billions, I know of them, but could be a \$10 million life insurance policy. They request or somebody asks on their behalf, power of attorney, one of their children, with them sitting in the room, asks the life insurance company to send out a change of beneficiary form. That comes out in the mail or by fax or e-mail the same day, the person signs it and most of them would require a witness, doesn't even require a notary, and that could transfer \$10 million in one instance with not nearly as much protection as we would be willing to provide in this document. So, yes, it's real estate that may well be a home, so maybe it's entitled to some of the rights of a homestead, but it seems to me that to go much beyond...go any, maybe, beyond what Illinois has done, would be to impose restrictions that would be almost impossible to meet or impossible to know that they've been complied with once a witness signed. And so with that, if Senator Flood would yield to a question or two, I would... [LB536]

PRESIDENT SHEEHY: Senator Flood, would you yield to Senator Wightman? [LB536]

SPEAKER FLOOD: Yes. [LB536]

SENATOR WIGHTMAN: Senator Flood, and you were here and heard what I just read

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Floor Debate
February 03, 2012

into the record with regard to the Illinois statute, and I think you may have a copy of it. Is that correct? [LB536]

SPEAKER FLOOD: I do. [LB536]

SENATOR WIGHTMAN: Would that language be satisfactory to meet the contentions that you've raised? [LB536]

SPEAKER FLOOD: Yes, I do. You know, if you did... [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SPEAKER FLOOD: ...if you did two disinterested witnesses, and I'd like this to be a sworn statement so when the notary notarizes the grantor or grantor's signature on the deed, they'd also be notarizing the fact that the witnesses...this should be in there, that the witnesses should know that when they witness this is what they're saying and so it should be a sworn statement by them at the bottom with the notary. If you did this, and put this language in there in the bill, and expect it on the deed, I'd be fine. [LB536]

SENATOR WIGHTMAN: I guess my question with regard to a sworn statement is that a deed normally requires an acknowledgement but not an affidavit. It's not in an affidavit form. Any of the other documents I'm talking about would not be affidavits on the part of the witnesses. Some of them may be but most of them would not be. So I might have a little problem... [LB536]

PRESIDENT SHEEHY: Time, Senator. [LB536]

SENATOR WIGHTMAN: ...with saying that they have to swear. I have no problem... [LB536]

PRESIDENT SHEEHY: Time, Senator. [LB536]

SENATOR WIGHTMAN: Excuse me. Thank you. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Burke Harr. [LB536]

SENATOR HARR: Thank you, Mr. Lieutenant Governor. I want to thank John Wightman, or Senator Wightman for bringing this bill on behalf of the Uniform Law Commission. I know a lot of people don't like the Uniform Law Commission for political reasons. I think each bill needs to be evaluated on a case-by-case basis. When LB536 first came in front of Judiciary, I was not a big fan of this bill, I must admit. And Senator Wightman, to his credit, worked on the bill and we came up with AM1668 and I think it's helped make the bill better. That being said, I still have some concerns. Transfer on

Floor Debate
February 03, 2012

death is cheap estate planning and as the old saying goes, you usually get what you pay for. And these transfer on death will often occur by individuals who may not always understand the ramifications of their actions who don't have the background to know. And I was wondering if Senator Wightman would yield to a question. [LB536]

PRESIDENT SHEEHY: Senator Wightman, would you yield to Senator Harr? [LB536]

SENATOR WIGHTMAN: Certainly. [LB536]

SENATOR HARR: Thank you, Senator Wightman, and thank you for all your work on this bill. I have a question. Let's say there is a couple, it's a second marriage, and as part of the "prenup" the husband tells...assigns the wife a life estate with the remainder going to his children. Now, if he were to later do a transfer on death, would that nullify the prenuptial agreement? Which would take precedence? [LB536]

SENATOR WIGHTMAN: Usually a prenuptial agreement refers to the fact that if they make voluntary changes that that would take precedence. And it would take precedence, in my opinion, at any rate if the act was done after the date of the prenuptial agreement, because that prenuptial agreement is only between the husband and the wife, not between the children who might have some hope of inheritance, an expectancy or whatever we might call it. [LB536]

SENATOR HARR: All right and I appreciate that. So let's assume that the transfer on death was done prior and then a "prenup" occurs, and then the wife is given a life estate. Which takes precedence? [LB536]

SENATOR WIGHTMAN: That's still might very well take precedence over that because if they don't refer to that previous deed...you're talking about he's deeded it to his spouse-to-be, if we're talking a prenuptial agreement. Prior to the time that they sign the prenuptial agreement...prenuptial, as you know, would refer to one entered into prior to the marriage as opposed to a postnuptial agreement that would be entered into after the marriage, which you're also allowed to do. [LB536]

SENATOR HARR: Okay. Well, thank you very much. I think, as you said, you believe there isn't clear law on this. And I worry if parties don't understand their interests or the ramifications, a disinterested third party to talk them through this situation, we're going to end up with unintended consequences. And so while I like the idea of democratizing transfer and not having to hire lawyers for wills, I think there is an importance to have someone who is educated in the area and can help explain to the individual the importance of their actions so that you avoid family disputes down the road. There is absolutely nothing worse than a family dispute over money. It tears a family apart. And oftentimes that can be avoided if, up-front, all parties are made aware of what's going on, and it often takes an impartial third party to help explain those situations. [LB536]

Floor Debate
February 03, 2012

PRESIDENT SHEEHY: One minute. [LB536]

SENATOR HARR: And so, while I like being able to save a little money, I just worry that maybe this isn't the best way to do that. So thank you very much. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Carlson. [LB536]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Here's a nonattorney getting involved in this conversation and a lot of these things in this bill are difficult for me to understand. I would like to address a question to Senator Flood if he would yield. [LB536]

PRESIDENT SHEEHY: Senator Flood, would you yield to Senator Carlson? [LB536]

SPEAKER FLOOD: Yes. [LB536]

SENATOR CARLSON: As a nonattorney, certainly I don't have knowledge in these areas but I have experienced holding power of attorney for general decisions and I've held power of attorney for medical decisions and I've been executor on several estates, and I know that your beliefs are that you want to guard against overregulation and government overreach, and it almost sounds to me like we could be getting into this area with what you've recommended. And so, you're saying that there should be two disinterested witnesses to this transaction which would be a notarized instrument. Would that be correct? [LB536]

SPEAKER FLOOD: Yes. [LB536]

SENATOR CARLSON: And what are the duties of a notary? [LB536]

SPEAKER FLOOD: The primary duty of a notary is that the person that says they're signing is actually the person that is signing and that that name matches the name on the document and that they verify that that person in the flesh actually signed that instrument. [LB536]

SENATOR CARLSON: And that's the primary duty versus making any kind of decision on the competency of the individual signing. Would that be correct? [LB536]

SPEAKER FLOOD: Right. [LB536]

SENATOR CARLSON: And so that's your suggestion, to have two disinterested witnesses... [LB536]

Floor Debate
February 03, 2012

SPEAKER FLOOD: Right. [LB536]

SENATOR CARLSON: ...that would be making that judgment. [LB536]

SPEAKER FLOOD: Right. [LB536]

SENATOR CARLSON: Now, is it necessary that one of those disinterested parties be an attorney? [LB536]

SPEAKER FLOOD: No. [LB536]

SENATOR CARLSON: Is there any training necessary for them to make the assessments that you've indicated they should make? [LB536]

SPEAKER FLOOD: No, but anytime you sign something you should read what you're signing, understand what you're signing, and then be able to say, yes, I agree with this and I can sign it, which is a...I think they'd have to be over the age of 19. Anytime you have an affidavit, you know, you want somebody that has the legal authority to make a sworn statement. If you're under the age of 19, then you have to have a parent or guardian make that statement for you. [LB536]

SENATOR CARLSON: Now, this would be done so that if there's a problem later on, it's referred back to that notarized piece of paper and the witnesses that signed it, and then they would be witnesses in some kind of a court case probably. [LB536]

SPEAKER FLOOD: They could be, yeah. [LB536]

SENATOR CARLSON: And so it would be asked of them, how did you know what to ask to make sure that somebody was competent to sign this document? Would that be correct? [LB536]

SPEAKER FLOOD: I think that would be one of the scenarios that would come up in court, yes. [LB536]

SENATOR CARLSON: But in your...in your estimation, it's not necessary to have any specific additional training that those people are aware of what they're doing when they come in as disinterested witnesses. I've been witnesses on things and willing to do it, but I guess I didn't really think, why am I doing this and what are the possible scenarios that I could get into that could be pretty uncomfortable. [LB536]

SPEAKER FLOOD: Well, you can get into a lot of messes witnessing wills. But, you know, what I'm trying to guard against is the, you know, Grandma is not doing well, she might not last another three days, let's get up to the nursing home, let's get her to sign

Floor Debate
February 03, 2012

that deed because it's going to be a huge fight if we don't get her to sign that deed so that when she dies we can take care of this. And if you're a witness and you watch this and you say, wait a second, Grandma doesn't even know...you know, you say, Mother, do you know what you're signing? Well, no, or, you know, you'd be surprised. I think the questions are basic. How are you doing today, Mildred? Are you feeling okay? I feel okay. [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SPEAKER FLOOD: What do you think we should do here? I mean, do you want to give the farm to John? Yeah, I want to give the farm to John. Well, that's fine, give the farm to John, but if you say, oh, no, I want all my kids to have it or I don't know what I'm signing, or doesn't this have to do with something for the hospital. I mean, if you guys want to...if this Legislature wants to go ahead and start transferring real estate on death without any protections, I won't be here in a couple years when the estate problems pop up from across Nebraska and people are livid at what happened. I'm just telling you, I think we should do something about it now. [LB536]

SENATOR CARLSON: Okay, thank you, Senator Flood, and I'll continue to listen to the testimony. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Members, in the queue to speak to amendment to AM1668, we have Senator Langemeier, followed by Senator Flood, Senator Nelson, Senator Schumacher, Senator Pirsch, and others. Senator Langemeier. [LB536]

SENATOR LANGEMEIER: Mr. President and members of the body, I rise just to give you a little personal perspective on this. Being in the real estate business and being a notary, I get these calls right before they take them to the nursing home. We get that conversation, and it's usually whatever family member is there wants to quick deed the property to them quick and then I find out there's another family member around the corner. Let me give you a little personal story. I was home on recess, on our last recess day, and had an older gentleman come into my office and said, Chris, he says, you know, land prices are as high as they've ever been. I'm thinking about selling my 40 acres, probably a good time to do it. I've got lots of kids, we'll give them the cash and not the land. And so, I was like, okay. He says, go take a look at it. Didn't list it, didn't do anything, just asked me to go look at it. Well, I came back down to the Legislature the next day and here come the daughter from Colorado and she came to my office, and I was down here, and slammed a power of attorney on my desk at my office and told me I couldn't sell it and I couldn't have it listed because she owns it now. And it just happens. And then a week later I found out that he's got a son that lives in Ohio. Well, he came to town. And so now they have a fight. They took this poor gentleman, I would say he was of sound mind, is now in Lincoln here in a nursing home because he's...he shouldn't

Floor Debate
February 03, 2012

have been making those decisions. So it happens. And so I think this whole subject matter is kind of a slippery slope and I don't know that this bill helps with that slippery slope. We talked a little bit about disinterested witnesses. Who is a disinterested witness in this instance? You know, you start to think about in rural communities, I don't know what it's like in Omaha because I don't do anything there, but in rural communities, you basically have three notaries out there, the attorneys, the realtors, and you've got the bankers. That's typically where you go to get something notarized. And if so...if I'm a realtor and this family comes together and they want this signed because they're doing this estate planning, and I look at that and I say, well, am I really disinterested because why are they here? I'm going to notarize it for free, because we do. But I'm going to notarize it because I hope that the family some day when they think about selling their property remembers me. So am I disinterested? Is the banker disinterested because he's hoping the family keeps that estate money in the bank...in their bank as long as they can. There's nothing wrong with that. I'm not saying any of this is bad but where does disinterested come in? And so I have some concerns about that. This has always been a touchy subject, is what kids get what? I did have to remind that gal that came to my office, just because she gave me a power of attorney for her dad doesn't mean that he doesn't have the right to sign himself still. Just because she had gotten an additional power of attorney from him and an additional person could sign for him, that doesn't mean he can't sign. And so again, it's just in the real estate business we see these all the time. It's a slippery slope. They want to move the money, they want to move the land so they don't have to pay it into the nursing home, which is all kind of understandable. But anyway, I'm not so sure that LB536 and AM1668 makes that slope any less slippery. So I'm a little leery at this point. I'm willing to listen, but I think we might not be solving a tough issue, a real tough issue. Thank you, Mr. President. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Senator Flood, and this is your third time. [LB536]

SPEAKER FLOOD: Thank you, Mr. President. Members, I think where I am right now, Senator Wightman and I are very close, given the language he's talked about. If...I feel that the witnesses have to sign it and they have to be held to it. And whether we can hold them to that in an acknowledgement, but there should be some penalty for falsifying that. If you...you know, and that's why I like an affidavit, a little sworn statement in there, and the notary said subscribed and sworn before me on this blank day of blank month, comma, whatever, 2012. I just think that if the witnesses are going to play a role they have to know that by signing that they're saying that there's...that the grantors are of sound mind and memory and that they knew what they were doing. If that's acceptable to Senator Wightman, that's acceptable to me. Now, Senator Schumacher has got some other ideas and he knows the value if you're going to have a fight, let's find out about it before Grandma dies. And I'm interested to hear from him on his side. But as to the concerns I've raised, I think I'm there with Senator Wightman and

Floor Debate
February 03, 2012

I'd give him the balance of my time to kind of react to what I want, but I feel very strongly if you're going to sign that acknowledgement, it should be kind of an under oath statement so that if you are lying or you participate in any kind of fraud, that there's a problem. I don't know how to resolve the power of attorney issue, but that issue...I mean, we need to spend some time on powers of attorney to get control of folks that are renegades over there in a different bill. I give the balance of my time to Senator Wightman. [LB536]

PRESIDENT SHEEHY: Senator Wightman, you're yielded 3 minutes 30 seconds. [LB536]

SENATOR WIGHTMAN: Thank you, Mr. President. Thank you, Senator Flood. And I have visited with Senator Schumacher and I'm sure he's going to be on the mike shortly. I don't know that I can ask him questions where my time is yielded but...and I know one of the things he suggests is that maybe there be a time limit that it has to be refilled, within ten days or something, some designated time after the document is executed. And I don't know that I would necessarily have a problem with that. I think that would be one protection. And the reason that we would be talking about this at all is that somebody might try to hide this away, the bad acting beneficiary, place it somewhere and not record it so that his brothers and sisters or any other person who might have received some portion of this estate wouldn't see if in time to act upon it; whereby, if we said it had to be recorded within 10 days of its execution or 30 days, 30 may be long if we're talking about somebody being almost on their death bed, that that would add some additional protection. It would only go to the filing requirements and not to the language. I hope that Senator Flood and I are, in effect, in agreement if we use the language of the Illinois statute and I'm certainly willing to consider that or do that. But we haven't brought forth the amendment because we're still trying to work out the details. Thank you, Mr. President. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Wightman, Senator Flood. Senator Nelson. [LB536]

SENATOR NELSON: Thank you, Mr. President. Members of the body, I would like to weigh in on this a little bit, not only as an attorney but one who has done wills probably for about 40 years now. And I remember when I first got out of law school and went to work for another attorney, one of the things that he was absolutely adamant about was that at the time of execution, signing of a will, there must be no one else in the room that had any interest in the transfer of the property or the things that were in the will, and that was carrying it probably to the extreme. But personally, I still believe in that so that someone may bring Grandma into the office and she may tell me what she wants to do and the instrument can be drawn up that way. But personally, I'm very particular that at the time of the execution of the will that the witnesses that we have be disinterested so that there can't be any question that a son or a daughter or someone was in there

Floor Debate
February 03, 2012

urging Grandma, say, well, this is what you want to do. We just avoid that altogether. Also as a matter of practice I'm very careful, if there's any indication at all that Grandma or Grandpa or whoever may not be aware of...or may not remember what they told me earlier what they wanted to do, that we go over those things and make sure that the distribution of the property is there. You know, one of the reasons set forth for putting this transfer on death is it avoids probate. I think that's a bogeyman there. There is some value to going through probate with some things, especially if you have elderly people involved. One thing about just the regular warranty deed is that you can execute that and you can put it in the drawer and sit on it. You don't have to do a revocation of anything if there's nothing that's been filed. If we're going to do a transfer on death and go into that, you may file that and meet all the requirements that we might want to impose here, but if you change your mind later on, you got to do a revocation and file that. And I'm wondering while we're talking about this whether or not we might want to impose the same requirements on a revocation of a deed, a transfer on death that we are right here. I think that this area is important, especially in light of what Senator Flood and others have said, that we need the formalities of a will signing. I don't know about doing an affidavit but I do know...I think...we...I've looked at the Illinois wording here where they talk about credible witnesses. I guess I know what that means. I don't know whether we might also want to add disinterested in there or not. But the wording in there is very similar to what we see in the execution of a will. You have the person sign and then the witnesses sign in two different places before a notary public and that's a good protection. At the same time, they will hear the questions that are asked of the testator. The other thing is we always...not always, but many times have to go into nursing homes to have wills executed and it's a good thing to have to be able to get a notary. People in nursing homes are very wary of signing as witnesses. In fact, they're really not supposed to on wills. The business office can provide a notary. So I think we need the same sort of protection that we have on wills here with the transfers on death just to alleviate some of the concerns that we have. [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SENATOR NELSON: So I'm glad that we're working on amendment. I like the language of the Illinois provisions here. I may talk with...may I ask a question of Senator Wightman? Would he yield? [LB536]

PRESIDENT SHEEHY: Senator Wightman, would you yield to Senator Nelson? [LB536]

SENATOR WIGHTMAN: Yes, I will. [LB536]

SENATOR NELSON: We don't have a lot of time here but what...how do you feel about the revocation of a transfer on deed? Do you have any thoughts on that, Senator Wightman, the formality that we ought to require on that? [LB536]

Floor Debate
February 03, 2012

SENATOR WIGHTMAN: We haven't addressed it but I think we could, perhaps, consider that it could be revoked in the same way that it would be required. And I understand your position, because in effect that's just as important a document as the...initially establishing this beneficiary, to be able to revoke it in what capacity. Otherwise, you can have...and I think attorneys have gotten into situations where they've had family fights going on and they changed things, wills, several times. [LB536]

PRESIDENT SHEEHY: Time, Senator. [LB536]

SENATOR NELSON: Thank you. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Schumacher. [LB536]

SENATOR SCHUMACHER: Thank you, Mr. President. Members of the body, this bill, as I think the debate has shown, is both a good and a bad thing. It is good that when everything is on the up and up, it creates a simple mechanism for the transfer of real estate much similar to that which we have for the transfer of certificates of deposit, and stock, and things like that. On the other hand, when everything is not on the up and up, when you have marginal competency of someone in a nursing home, when you have a large family and now a big estate and somebody wanting to get ahead of the other heirs, these things can absolutely ruin a family. And so we've got to try to figure out a mechanism at which we can balance between the two particular things. Quite frankly, I'm not a great believer in witnesses and notaries which may be done outside of a formal setting in a room in a nursing home because there are just too many times when nobody knows what they're doing, and they're just signing papers, and they're...a nursing home aide or something or a friend that's been brought in, and they've just been told, sign here. I think that we have very little...and that leads to all kinds of wars in courtrooms after the fact as to who was doing what and who knew what. Let me suggest this is an idea that maybe could be worked on, on Select File; that in order for one of these animals to be effective, it's got to be filed within X days, seven days, ten days, or whatever, of when it is signed. And a copy of the filed document has got to be mailed to all the natural heirs at law, basically, in most cases, the kids. Nobody objects within so many days, files an objection with the register of deeds, it's a done deal. If somebody objects, then everybody can have the fight there while everybody is alive. Grandma is available to be examined, talked to, and we know what is on the up and up. And if it is not on the up and up, the process is aborted at that point. I think with a little work with the other parties who may be interested and realize the seriousness of this and the havoc that this thing can reach to families, that between now and Select File we should be able to work out some language. And I really think that addresses the problem. Most of the time it's going to be on the up and up, everybody is treated fairly and equally and agreeable. But in those cases where there's mischief at work, we can abort the process and have the fight while everybody is alive. Thank you. [LB536]

Floor Debate
February 03, 2012

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Members requesting to speak on AM1668 to LB536, we have Senator Pirsch followed by Senator Wightman, Senator Krist, Senator Carlson, and Senator Price. Senator Pirsch. [LB536]

SENATOR PIRSCH: Mr. President, members of the body, and I do appreciate the conversation. Again, the underlying, I guess, goal of these transfer on death deeds, or sometimes called revocable beneficiary deeds, are...is that you...it's a method to avoid probate and yet a method that is not typically as expensive as establishing a trust. And so I appreciate the conversation. Right now when it comes to the issue of trans...these kind of transfer on death documents with respect to real estate, real estate has been the last asset, really, I think looked at nationally in terms of having this type of simplistic method in place. We already have security accounts and retirements accounts and, you know, in some states cars and boats, so I think there is a recognition that there is something potentially unique about the real estate and probably just in terms of the possibility of the size, the financial size of the assets that have caused legislatures around the states to treat it different, to be a little bit reticent. But I do think that this is...there's a possibility to address it and I appreciate Speaker Flood's concern about addressing it in a way that is careful and making sure that, you know, any bad actors are eliminated. With respect to...well, I don't see Senator Wightman at his mike, so I guess I will ask Senator Flood if he would yield to a...Speaker Flood if he'd yield... [LB536]

PRESIDENT SHEEHY: Senator Flood, would you yield to Senator Pirsch? [LB536]

SPEAKER FLOOD: Yes. [LB536]

SENATOR PIRSCH: Thank you. And I was asking about the structure of the protection that you were proposing and I guess at that time I was unaware there wasn't...there's other documents we can kind of look to, such as wills, that provides certain language, certain requirements on self-proven wills that help establish that...help deter bad actors, one of which is at the end of the will. Typically there's an attestation clause, if you hope to present it as self-proven. And amongst those requirements then are typically that you're...both the testator and the witnesses state that typically that the testator, the person who is signing the will, executed the instrument as the testator's will; that in the presence of both witnesses the testator signed, and that the testator executed the will as a free and voluntary act for the purposes expressed in it; that each of the witnesses in the presence of the testator signed the will as a witness; that the testator was of sound mind when the will was executed; and that to the best of the knowledge of each of the witnesses that the testator was above 18 years of age or a member of the service. So those are generally on attestation. Is that in the...in LB536, Senator Wightman's proposed, that is not a requirement, those type of attestations? [LB536]

SPEAKER FLOOD: That's not currently in the bill, but... [LB536]

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

Floor Debate
February 03, 2012

PRESIDENT SHEEHY: One minute. [LB536]

SPEAKER FLOOD: ...exactly what you just said is what I would like to support as an amendment on Select File to LB536. [LB536]

SENATOR PIRSCH: So you hope to treat... [LB536]

SPEAKER FLOOD: Yes. [LB536]

SENATOR PIRSCH: ...the securities that will provide is fine with you in terms of these type of new documents. [LB536]

SPEAKER FLOOD: Yes. Change the word from "testator" to "grantor or grantors," and I think we're there. And exactly where you are, is where I am. [LB536]

SENATOR PIRSCH: Okay. Thank you. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Wightman, this is your third time. [LB536]

SENATOR WIGHTMAN: Thank you, Mr. President. I'd like to address some of the issues and I thank everybody for their involvement in this conversation and discussion. I think it is helpful for us to look at this. It is a change from current law, obviously. First of all, I'd like to tell the members that are here that probably 95 percent of the cases are not going to involve what we're talking about here, and I may be...I may be low on that. Ninety-five percent probably are going to come in, they're going to decide that...maybe they have a house in town. They're going to decide that this would be an easier way because it doesn't risk the fact that one of their children, who they name as a remainderman in another type of deed, may die ahead of them. It just is an alternate method. And in 95 percent or more of the cases, I would suggest, these questions will not be involved and it is an additional tool to pass real estate. Do I think there should be an attorney involved? Certainly, I think there should be an attorney involved that discusses it, but I don't know that you can legislate that, just as we don't legislate that an attorney has to be involved even in drawing a deed. A person can draw his own deed to a remainder interest. I wouldn't advise it, but people will think that I'm just self-serving as an attorney in suggesting that an attorney ought to look at that deed, but I certainly do think that they ought to. And I think we've put enough requirements in here that it is going to be almost necessary to draw the deed, to draw the document that we're talking about, because we're not setting out the form. That was one of the suggestions early, that we set out the form, which would make it easy for anyone just to copy the form and sign the form, find a notary that will notarize the signature. But here, we're looking at something that is going to serve the 95 percent as well as building in

Floor Debate
February 03, 2012

safeguards for the 5 percent and we already are talking about situations that's going to greatly increase the duty on those who are...fit within the 95 percent. And I'm not trying to do class warfare here. But at any rate...but some of the suggestions I think are very legitimate. I think that it has to be filed within ten days. They probably all should be on remainder interest, because sometimes people leave those set for years, and I have no problem with that. I think that we could very easily accommodate Senator Nelson's suggestions that we make a document of revocation subject to the same requirements because it can get into a fight between two or three heirs. So these things...and putting the language of the Illinois statute, but I guess I will absolutely agree to work between now and Select, and that's why we didn't put in the amendment that we're proposing, because we wanted to hear some of this discussion. But we will work to solve those. I do have more problems, and I'll say this on the floor, with sending it to everyone because 50 percent or 60 percent of the people that are totally competent that come into my office, that nobody could even question they're competent, would not want to send out a copy of that document to every interested party. We do deeds of trust. Many of them don't send those out and they aren't done under the protection of the statutory language with regard to wills. But I certainly am willing to sit down and try to address these issues as well as we can without giving away the whole act, I might say, as well as we can prior to coming back on Select File. [LB536]

PRESIDENT SHEEHY: One minute. [LB536]

SENATOR WIGHTMAN: Thank you, Mr. President. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Krist. [LB536]

SENATOR KRIST: Good morning, Nebraska. And thank you, Mr. President. I'm not a lawyer. I don't know the proper fix. I trust that Senator Flood, Senator Price, and then...I'm sorry, Senator Flood and Senator Pirsch at this point, along with conversations with Senator Wightman, will come to that conclusion. I understand Senator Schumacher's points and agree 100 percent. But I would just, in my own personal experiences just within the last two years, an extended part of our family were really affected by two bad actors who convinced someone, who was within hours of passing and, theoretically, should not have changed his perception of what he had in his will, to actually change that. And that family is separated and probably will not reconcile and it's an unfortunate thing because of conceivably, theoretically, two bad actors that made that happen. What is interesting to me is in the state of Nebraska, in all these discussions, it takes two witnesses. But as Senator Flood highlights very effectively, is that person...do you know what you're signing and is that person capable of signing it? So my hope is that Senator Wightman, and I know he will, take a look at these things and now...between now and Select, because I think it is an important issue. It is a protection, not just for the individual but for the family. That's the worst part of the situation. I will speak to you about, off the mike, is that that family is going to be torn

Floor Debate
February 03, 2012

apart and they will not reconcile and not in the immediate future. That's something that I think we can help with. And I don't think we pass laws necessarily to dabble in other people's affairs, but in this particular case I believe this is a protection mechanism that can be put into place very effectively and we should pursue this to its logical end. And I thank Senator Wightman for bringing the discussion forward. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Carlson. [LB536]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'm going to react to a comment that Senator Schumacher made suggesting that these copies of documents go out to interested or related parties, and Senator Wightman, I think, reacted pretty well to that and a lot of those clients of his don't want that. The other thing is, what if there is no will to even identify who some of these people might be? But I think the truth is that even if paperwork is legal, complete, and prudent, it probably doesn't do much to avoid family bad feelings and disputes. And this is certainly magnified by the high land and property values that we experience today. I would like to address Senator Wightman with a couple of questions, if he would yield. [LB536]

PRESIDENT SHEEHY: Senator Wightman, would you yield to Senator Carlson? [LB536]

SENATOR WIGHTMAN: Yes, I will. [LB536]

SENATOR CARLSON: You may have said this, but do you know how many states have similar legislation in law today? [LB536]

SENATOR WIGHTMAN: I think the last we saw were 17, but almost all of them have made some amendments, probably ours would be the most restrictive amendments other than the state of Illinois. [LB536]

SENATOR CARLSON: Okay. Thank you. [LB536]

SENATOR WIGHTMAN: And I think others may have it under consideration. [LB536]

SENATOR CARLSON: Okay. The other thing and you may have said this, but I look on the committee statement and NACO and Lancaster and Douglas County Commissioners were against the bill. In the amendment, have their concerns been addressed? [LB536]

SENATOR WIGHTMAN: They...yes, they have. [LB536]

SENATOR CARLSON: They have. Okay, thank you for that. And this is good debate and appreciate what people are saying. Thank you. [LB536]

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

Floor Debate
February 03, 2012

PRESIDENT SHEEHY: Thank you, Senator Carlson. Seeing no additional requests to speak, Senator Ashford, you're recognized to close on Judiciary Committee amendment, AM1668. [LB536]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor, and I will waive closing other than just to say that I appreciate the comments, and I mostly appreciate the work that Senator Wightman has put into this. And we can continue to work through the issues, but I would urge the body to adopt the amendment and we can continue to think about some of the downsides of incompetence and that sort of thing as we proceed along. But again, thanks to Senator Wightman for all of his work and I'd urge the adoption of the amendment. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing. The question before the body is on the adoption of AM1668 to LB536. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB536]

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB536]

PRESIDENT SHEEHY: AM1668 is adopted. We'll now return to floor discussion on LB536. Seeing no requests to speak, Senator Wightman, you're recognized to close. [LB536]

SENATOR WIGHTMAN: Thank you, Mr. President. Thank you for the great discussion among my colleagues. I think many of those things are legitimate concerns that we will attempt to address between now and bringing it back on Select. I hope that the body would be willing to go ahead and advance the bill to E&R Initial, and then before it comes back on Select we hope we can work out, and I think we're very close to having those worked out, at least verbally on the floor. So with that, I would urge your support of LB536, subject to it's coming back with the suggested or, at least, most of the suggested revisions on Select. Thank you. [LB536]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You've heard the closing. The question before the body is on the advancement of LB536. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB536]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB536. [LB536]

PRESIDENT SHEEHY: LB536 advances. Mr. Clerk, do you have items for the record? [LB536]

CLERK: I do, Mr. President. New A bill, LB862A by Senator Ashford. (Read LB862A by

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

Floor Debate
February 03, 2012

title for the first time.) Enrollment and Review reports LB677, LB873, LB770, and LB771 to Select File. New resolutions: Senator Janssen offers LR389. That will be laid over. And I do have hearing notices from the Natural Resources Committee and the Revenue Committee. And finally, a priority bill designation: Senator Ashford has selected LB357 as his priority bill. That's all that I have, Mr. President. (Legislative Journal pages 430-434.) [LB862A LB677 LB873 LB770 LB771 LR389 LB357]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now move to LB269. [LB269]

CLERK: LB269, a bill by Senator Conrad. (Read title.) The bill was introduced on January 11 of last year. At that time referred to the Banking, Commerce and Insurance Committee; advanced to General File. I do have committee amendments, Mr. President. (AM1597, Legislative Journal page 321.) [LB269]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Conrad, you're recognized to open on LB269. (Gavel) [LB269]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I introduced LB269 for the following three reasons and I urge your favorable consideration of this legislation. LB269 modernizes the licensure fee structure which has not been modified since 2001 in order to ensure Nebraska's structure is reasonable in comparison to other states and most importantly our border states. LB269 forges important and refreshing common ground on a topic that has been quite contentious over the past few years among members of the financial services industry and consumer advocates. If you note the committee statement, you will see support from a broad and unique coalition. I want to thank the industry for working with me over the past two years in support of this important legislation. Working together we have identified positive, pragmatic, and constructive ways to improve our economic landscape together. LB269 improves our state's financial literacy and education efforts through well-established and respected public-private partnerships. Yesterday, I did have a page bring around some information related to a financial literacy program that this legislation implicates. It should be on your desk. If you need additional copies brought around today, please let me know. These types of educational efforts are proven to help the next generation make good financial decisions. As evidenced during our recent economic uncertainty, Americans and Nebraskans need more sound financial education and financial literacy efforts to ensure they are responsible actors in our economic and democratic system. Additionally, I fully support the committee amendment, which you'll hear about shortly, and believe it is necessary to express my clear intent to essentially hold harmless the Department of Banking, which is responsible for regulation of this industry in terms of their budget and statutory obligations. I want to thank the leadership of the Department of Banking for assisting us with the technical issues involved in the amendment. Thank you, Mr. President. [LB269]

Floor Debate
February 03, 2012

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Conrad. As the Clerk has stated, there are committee amendments offered by the Banking, Commerce and Insurance Committee. Senator Pahls, as Chairman of that committee, you're recognized to open on the committee amendments. [LB269]

SENATOR PAHLS: Thank you, Mr. President and members of the body. The committee amendments would clean up a couple of issues that came up at the bill's public hearing. First, the committee amendments would provide that only the increased part of the main office and branch office renewal fees would go to a Financial Literacy Cash Fund. The amount that goes to the Department of Banking would remain unchanged. The main office renewal fees would be increased from \$150 to \$500, and the branch office renewal fees would be increased from \$100 to \$500. The \$350 and \$400 difference would go to the Financial Literacy Cash Fund. The second...second, the committee amendment would provide that the Financial Literacy Cash Fund would be administered by the University of Nebraska rather than the Department of Banking. Thank you. [LB269]

SENATOR LANGEMEIER: Thank you, Senator Pahls. You have heard the opening on the committee amendment offered to LB269. The floor is now open for discussion. Those wishing to speak, we have Senator McCoy, and Senator Hadley. Senator McCoy, you're recognized. [LB269]

SENATOR MCCOY: Thank you, Mr. President and members. I stand in support of AM1597 and in support of the underlying bill. And I'd like to thank Senator Conrad for her hard work on this legislation. Many of you know we've dealt with a number of bills dealing with payday lending in the Banking Committee just in my four sessions here in the Legislature and, I know, predating that as well. And we've never really hit upon something that could be done to address this issue in a positive manner that the two sides, such as they are, could agree upon. And again, I want to thank Senator Conrad for her hard work on this in thinking outside the box, finding a solution. It really appears to have broad support. You can see that from the committee statement. And as Senator Pahls has talked about with the amendment, really, hopefully, is something that we can make work, and it's something that I'm very proud to support. And I really believe that anytime we can hopefully address financial literacy with our young people will pay dividends, not only for the quality of life in our state but for the issues that we deal with in the future here in this body. And with that, I again stand in strong support of AM1597 and the underlying bill, LB269. Thank you, Mr. President. [LB269]

SENATOR LANGEMEIER: Thank you, Senator McCoy. Senator Hadley, you're recognized. [LB269]

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

Floor Debate
February 03, 2012

SENATOR HADLEY: Mr. President and members of the body, would Senator Pahls yield to a question? [LB269]

SENATOR LANGEMEIER: Senator Pahls, would you yield? [LB269]

SENATOR PAHLS: Yes. [LB269]

SENATOR HADLEY: Senator Pahls, it caught my eye that you mentioned the University of Nebraska to administer it. The University of Nebraska is made up of four campuses with a central administration office. Who are you thinking of when you just designated the University of Nebraska? [LB269]

SENATOR PAHLS: Okay. In all fairness, that answer was negotiated...or that question was negotiated by Senator Conrad so that probably would be a good question to ask her. [LB269]

SENATOR HADLEY: Okay. Thank you. Would Senator Conrad yield to a question? [LB269]

SENATOR LANGEMEIER: Senator Conrad, would you yield? [LB269]

SENATOR HADLEY: The same question: Since the University of Nebraska is made up of four campuses and a central administration, who would administer this fund? [LB269]

SENATOR CONRAD: Thank you, Senator Hadley, for your question, and I will yield, Mr. President. If you notice, Senator Hadley, and I don't know if you heard these comments earlier, yesterday I did have the page pass around a pamphlet that represents a...the hopeful beneficiary of this grant money, which is the Nebraska Council on Economic Education. And I envision that these resources will be utilized by the University of Nebraska and will be ultimately awarded to the Nebraska Council of Economic Education in their existing budgetary allocation. [LB269]

SENATOR HADLEY: And where is that located, that council? [LB269]

SENATOR CONRAD: The center itself? It's a program that operates statewide, but I believe that its home base is in Lincoln. [LB269]

SENATOR HADLEY: At the University of Nebraska-Lincoln? [LB269]

SENATOR CONRAD: That's right, through the College of Business Administration, I believe. [LB269]

SENATOR HADLEY: Okay. Will there be any administrative fee that they get for

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

Floor Debate
February 03, 2012

administering this program? [LB269]

SENATOR CONRAD: Senator Hadley, it's my understanding that there would not be because those administrative issues are already contemplated in their existing budgetary allocations that are funded through state resources, private resources, and other avenues. So these dollars would be utilized for program expenses and they will be utilized statewide, not just in Lincoln. [LB269]

SENATOR HADLEY: Okay. I guess I just have a concern when you use the term University of Nebraska in a bill. That certainly doesn't designate the Council of Economic Education, doesn't say where it's going and such as that. [LB269]

SENATOR CONRAD: And, Senator,... [LB269]

SENATOR HADLEY: So I really do have a concern... [LB269]

SENATOR CONRAD: Well,... [LB269]

SENATOR HADLEY: ...that it doesn't specifically say who is going to administer the... [LB269]

SENATOR CONRAD: And, Senator Hadley, I would draw your attention to a couple of points on that very topic. When we do appropriate funds for the University of Nebraska, we have to be cognizant of a few things, the fact that it's a constitutional entity in its first right and how that relationship and designation has been specified and dictated through our corresponding case law. Most notably, I'm thinking of the Exon decision, when we provide a sum to the university but we are restricted in our ability to specify the utilization thereof. [LB269]

SENATOR HADLEY: Okay. Thank you. I guess, I understand that but when I...I guess, I sometimes get tired of people using the term "University of Nebraska" as if this was one campus and it certainly is not. There is the University of Nebraska Med Center, there is the University of Nebraska at Omaha, there's University of Nebraska-Lincoln, and there's the University of Nebraska at Kearney. And when we start using the term "University of Nebraska," it just does cause me concerns, because its use is kind of a generic term rather than a specific term. Thank you, Mr. President. [LB269]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Hadley. Seeing no additional requests to speak, Senator Pahls, you're recognized to close on AM1597. [LB269]

SENATOR PAHLS: Thank you. As you can see, Senator Conrad has worked this bill. I

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

Floor Debate
February 03, 2012

urge your adoption of this amendment. [LB269]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You've heard the closing. The question for the body is on the adoption of AM1597 to LB269. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB269]

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB269]

PRESIDENT SHEEHY: AM1597 is adopted. We'll now return to floor discussion on LB269. Senator Conrad. [LB269]

SENATOR CONRAD: Thank you, Mr. President. And number one, I would also like to offer my sincere gratitude to members of the Banking Committee who worked very diligently with me on this issue in making sure that this is the best bill it could be, and I truly appreciate their hard work and support. And in one final note that I did want to clarify for the record, the programs that we envision benefiting from this legislation are statewide...is a statewide program that is in the schools, so to speak. It benefits K-12 education. It doesn't benefit the university itself per se. The university happens to house the program that is responsible for this financial literacy program that operates statewide in K-12 education. It does not operate on the university level. Thank you, Mr. President. [LB269]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Seeing no additional requests to speak, Senator Conrad, you're recognized to close. Senator Conrad waives closing. The question for the body is on the advancement of LB269. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB269]

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB269. [LB269]

PRESIDENT SHEEHY: LB269 advances. We'll now proceed to LB828. [LB269 LB828]

CLERK: LB828 is a bill by Senator Dubas. (Read title.) The bill was introduced on January 5 of this year, referred to the Natural Resources Committee for public hearing, advanced to General File. There are Natural Resources Committee amendments, Mr. President. (AM1729, Legislative Journal page 325.) [LB828]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Dubas, you're recognized to open on LB828. [LB828]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. LB828 is purely technical in nature. It makes no substantive changes to the existing wind and solar agreement statutes. It simply seeks to clarify terminology and harmonize these various

Floor Debate
February 03, 2012

statutes. I worked with the developers. They requested this bill to be brought earlier. I said, let's let the dust settle and see how things all pan out and promised to bring it at a later date. And so, you know, again, what we've done is just put...we made sure that the language that they use in their contracts and in their work matches the language that we have in statutes, trying to make it a little more user friendly in putting the statutes together so they're easier to find. If you haven't received it yet, you should receive it very shortly. It's just kind of a bullet point as to what the specific changes are in the bill. Probably the most...I wouldn't say substantive, but something that would catch your eye was talking about the renewal or the extension of the 40-year term. We just clarified that language. And it also allows for publishing notice with the abstract instead of the entire agreement. That is still public information but just trying to save some costs and space in newspapers rather than publishing the entire agreement in the paper. With that, again it simply harmonizes, strikes duplicative language, and inserts the word "solar" along with the rest of the language. [LB828]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the opening to LB828. As was stated, there is a Natural Resources Committee amendment, AM1729. Senator Langemeier, you're recognized to open. [LB828]

SENATOR LANGEMEIER: Mr. President, members of the body, the committee amendment is, again, it adds one word. It adds...well, two words, it adds "solar agreement" in there. Throughout the wind discussion, wind was used a lot and the industry said what about solar, which we knew it qualified for so we added the word "solar." And then I support LB828. It is harmonizing. It's putting some better references in so people can follow through the new wind legislation. And so we'd ask for your adoption of AM1729 and LB828. [LB828]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening of the Natural Resources Committee amendment, AM1729. Seeing no requests to speak, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question for the body is on the adoption of AM1729 to LB828. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB828]

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB828]

PRESIDENT SHEEHY: AM1729 is adopted. We will now return to floor discussion on LB828. Seeing no requests to speak, Senator Dubas, you're recognized to close. Senator Dubas waives closing. The question for the body is on the advancement of LB828. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB828]

CLERK: 29 ayes, 0 nays on the advancement of LB828, Mr. President. [LB828]

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

Floor Debate
February 03, 2012

PRESIDENT SHEEHY: LB828 advances. Mr. Clerk. [LB828]

CLERK: LB725, Mr. President, a bill by Senator Cornett. (Read title.) The bill was introduced on January 4 of this year, referred to the Revenue Committee, advanced to General File. I have no amendments to the bill, Mr. President. [LB725]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB725. [LB725]

SENATOR CORNETT: Thank you, Mr. Lieutenant Governor and members of the body. LB725 is the annual bill designed to update references in all Nebraska statute to the most recent version of the Federal Internal Revenue Code, except as provided by Article VIII, Section 1B of the Nebraska Constitution, the statute sections listed in Section 1 of the bill that govern Nebraska income tax, and the statute sections listed in Section 1 of the bill that govern Nebraska business tax incentive programs. With LB725, the most recent version of the IRC would be the version in existence on the effective date of the bill, which contains the emergency clause. February 23, 2011, is the applicable date under the current statute. There are no amendments to the bill. I urge the body to support this. This is our annual update bill for the IRS. Thank you. [LB725]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You've heard the opening to LB725. Seeing no requests to speak, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question for the body is on the advancement of LB725. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB725]

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB725. [LB725]

PRESIDENT SHEEHY: LB725 advances. We will now proceed to LB470. [LB725 LB470]

CLERK: LB470 by Senator Karpisek. (Read title.) Introduced on January 14 of last year, referred to the General Affairs Committee. The bill was advanced to General File. I have no amendments pending at this time, Mr. President. [LB470]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Karpisek, you're recognized to open on LB470. [LB470]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, LB470 was introduced to give local elected officials authority to approve the personnel policies of their public library, reading room, art gallery, or museum. Under Section 50-211, for example, public library boards are given the authority to appoint and remove the librarian and assistants and to fix their compensation. Because current law does not directly address whether public library employees are under the personnel policies of a

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

Floor Debate
February 03, 2012

county, city, or village, library boards will often enact its own policies. LB470 creates a process to resolve any problems that may arise from having conflicting personnel policies by requiring the elected officials, such as the county board, the city council, or the village board, to approve the personnel policies of their public library board. LB470 amends Section 16-251 to give the authority to the city councils in cities of the first class to approve the personnel, administrative or compensation policy or procedure applying to a director or employee of a public library, reading room, art gallery, or museum before such policy or procedure is implemented. It also amends Section 50-211 to give authority to counties, cities, and villages to approve the personnel administrative or compensation policy or procedure applying to a director or employee of a public library before such policy or procedure is implemented. This bill was brought to me by the League of Nebraska Municipalities and I received a letter of support from the Nebraska Library Association. The Nebraska Library Commission director provided neutral testimony, and there were no opponents. LB470 was unanimously voted out of committee. Thank you, Mr. President. [LB470]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. You have heard the opening to LB470. Seeing no requests to speak, Senator Karpisek, you're recognized to close. Senator Karpisek waives closing. The question for the body is on the advancement of LB470. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB470]

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB470. [LB470]

PRESIDENT SHEEHY: LB470 advances. Mr. Clerk, we'll now proceed to LB879. [LB470 LB879]

CLERK: LB879 is a bill by Senator Pahls. (Read title.) Introduced on January 9 of this year, Mr. President; referred to the Banking, Commerce and Insurance Committee; advanced to General File. I have no amendments to the bill. [LB879]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pahls, you're recognized to open on LB879. [LB879]

SENATOR PAHLS: Thank you, Mr. President and members of the body. LB879 is a bill I introduced on behalf of the county official organization. We changed one word in the statute. The word...the bill strikes the word "clerk" and replaces it with "treasurer." Under state law, we currently require security to be filed with the county clerk when the county treasurer makes a deposit. Under contemporary banking practices, there's nothing to file with the clerk. The county treasurer is the appropriate steward of the electronic record. This makes...this bill makes the statute conform to modern-day banking practices. Thank you. [LB879]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the opening to

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

Floor Debate
February 03, 2012

LB879. Seeing no requests to speak, Senator Pahls, you're recognized to close. Senator Pahls waives closing. The question for the body is on the advancement of LB879. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB879]

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB879. [LB879]

PRESIDENT SHEEHY: LB879 advances. Mr. Clerk, have items for the record? [LB879]

CLERK: I do, Mr. President. A couple of name adds: Senator Council to LB976 and Senator Coash to LB959. (Legislative Journal pages 434-435.) [LB976 LB959]

And, Mr. President, I have a priority motion. Senator Conrad would move to adjourn the body until Monday morning, February 6, at 10:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Monday, February 6, at 10:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.