

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

Floor Debate
May 10, 2013

[LB3 LB6 LB23A LB98 LB99 LB194 LB242 LB265 LB269A LB299 LB384A LB384
LB407 LB443 LB476 LB505 LB517 LB530 LB536 LB613 LR180]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventy-fifth day of the One Hundred Third Legislature, First Session. Our chaplain for today is Pastor Jason Wolter of St. John's Lutheran Church in Tecumseh, Senator Watermeier's district. Please rise.

PASTOR WOLTER: (Prayer offered.)

SENATOR CARLSON: Thank you, Pastor Wolter. I call to order the seventy-fifth day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

SENATOR CARLSON: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

SENATOR CARLSON: Thank you. Are there any messages, reports, or announcements?

CLERK: I have the lobby report that is required by statute to be inserted in the Journal, Mr. President, as well as an acknowledgement of certain agency reports that are available on the legislative Web site. That's all that I have. (Legislative Journal page 1301.)

SENATOR CARLSON: Thank you, Mr. Clerk. The Chair recognizes Speaker Adams.

SPEAKER ADAMS: Thank you, Mr. President. Members, it's been a long week. We've done a lot of work and what I'd like to do today is we will, of course, begin by taking up where we left off last night. And I think we need, in one way or another, have some conclusion to that so that we can finish our package of budget bills; then move on to the claims bills; see if we can't deal with TEEOSA this morning, LB407 on Select File; and then do some Final Reading and go home. Monday morning at 10:00 a.m. we will take up Senator Chambers' LB543, I believe it is, on the repeal of the death penalty and that's where we will begin the week. So let's see if we can't get through Final Reading this morning. Thank you. [LB407]

SENATOR CARLSON: Thank you, Speaker Adams. Mr. Clerk, next item.

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

Floor Debate
May 10, 2013

CLERK: Mr. President, LB194 is a deficit bill, as presented by the Appropriations Committee. Senator Mello has presented the Appropriations Committee amendments. Amendments to those amendments were considered last evening. Pending, Mr. President, is a motion by Senator Chambers. Senator Chambers would move to reconsider the vote taken with respect to AM1324 that was originally offered by Senator Dubas. Senator Chambers' motion to reconsider is pending. [LB194]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Chambers, you're recognized to open your motion to reconsider. [LB194]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. Senator Dubas and I cosponsored this motion that's before us...I meant the amendment that's before us. We had a somewhat lengthy debate last night, so I'm not going to say a great deal to begin with. I'll see if, as the debate proceeds, it's necessary. But my objection, first of all, is to the idea that there's been no establishment that convinced me of the fact that the Governor or the state needs to own an airplane. But that is not what this particular amendment deals with. It would take away the money that would buy this airplane that the Nebraska University Foundation is trying to get rid of. Senator Dubas added language that would call for a study or an evaluation but, at any rate, an independent examiner to look at this issue. And if you have questions that you think I can answer, I will. If you have questions of a technical nature, Senator Krist is here and he's available. And naturally, Senator Dubas is available. In order to reconsider, it would take 30 votes, and I hope that we can get them and ground this plane at least temporarily so that we can proceed with the issue itself, not just this amendment, not just my motion to reconsider but the whole methodology used to purchase this airplane so that there is circumspection, due diligence, and a handling of a sort that will comport with the requirements the Legislature has placed on other entities and political subdivisions when they make a purchase of a substantial amount. That's where I will leave it at this moment. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Chambers. You've heard the opening on the motion to reconsider. The floor is now open for debate. Those wishing to speak include Chambers, Johnson, Nelson, Brasch, and others. Senator Chambers, you're recognized. Senator Johnson, you're recognized. [LB194]

SENATOR JOHNSON: Thank you, Mr. President and body. I was not involved in the discussion last night, do have some comments, I guess. My one question is, and maybe it was answered. I wasn't concentrating the whole time I guess on this bill. Before the state or before the foundation came to the body and said, hey, we have this plane for sale, we think you should buy it, was the Governor's Office or the state ever involved in a discussion that at some point should the state own a plane? Was it on our radarscope as to whether we should have a plane of our own? I think that leads to maybe a study.

Floor Debate
May 10, 2013

The second thing, and I would ask if Senator Krist would yield to a question. [LB194]

SENATOR CARLSON: Senator Krist, would you yield? [LB194]

SENATOR KRIST: Yes. [LB194]

SENATOR JOHNSON: Thank you. Senator, I've got information from the Governor's Budget Office that there are approximately 80 municipal airports in Nebraska receiving planes. About 60 of them would be able to utilize...or this particular plane would be able to land on 60 of these airports. Is it possible that a different plane, a smaller plane, maybe one that could take a little shorter runway could be...work and maybe go to more airports? [LB194]

SENATOR KRIST: Absolutely. This is all based upon a minimum field length for the type of airplane you have. The Navajo, for example, which is one of the airplanes currently in the stable, can take off and land on 2,000 feet of runway easily, sometimes a little less, depending upon the weight, so yes, a smaller airplane tailored to the mission. If you're taking three people out, the Navajo can handle it, and certainly it could land on a shorter runway. [LB194]

SENATOR JOHNSON: Thank you. If the state is going to own a plane, a smaller plane, does that fit our need? Do we know what our average passenger size would be if it's strictly within the state? If we owned the plane, would we feel, well, we own this so let's use it? Yeah, it spreads the fixed costs more and it lessens the cost per trip, but then we've got to look at what's the total cost of operating this plane. Are we going to be using it, more efficiency? I think what I'm dealing with here is we've got the option, we're going to reconsider to do the study, and I think my questions lead to a study. If we don't do the study, I think what's left on the table is, are we going to buy a plane or not? I think that takes our analysis now, not our study, because we don't have time for that, and/or are we...if we are going to buy a plane, own a plane, which one is it? Is it a new one? Is it a used one? Is it a smaller plane? To me, everything leads to needing time to study this. If it was on our radarscope, maybe the state has studied it enough. I don't feel we're ready for anything other than AM1324. Thank you. [LB194]

SENATOR CARLSON: Thank you, Senator Johnson and Senator Krist. (Doctor of the day and visitors introduced.) We return to debate. Senator Nelson, you're recognized. [LB194]

SENATOR NELSON: Thank you. Thank you, Mr. President, members of the body. Welcome to another wonderful day here in Nebraska, overcast but we'll see some sunshine later on in the day, perfect flying weather. For the record, I want to correct some things that I said yesterday. When we talk about flying the plane here for the state of Nebraska, the average amount of time that plane is flown is about 150 hours. Then I

Floor Debate
May 10, 2013

talked about the charge and I mistakenly said \$5 an hour, which of course is absolutely wrong. My wife pointed that out to me. The charge is \$5 a mile flown. So if you're going to fly from here to Scottsbluff and back again, you know the number of the miles, the charge there is \$5 a mile plus the pilot cost of \$60. I referred to the director of the Department of Aeronautics a couple of times I think as Ronnie Green. That was wrong. His name is Ronnie Mitchell. He's been a pilot of longstanding, a lot of experience. Ron Green is out on the East Campus, director of the Institute of Agriculture and Natural Resources. Let me give you a little background here, as I understand it now, on the foundation. The foundation has owned this plane that we're talking about, the 200, and they've kept a log on it all this time. However, the plane has been managed by the Department of Aeronautics. And the foundation has paid for all the maintenance and everything like that. But when various departments here of the state have come and needed to use the plane, it's the Department of Aeronautics that has, for the amount of miles used, paid the foundation \$5 a mile for the use of the plane. And then they turn around and have collected that amount from the department or the Governor or anybody that has used the plane, and that's where we recover quite a bit of the cost. The foundation last year decided that it did not want to have ownership of the plane anymore, so they had an appraisal done. And there was correspondence between the Department of Aeronautics and the foundation saying we've decided we want to sell our plane; we've had an appraisal done and we would be willing to sell it to you for that amount if you care to buy it; in the meantime, let's enter into a lease-purchase agreement. And that started in August. It's a written agreement. And so the agreement was that we, the state, would lease the plane at the cost of \$10,000 a month, and that's what we've been paying. The lease then is up in June. So this is the time frame here. If we do not elect to exercise our right to purchase that plane for \$2.1 million, then they can go out and will go out and find another buyer. The Department of Aeronautics also had its own appraisal done. My understanding is that the foundation had its appraisal done by someone that was recommended by Duncan Aviation here in Lincoln. I don't know the name of who the appraiser was. The Aeronautics Department also had its own appraisal run by a gentleman by the name of Andy Biller, located here in Lincoln, and apparently the appraisals were pretty close. So we're not in a corner by the University Foundation. We're not under the gun to buy this plane at all. The question is whether it's a good buy, a good purchase for the state of Nebraska. [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR NELSON: And we've already talked about the value of the plane, the fact that we know that our pilots are familiar with it. We have the complete log, the maintenance of the plane and everything. It's been flown safely and I think safety is paramount here. And there's a possibility, we talked yesterday, about paying more money and going after a new plane. That would take more time; questionable about whether we want to do that, whether we want to spend that money in light of the plane that we have right now. So I hope I've explained enough, answered some of your

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

Floor Debate
May 10, 2013

questions so that we understand what we're doing here. I stand opposed to the reconsideration. I think we heard a great deal of testimony yesterday. I think the question boils down to, do we want to buy this plane at this time, the plane that we know well, that will serve our purposes, that has a lot of time left on it with some work down the road, for an appraised price... [LB194]

SENATOR CARLSON: Time. [LB194]

SENATOR NELSON: ...of \$2.1 million? Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Nelson. Senator Brasch, you're recognized. [LB194]

SENATOR BRASCH: Thank you, Mr. President, and good morning, colleagues. I wanted to remind you of what I had brought up last night. I am questioning the cost and need for a study. We know by statute that the Nebraska Aeronautics Commission authorizes the state's purchase of aircraft, that there is a commission of members, I read you their names also, locations within the state, all the way to McCook, Norfolk, Bellevue, other areas, to be on the commission. And we've approved these commissions. They have authority, expertise, knowledge, background in avionics, and they qualified, and we have as a Legislature brought them here and approved them on these commissions. They drove all the way from McCook to be here. You know, we have called these people to take time to be on this board and their duties are prescribed in law, and it says that they have the authority to help select and...on purchases of aircraft. As a Legislature, we have the authority to approve funds. The need for a study, I don't know, why are we second-guessing this commission? That's what it appears to me to be. Bellevue, Beatrice, McCook, Holdrege, Norfolk, individuals who have agreed, who are on this commission to just do that. Is there a need for one? Why has Governor...then-Governor Kerrey, Governor Nelson, Governor Johanns, Governor Orr, why have all of these Governors found the need for efficient, timely travel, not just to Scottsbluff but perhaps to Scottsbluff, then to South Sioux, then to Norfolk? Many of the days are several trips across a state which has much geography. Nebraska is a very large state from border to border and traveling by air is not traveling by rocket. You know, we're talking about an airplane here. Also looking at the fact that as a body we've talked about our committees, that our committees...we need to uphold our committees. We need to uphold the importance of our committees and the knowledge of committees and the committee process. Well, what about the commission process? There are many individuals who have agreed to take time, with their background, with their expertise, to serve on several commissions across the state. As bureaucrats, the Legislature, I guess we want to make more meetings, we want to make more studies, more costs in here. Is that truly what we intend to do? Again, the whole Department of Avionics (sic) here, airports, airplanes, I mean if you pull up the information on that division itself, are we questioning them about what they do day to day, what they have studied, what they

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

Floor Debate
May 10, 2013

have invested their careers in? It seems so. I do not. I really appreciate our commissions, and our...in our committees... [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR BRASCH: ...we approve those individuals and do appreciate their work. So I do say let's move forward, let's not stretch time out--it seems that that's what we're getting good at now--and move forward on this and take care of other business that we have before us. Thank you, Mr. President, and thank you, colleagues. [LB194]

SENATOR CARLSON: Thank you, Senator Brasch. Those wishing to speak include Mello, Krist, Schumacher, Gloor, and others. Senator Mello, you're recognized. [LB194]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I rise to respectfully oppose the reconsider motion and to provide a little more context in regards to, I think, some of the ongoing floor debate on this one specific deficit appropriation request. The Heineman administration approached the Legislative Fiscal Office last summer, as well as the existing members of the Appropriations Committee, surrounding the issue of the possibility of purchasing the state airplane...or purchasing the current aircraft owned by the University Foundation, which the Department of Aeronautics has been utilizing and housing for the last decade. It was an issue that ultimately the administration brought forward to try to be transparent to see if there were significant concerns, to see if there was widespread opposition, if there was anything out of the extraordinary that would cause the Appropriations Committee members at the time to say we shouldn't even be...consider doing this, we shouldn't even...we should move a completely different route. Granted, it was during the interim. A number of members ultimately just did our own research, moved on. If it was some...a priority of the administration, we knew we would hear about it when the legislative session began. As many returning members know, obviously, over the last four years I've had significant disagreements with the Heineman administration on a variety of issues. One issue though I would agree on is that they do do their due diligence on issues like this. It's not like the Governor or the Department of Aeronautics or anyone who reports to them simply made the decision one day that we're going to purchase a state aircraft. I give them credit in the sense that they did reach out to the Legislature last summer, that they were going to do their due diligence on this specific aircraft, similar to the analogy I tried to explain last night, that this is a vehicle that the state has essentially been leasing for the last decade, that the owner of the vehicle is giving the state the first option or right of first refusal to purchase this specific vehicle before they go to the free market to sell it. The state ultimately felt that this vehicle is serving the purpose of the agencies who utilize it. They're familiar with this vehicle. They understand the entire history of this vehicle since it was initially purchased. So they felt this was a better option to move forward. I imagine that they were moving forward on purchasing a used aircraft that they've utilized the last ten years, instead of purchasing a new aircraft, because a new

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

Floor Debate
May 10, 2013

aircraft costs more. And maybe at the end of the day there's a concern in regards to why would we be purchasing a new aircraft when a used one that has less than 1,500 hours on it would suffice for the next 20 years. Colleagues, I can understand the concerns of appropriating money for something like a state aircraft. I appreciate Senator Dubas, Senator Krist, and others who have raised, I think, very...I think very serious and I think very noteworthy issues in this debate, Senator Chambers as well. But if the body chooses to reconsider this motion from Senator Dubas, I would urge, if we get to that point, to change Senator Dubas' amendment, because I get the feeling for those who supported this amendment there's a general distrust of the Department of Aeronautics. So why would we want to require them to do a study that they may come back to us, and the Legislature maybe to say we don't trust what your study says anyway? [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR MELLO: So if we get to this point this morning of reconsidering this motion, I'm going to urge Senator Dubas to withdraw her amendment and replace it with something that requires the Legislature's Exec Board to do it. Because the Appropriations Committee asked the Department of Aeronautics to do another study, after they've already done their analysis. They said, they did their due diligence in their analysis. And they even brought more due diligence and analysis back to us at their public hearing. So if they didn't do what we asked them to do through the appropriations process twice, I would urge the body not to make them do this again, because ultimately it shows that we just don't trust what they would provide us in the first place. And if we get to that point, I'll urge Senator Dubas to withdraw her amendment or, I should say, replace her amendment with one that would have the Legislature's Exec Board do the study instead, so that we would have our own study to trust and look at and put us in the driver's seat instead of asking the Department of Aeronautics to... [LB194]

SENATOR CARLSON: Time. [LB194]

SENATOR MELLO: ...do something we wouldn't trust anyway. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Mello. Senator Krist, you're recognized. [LB194]

SENATOR KRIST: Thank you, Mr. President. Good morning, colleagues. And good morning, Nebraska, and thank you, Department of Roads, for deciding to stripe the eastbound area...eastbound lanes of the interstate last night, amen, so that it took us all an hour and a half to get home. But it has to be done and that was the time of night that they decided to do it. I want to, first of all, speak to Senator Brasch's comments and a bit of Senator Mello's comments. I don't distrust Ronnie Mitchell. He has the same background as I do. I don't distrust the Department of Aeronautics. I also think that the

Floor Debate
May 10, 2013

state of Nebraska needs air travel. They probably need their own airplane. But I'm going to tell you from experience of working in the federal government, that there are people out there, there are concerns out there that act in the best interest of the taxpayers' dollars. And I don't believe that an independent study is out of line. I just think that an independent study done by the company I suggested, Conklin and de Decker, or any other nationally ranked company is warranted in this particular case. I made the case when I went to the Appropriations Committee that we need to buy new. If we're investing in an airplane and we say we're going to have to provide air travel, and we probably do, and that's a decision that 48 others in this room are going to have to make, the thing is, do we have the right information? I don't distrust Director Mitchell or his Aeronautics Department or the administration. I want an independent review of what we need, how much we should spend given our average load. So let me give you some facts. I know this was bantered about last night and there was kind of some soft numbers put around. The average load that we have flown on the King Air is five, five passengers. They asked for an airplane in their specs between six and eight. So the average load being five, you have to assume at some point they might have had seven, they may have had three, and they came to five, so reasonable number. Secondly, currently the state of Nebraska owns two of its own airplanes. One of them is a Piper Cheyenne and it is...it needs to be moved on to different pastures. I'm just going to say that. It is the...the fund, the fund for the maintenance fund for that airplane is where we are taking the \$10,000 a month, going back to August, and paying a dry lease rate on the King Air. Which again, relating to the amendment we talked about the other day, my amendment, I think is inappropriate. That money should stay with the preventative maintenance fund that is meant for that airplane. That airplane needs to go. We also...and that airplane, by the way, is touted as being an eight-seat turboprop. The state also owns a Piper Navajo. They say that it is an eight-seat business airplane, and I'm going to tell you, Senator Kolowski could not put eight of himself on that airplane and get off the ground. It's more comfortably a four-to-five person airplane. But it's currently configured with a camera system on the airplane. And I didn't mean that for girth, sir; I meant that for height. That airplane currently has a camera system in it, that camera system in it that is employed to do aerial photography, and reduces the number of seats but can be taken out. So as we make all these decisions and this is going to complicate your decision process, and this is exactly my point, three months ago we said independently you're going to find out, if you do a study, you need an airplane, you need an airplane that handles so many people,... [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR KRIST: Thank you, Mr. President,...and you need an airplane that goes into these short fields, and they will tell you what it is. And I was asked at an event last Saturday by one of the commissioners for the Aeronautics, Senator Brasch. His name is Mike Cook. Again, a guy I served with and served under in the Air Force for many years. I trust his judgment. He is on that commission. They need an airplane. He tells

Floor Debate
May 10, 2013

me they need an airplane. And he said, why do we need to have an independent analysis? And I said, Mike, you know what happened with the Corps of Engineers, you know that that's been second-guessed many, many times about is that the right airplane. And the way we defend it is having an independent analysis say this is what we need. That's in the best interest of taxpayers. That's what we've been talking about for the last three days--how do we spend the taxpayers' money the best? Forty-eight others of you are going to have to come to that conclusion and you're going to have to see the data from an independent analysis. That's my opinion. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Krist. Senator Schumacher, you're recognized. [LB194]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. It occurred to me last night that I wonder if we want this airplane that much if it was called a Queen Air instead of a King Air. But all kidding aside, to do Nebraska, a big a state as it is, effectively, you need access to an airplane if you're going to operate across the state. The state has many really fine airports, even though I don't think they need a ten-mile path in the sky to get down to them, but nevertheless about 80 of them, and they are very well located in western Nebraska. And as long as the weather is halfway clear, even the shortest ones are safe and functional, and some of them even have a vehicle waiting at the end of the runway for you. It's a needed thing for any business or any government that wants to operate statewide. Now that being said, it's about all you can say for sure. Do we need a King Air, which eliminates 20 percent of those airports? Do we need to have that many seats? Do we need to have the expense cost of maintaining that big an airplane? Or is that more the fact that it's a King Air? Would two airplanes of a smaller size, four or five seats, be more functional? Airplanes don't always stay fixed, and when one goes down for repairs or for an examination, it may be down for a week or more. I know we've had one that when we were flying was down for three, four weeks. Well, it would be good to have a backup under those particular situations. It seems to me that logically maybe the right way to do it is two smaller aircraft, even though I don't know that for a fact. There seemed to be some rush that this particular airplane that we're looking at is the only one available; it's you got to buy it now. Well, as Senator Krist pointed out, an airplane is a hole in the sky that you pour money into. And there are lots and lots of airplanes that are bought by people who think they can afford them, or businesses who think they're doing great and can afford them, and find out really quickly that they're not the best idea to have in a hangar. They don't get enough use out of them and they're just a hole in the sky. So the market for airplanes and turnover in airplanes is active, it is available. This is not the only airplane for sale; and if it goes someplace else, chances are you'll find a comparable deal somewhere else if you're going to go used. I've been impressed with Senator Krist's argument that maybe the smart thing to do is look at new, if we really need a King Air, or maybe a new smaller four- or five-passenger aircraft which may be more functional.

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

Floor Debate
May 10, 2013

We don't know the answer. And yet, we're being asked to lay out \$2.1 million for the airplane, several hundred thousand dollars more for avionics, and we still have an old airplane. I think the study is a good idea if for no other reason to be able to go back home and say, look it, this was a smart thing to do because, quite frankly, people are really questioning whether or not an airplane is needed, whether or not this big an airplane is needed, this fancy an airplane. I admit that there may be times you want a fancy airplane if you have some fancy delegation coming in from out of state. If you need that kind of situation in order to show them the state and show that we have our stuff, go rent one. They're available all the time. People want to have their airplanes in the air because their cost of operation is low. So you can rent one. You can charter one. That's not difficult. If you really want to be fancy, go charter a jet to take them in and out of some of the bigger airports. Or if you really want to spend money, call... [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR SCHUMACHER: ...some of these commercial charter services. At any rate, I'm not convinced that we should just jump at this particular airplane without being able to justify its need and its cost to our constituents. And I can't say that I have enough handle on the facts today to say that this is a smart thing to do and to look my constituents in the eye and say, look it, we had to buy this airplane. Thank you. [LB194]

SENATOR CARLSON: Thank you, Senator Schumacher. Senator Gloor, you're recognized. [LB194]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I had a chance to sleep on this. I'm glad I did. I woke up this morning and there was something in my...ringing through my mind. Some of you have heard of ear worms. This was Shakespeare, "To sleep: perchance to dream: aye, there's the rub." That was a soliloquy about death from Hamlet, as I recall. And there were times last night during debate where my life flashed in front of my eyes. I got so bored by hearing some of the same arguments. And so I'm glad there was that break for me to think about this a little bit and throw some issues out, at least for the record, as relates to my constituents on my thoughts at this point in time about this. I think the executive office should have a plane. The case has been made to me from a safety standpoint, from an efficiency standpoint, for an access of Nebraskans to the executive office. I think having a plane makes sense now. And I don't worry about it being misused by the executive office, whoever may be in it. Who wants to fly in these planes anyway? If you've not taken a lot of charters, and I'm not talking about a lot of charters the way Senator Krist does, since he does that for a living. It's not fun to fly across Nebraska skies most months of the year, so I'm not worried about abuse along those lines. I'm not concerned about conspiracy. The Nebraska Foundation doesn't need us, thank you very much. They raise their money privately. And knowing, I think, a considerable bit about foundations, since we had one with my institution, you try and stay as far away from controversy as

Floor Debate
May 10, 2013

you can because it doesn't help you dealing with your donors. And the partisanship issues that may fit into this just, in my mind, don't exist. This is a business transaction and the foundation, to its credit, takes a look at the other biggest user it has, its partner contractually in using this plane. And when they've made the decision that they need, using the monies that they have which are separate and distinct from the monies we deal with, when they make a decision that they want a new plane, they obviously turn to their business partner and say, you want to buy it? And so it comes to us that way. As relates to the business case, I've told several people that at times when I wasn't slipping into a coma last night, I chuckled because this reminded me so much of some of the discussions and debates we had in my hospital. And you could throw in front of my hospital board issues that had to do with hospital-acquired infection rates, postsurgical admissions, very technical things with a lot of jargon in it. And not unexpectedly, board members had a hard time getting engaged in what were very, very important decisions that were going to be made. And you did your best to move slowly and educate them, but it's hard for people to jump into that, the same way it's hard for people to jump in the complications of the TEEOSA formula or the intricacies of road funding, as an example. But in front of my board, if you talked about the new furniture that you were going to be putting in the hospital waiting room, everybody has an opinion about hospital waiting room furniture. We all can relate to that. And we can all relate to an airplane, which may or may not be used, misused. And our constituents contact us with their assumptions about whether this is going to be used to spray crops, photograph crops, or take the executive office on a golf outing someplace. I think the business case has been made for this. I trust the people, both from the Appropriations Committee to the aeronautical folks and their recommendations to us. [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR GLOOR: I was interested...thank you, Mr. Chairman,...I was interested in a study, but we had a vote on that and it didn't pass. We have lots of other things to cover on an agenda, and if you haven't been counting, we are now down to hours of debate, not days of debate, with very important bills yet to be discussed. I don't think it's worth spending any more time on this. It's had its day in the sun, in the sky, whatever metaphor you want to use, and we need to move on and we need to trust those who have come to us with the recommendation, move forward with this and get on to the people's business. There are lots more dollars for us to talk about and far more important issues, I think, than this. And so let's move off this mortal coil (laugh) and advance the committee amendment, the amendment to the committee amendment, and the bill itself. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Time. Thank you, Senator Gloor. Senators wishing to speak include Dubas, Price, Karpisek, Brasch, and others. Senator Dubas, you're recognized. [LB194]

Floor Debate
May 10, 2013

SENATOR DUBAS: Good morning, colleagues. And I do stand in support of this reconsideration motion. As I stated in my closing last night on this amendment, I believe there are options for us. We just need a little bit of time to explore those options and see what we may be able to put forward. As I listened to the discussion last night, I didn't hear anybody necessarily say for certain, no, we don't need a plane. I think everybody is in agreement in some way, shape, or form we need to make sure that our government officials have the ability to travel the state and carry out their business when airline travel is appropriate and meets the needs. The question is what is that best option? It may be at the end of the day that this plane is that best option. I certainly can agree with some of the points that were made about, you know, knowing what we have in this plane versus going out and buying something that we don't know so much about, especially if we're buying used. But I think by giving...by having the reconsider motion so we can continue to have a little bit more discussion about this, and if we can't get something worked out during this debate, to move forward between General and Select and come back with an amendment that again will give us, as the Legislature...we're the ones that write the check at the end of the day. We're the ones that have to go, as was pointed out many, many times yesterday during the course of debate, you know, we're the ones that have to go home and explain to our constituents why we did or didn't do...take a particular action, and so to be able to go home to our constituents and say this was the reason why we supported the plane or this was the reason why we supported the study, and to have those reasons behind that decision. So I really hope that you will give this reconsider motion serious consideration and give it a green vote so that we can continue this dialogue and come up with a solution that allows the Legislature to have a level of comfort with the decisions that we're looking at making right now. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Price, you're recognized. [LB194]

SENATOR PRICE: Good morning, Mr. President, members of the body. Last night, those few hours ago that we stopped, I had an opportunity to speak, and I didn't vote on that amendment. I must say why, because what we said in the amendment was, yes, we believe we need a plane but we don't have a time frame to execute it in. I want to back up the train a bit, go to acquisition 101. We're policymakers. A lot of us all said we're not the acquisition professional who understands the difference between planes. We have people who can buy cows, who can buy farm equipment, who can do a lot of things but not planes. What we do is we give the authority for the policy. Another entity, the acquisition professionals, will gather the requirements. When you gather requirements and make sure those requirements are validated, you have a budget. What you don't want to do is dictate a solution from the beginning, because I guarantee you, you won't get your best bang for the buck. So in going through this, we give the authority, an acquisition strategy is generated, requirements are generated and validated. At that point in time, market surveys are done. Industry gets to put input in, to

Floor Debate
May 10, 2013

make sure we have the best possible proposal. We let that out. We let vendors come back and give us their solutions to our requirements. And then the source selection team and a source selection authority go through that and they find the most responsible bidder, not lowest cost, most responsible with the least amount of risk. I believe that this is a very good model to follow. This is the model we should follow. Again, as I said last night, it is my intention, hopefully, if this goes forward, I will vote for the reconsideration. I will vote for the amendment, with the understanding that between now and Select we're not going to dictate a solution. We're going to make the decision here this morning on the policy of having a plane and then, once we've done that, we will put money aside, we will fence money. The professionals will go ahead and do their job. We will have done ours. I believe each and every one of us can go back to our constituents. We can look them in the eye and say, for this reason I believe and I voted for this policy. I'm sure our constituents don't want us going out there, tell them what cars to buy. We don't make that policy. We make the policy on driver's licenses, on roads, things of that nature, on funding the state police. We don't get all the way down in the weeds. On this bill, on this motion, I want to support it, knowing that we're going to get back to a purer sense of what acquisitions is about and what policy is about and not blend the two. I likened it to saying, yes, if your doctor told you, yes, you need a new organ, let's say you need a new liver, I agree, you need a new liver but I'm going to tell you when, you know? If it's important, you want to set parameters around it. You just don't want to say yes and then walk away from it, like it's some nebulous thing. That's what gives government a bad name. So, colleagues, I would encourage you to vote green on the reconsideration and on the amendment, knowing going forward that we are going to make policy here today. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Price. Senator Karpisek, you're recognized. [LB194]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. We talked about if we need a plane or don't need a plane. And as Senator Krist and others have pointed out, we have planes. So it isn't that we won't have a plane if we don't have this plane. Maybe those two...other two aren't exactly what we need in all situations. However, it's not like we're flatfooted if we don't have this exact plane. I know that Senator Mello talked about the Exec Board doing the study and, with all due respect, I don't know that that is a great idea for the Exec Board to do. I think, as Senator Krist has said, there are people who do this. Now if the Exec Board were to commission the study, I guess, or pay for it, then I would be happy with that. I voted for the amendment last night and I will vote to reconsider. I just think it makes sense to check out everything a little more. It's not that I don't trust what we have now or the people that gave it to us. I guess in my heart, I feel that it came quickly and not enough time to really study all the options. It's not that I don't believe what's been handed out or what they've said. I just think there is a lot more to look at rather than what we've looked at so far. So I will vote for the reconsideration motion and I would like to yield the remainder of my time to

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

Floor Debate
May 10, 2013

Senator Chambers, if he would like it. [LB194]

SENATOR CARLSON: Thank you, Senator Karpisek. Senator Chambers, 2 minutes and 50 seconds. [LB194]

SENATOR CHAMBERS: Thank you, Senator Karpisek. Thank you, Mr. President. And as I stated when I gave my opening, I would allow others to have what they...have the opportunity to say what they chose and I would say as little as possible. My understanding of the next step after the reconsideration and the adoption of the amendment as it exists, the Executive Board would not conduct the study. The study would be done under the aegis of the Executive Board. Then the Legislature would be the one in charge, not the Aeronautics Department. So as Senator Karpisek very clearly stated it in a simplified way that everybody can understand, the Executive Board would commission the study or select the entity that will do the study; it will not be done by the Executive Board itself. And I will support that. But we will work on that aspect of it not during this General File debate but when we have the time between now, when we advance the bill and it comes up again on Select File. Everybody who is interested can participate in whatever way they choose, but we're not going to come back with an involved, complicated, lengthy proposal that would require a rocket scientist to understand. So I appreciate the time that Senator Karpisek gave me and I don't see the need for me to say anything until I close. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Chambers. Senator Brasch, you're recognized. [LB194]

SENATOR BRASCH: Thank you, Mr. President. And thank you once again, colleagues. Questions raised about should we buy a used plane, many individuals fly used planes, they are sound. This plane is well-known and it's been determined by the commission that this is a good purchase. Senator Chambers had mentioned how Warren Buffett will bend down to pick up a penny, that a penny is important. I've also read that Warren Buffett has gone to thrift stores and purchased some of his suits, has repurposed them. Doesn't seem like a bad idea if we can save money with a used plane. The other thing I want to bring up is the fact that I think it's over 25 years ago, back into 1989-ish here, when the state of Nebraska had proposed to the Legislature LB775, now known as the Nebraska Tax Advantage Act. There was a special group, I believe Senator Landis was the one, but the Governor's Office and several agencies and entities collectively held a study and held informational meetings, now not a study but informational meetings. And on these planes they attended at least 14 meetings across the state. And the reason I'm so familiar with it is I was the public information officer at the Department of Revenue at the time, and I helped secured the facilities and the locations for all of those meetings. And it was paramount that we were able to take the collective group of authorities on creating LB775, or the Tax Advantage Act, quickly across the state in a short window of time to let the state know of the intentions and the need for an economic development

Floor Debate
May 10, 2013

plan. We were the last state to bring in an economic development plan. Other states were stealing our businesses and youths and talents. And why I even bring this up is we're talking about a tax study now, a very important tax study, where we are hopefully in the process of securing locations, meetings, and I hope it's just not within a 50-mile radius. We're talking about an entire state that needs to know about taxes and have consensus and input on this valuable tax study. Well, the time is running out on this plane and we're going to have a group of people and a group of senators that are going to need to get together and make it across the state as quickly as possible. Well, first of all, I'd like to recommend that without a plane we put Senator Bloomfield on this commission, because he has a CDL and I think is licensed to haul cargo for ten hours at a time. I think Watermeier has a CDL. I don't know how many others can drive ten hours at a stretch, because it's going to take a lot of time to meet with a lot of people across the state by vehicle. And at the end of the day, I think this group will wish that we had a plane to effectively and efficiently talk to as many people as possible about changing our Nebraska tax system. I also want to say that I believe it was Senator Mello that stated that there was diligence in the commission in the Department of Aeronautics, that that is within their... [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR BRASCH: ...purview, within their authority. And the other is, if they're not in the authority, perhaps we should start buying equipment for the Department of Roads as well. Do we need to pick out the trucks and things and have studies? Department of Roads are allocated funds to buy their heavy-duty trucks. Some equipment is very expensive. If we're going to change policy on Aeronautics, maybe Department of Roads also needs to have studies on every piece of equipment they buy. They're no longer an authority. Our commissions are no longer an authority. Let's give the people, like the committees, the authority to use their expertise in making this decision. Thank you, Mr. President, and thank you once again, colleagues. [LB194]

SENATOR CARLSON: Thank you, Senator Brasch. (Visitors introduced.) Those still wishing to speak include Senators Krist, Watermeier, Burke Harr, Nelson, Davis, and Bloomfield. Senator Krist, you're recognized. [LB194]

SENATOR KRIST: Thank you, Mr. President, colleagues. And this is probably the last time I'm going to talk about this issue, unless you ask me a question. I passed out to you a real, live, small business company called SkyWerx up in Blair. They have an option to buy into that jet for \$250,000 for 75 hours or \$500,000 for a 150-hour guarantee program per year. You can look at the numbers yourself. In their stable of airplanes, they also have additional airplanes, and one of them is a King Air C90. So I'm going to give you a couple hypotheticals, and this lends itself perfectly in your decision process of do we really need to spend the money to have an independent analysis. And by the way, when I talked to Mike Cook, although he is a very intelligent and very savvy

Floor Debate
May 10, 2013

aviator, he did agree that sometimes you need to go outside and have somebody do an analysis because you are spending taxpayers' dollars. He is encouraging us to buy an airplane for the state of Nebraska. He's encouraging us to look at the option of buying the foundation airplane. But again, that is the independent opinion of one of the commissioners, and I appreciate and respect his opinion, as I do Ronnie Mitchell's. But I think the independent analysis is still the way to go. Back to my point, here's a scenario for you. Whatever natural disaster happens, the Governor needs to get from point A to point B not to do anything more than to be on-site to declare an emergency. Well, that one airplane that we depend upon, that brand new King Air C90, if that's what we decide to buy, or that King Air 200, which is the foundation's airplane, is down for routine maintenance. What are we going to do? We going to put him in the Navajo and send him out there? Probably. We going to put him in the Cheyenne? Remember, that one is probably going to go away. So we're probably going to have...forced to either put him in a smaller airplane or charter or lease another airplane. Different scenario, actually same circumstance: The Governor has to go, eyes on, to look at something and declare an emergency. He calls up the National Guard. The helicopter cost, last time I checked, billable back to the state, is \$4,000 to \$5,000 an hour. Has to be done, has to be done. That comes out of his emergency fund. Same scenario: You have a business relationship, a contract written up with SkyWerx Aviation up in Blair. The jet is down. The second jet though is available for the same price. Small field landing, the King Air is also available for a lesser price. These are the kinds of options that you step through, as Senator Schumacher said earlier, when you make a decision to make a major purchase and you have your CFO and your business manager making a decision based upon good information. I'm not saying again the Department of Aeronautics did not give us all the information that we need, but I think we owe it to the taxpayers to get an independent analysis, make the right decision. The study is the right way to go. Vote for the reconsider motion, we do as Senator Chambers suggested and make sure that it's an independent analysis, done the correct way between now and Select, and let the administration go back and let the foundation know they need to extend the lease on the airplane until policy... [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR KRIST: ...and decisions are made. And those policies and decisions will be made by the people who are going to be writing the checks, it will be us, and move forward. And I don't think it's second-guessing. I think it's doing the right thing for the right reasons with the taxpayers' dollars. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Krist. Senator Watermeier, you're recognized. [LB194]

SENATOR WATERMEIER: Thank you, Mr. President. Good morning, Nebraska. I've kind of gone back and forth on this issue. I'll just share with you how I was originally on

Floor Debate
May 10, 2013

this. A couple weeks ago, I was probably against even buying the airplane at all, because in my business, any chance I have a chance to get rid of a capital purchase, I'll get rid of it and try to do something temporarily as best I can. And even last night, when the vote came up to vote on a study, I felt, okay, I can do that. But I'm in opposition to the vote to reconsider and I'm actually in opposition of the amendment that I voted for last night. I really took some time last night and this morning to dig through...and this is the part where the body needs to be reminded that we can all get involved with that hearing that we did not attend. Go pull out the testimony. Go look at the history. Go back and ask these people that were involved in that hearing. And I'm just going to read a little bit of excerpt from what the Department of Aeronautics had testified at, and they were charged with the question of: Should the state purchase an aircraft or should privately owned aircraft be used through the rental, timeshare, lease, or other arrangements? The department has studied and experienced aircraft ownership, chartering, renting, and now leasing. The only method of providing state air transportation in which the NDA has not participated is fractional ownership, which is timeshare. Timeshare, or fractional ownership, is not a viable option for the state due to its high cost and initial capital outlay or lease payment and monthly management fee covering the cost of ownership, base hourly rate for each hour flown, plus a fuel surcharge which can be upwards of \$700 an hour. Additionally, the aircraft in these programs are jets, not twin-engine turboprops. Leasing the aircraft provides all the costs of ownership: maintenance; inspections; insurance; hangaring; along with hefty monthly lease payments, typically 1 percent of the value of the aircraft. Leasing a new King Air 250 valued at \$6 million would entail a lease payment of \$60,000 per month, \$720,000 a year out of the General Fund. Three years of these lease payments would equal the purchase price of a King Air, the used King Air that we're talking about. Five years of lease payment on a new, smaller King Air would exceed the purchase price of the King Air B200. Leasing only makes sense for a user who would otherwise buy a new aircraft every few years. The department has not purchased an aircraft since 1986, 27 years ago. Similarly, the NDA anticipates not needing to replace this aircraft that they are recommending for 20 years. Now Senator Krist has got way more experience in this than I do. I bought several airplanes and stuff but nothing like this class, and this is a big deal. And like I said earlier, I would probably be in favor of not buying anything or certainly buying the study, but I think I do need to defend a little bit what went on behind the scenes in the Appropriations Committee as I dug into it and I asked more questions. Yesterday there were some questions about this appraisal. Well, the NU, the university, had actually paid for an appraisal done from Illinois, and they also had an internal appraisal done. That rate of \$2.1 million was right in the range, and so I'm comfortable with that. But the thing that I would have to share, my own personal experience is anything I can buy that I've had history of since day one, being new, I will give a lot more value to that. Now we may very well get burned on this airplane, I don't know, but I don't believe in the fact that the university is trying to shuffle this off on us in setting up a deadline. It is unfortunate that the deadline is July 1, but they actually gave that to us back in August. That's when we started leasing this airplane under a dry monthly rate.

Floor Debate
May 10, 2013

So there's really nothing that I can see that's gone on under the table, and I'm comfortable with this purchase. So I'm going to suggest we not vote to reconsider this, that we allow the motion to die, which it did last night, and we'll have to look at some other amendments. And I would also ask that Senator Wallman reconsider his motion that he's going to bring up to reduce the dollar amount to \$1.5 million. And I guess I'm going to vote in support of following through with the recommendations of the Appropriations Committee. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Watermeier. (Visitors introduced.) Continuing with debate, Senator Burke Harr, you're recognized. [LB194]

SENATOR HARR: Thank you, Mr. President, members of the body. I'm going to start out with an apology. Apparently I offended some people last night when I questioned the voracity of the study, saw as a personal attack. I wasn't pointing fingers. I wasn't meaning to offend anyone. I just don't understand the paper that was handed to us. So if I offended anyone, I understand the members of the committee are great. Matter of fact, Senator Watermeier and I met with Mr. Mitchell, head of Department of Aeronautics, and let me just say if every employee of the state is that good and that honest, we as a state are very lucky and we are in good hands. But just because they're good people doesn't mean the study doesn't leave some questions for me. I still...I didn't stay at a Holiday Inn Express last night. I went home. But I still have questions as a result. So you look at the prices on this handout from Senator Nelson last night and it's \$1,500 for this trip from Lincoln to Kearney back, versus a charter, versus a charter, versus a charter, versus a fractional ownership. Now things are complicated when it comes to...because you have a number of different federal agencies overseeing flights. You have the FAA, you have...and the ownership, you have FAA, you have IRS, and there are others. So when you charter you're paying a surcharge, a tariff, on the fuel, as opposed to ownership. Fractional you get a tax write-off, which is great, except that, well, unfortunately, we as a state don't pay taxes, so that's kind of offset. There are a number of variations and variables that go into determining the actual cost and what I would like to see is this number \$1,500 doesn't take into account the cost of the plane. That's just written off. So you have a plane, this is the cost of operating the plane. The charter, when you're operating it, it takes into account the actual underlying costs of the plane and the depreciation on the plane. So we aren't really giving a fair number here and Director Mitchell, to his credit, was willing to say as much, that if we compared actual apples to apples we might have a different number. And matter of fact, we would have a different number. That \$1,500 would be greater. Now depreciation on planes isn't that great, let's be honest, because of all the maintenance that goes into planes, minus this Great Recession that we are just coming out of. Everyone was dumping their planes. But we're coming out of that so I think the price of planes are going to stabilize a little bit. I'm not saying this is a bad deal, not at all, but if we're going to measure the drapes, as Senator Gloor says, I want to make sure those measurements are accurate and I want to be able to make sure that we have taken into account all of the variables,

Floor Debate
May 10, 2013

because there are a lot out there. You know, filing your flight plan versus a charter, does it make more sense? What this doesn't tell us is, do we get a discount? King Air 150 hours, is it discounted? Does it go lower? Is this Walmart--the more you buy the cheaper your price is? I don't know. It would seem to be that way because we already know the costs of a plane are large, fixed costs. So it would seem the more I rent that plane, the lower that company's fixed costs are going to go, and so we're going to meet somewhere and it's going to be cheaper. You know, we say this is based on 150 hours. And I am not very good at math, but 150 hours divided by weeks in a year, which is 52, comes out to around 3 hours a week. That's not a lot of time. I can't believe owning something would be cheaper than renting it for three hours a week. [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR HARR: Thank you. It's just...it's not a lot of time, three hours a week. You got pilots, you're going to have a pilot, copilot; now they need to have other responsibilities, I would concede that. But it would seem a better use of resources...a charter company sure as heck is going to be flying more than three hours a week, so their fixed costs are going to go down, it would seem to me. Again, maybe this isn't true. I only had about a 20-minute conversation with Mr. Mitchell this morning, and we weren't able to get into great detail that I would like to see before I feel comfortable. Again, not impugning any individual. Not saying this may not be a great idea, and maybe it's been thought out, but the evidence hasn't been presented to me. And just like the waiting room, everyone is going to want to know about this; and so I got to be able to go back to my constituents and defend the indefensible, as Mr. Buffett calls it. Thank you. [LB194]

SENATOR CARLSON: Thank you, Senator Harr. (Visitors introduced.) Returning to debate, Senator Nelson, you're recognized. [LB194]

SENATOR NELSON: Thank you, Mr. President. Good morning again, colleagues. I appreciate Senator Harr taking the time to talk with Director Mitchell, and I think it's influenced his thinking a little more now. I just want to say for the record, I've never maintained that it's going to be cheaper, necessarily, to buy this plane in comparison with chartering or fractional ownership, which I think is just out of the window. As I said yesterday, the \$1,530 for a trip from Lincoln to Kearney to Lincoln, the \$4,204 cost is based on the number of miles at \$5 a mile, doesn't include the cost of the plane. But we have to look at this from the standpoint that that cost of the plane is going to be prorated over the next 12, 14, 15 years. And so what we're doing is we're buying something that we know, a bird in the hand, that we're comfortable with that we may not keep forever, you know? There's always the possibility that if we buy it, and I think that we should, I hope that we will, because I think it's really a pretty good deal, all things considered, if you listen to what Senator Watermeier said. We can turn that plane over in two or three years if the Legislature decides it's in our best interest to buy a King Air 90, a new one.

Floor Debate
May 10, 2013

That can be done down the future. But we have an opportunity now. I don't see any way, and I'm standing in opposition to this motion to reconsider, that we could get a valid report between now and Select to make a decision. And the amendment doesn't provide for any money at all. If we do not get a report and go through the Executive Board and we say, well, we find out basically what we've already known from the two appraisals and from the testimony that we heard from the Department of Aeronautics, who's going to make the decision to go ahead? We going to come back into special session or something like that? It's just more delay. So I'm in favor of acting now on something that we know about. Let me point out, and I think I mentioned this already and you had an Exhibit 3 that tells the number of states: 35 states operate King Airs. Kansas has a 350; Minnesota has two planes, a 200 and a 90; Missouri has three; South Dakota has three. So we're just asking for one and we've got the Navajo as a backup. Yes, it's a 31-year-old plane. It will carry six people. It's got two engines. We're okay with that. The idea is, though, that if we're going to purchase this plane, we're going to sell the Navajo and get possibly \$500,000, \$600,000 out of it, which would help a big...quite a bit, you know, with the purchase here. So in my mind, I think I've probably given you all the information I have. I think, from what we've heard from Senator Krist and others, that we have honorable people in the Department of Aeronautics. This offer was made to us. They've looked at it carefully. They think, all things considered, it's a good deal. I don't see why, if we can buy an 11-year-old plane that's used, that's in good shape, that has a log all these years, that our pilots know how to fly, we've flown it safely up to this point, why we can't go ahead at this time and purchase the plane, confident that we've done our due diligence and we're doing the best we can for the state of Nebraska and not spending \$3 million to \$5 million on a new plane down the road. So I urge you to vote not to reconsider, to vote against this motion for reconsideration, and let's move on with the purchase of this plane, which I have full confidence is a good and reasonable buy... [LB194]

SENATOR CARLSON: One minute. [LB194]

SENATOR NELSON: ...for the state of Nebraska. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Nelson. (Visitors introduced.) Senators still wishing to be heard, Davis and Bloomfield. Senator Davis, you're recognized. [LB194]

SENATOR DAVIS: Thank you, Mr. President and members of the body, good morning. I just a few minutes ago hit my send button to all of you and made a few mistakes in it before it...because I sent it out too early, but basically it's a reiteration of the data that I put together last night. Refine a little bit to reflect the fact that the data I went through last night included the foundation's use of the plane. This takes the foundation's use out. However, I also made another mistake on that and I apologize for that because on the sheet that Senator Krist handed out last week talking about the aircraft usage, the miles, etcetera, the Governor did use the plane about 2,000 miles, the Cheyenne, and that

Floor Debate
May 10, 2013

was not figured in here. But if you look at the data that I sent out, you will see that we could charter a plane and we could use that plane for about twenty years and that twenty years would be what it would cost the state of Nebraska for chartered services over...instead of buying this plane. I'm not sure that chartering is the appropriate way to go, but I'd like to see us look at that as a possibility. I think that it would really make a great deal of sense to do that. We'll have safe, new planes always to be flying in and we will not incur maintenance costs, etcetera. So look my e-mail over carefully. If you've got any questions, you can ask me. I don't want to waste anybody's time and I realize people are kind of bored with this topic, but it's an important issue that we need to look at. Thank you. [LB194]

SENATOR CARLSON: Thank you, Senator Davis. Senator Bloomfield, you're recognized. [LB194]

SENATOR BLOOMFIELD: Thank you, Mr. President, and I see Senator Krist just heading out the door. If he would be willing to turn around and come back, I'll have some questions for him in a couple minutes. Colleagues, as I mentioned last night, I'm not convinced that buying a plane is necessarily in the best interest of the state, but I believe if we're going to buy one, we should be looking at buying a new plane to keep the Governor as safe as possible in his travels. And I would like to ask Senator Krist for some comparisons between the 2001 King Air B200 and the 2013 C90. [LB194]

SENATOR CARLSON: Senator Krist, would you yield? [LB194]

SENATOR KRIST: Yes. [LB194]

SENATOR BLOOMFIELD: Senator Krist, I think you mentioned yesterday the passenger capacity of each. Would you remind us of that? [LB194]

SENATOR KRIST: Sure. The 200, and I'm quoting off of the Department of Aeronautics, is billed out as an eight-passenger airplane and the Cheyenne is billed out as an eight-passenger airplane. The C90 that you see there new is going to be a six- to seven-passenger airplane because it's a little bit smaller cab. [LB194]

SENATOR BLOOMFIELD: Thank you. I asked you yesterday about new safety features. You ensured us there were a lot of them. Going to the smaller plane, are the new safety things still included? [LB194]

SENATOR KRIST: Yes. The sheet that Senator Nelson handed out yesterday I think makes the case in terms of dollars and cents and what we're looking at in the new C90 is all the state-of-the art avionics, and it's not just safety of the aircraft in terms of the reliability of the engines, but it's also the avionics on the airplane. The TCAS I talked about, which is a terrain system, also let's you know what kind of terrain is in front of you

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

Floor Debate
May 10, 2013

and also where airplanes are in relationship to your airplane. So it's a situational awareness. [LB194]

SENATOR BLOOMFIELD: Thank you. Colleagues, we're looking at spending virtually \$2.2 million on a used plane. We're going to have \$250,000 five-year maintenance, minimum of \$350,000 avionics upgrade versus a \$3.5 million new plane, if we're going to buy a plane. We're looking at a difference of \$700,000 to put the Governor in a new, safer plane. Let's support this reconsideration motion, let's pass this amendment, let's do the study. If we're going to have a plane, let's put the Governor and those traveling with him or for him in a newer, safer airplane. Thank you. [LB194]

SENATOR CARLSON: Thank you, Senator Bloomfield. There are no other senators wishing to speak. Senator Chambers, you're recognized to close on your motion to reconsider. [LB194]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there's not anything really that needs to be said. So I will simply...since somebody made a reference to the bard earlier, the die is cast, Caesar has crossed the Rubicon. I will dub this amendment that we're considering so that people know we're not, by adopting this amendment, casting aspersions on anybody's integrity. I will dub it the Ronald Reagan amendment: trust, but verify. Thank you, Mr. President. And I would ask for a call of the house. [LB194]

SENATOR CARLSON: Thank you, Senator Chambers. There's been a request for a call of the house. The question is, shall the house go under call? All those in favor vote yea; all opposed vote nay. Record, Mr. Clerk. [LB194]

CLERK: 34 ayes, 0 nays, Mr. President, to place the house under call. [LB194]

SENATOR CARLSON: Thank you. The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Schilz, Larson, Ashford, Kintner, Gloor, the house is under call. Senators Gloor and Ashford, the house is under call. Senator Chambers, all members are present or accounted for. How would you like to proceed? [LB194]

SENATOR CHAMBERS: (Inaudible). [LB194]

SENATOR CARLSON: Thank you. Members, the question is, shall the motion to reconsider be adopted? It takes 25 votes. All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB194]

CLERK: 28 ayes, 14 nays to reconsider the previous vote, Mr. President. [LB194]

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

Floor Debate
May 10, 2013

SENATOR CARLSON: The motion to reconsider is adopted. Members, we return to debate on AM1324. Are there senators wishing to speak? Seeing none, Senator Dubas, you're recognized to close on AM1324. [LB194]

SENATOR DUBAS: Thank you very much, colleagues, for that opportunity to reconsider the last vote taken on this issue. You know, I have been having a lot of conversations on the floor visiting with Fiscal, visiting with members of the Appropriations Committee. I do believe we have some options here. I thought maybe there was an opportunity that I could have brought an amendment forward now here on General File but we really need to make sure that, you know, we've got all our t's crossed and our i's dotted and we're dealing with an appropriation here and how we're able to handle that appropriation. If we want to make sure that that remains available, but by putting some specific criteria in place, I think is going to take a little bit of time to make sure that we have those details ironed out before we bring forward an amendment. So, I believe by adopting this amendment, moving forward, it will allow me to continue working with the Fiscal Office and other interested stakeholders so that we can come forward between General and Select with an amendment that is sound, and that will do what I heard the conversations on the floor this morning saying that the decision that we'll have an independent study, that we'll be able to have a level of confidence in whatever decision comes forward. I would echo the words that Senator Chambers stated: trust, but verify. And for me also, this is not an indication of mistrust on anybody's part; but we also have, you know, a person, a senator here in the Chamber who has a great deal of experience in this area. I think we should take those thoughts into consideration as well as we make this decision that does involve a great deal of money. And as I stated earlier, we're the ones that have to go back home, talk to our constituents and give them reasons why we made whatever decision we made. And as I often tell my constituents, you may not agree with me, but you're going to know where I was at and why I ended up making that decision. And so I think for us to be able to have that independent study done, recognize the limitations that we're looking at as far as appropriations goes, coming back between General and Select with a good solid amendment will give us that ability to go home, give us a level of confidence for ourselves as well as our ability to go home and talk to our constituents about what decision was made. So I would appreciate your support for this amendment and promise you that I will follow through with the concerns and questions that I heard from you through our individual conversations as well as the debate on the floor, and will come back in a manner that will address those concerns. Thank you for your support. [LB194]

SENATOR CARLSON: Thank you, Senator Dubas. The question is, shall AM1324 be adopted to LB194? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB194]

CLERK: 26 ayes, 14 nays on adoption of the amendment. [LB194]

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

Floor Debate
May 10, 2013

SENATOR CARLSON: The amendment is adopted. Mr. Clerk. We raise the call. [LB194]

CLERK: Mr. President, Senator Krist would move to amend with AM1342. Senator Krist would like to pull that amendment. Mr. President, Senator Wallman for...withdraw yours as well? Yes, sir. Mr. President, I have nothing pending further to the committee amendments. [LB194]

SENATOR CARLSON: We return to debate on the committee amendments. Are there senators wishing to speak? Seeing none, Senator Mello, you're recognized to close. [LB194]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. AM655 is the Appropriations Committee recommendation for the deficit appropriation bill. Obviously, the body just voted to make a change to the deficit appropriation in relationship to the Department of Aeronautics request that the committee ultimately had originally put in our proposal that now has been stricken out, but the overlying other issues can be found on page 89, or page 88, 89 and 90 of your Blue Book of the other aspects of our deficit appropriations request. I'd urge the body to adopt AM655 which would become the copy of LB194. Thank you, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Senator Mello. Members, you've heard the closing on AM655. The question is, shall the amendment be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB194]

CLERK: 43 ayes, 0 nays on adoption of committee amendments. [LB194]

SENATOR CARLSON: The committee amendments are adopted. [LB194]

CLERK: I have nothing further on the bill, Mr. President. [LB194]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Mello, you're recognized to close on LB194. [LB194]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. LB194 is the final budget bill that we will have discussed through the seven budget bills over this entire week. LB194 now incorporates the Appropriations Committee deficit appropriation request for a variety of different agencies. As I mentioned, to be found on pages 88, 89 and 90 of your Blue Budget books. Ultimately, I think we will have some technical changes to the budget bills that we passed this week, not just with LB194, but other bills that we have passed prior to on Select File as we normally do during the budget process. With that I appreciate, once again, the hard work of the members of the

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

Floor Debate
May 10, 2013

Appropriations Committee in helping forge our comprehensive package of budget bills and the budget recommendations, and urge the body to adopt LB194 so we can move the entire budget process now to Select File. With that, thank you, Mr. President.
[LB194]

SENATOR CARLSON: Thank you, Senator Mello. The question is, shall LB194 be advanced to E&R Initial? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB194]

CLERK: 45 ayes, 0 nays, Mr. President, on the advancement of LB194. [LB194]

SENATOR CARLSON: LB194 does advance. Mr. Clerk, next item. [LB194]

CLERK: LB536 is a bill by the Business and Labor Committee and signed by its members. (Read title.) Introduced on January 23, referred to the Business and Labor Committee, advanced to General File. There are committee amendments by the Business and Labor Committee, Mr. President. (AM904, Legislative Journal page 976.)
[LB536]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB536. [LB536]

SENATOR LATHROP: Thank you, Mr. President; and colleagues, good morning. We're about to undertake the claims bills. Typically, we have two bills that come from the Business and Labor Committee. One is approved claims and the other is claims that are not approved. We actually have no unapproved claims. So, we only have one bill and that's a bill to approve claims that have been approved by, typically, Risk Management, and in some cases, they're judgments entered by a court or they're agreements or settlements entered into by the Attorney General's Office. So I'll go through those with you this morning as I introduce this bill. LB536 is introduced by the Business and Labor Committee at the request of the Department of Administrative Services, Risk Management Division. This is the annual approved claims bill which contains claims against the state that were either approved by the Claims Board or settled by the Attorney General's Office. The first claim is by the Nebraska Press Advertising Service. It's for \$72,808.58 to recoup the cost of publication of constitutional amendments on November 6, 2012, general election ballot. The second claim is for \$450,000 by Darrel Parker. This was filed pursuant to the Nebraska Wrongful Conviction and Imprisonment Act. In 1956, Mr. Parker was convicted and sentenced to life in prison for murdering his wife. The basis of this conviction was a coerced confession. Lincoln police brought in Chicago polygraph expert, John Reid, to assist in the interrogation and you'll learn in a moment why this is noteworthy. He was released...that is, Mr. Parker was released in 1970 after the Federal Eighth Circuit threw out his conviction finding his confession was involuntary. The United States Supreme Court vacated the Eighth Circuit's decision and

Floor Debate
May 10, 2013

remanded the case for a determination on the voluntariness of his confession. Facing additional time in prison, Mr. Parker agreed to admit that his confession was voluntary in exchange for a commuted sentence and parole. However, Mr. Parker continued to maintain his innocence. Mr. Parker was later pardoned on the basis that he was rehabilitated, but the board could not indicate whether his confession was coerced. Later the United States Supreme Court released the Miranda decision, a seminal ruling that recognized the course of nature of custodial interrogations. The Miranda Court adversely quoted the interrogation tactics from manuals authored by John Reid. The individual interrogated Mr. Parker included manipulative tactics to dissuade against the request to remain silent or consult with an attorney. Ultimately, the court ruled that certain warnings should be provided to an accused to safeguard their Fifth Amendment right against self-incrimination. The Attorney General's Office admitted in court documents that Mr. Parker provided a false confession and now believes another individual committed the crime. Accordingly, the AG's Office agreed to settle the case for the statutory amount. The third claim for \$950,000 by the estate of Michael Stodolka concerned a fatal car crash on the entrance ramp to I-80. Mr. Stodolka died when his car hit a drop-off and rolled. The fourth claim is for \$150,000 by Regina Seamann in a Work Comp claim. Ms. Seamann was employed at the Norfolk Regional Center and was attacked by a patient. After receiving temporary disability benefits, medical professionals determined Ms. Seamann could not return to work. The AG's Office agreed to lump sum the settlement for the permanent disability benefits. And the following claims concern agency write-offs. Agency write-offs are required to seek the Claims Board approval for debt write-offs. The board approved all of the requests which are found in LB536. The board determined the debts were uncollectible either because the debtor is deceased, the debt has been discharged through bankruptcy, the statute of limitations has run, or the board was satisfied with the department's effort to collect the debt. Supreme Court requests a write-off of \$212.76, mostly for postage and copies and things of that sort. Military Department is requesting a write-off of \$1,468. They've been unable to collect amounts for tuition assistance. Legislative Council, you may be interested, is requesting to write-off \$157.50 for unpaid copying services. Department of Corrections requests a write-off of \$18,124.45, the bulk of which was money that we got stiffed when Oriental Trading Company went under. The Department of Roads requests write-offs of \$66,141 for debts related to the property damage that happens when people run over signs and guardrails and things of that nature. Department of Administrative Services wants to write off \$2,147. This concerns debts related to videoconferencing. Department of Health and Human Services has the most significant, and that's \$2,015,439 and this is the accumulation of several different smaller claims when people have been overpaid. They get on to it, they go try to collect it, and they can't get it back from them. These are where families did not reimburse the department for care of a family member, for example. Department of Motor Vehicles. I only have two of these left. Department of Motor Vehicles request that we write off...permission to write off, \$3,643 for unpaid appeal transcripts, and finally the Fire Marshal wants to write off \$4,060 for debts related to inspection and registration fees. This is an exercise that

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

Floor Debate
May 10, 2013

we go through every year to basically to balance the books and to pay the claims that the Attorney General and the Claims Board has seen fit to settle, and I would encourage your approval of LB536. Thank you. [LB536]

SENATOR CARLSON: Thank you, Senator Lathrop. And as the Clerk mentioned, there are committee amendments; and as Chair of the Business and Labor Committee, you're recognized to open on AM904. [LB536]

SENATOR LATHROP: Thanks once again, Mr. President. Colleagues, AM904 adds an additional claim and makes a couple technical changes. The federal district court...this is something I talked about before when we pay attorney fees on an unconstitutional bill, the federal district court has ordered the state to pay \$302,461.44 for attorney fees and court costs associated with a lawsuit challenging the constitutionality of a recent sex offender registration legislation. The court found the law's provisions concerning computer monitoring and the use of social media unconstitutional. The state did not appeal that decision. We have to pay that, and it's a little bit of a lesson in what happens in the cost of passing unconstitutional legislation. On page 3, line 6 and 17, the claim in the amount of \$950,000 was changed to \$1.2 million because the AG's Office agreed to increase the settlement amount to accommodate a subrogation claim. And on page 5, line 13, the Supreme Court's original debt write-off of \$212.76 is changed to \$200.43 because the court was able to collect one of the owed debts from an estate. That was two dollar change. And with that, I would encourage approval of both the amendment and the bill, and I'd be happy to answer questions you have regarding any of those claims. Thank you. [LB536]

SENATOR CARLSON: Thank you, Senator Lathrop. You've heard the opening on LB536 and AM904. The floor is now open for debate. Senator Chambers, you're recognized. [LB536]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the kind of bill that Senator Lathrop was presenting may not register on anybody's radar screen, but there were a couple of extremely important claims that were discussed. One related to a man who confessed to a murder, which he did not commit. There was coercion in getting that confession. The law enforcement machinery knew that the confession was coerced, but they went along with it. Now, there has been case after case after case establishing that coercions...that confessions are coerced. One of the most recent ones that led Will, the columnist, the conservative columnist, to say that conservatives need to look at doing away with the death penalty in view of what happened to those five young men in that notorious Central Park jogger beating and rape. They had no physical evidence against any of these young men. The young men made confessions. Some recanted them. When a time line was put together, they could not have been in Central Park because it was established that they were someplace else. And they spent a lot of time in prison. They were condemned by everybody from

Floor Debate
May 10, 2013

the mayor of New York to that guy who has the Trump Towers, Donald Trump. They were demonized. They were compared to animals and all of them were nonwhite. The only way they were vindicated is that the man who committed the crime confessed. He had committed similar type crimes after they were put away. There were more vicious murders and rapes of nonwhite women which did not get the play in the newspapers. So after they were exonerated, there were reporters and people in the news industry who talked about the rush to judgment, the fact that there was no physical evidence. The only DNA evidence they found connected to nobody who had confessed. People said, that won't happen in Nebraska. It did happen. And the only reason this man said that his confession was voluntary, after the court found that it wasn't, was because hanging over his head, thanks to your criminal justice system which you say is so fair, was additional prison time because they wanted to be vindicated even though they knew the man was innocent. It was more important that they could say, we didn't do anything wrong, than it was to accept the proof that this man was innocent. The Attorney General did not object to paying this money. Money can never make a person whole when it comes to something like this. Six people in Beatrice, and I won't go into a lot of detail on that, coerced to confess by being threatened with the death penalty. One woman was mentally challenged, and even after it was established that none of them had anything to do with it and were not there, she insisted that her confession was not false because the person who had tricked her into confessing had obtained her confidence to such an extent that it overruled her own mind telling her that she wasn't there. But because she trusted this person, this person must have been right... [LB536]

SENATOR CARLSON: One minute. [LB536]

SENATOR CHAMBERS: ...she must have been wrong. Subsequently, she went along and acknowledged that she indeed had not been there. When they were going to be given a pardon, not on what people call a technicality, but on the basis that they were innocent and the identity of the perpetrator was discovered and known, the Attorney General wanted me to be present at that hearing of the Pardons Board because he said the DNA legislation that I had gotten through the Legislature--and it was difficult to do--was the basis on which these exonerations occurred. So innocent people not only are convicted, but innocent people make false confessions. I'll put my light on one more time. Thank you, Mr. President. [LB536]

SENATOR CARLSON: Thank you, Senator Chambers. Mr. Clerk for an announcement. [LB536]

ASSISTANT CLERK: Thank you, Mr. President. The Government, Military and Veterans Affairs Committee will hold an Executive Session at 11:00 a.m. in Room 2022. [LB536]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Lathrop, you're recognized. [LB536]

Floor Debate
May 10, 2013

SENATOR LATHROP: Thank you, Mr. President and colleagues. I might follow up on the comments of Senator Chambers. And I'm doing it on my own time and not as the Chair of Business and Labor introducing the bill, and let me give you a little bit of a...suggest that you pause for a second and consider what we just...what we're about to do. A few years back, Senator Rogert, who was serving here at the time, introduced a bill for the wrongfully convicted. We had just gone through the Beatrice Six, six young men who had been convicted of a crime in Beatrice that they apparently did not commit or did not commit, and they had done time and we looked for a solution. Of course, money doesn't provide a substitute for taking away someone's freedom, but you know what this bill has done, and we are taking care of one of these claims today. What this bill has done is illustrate that sometimes the criminal justice system convicts the wrong guy. As good as the system is, and I've spent a lifetime in it, right? I've spent a lifetime in our courts and the systems. As good as it is, it's not perfect. And once in a while, the wrong guy gets convicted and they get convicted for the wrong reasons for a lot of different reasons. It can be, of course, confession. And I'll just say, it can be because the victim is Caucasian and the defendant is not. There's a lot of things. We're human beings and when we put twelve people in a jury box and we ask them to make a decision, they still make mistakes. And sometimes it's the lawyers, sometimes it's the judges, and sometimes the juries don't get it right. And so why is that important on Friday? Because Monday morning we're going to pick up the death penalty and we're going to talk about imposing the ultimate punishment and here we have a claim for a fellow who they brought somebody in to interrogate him from Chicago, forced the confession that he killed his own wife, and it wasn't true. Why is that important? Because our system is not perfect enough, in my opinion, to impose death as a form of punishment. This is an example and for us to pay this Mr. Parker fellow, the Attorney General's Office had to appreciate or come to the conclusion that it was obvious, it was obvious in hindsight. And I give you that to chew on over the weekend and I'll look forward to visiting with you on Monday. Thank you. [LB536]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Pirsch, you're recognized. [LB536]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I wonder if Senator Lathrop might rise to ask him a couple of questions regarding this amendment. [LB536]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB536]

SENATOR LATHROP: Yes. [LB536]

SENATOR PIRSCH: Thank you. And I appreciate a little bit of the background with respect to introducing the topic of Senator Rogert's bill that passed a few years back.

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

Floor Debate
May 10, 2013

With respect to this particular claim, and is this the claim for \$450,000? It doesn't...there's nothing in the amendment that identifies this, I guess. [LB536]

SENATOR LATHROP: Yes, it is, \$450,000 for a fellow named Darrel Parker. [LB536]

SENATOR PIRSCH: Okay. And could you tell me, what year was this that...? [LB536]

SENATOR LATHROP: I'll just read the notes because I'm not personally familiar with the case. In 1956, Mr. Parker was convicted and sentenced to life in prison for murdering his wife. So it goes back to a day before I was even born. [LB536]

SENATOR PIRSCH: Okay, 1956. Was...and do you know, did the Attorney General take a specific position on this...on the Legislature paying \$450,000 to...on this claim? [LB536]

SENATOR LATHROP: They settled it. And I should tell you, I'm not...this doesn't suggest that somebody did something wrong other than perhaps the guy that did the interrogation and the people that brought him in. Understand, we're not paying because somebody did something that is fault-like. This bill is about compensating people that were wrongfully convicted for whatever reason, and the settlement was entered into between Parker and his lawyer and the Attorney General's Office who saw that all the elements were there and that this amount was fair compensation. [LB536]

SENATOR PIRSCH: Could you refresh my memory what those elements are that we set forth in Senator Rogert's bill? I remember that you had to either have a pardon or... [LB536]

SENATOR LATHROP: I think you had to have a pardon, if I remember right. That was sort of the threshold to do it, but I've got to tell you, that was a lot of bills ago and maybe five years ago. I don't know all the elements, Senator Pirsch. [LB536]

SENATOR PIRSCH: Okay. Is it necessary for a determination of actual innocence by any entity come about for the...for this body to grant the request for \$450,000? [LB536]

SENATOR LATHROP: We don't have...the Attorney General decided that was fair compensation, so all we're doing is approving their settlement. [LB536]

SENATOR PIRSCH: Okay, but I guess you pretty well answered. With respect to the statutory requirements, you're not familiar with right now. [LB536]

SENATOR LATHROP: I have the statute here. I'll share it with you and I'll let you take a look at it, if you like. [LB536]

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

Floor Debate
May 10, 2013

SENATOR PIRSCH: Wonderful. Thank you. That's all. [LB536]

SENATOR CARLSON: Thank you, Senator Pirsch and Senator Lathrop. Senator Chambers, you're recognized. [LB536]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I was not here when Senator Rogert's bill passed and had I been, I would have opposed it. They wanted to put an almost impossible burden on an individual who has been falsely convicted. You cannot prove a negative. And here's what these people in this Legislature did not look at. And Senator Pirsch is a lawyer. Senator Nelson is a lawyer. I don't know if they were voting on that bill or not. The only conduct that a person can be punished for must be specifically stated by law to be a crime. For a person to be convicted of a crime, there must be proof beyond a reasonable doubt of every element that makes it that offense. If a person was convicted without every element having been proved beyond a reasonable doubt, and if the conviction is thrown out, that means the person was illegally convicted. And for lawyers to say that a person must prove actual innocence is unrealistic, it's unfair, and it's contrary to the principles of Anglo-Saxon jurisprudence. I don't practice law, but I take it seriously. The law has to be respected, not manipulated. And these people who talk about not wanting to be soft on crime will pervert the law to get what they want. And they say, this so-and-so should not have violated the law. And yet in passing laws...and I'm going to try to do something about that bill, that law, next session. I couldn't do everything this session that I feel needs to be done. But those are the kind of things where somebody needs to be here to remind those people who have taken legal training and an oath to uphold the law to realize and reflect on what it was they used to think and believe before all of their idealism. All of their belief about the nobility of the law, when they could think about that and not feel funny thinking that way, elevating the law to where it should be. It is the last stronghold and bastion against chaos. And because you are poor, because you belong to a minority or unpopular group, because you are mentally ill, you will be the victim of the wrongful application of the criminal law and functioning of the criminal justice system. And that has always troubled me and it does now. And I'm not embarrassed by using a term such as the dignity of the law, the magnificence of the law, the sacrosanctness of the law. And if that law is violated by the lawmaker, when the lawmaker becomes the lawbreaker, don't put the fault on the one who is victimized by those who didn't do their job properly, and erect an almost impossible hurdle so that you can sit back and say, well, this person ought not to have been convicted. The conviction was overturned by a court, but the person didn't prove actual innocence. When you plead to an offense, you don't plead innocent. [LB536]

SENATOR CARLSON: One minute. [LB536]

SENATOR CHAMBERS: You plead not guilty. That sets the parameters within which this game is to be played--not you proving innocence, but the state proving guilt, and

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

Floor Debate
May 10, 2013

that's why a person cannot be compelled to testify when a crime is charged against that person. And the refusal, failure, or disinclination of a person to testify can never be taken as a sign of guilt. I will have to turn on my light again to finish. [LB536]

SENATOR CARLSON: Thank you, Senator Chambers. (Visitors introduced.) We return to debate. Senator Chambers, you're recognized. This is your third time. [LB536]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I wish that people would pay attention to how the legal system in this country works and how it's supposed to work. When a jury brings back a finding, the jury never, ever, says, innocent. Never. That's not a part of it. The jury says, not guilty. We took the rules of this game as they were given to us. The prosecutor has the obligation to prove every element of the case without any participation whatsoever of the accused. And if the prosecutor does not cross every t, and dot every i, that the law says must be crossed and dotted before this person can be subjected to the coercive force of the state, and be punished. And the prosecutor failed to do that. If there is a doubt that a reasonable person could have that this individual charged did the crime, if there's a doubt that a reasonable person can have, you must acquit. You don't find the person innocent. That kind of burden is not placed on the jury. The jury does not have to find innocence. The jury finds a lack of proof of guilt. So why must the person who is victimized by this game, played according to the rules, prove what the jury is not asked to establish? Senator Pirsch and every lawyer knows better, but they don't bring to play on these laws that are to be put on the books. All of that knowledge, all of that training, somebody needs to remind them, and I will do it. Another thing I will say, established by what Senator Lathrop presented to us this morning, there was a considerable amount of money that had to be paid because of unconstitutional nonsense that you all passed, not me, I wasn't here. I saved you all's bacon and I'm trying to save it while I'm here this session. I told Senator Carlson that I am a financial benefit to this state, not a burden because I comb through this bad legislation. I prevent it from going into operation and I prevent the expenditure of thousands of dollars by the Attorney General trying to defend unconstitutional legislation. And you all don't appreciate that. You don't even see it as an issue. If you don't see it as an issue, how can I expect you to do anything about it? No precision in the legislation we are going to convert into a law. We had some thing for the Corn Board, and some other types of bills; and if I hadn't stood up and faced the slings and arrows of upset senators, that stuff would have gone across the board and been enacted into law and signed by the Governor. And it's unconstitutional. It cannot stand. Who is going to look at it? Who will watch the watchers? Who will police the police? Somebody has to do it. And because my people and the people I'm concerned about are the victims, I will do it. [LB536]

SENATOR CARLSON: One minute. [LB536]

SENATOR CHAMBERS: But I'm paid to do it. I'm not paid well, but I'm paid. And when I

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

Floor Debate
May 10, 2013

enter an agreement, I don't care how other people live up to or don't live up to theirs, I live up to mine. And the responsibility I placed on myself when I took this office, based on people voting for me and reposing confidence and trust in me, that I'm going to do the best that I can however much time and effort it takes and I read, I study, I pore over--p-o-r-e--cases, decided by the Supreme Court. I try to see what the state of the law is. Then I try to apply that and get us to apply it on this floor. And that's why I will ask, if we don't even understand the law that we're passing, how can we expect anybody else? I know that's my third time on this, but since this is an amendment and we'll get to the bill, I may have an opportunity to say just a little bit more, but I'm not in any way trying to hinder the movement of the bill because I support it. [LB536]

SENATOR CARLSON: Time. [LB536]

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

SENATOR CARLSON: Thank you, Senator Chambers. (Visitors introduced.) Returning to debate, Senator Pirsch, Senator Nelson, wish to speak. Senator Pirsch, you're recognized. [LB536]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. And just quickly, I had an opportunity to briefly talk with the Risk Manager for the state outside in the hall and get a couple of quick facts upon which this particular claim is premised according to the Risk Manager. According to the Risk Manager the...there apparently was in this case a...this case was from 1956, a very old case during the Eisenhower administration, but apparently at some later time there was a deathbed confession of a different individual who admitted to committing the crime. And the...apparently the interrogation was done by an individual over a very extended period of time, over a 24-hour period. I don't have all the specific details, but that are at least two of the details upon which this claim is premised. So thank you. [LB536]

SENATOR CARLSON: Thank you, Senator Pirsch. Senator Nelson, you're recognized. [LB536]

SENATOR NELSON: Thank you, Mr. President and members of the body. I have a question for Senator Lathrop. [LB536]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB536]

SENATOR LATHROP: I'd be happy to. [LB536]

SENATOR NELSON: Things move pretty fast there and I didn't catch up with you on the amendment. Apparently, you added in a claim of \$302,461, is that correct? [LB536]

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

Floor Debate
May 10, 2013

SENATOR LATHROP: Yes. That's for attorney fees and costs associated with a constitutional challenge of a... [LB536]

SENATOR NELSON: Could you tell us a little more about that, what that case involved, if you know? [LB536]

SENATOR LATHROP: (Laugh) I might have Senator Ashford talk about this. No, it was...we passed a bill dealing with sexual offenders. [LB536]

SENATOR NELSON: Does that go back to the six Beatrice people? Is that the one? [LB536]

SENATOR LATHROP: No, no, no. The \$302,000 had to do with us paying attorney fees after a constitutional challenge to a law that we had regarding sex offender registration, and this was something where we were going to...the bill and the statute required that certain monitoring or...of computer activities, you can't get into social media, you can't do this, you can't do that. We went too far. The court determined it was an unconstitutional legislation and the lawyers who presented the constitutional challenge were awarded by the federal district court, attorney fees of \$302,000. [LB536]

SENATOR NELSON: So this was in federal court... [LB536]

SENATOR LATHROP: Yes, sir. [LB536]

SENATOR NELSON: ...and they got their attorney fees there. You know, we've had several sex offender bills and I can't remember my vote or what they were involved, but I always felt we went a little too far and I don't know whether this was the particular case here. [LB536]

SENATOR LATHROP: This was one...this was one where we were trying to tell them they couldn't go into chat rooms and I remember the bill. I remember the bill and I've not read this case. I'm not exactly sure what the challenge was other than we were telling them what they could and couldn't do, and we were getting too far into the First Amendment, I think. [LB536]

SENATOR NELSON: But this has nothing to do then with instances in which someone is declared a sexual offender,... [LB536]

SENATOR LATHROP: No, sir. [LB536]

SENATOR NELSON: ...they serve their time, and yet they're still on the registry. [LB536]

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

Floor Debate
May 10, 2013

SENATOR LATHROP: I don't think that's this claim. It's a different one. [LB536]

SENATOR NELSON: Okay. All right. All right. Thank you very much. So we lost on a constitutional issue and we have to pay the attorneys fees, right? [LB536]

SENATOR LATHROP: Yes, sir. [LB536]

SENATOR NELSON: In your mind, is it something that we could have seen here on the floor that was unconstitutional? [LB536]

SENATOR LATHROP: You know, it would...I would say it was probably a close call. I know we were trying to...one of the concerns we had when we passed the bill, I remember, I think it might have been...well, it doesn't matter who sponsored it, but I remember that we were concerned that a lot of these folks were getting into chat rooms, finding young kids or young people in chat rooms, making friends, trying to make meetings, and so one of the things we're going to do to try to protect younger people who get into these chat rooms and places like that was to prohibit these guys from going there. And that was, I think, the challenge portion of the legislation. [LB536]

SENATOR NELSON: Well, all right. Thank you. Just a comment on the Darrel Parker case. That happened right here in Lincoln. He was a caretaker and apparently was not able to prove his whereabouts and things of that sort. So I was discussing with Senator Chambers, I think it was because someone on their deathbed or something made a confession and that's the way they... [LB536]

SENATOR LATHROP: Thank goodness, thank goodness. [LB536]

SENATOR NELSON: Yeah. [LB536]

SENATOR LATHROP: You know, it's...that stuff happens when you go a little too far in the interrogation, and as you know, as a lawyer, the system isn't perfect. [LB536]

SENATOR NELSON: Well, he was wrongfully convicted, no question about that and it affected his life. He had to move away, went back east or something like, changed his life. So \$450,000 is certainly a fair amount as far as I'm concerned. [LB536]

SENATOR LATHROP: Okay. Thanks. [LB536]

SENATOR NELSON: Thank you, Senator Lathrop. [LB536]

SENATOR CARLSON: Thank you, Senator Nelson and Senator Lathrop. (Visitors introduced.) There are no other senators wishing to speak, Senator Lathrop you're recognized to close on AM904. [LB536]

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

Floor Debate
May 10, 2013

SENATOR LATHROP: I'll waive closing. Thank you. [LB536]

SENATOR CARLSON: He waives closing. The question is, shall AM904 be adopted? All those in favor vote yea; all opposed vote nay. Record, Mr. Clerk. [LB536]

CLERK: 28 ayes, 0 nays on adoption of committee amendments, Mr. President. [LB536]

SENATOR CARLSON: Committee amendments are adopted. We return to the floor on debate on LB536. Senator Chambers, you're recognized. [LB536]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, there are times when Senator Carlson and I will banter back and forth about things of a religious or spiritual nature. He's in the Chair so he cannot respond to a question, but were he on the floor and able to respond, I would ask him this question, can any man or woman say that tomorrow is promised to that man or woman? And the answer is no. We don't know when we breathe out and not be able to breathe in again. We don't know when that moment will come, because I could croak before an opportunity presents itself like the one I have now. I want to say just a few more things about my concept of the law and how it needs to be respected. As Senator Nelson pointed out, he and I were discussing the Darrel Parker case, and fortunately a man did confess to having murdered the wife that Darrel Parker was coerced into confessing falsely that he had murdered. Darrel Parker did not prove his innocence. He could not prove his innocence. And had he offered something by way of proof, it would not have been accepted because the prosecutorial authorities would have had to deny the validity of what he said to protect what they did. So this man, through happenstance, even though after his false conviction, he always said, I didn't do it. But after all those years he spent in prison for a crime he didn't commit, and a court finding that his confession was not voluntary, he knew that if they could convict him of a murder he didn't commit, and keep him locked up all those years, after all this time of being without your freedom, a convicted murderer, and these same people who put you there the first time can do it again, and then they tell you in that seductive way, all you have to do is say that your confession was voluntary. You don't have to repeat it again and we'll let you go. We'll cut you loose. We'll turn you loose and set you free. "Parson" Carlson will understand this. When you make a man tell a lie, which everybody knows is a lie to get his freedom, that can hardly be a system of justice that is praised. People will say, well, the system worked ultimately. No, the system did not work ultimately. The system did everything it could to prevent itself from working the way it should. It's why I'm always offended when I hear Americans say that America has the best system of justice in the world. They don't have any basis for saying that. They don't understand the system of justice in the city they live in, let alone the system of justice of the state. And if they happened to have been trained in the law of their state, they don't know and understand the system of justice in all of the forty-nine other states. And they certainly don't know anything about the justice

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

Floor Debate
May 10, 2013

systems in other parts of the world. There are other countries which this country would say are inferior to this one, where the prosecutor's job... [LB536]

SENATOR CARLSON: One minute. [LB536]

SENATOR CHAMBERS: ...in fact is to determine what is just. And if, as the case progresses it appears to the prosecutor that the wrong person is on trial, the prosecutor moves to dismiss because the prosecutor is not under the burden of winning the case but seeing that justice is done. And if the judge perceives that the person is improperly charged, the judge on his or her own motion will dismiss the charge and that doesn't happen in America. And how can you say this the best system in the world when you didn't even know that what I'm telling you exists, and you don't know now that it's true? But you won't read to find out. We...people in this country...I'm not going to say we, I'm not a part of this country in the way that you all are. People in this country could learn something from other countries if they would but open their minds and their eyes. Thank you, Mr. President. [LB536]

SENATOR CARLSON: Thank you, Senator Chambers, and you're recognized on your second time. [LB536]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, for those...and I don't expect laypeople to read this because even lawyers don't, many of them. The code of professional responsibility that governs lawyers and tells them what their ethical duties are points out that where you have a public prosecutor, then that prosecutor has a higher burden and duty and responsibility to uphold the law because that lawyer represents the sovereign. That lawyer represents the sovereign. And as such, a higher burden is placed on that lawyer in that capacity than on an ordinary lawyer. There is no such thing...there's no need to put public prosecutor in the version of the code in Nebraska because you have only public prosecutors. A private citizen cannot bring a criminal charge against anybody in this state. The charges are always brought by a prosecutor, and it's brought in the name of the state, not in the name of an individual. It's always the state against so-and-so because the state prosecutes it. In other states, a person, a citizen can file a criminal charge against another citizen. Then the public prosecutor reviews this case; and if there's a basis for the charge to go forward, then it's reduced to a formal charge brought by the public prosecutor on behalf of the state, and it no longer is the complaint of this person. People in Nebraska in the legal profession don't even know these things. I try to talk to them about lawyers. They say I don't even know what you're talking about. I read all the time. I read as much as I can about as many things as I can. And I probably have more useless knowledge than anybody anywhere on the face of this earth because if something is of interest to me, then I will pursue it until my curiosity is satisfied, and there's nothing else I can do with it. I can't make any money from it. It won't help me in my job. It just satisfies that something in my mind, that itch that you have in your brain, that only knowledge can

Floor Debate
May 10, 2013

scratch. So back to what the law is supposed to do. The lawyer who would defend Martin Luther King, that's good, but that lawyer is not worthy of any special consideration. The one who would defend Mother Teresa is not worthy of any special consideration. The one who would defend Mahatma Gandhi is not worthy of any special consideration because identifying their name with those people is going to redound to their benefit and they will be elevated. You know who is due some consideration? The one who would defend Gacy. The one who would defend Jack the Ripper, had he ever been apprehended. The one who is willing to defend the person that everybody hates, the one that everybody wants to throw away, the one who says if he's guilty and the death sentence is pronounced on him, don't just put him in the electric chair and fry him, don't just hang him, drive nails through his head first. And don't drive them through enough to kill him because we want to execute him. And then after you kill him, do like they did in Britain, although they do it while the person was alive. And it's why they said in other parts of the world at that time, to have such humane laws as you find in England, you find the most barbaric punishments. When they talked about drawing and quartering, sometimes the drawing consisted of putting a person on a sled and dragging that person to the place where he or she was to be executed. Other times it referred to disemboweling that person, cutting that person open and taking out the intestines, the internal organs. And you know how they would quarter somebody? They would take four horses... [LB536]

SENATOR CARLSON: One minute. [LB536]

SENATOR CHAMBERS: ...and they would attach your arm to one and your other arm and a leg to each horse and then they hit those horses and they're supposed to strain with all their might until they split you. That's in Christian England. That's what they would do. And when they would disembowel somebody, they sometimes would burn that person's entrails before the person had completely lost consciousness. These things are recorded. That's what they did to people. Thank you, Mr. President. [LB536]

SENATOR CARLSON: Thank you, Senator Chambers. (Visitors introduced.) Senator Chambers, you're recognized for your third time. [LB536]

SENATOR CHAMBERS: Thank you, Mr. President. By the way, I do support the bill, as I indicated. I will state briefly or repeat briefly an incident that involved Sir Thomas More to make a point. There was an individual in Thomas More's house and they were having a discussion and this guy was a spy for Cromwell. And at that time, Thomas More was the Lord Chancellor. He was the top legal person in the realm. And when this spy left, the young man who wanted to marry Sir Thomas More's daughter said, you let him go. Thomas More said, yes, I let him go and go he should until it's found that he violated the law. And the young man said, he violated God's law, and Thomas More said, then let God arrest him. And the young guy said, you would give the devil benefit of law. And Thomas More said, yes, I would give the devil benefit of law. And then he pointed out

Floor Debate
May 10, 2013

how England is planted thick with laws from coast to coast and would you do away with these laws to get after the devil? And the young man said, I'd cut down every law in England to get after the devil. And Thomas More said, and after all of the laws are flat, and the devil turned upon you, what then would you have to protect you? The winds that would blow, all the laws being flat, could you or any other man stand against those winds? Yes, I'd give the devil benefit of the law for my own sake. And that's what we need to realize, that you can be innocent and convicted of a crime. And what could be more horrible than being convicted of having murdered your own wife when you didn't? And you carry that burden of having lost your wife and they force you to say, you killed her, and then they take your freedom from you and say, you will be locked up and deprived of your freedom for the rest of your life. And the system that did that is lionized by people in this state because that happened in Nebraska. He's fortunate that he was not sentenced to die and executed because had he been executed, nobody would care. When former Governor Kerrey was still Governor, he issued a posthumous pardon to a man illegally executed many years ago in Nebraska. And the reason they know that this man's execution was illegal, unlawful, and unjustified because the man he allegedly murdered turned up alive in Kansas, and this is a matter of historical fact. They never found his body. They found a plaid shirt and some other garments and things that were his in a streambed, and they moved from that so-called evidence to say he must have been murdered and this is the man who murdered him. And they didn't even have a body. And he was executed. And with all of the people who have been exonerated by DNA evidence and taken off death row, it's bad enough for the state to kill anybody, but to know that innocent people have been killed is enough to do away with a system where the state does that act which we would take another person's life for. [LB536]

SENATOR CARLSON: One minute. [LB536]

SENATOR CHAMBERS: We say, this criminal killed an innocent person. What happens when the state kills an innocent person? Is the state abolished? Is the state overthrown? No, they just say, well, I'm sorry, we all make mistakes. I can't dismiss it that casually. And Senator Lathrop opened the way--I have done everything that I could think to do to get rid of the death penalty, to take Nebraska out of the killing business and I intend to continue doing so. I hope we do it this session, but as long as that penalty exists and as long as I have breath in my body and there's anything I can do to fight against it, I will. Thank you, Mr. President. [LB536]

SENATOR CARLSON: Thank you, Senator Chambers. Senator Lathrop, you're recognized to close on LB536. [LB536]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Again, LB536 is the claims bill. We don't really have a lot of choice in the matter. Much of it has been agreed to by the Attorney General, ordered by the federal district court, or the write-offs for agencies. I would appreciate your vote on LB536. Thank you. [LB536]

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

Floor Debate
May 10, 2013

SENATOR CARLSON: Thank you, Senator Lathrop. You've heard the closing. The question is, shall LB536 be advanced to E&R Initial? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB536]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB536. [LB536]

SENATOR CARLSON: LB536 does advance. Mr. Clerk. [LB536]

CLERK: Mr. President, the next item, Select File, LB407. I do have Enrollment and Review amendments, Mr. President. (ER91, Legislative Journal page 1194.) [LB407]

SENATOR CARLSON: Senator Coash for a motion. [LB407]

SENATOR COASH: Mr. President, I move to adopt the E&R amendments. [LB407]

SENATOR CARLSON: You've heard the motion. All in favor say aye. Opposed, nay. Motion carries. [LB407]

CLERK: Mr. President, Senator Krist would move to amend the bill with AM1307. (Legislative Journal page 1268.) [LB407]

SENATOR CARLSON: Senator Krist, you're recognized to open on your amendment. [LB407]

SENATOR KRIST: Thank you, Mr. President, colleagues, and good morning again, Nebraska. There was a discussion at the end of LB407 that led to an agreement, an agreement of those that were present. Unfortunately, I was in the Chair presiding for better than half of that discussion. Had I been there, I would have brought these two items more to light. I do not intend to take this in an inordinate amount of time. I intend to use part of this as an educational process and program for us to listen to; and if you find the two ideas involved here in these two amendments, this and the one to follow, are worthy of your vote, then we will do that. I had asked the Speaker to be available because this is...if it is an educational process, he probably has more knowledge than anyone in the room on this issue, next to Senator Sullivan. I know that Senator Sullivan's reaction to an amendment on the bill was not favorable the other day. And I do understand her concern because when we do come to a consensus, usually those consensus are felt across the board, particularly with those people who participate in them. However, I want to just...this is not to embarrass anyone, but on the record, Senator Sullivan said, I thank my colleagues for the support of AM1102 and I look forward to additional discussion on TEEOSA, answering some additional questions when we deal with it on Select File. I want you to know that I and my staff stand ready to answer any questions when the models come out. My door is open and we're willing to

Floor Debate
May 10, 2013

work through the process and again, thank you. And I say that, because it was with that closing and with the invitation of the members of the committee--and I talked to several of them on the issues--that I again bring up a few issues today. To the point. The instructional time allowance that was not necessarily discussed as part of the final discussion, at least not while I was present in the room, seems to be, in my opinion, heavily weighted towards those districts that have taken advantage of the program, and about a third of that money is going to one school district in the state. Now, I know that they have said on many occasions that the TEEOSA formula will be the subject of an intense interim study and I hope that is the case. And I hope that what we talk about today is indeed part of that discussion. I handed out to you what I think capsulizes where we are. It gives you the history. I'm not going to insult your intelligence and read it to you, but the history is very brief. The process was amended, as amended, LB407 as amended on General File would give you this formula. The challenges with the current approach, I think are interesting to note, current approach increases the instructional time allowances from fifteen million in January model to state aid and it goes on to twenty million. Most dramatic example, Millard goes from an instructional time allowance of one million under fully funded current law to five million under LB407. Now, again, I am not attacking any one district here. I am showing you that the purpose of TEEOSA may be flawed in the execution of a formula as it currently exists. These two changes are addressed in the proposal amendment that I bring forward, decreasing the allowance amount from twenty to ten, and establishes a sunset after 2014-15. And then if you'll flip to the second page on the bottom, proposed amendment, the business managers who brought this to me through their lobby, and again, I don't think lobbyists are bad guys. I think they're a concentrated form of a citizenry, a concentrated voice for the citizenry that they represent. The business managers were not necessarily convinced that that was the best way to go. And some of them, some of them, including my two school districts, Bennington and OPS, and to some extent...I don't want to throw anybody under the bus, but there's at least eleven of these folks that are involved as business managers in the decision...or in this proposed amendment. Business managers from learning community school districts and Lincoln met earlier in the morning and are receiving a draft of LB407 prior to. So again, I don't really think it's necessary for me to read all this to you and I will say this, again, these two amendments, AM1307 and the following, are not meant in a malicious manner. They are meant to have a discussion. With that, I'd like to ask Speaker Adams a question if I could. [LB407]

SENATOR CARLSON: Senator Adams, would you yield? [LB407]

SPEAKER ADAMS: Yes, I would. [LB407]

SENATOR KRIST: Speaker Adams, could you just capsulize the intent or the purpose of the TEEOSA formula? [LB407]

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

Floor Debate
May 10, 2013

SPEAKER ADAMS: Well, the intent of the formula...and realize, we're talking equalization now, not special ed or apportionment money, any of that, it's equalization money, and it is to balance the needs versus the resources of school districts. [LB407]

SENATOR KRIST: Is it intended to be a balance for the district or is it intended to be a balance for the student? [LB407]

SPEAKER ADAMS: Well, it should be for students, it should be for the district, and it should be for the taxpayers. [LB407]

SENATOR KRIST: So in this particular case, we're looking at the formula being used to balance an award or a funding mechanism that goes to teachers who have reached levels of education. Is that fair? [LB407]

SPEAKER ADAMS: Not in your amendment, Senator. Your amendment, as I read it, deals with instructional time. I think you're referring to the teacher education allowance. The instructional time allowance refers to the amount of time spent in the classroom in a school year. [LB407]

SENATOR KRIST: So we're talking specifically about the amount of time in the classroom whether it's extended to provide additional instruction or whether it is the...as we would consider it to be the standard school day. [LB407]

SPEAKER ADAMS: That's correct. [LB407]

SENATOR KRIST: Okay. So this has nothing to do...and I wanted to make that clear. This has really nothing to do with rewarding teachers or rewarding districts or rewarding anyone. You see, Millard has done a wonderful job of providing educational opportunities and because of that, they lopsidedly tip the scale. Now, that is not to say that any school district out there cannot take advantage of the formula in order to do the same thing. And Senator Adams, I will yield you the balance of my time. I'd like you to talk to why this is so important in the education system. [LB407]

SPEAKER ADAMS: All right. Thank you, Senator Krist. Let me begin first of all...and Senator Sullivan can probably do a much better job than I can of this. And instead of looking at the entire formula, let's zero in on an allowance within the formula. What we have said traditionally about an allowance is this. If a school district is experiencing an extraordinary cost that has resulted from them doing something that we in the Education Committee and have the Legislature believe is something good, let's recognize that cost--so an instructional time. If we have a school district that has said, we're incurring additional costs because we're lengthening our school year; and the Legislature and the Education Committee says, and you know what? That's a good thing. We believe that educationally that is sound and so we're going to build an allowance in the formula that

Floor Debate
May 10, 2013

helps offset some of that incurred cost. Now inherent in that, is this. It doesn't mean that every school district gets it unless they qualify for it. This isn't one of those items that you divide the cake up amongst everybody at the table. They've got to qualify for it. That's what an allowance is. All right? And there are times as a committee, that the Education Committee when the various elements of the formula are reviewed, they have to sit down and say to themselves, is this still good policy? Is it still good policy? And are some school districts who are implementing the policy experiencing extraordinary costs that other school districts are not? And then third, and I think this is part of what the Education Committee this year wrestled with because I know I wrestled with it in my four years, if it's good policy... [LB407]

SENATOR CARLSON: One minute. [LB407]

SPEAKER ADAMS: I'm sorry, Mr. President. [LB407]

SENATOR CARLSON: One minute. Then your time is next, you can continue. [LB407]

SPEAKER ADAMS: All right. All right. If a school district...if they're extending the day, and we have said additional instructional time is a good thing and they are truly taking on costs that other school districts are not because other school districts have not chosen to go to that level, then the next question becomes, can we devise a calculation that mechanically works within the formula? You can imagine the difficulty there. One of the reasons, I believe, given that Senator Sullivan and I had done a lot of work on this leading up to this year, that the instructional time allowance was being reviewed by her committee was not that it wasn't a good idea to extend the school year, nor was it that every school district in the state was doing that and all had the same kind of costs, they didn't. Millard happens to be one of those poster schools, I suppose, for extending time. My problem with it was there were some schools that I felt...I hate to use the word gaming, but the law is the law, the calculation is a calculation, and they found a way of qualifying for the allowance legitimately. But one would question, maybe we're not calculating that. We're not doing it right. And when we held hearings all across the state of Nebraska, starting in Gering all the way to Gretna this summer, the instructional time allowance when we brought it up, you kind of...this is my interpretation, you kind of got this look in the room like, yeah, we like it and, well, we don't get it at our school but they get it down at their school and I don't want to say that they shouldn't, but I don't know how they're calculating it. And hence, that element was part of LB407. Senator Sullivan can talk to this far better than I and part of the reason that they spent probably a lot of time this session in Exec Session talking about the whole concept and the educational time allowance which works basically the same way. What we said several years ago, all right, it's an allowance now. What we said several years ago was look, we had places like Lincoln, Nebraska, because the university was here; Wayne, Nebraska, because of Wayne State College; Chadron, all had teacher's colleges with graduate programs, easy access to their staff to get master's degrees, they were coming in and

Floor Debate
May 10, 2013

saying, hey, we're experiencing an extraordinary cost that a lot of other schools aren't. We got all these teachers with master's degrees because it's geographically easy to access, is that a cost that we ought to recognize, and then (b) is that a good policy on behalf of the state that we recognize and therefore incentivize having advanced degrees? Several years ago this Legislature said yes, and they built that allowance into the formula. Does every school take advantage of it? No. Some of them don't meet the bar and then there are schools that are way above that bar. Is it something that always ought to be looked at? Yes, indeed. And I don't really know...I don't want to stand here and tell you that the allowances...and we have allowances for poverty and we have allowances for transportation and we have allowances for teacher education, the list goes on. I don't want to say that the allowances are not intended to be equalizing, but the reality is, as I said before, you don't take every school and sit them around the table and say, you all get a piece of this pie. They may not have the cost, they may not have met the threshold, and that threshold is established by the Legislature based on what they believe is good policy. Now, I've not really dug into a lot of detail on this, but having been involved in the compromise that was worked on, I knew that there may be something coming forward, but I'm going to tell you straight up, I'm a bit uncomfortable with this. Is it some hidden deal... [LB407]

SENATOR CARLSON: One minute. [LB407]

SPEAKER ADAMS: ...that's going to rob money out of all of these schools? No, because what it really does is to affect the schools within one cost group. And you know that cost group is that we're dealing with here? It's Omaha, it's Westside, it's Ralston, it's that cost group moving this money around and one is getting some and somebody else wants some of it. It's not going to affect York. It's not going to affect Hyannis. It's going to affect the schools in that cost group and to what avail? I mean, that's one of the things you need to think about here. I support the committee's work in what they've done and that's not to say that this can't be looked at. There isn't an element that isn't always being looked at. And I think we need to appreciate the fact that the business managers took a look at this, but frankly, I think it's a bit after the fact although we're only on Select File. I get that. It's a bit after the fact and I do know that the committee has done good work on this... [LB407]

SENATOR CARLSON: Time. [LB407]

SPEAKER ADAMS: ...and will continue to. [LB407]

SENATOR CARLSON: Thank you, Senator Adams. Those wishing to speak include: Davis, Sullivan, Ken Haar, Hadley, and Harms. Senator Davis, you're recognized. [LB407]

SENATOR DAVIS: Thank you, Mr. Speaker. I'll yield my time to Speaker Adams.

Floor Debate
May 10, 2013

[LB407]

SENATOR CARLSON: Speaker Adams, 4 minutes and 55 seconds. [LB407]

SPEAKER ADAMS: Well, I'd love to speak on, but I'm caught a bit off guard. All of these elements in the formula...I don't mean to be stealing Senator Sullivan's fire. These are all things that she can talk about every bit as well as I can and probably ought to be the one. I don't chair that committee. All of these elements we look at all the time. We look at them all the time. The teacher education allowance, frankly, I'm the bad guy. Clear back this summer, I was sitting in the committee with staff, saying, you know what, I'm not sure that teacher education allowance ought to be in the formula anymore. Is it a unique cost? I don't know if it is anymore. And at the very least, it's back in and the committee is going to continue to take a look at it. And I heard in our conversations in my office as we were developing this compromise that the committee really needs to continue to take a look at this teacher education allowance, the instructional time allowance, a host of things. Well, at the risk of confusing you--and I wish I had my whiteboard here--let me go back just a second to that cost group. Imagine you've got 20 schools in a cost group and all of these 20 schools have just about the same enrollment, all right? And some of those schools meet the threshold for an allowance and some don't, all right? Now what we're going to do is we're going to take all the schools in that cost group and we're going to find the per-student spending at the midpoint, the average, at the midpoint, all right? But what we do is this: If school A is getting the instructional time allowance because they've cranked up the number of school days, we take that allowance amount and we put it over here in our pocket. And school C is also doing that, and we take that allowance amount and put it over here. Then we average them together, okay, so that way you don't have the other schools nursing off of the allowance that schools A and D are getting because they're doing something special that pushes up their per-student spending. Now the average is created. And if the average is, say, \$9,000 a student within the cost group, what do we do next? We reach back in the pocket, give student A their allowance on top of that \$9,000, reach back in the pocket--I forget now whether it was C or D or whoever--give them their allowance on per-student spending. So it bumps it up a little bit. So if you took away one of these allowances completely, in statute, you just took away, you realize what you really do. You take the money that is in the allowances and you just spread it out amongst all 20 of them. That's all you've done. That's all you've done. And it's my fault, Senator Krist, I've not read your amendment in detail. But what I see happening is that when you reduce the amounts of the money and you would change the average, what you're really doing, you're redistributing the money within that cost group of schools. You're not affecting the total aggregate of state aid. You're not doing that. That's how you always have to think of an allowance. It's not an add or a subtract from the total; it's a remixing within a cost group, the remixing. There are some schools out there that don't qualify for any of these allowances. And you know what they'd like to have us do? All right, my tutorial must not have been too good. [LB407]

Floor Debate
May 10, 2013

SENATOR CARLSON: One minute. [LB407]

SPEAKER ADAMS: Get rid of them. Get rid of them so we can divide all this money up equally amongst everybody in the cost group. And then those schools--and let's take a Millard--that have traditionally developed policies and calendars and hiring practices which try to meet those allowances, they're saying, oh, we don't want to get rid of it because we don't want to have to divide up this little extra money we get for doing these things. That's what an allowance is. And does it have a great equalizing effect in the broad scheme of how equalization is supposed to work? No, no, it doesn't. Thank you, Mr. President. [LB407]

SENATOR CARLSON: Thank you, Senator Adams. Senator Sullivan, you're recognized. [LB407]

SENATOR SULLIVAN: Thank you, Mr. President. I appreciated Speaker Adams' review of some of the details. And I can only aspire to his...how articulate he is in explaining some of those things. I think there's probably one thing that we can all agree on, and there is no perfect formula. And some of the things that Speaker Adams was talking about were, yes, the very things that this committee struggled with, starting last summer. I will tell you, as I speak, and I have shared the wording with all the members of the Education Committee, that one of our priorities, our top priorities this summer over the interim will be to open the book, so to speak, on school finance and look at every single aspect of it, whether it's instructional time, teacher education allowance, or even beyond the aspect of TEEOSA as it currently exists, that we want to look at the whole...all of the alternatives that can be approached with respect to how we fund our schools. And, yes, we tried to do that this last summer and we tried to hear the voices of the individual districts. And in doing that, that's how we arrived at the details of LB407, to eliminate the instructional time allowance, to eliminate the teacher education allowance, to eliminate the averaging adjustment. But as you...I...as you've heard me say several times on this floor, that all changed as the voices started to coalesce around certain features that they wanted to be sure remained in the formula, those being the instructional time, the teacher education allowance, and the averaging adjustment. And so we ended up with a compromise. I would prefer...and so I stand not in favor of AM1307 because the compromise that resulted, distasteful as it was to me, was something that we could be comfortable with for the time being. My committee, I think, remains strong with that and knowing full well that we are going to reexamine it going forward. If we look at Senator Krist's amendment specifically, what it does to the instructional time and what it deviates from as far as what LB407 looks like in its amended form, it would drop the amount of dollars going into instructional time from \$20 million to \$10 million and it would also sunset the instructional time. Speaking to the latter, as I said, the committee is committed to looking at all aspects of school finance and we basically just don't want our hands tied with putting a sunset on this particular

Floor Debate
May 10, 2013

allowance. As far as the total dollar amount, well, I will tell you that, at first estimates, if we decrease that instructional time allowance from \$20 million to \$10 million, it will, in effect, decrease the total amount of aid. And we've already seen that decrease for a variety of different reasons, the compromise being one of them. So I'd hate to see that amount decreased any more. And then the other thing it does, and both Senator Adams and Senator Krist alluded to this: You end up with different winners and different losers, particularly within that cost group. So I have to ask you, particularly from a policy standpoint, why is...where does that lead us down the policy road? Because if we make those changes, then I would venture to guess we are still going to have other school districts that win in the process and those that lose. [LB407]

SENATOR COASH PRESIDING

SENATOR COASH: One minute. [LB407]

SENATOR SULLIVAN: We have, under LB407, as it's amended, a compromise that I think still adds some growth, still tries to provide some aid across all 249 school districts. And quite frankly, to change that now I don't think achieves anything for the greater good. Yes, it does have some specific impact to a few larger school districts. And I would emphasize that, among those districts, all of them are receiving significant increase in aid. It's just that when we change that instructional time, some became bigger winners and others became losers. If we want to go down the path of staying true with more policy, rather than politics,... [LB407]

SENATOR COASH: Time, Senator. [LB407]

SENATOR SULLIVAN: Thank you. [LB407]

SENATOR COASH: Thank you, Senator Sullivan. (Visitors introduced.) Returning to discussion, Senator Ken Haar, you are recognized. [LB407]

SENATOR HAAR: Mr. President, members of the body, first of all, I want to do some thank-yous. And I would like just the teachers in the south balcony to stand for a moment. Would you please do that? And I applaud you. That's what this is all about. It's the kids. It's about the teachers. Then I simply want to say, I'm a storyteller. I used to tell stories to my grandkids all the time. And they're old enough they don't want to listen to me on stories anymore. So the story I told on Monday was, I thought, sort of in the genre of Garrison Keillor, who doesn't always start out by saying, this is a story. I thought, by the end, you'd know it was a story, so I want to make sure that...I had a mild heart attack. I was down in the woods, cutting trees, and I am undergoing cardio. I did not see a bright light. I didn't change parties. That was all part of the story. (Laugh) And the commitment that Senator Janssen made to throw me some votes, that was a story too. So anyway, I want to get all that clarified. I want to thank the committee. In

Floor Debate
May 10, 2013

committees we don't always come to consensus. We don't always vote everything out, 8-0, and, of course, that didn't happen. But finally we came out with LB407. So I want to say I support LB407 without amendments. The second point I'd like to make real briefly is I hope we reconsider next year Senator Hadley's proposal to have that temporary aid adjustment. What would have been so cool this year is, since the Appropriations sort of said, we could have had \$915 (million) for school aid and the formula only came out to \$807 (million), we could have said, multiply by 105 percent. Wouldn't that be great, that at some point our formula comes up with a number and we can actually multiply? I think everybody assumed it was always going to be a less-than-100 percent. This would have been a great opportunity to just under...insert what I call the "Hadley factor," and we'd have come up with 105, 106 percent. So that's something I'm going to be thinking about next year. One of my disappointments during our whole debate on LB407 is so many people left the floor. And I would simply say that I think it's a mistake to not try to understand at least the fundamentals of TEEOSA. It's a third...state funding is a third of the budget, a third of the budget, and I think we all need to understand it better. So one of the things I want to talk about real briefly because it was so important and most of the people had left: I handed out a paper today which I got permission to use. It was used at a conference in Kearney on economic issues in school consolidation in Nebraska. This paper is authored by Dr. Eric Thompson, associate professor of economics at UNL and director of the Bureau of Business Research at UNL, and by Dr. Bree Dority, who is an associate professor of economics at UNK. And they were...they presented this paper. They hope to publish it, but I talked to Dr. Thompson to get permission to use this. [LB407]

SENATOR COASH: One minute. [LB407]

SENATOR HAAR: And he said they'll probably make--thank you--some minor adjustments in the paper before they publish it. But this was on a conference on...presented by the Center for Great Plains Studies at UNL, and it was on the effects of school consolidation in the Great Plains. And this paper is very interesting because it brings up a topic called economics and diseconomics of scale. Now economics of scale is a well-known principle when you produce widgets. And it simply says, the more widgets you produce, the lower the cost per widget. When we apply it to schools it says, the more kids you have in a school district, the less basic funding per student. The other part of that theory of economics is...the other part...if you think of it as a U. You know, the more widgets you produce, you go down on the left side of the U. But then, at some point, there is... [LB407]

SENATOR COASH: Time, Senator. [LB407]

SENATOR HAAR: Thank you. I'll continue. [LB407]

SENATOR COASH: Thank you, Senator Haar. Senator Hadley, you are recognized.

Floor Debate
May 10, 2013

[LB407]

SENATOR HADLEY: Mr. President, members of the body, I thought I would stand up and speak on this amendment. I do not support it. I was asked to be part of the group that got together to work on a compromise involving TEEOSA and what we were going to do. And the compromise dealt with, basically, four areas. That was the averaging adjustment, the teacher education allowance, the instructional time allowance, and then increasing the spending that schools can do. And I want to say the group worked real hard to come up with a compromise. And the one thing we didn't do was to spend our time trying to figure out, how is this going to impact my district? How am I going to...what's going to happen to my district because I do this? And I want to say I think the entire group worked real hard to talk about policy issues, not how this is going to impact my district. In fact, we had someone say, well, we need to lower the instructional time allowance so everybody can get some money. That isn't the purpose behind it. I think if you look at the compromise that we came up with, it is a good compromise. I think it puts emphasis on what we think, as a body, we should be doing. And you look at it, the averaging adjustment. There was a concern with the low spending per pupil, high taxing ability. The teacher education allowance, we looked at it from a policy issue. Do we not want our teachers to have advanced degrees, especially in the area they're teaching? The instructional time allowance, do we not want our students to spend more time in the classroom? We came up with 175 hours as the compromise. I did some reading. It's 180 hours is the average in the United States. And it's 200 around the world. So from a policy issue, how can you not feel that that's important? The spending was that we had some nonequalized districts that were up against the spending lid. They had some money, but they couldn't spend it. So we tried to give them the opportunity. So I think the point is, is that this was a good compromise. Did it help my district? No. I got a telephone call from them and said, wait a minute, this didn't help us out. Well, I said to them, that wasn't the overall goal. When we went into this, there was a priority of goals. And it seemed to me that every time we got one priority taken care of, the next priority became higher than the one we got taken care of. I do not have the ability to have Senator Sullivan's or Senator Adams' knowledge of the formula. I will never have that. But I do think I have a knowledge of what we kind of want in it from a policy standpoint. And I think these are four things that that bill came up with, which are excellent compromises, that gets us a good overall TEEOSA funding. So I support LB407. I do not support the amendment. [LB407]

SENATOR COASH: One minute. [LB407]

SENATOR HADLEY: Thank you, Mr. President. [LB407]

SENATOR COASH: Thank you, Senator Hadley. Senator Harms, you are recognized. [LB407]

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

Floor Debate
May 10, 2013

SENATOR HARMS: Well, thank you, Mr. President, colleagues. Senator Sullivan, would you yield? [LB407]

SENATOR COASH: Senator Sullivan, will you yield? [LB407]

SENATOR SULLIVAN: Yes, I will. [LB407]

SENATOR HARMS: First, Senator Sullivan, thank you very much for all that you've done. I know that it's been stressful to try to bring all of us together and try to make everybody happy, which is almost impossible, as we both know. Could you help me better understand? When we went...when you went through the development of the compromise, what amount of dollars was actually shifted in the compromise? Do you have any idea? Are we talking...that's the part that I don't understand. [LB407]

SENATOR SULLIVAN: Well, it resulted in about an \$8 million decrease in the total amount that we were dealing with. [LB407]

SENATOR HARMS: Now was there a shuffle internally among...of larger schools or the smaller schools? Because when I looked at the printouts that I have received, you know, a couple of my schools, one I knew was going to lose because it was losing--then it lost more--which was smaller, and a larger school who gained--lost. And I was just trying to figure out, I mean, how that all worked out basically. [LB407]

SENATOR SULLIVAN: Well, as I said, there always does seem to be...any time you start to make changes in one aspect of the formula you end up with winners and losers. I think we've got a handout that shows, under the compromise, where all the aid goes. And, you know, one of the things that I think it shows is that the money follows the student. The biggest increases were realized in the larger school districts, and there was less of an increase in the smaller schools. [LB407]

SENATOR HARMS: Well, I thank you very much for that. I believe that we all have to continue to work to, maybe, fine-tune this formula. There's a school district in my district that I did not have originally until we redistricted. It happened to be a school that I graduated from, both my wife and I did, graduated from, which is a small school. I finally called and said, you know, I don't understand why you're losing. And we talked with your staff, and so I also talked with the superintendent. And he said, I think, John, we're losing for three reasons: our enrollment is going down; we have a high of about 75 percent of our children are free lunch program; and we have high assessed valuation. And so what that said to me was, as we start to look at this, comes back to a concern that I have stated once before. We have to find a way to address these smaller rural schools because I don't see them, as I look at the numbers coming through this system, in the future are going to be there. And I really worry about how we're going to provide equal access to a quality education for some of those kids because kids who have

Floor Debate
May 10, 2013

special needs, that are mentally challenged, what are we going to do with them, you know? So I think this begs another series of questions. And you've got your hands full just to figure out the formula. But I think, long term, I urge this body to start thinking about what type of a model do we have to have for our rural schools to survive because you're just not going to be able to take a six-year-old and put them on a bus and send them 50, 60, 70, or 80 miles to get an education. And we know that you can't all do that through what Senator Chambers calls the "gadget." And then we know that we're going to have children--... [LB407]

SENATOR COASH: One minute. [LB407]

SENATOR HARMS: ...thank you, Mr. President--who have special needs that we can't put on a bus to go. And I think our problems are really going to be very complicated here. It hasn't come to a point of crisis yet, but it's coming. And what I urge us to do that we know that it's coming...how do we get ahead of this issue? How do we come forward to address it? And I just want to, again, thank you because I know that the job you've got is tough. But I hope that, as you begin to look at the formula...and I support LB407 and I don't support the amendment. I'm with where you want to be and where we need to be as colleagues. But I'm just going to come back and say don't forget the future. We're going to have to look out more than just tomorrow, at ten years out, and start understanding that we have a crisis that is coming. And I'm not going to be around. You know, next year is it. We term out. This...all of the 15 or 18 or 20 of us are going to be gone. But that's going to be a new challenge for us, and we need to get ahead of that issue. And I urge you to give it a... [LB407]

SENATOR COASH: Time, Senator. [LB407]

SENATOR HARMS: Thank you, Mr. President. [LB407]

SENATOR COASH: Thank you, Senator Harms. Senator Scheer, you're recognized. [LB407]

SENATOR SCHEER: Thank you, Mr. President. I rise in support of LB407 and against AM1307. I think, as part of the Education Committee, we've worked very diligently. The compromise group worked very hard during that week. As Senator Hadley stated, you know, when we were looking at the types of allowances, it was not how much we could get to any individual school district; it was the sum and substance of that item that we were talking about, whether it be teacher educational allowance or educational time in the classroom. It was trying to mimic best practices and provide funding for those schools that did that. I think the body responded to that compromise with the initial passage on General File of LB407. And I want to again thank Senator Sullivan for her leadership, not only on the Education Committee but during the compromise, and the rest of my committee members on the Education Committee. We had some very diligent

Floor Debate
May 10, 2013

conversations and, certainly, we didn't always agree about everything and, case to point, we probably agreed about a little, a lot. But having said that, we did reach a compromise that I think everyone is proud of and feels it's in the best interest of the education of the youth in Nebraska and the school districts. And with that, I'm pleased with the outcome and I will turn the rest of my time to the Chair. Thank you, sir. [LB407]

SENATOR COASH: Thank you, Senator Scheer. Senator Avery, you are recognized. [LB407]

SENATOR AVERY: Thank you, Mr. President. I'm going to oppose this amendment because we had a deal. And now some parties in the lobby that were a part of that deal want to overturn what was previously agreed to. So the question needs to be asked, when is a deal not a deal? And I suppose the answer is when some parties to the deal decide they want more than they got in the negotiations. So let me just say that I don't think that's the way we ought to be doing business in this body. Your word ought to be worth something. The negotiations that led us to the underlying bill, LB407, on General File were what can be easily classified as hard-bargain negotiations. When you have hard-bargain negotiations, each side usually stakes out fairly extreme positions, knowing that they will probably not be accepted, and then using guile, bluffs, and brinkmanship in order to cede as little as possible before finally reaching a deal. This is the kind of bargaining that involves distributing a fixed amount of what is valued in a bargain. And that fixed amount is going to be divided up. It's a finite amount. It's going to be divided up and everybody in the negotiations will do everything within their power to get as much of what is to be divided as they can. This is what happened in the negotiations on LB407 that got us where we are. So I would ask this body to remember that we did not arrive at LB407 lightly and we didn't do it without careful consideration. Now is not the time to toy with that delicate bargain. It was worked out in good faith and good faith should be applied to keeping it as we agreed to it. So with that, I would ask you to vote no on this amendment. And I believe we have another amendment coming up that I will...I don't plan to speak on that one, but I will ask you to vote no on that one as well and advance LB407 as we amended it on General File. Thank you, Mr. President. [LB407]

SENATOR COASH: Thank you, Senator Avery. Senator Ken Haar, you're recognized. [LB407]

SENATOR HAAR: Mr. President, members of the body, again, I support LB407 without amendments. This paper is simply...and I did the underlining on page 1 and 22. But it basically says that it's been studied in Nebraska to a certain extent and, at the bottom of the scale of cost per student, we ought to see an upturn, and that is the bigger school districts in this state. Right now, the bigger school districts in this state have the lowest cost per student, the basic funding per student. And we'll go over this all next summer, but it's simply something else to look at. The paper has some interesting ideas about

Floor Debate
May 10, 2013

whether consolidation really saves money or not, and I'll let you come to your own conclusions on that part. Again, I really urge people in the body not just to take TEEOSA for whatever the Education Committee comes up with, although I think we do good work. You need to understand this formula. It's a third of all the spending, of all the state spending dollars from the General Fund. Finally, the fourth point is I hope to study and make better use of modeling over the coming year and over the coming summer. We've had some restrictions on using that, and I hope we can resolve that issue so that all of us can work off numbers and trends. That's what I've been trying to do is look at trends, and modeling is an important part of that. So once again I want to thank the committee for its work; I want to thank the body. I encourage everyone to try to understand TEEOSA more fully. Thanks so much. [LB407]

SENATOR COASH: Thank you, Senator Haar. Senator Kolowski, you're recognized. [LB407]

SENATOR KOLOWSKI: Thank you, Mr. President. Good morning, Senators. And I'm also standing in support of LB407 and in opposition to AM1307. I want to thank Senator Sullivan for her presentation this morning, right on target, and for her leadership that's gotten us to this particular point and for the compromises that were agreed upon. Senator Avery is correct. There is a deal, and we want to stick to that and hold ourselves to that. The most important part of all the discussion from Senator Sullivan, as far as I'm concerned, is the idea that we have a compromise now. It's going to bridge us to where we want to be in the future. And the study that will be done needs to be in depth, extremely serious, and impactful for the future of the TEEOSA formula and for state funding and delivery of educational services in total for the students of Nebraska, both now and in the future. That's the key issue for me. That's where we need to put our emphasis because we all get so tied up into where we are, with the formula, what the totals are, what the districts are, how much they're getting or not getting. We've got to get past all that to give people of goodwill to serve in this committee, to do the work that needs to be done, to think ahead for decades in Nebraska as to what we need to do to deliver educational services to all students. So I look forward to the...with anticipation to the study and what we will be able to accomplish. And I would ask for your support in...and...on LB407 and not supporting AM1307. Thank you very much. [LB407]

SENATOR COASH: Thank you, Senator Kolowski. Senator Bloomfield, you are recognized. [LB407]

SENATOR BLOOMFIELD: Thank you, Mr. President. I've been blissfully quiet on LB407. We've all heard it's better to keep your mouth shut and be thought a fool than to open it and remove all doubt. That's kind of where I was operating from. Some of my schools squealed like a pig caught under a gate about this. I spent some time with Senator Sullivan and her staff. I don't pretend to understand all of the state aid formula. But I understand enough of it now to be able to defend what the committee has done. I

Floor Debate
May 10, 2013

will support LB407. The schools that told me how badly it hurt, they were not hurt that badly. I will oppose AM1307. I want to thank the committee for what they've done, and I want to yield any time that Senator Sullivan might be able to use. [LB407]

SENATOR COASH: Senator Sullivan, four minutes. [LB407]

SENATOR SULLIVAN: Thank you. Thank you to Senator Bloomfield. I just want to reiterate the commitment that the committee has and I personally have to, as I said, opening the book on school finance. I remember my first year down here. And I even, in fact, was reading the transcripts from the discussion on TEEOSA that year. And I said, you know, I think the formula needs to be reworked. I think we need to be broader than that because, also, in terms of what Senator Harms said, we've got some demographics in this state that are impacting how we deliver education to our young people. We're seeing some impact from the valuation of ag land that, I would venture to guess, was never expected when the equalization formula was put in place. And on top of all of that, we have the needs of our school districts and what they are being faced with in terms of providing educational opportunities for students that come to their doors with challenges all their own, whether it's poverty or English language learners and a myriad of other issues that I know that school districts and the educators in those districts are faced with. It's a tall order to look at how we're going to revamp school finance. And it makes me shudder, actually, to think about how tall that order really is. But I will tell you I'm not going to shirk from it. I think the committee is truly committed to dealing with it. And I hope we can bring you something that...you know, that's the other issue, whether we can bring you something by next session, I don't know. It's fair to say that this...if we really delve into it, may take us longer than one interim study. But I think there is commitment to do it, and we are going to meet that challenge and hopefully bring you something that is good for all the children that need to be educated in this state. Thank you. [LB407]

SENATOR COASH: Thank you, Senator Sullivan. Senator Gloor, you are recognized. [LB407]

SENATOR GLOOR: Thank you, Mr. President. I'll be brief. I was also part of the group that sat down and worked towards a compromise. My area of interest is the averaging adjustment because I come from a high-needs, low-resources district. And it seems to me, clearly, once you get into TEEOSA, you recognize the fact that the averaging adjustment is at the heart of the equalization we try and reach. This is hard. This really is hard. And coming from an area where I dealt with payments to Medicaid and Medicare, the calculations for all those are hard. But I am fond of saying, because I believe it's an absolute truism, that if it's important, it should be hard. We talk about wanting to simplify TEEOSA. I don't know that that's possible. Maybe clarification is a better term because figuring out ways to spread the money around to educate our children seems, to me, to be, by its very nature, hard. And so the formula, perhaps,

Floor Debate
May 10, 2013

should be difficult. I'm certainly in support of LB407. And I would like to be in support of AM1307 except that we worked hard and it was difficult to come to a compromise. And for that reason I have to, in all good conscience, say, where we got is the best we could do. And I have to, by way of clarification, say what I heard in those discussions is a little different than what Senator Avery heard. We did not have all the information in front of us at that time. We did not know exactly what components may impact districts. And so I'm not surprised at AM1307. I have no problem with AM1307. We ought to talk about it. But I won't be supportive. I also would like to finish by pointing out that as we study TEEOSA, I've put together here a short list that I know is not complete. But so far this session we've agreed to roll up our sleeves, knuckle down, and look at education funding, taxes, healthcare, water, and today airplanes are going to be part of what we're going to study. And I know I'm forgetting something. And that's all well and good. But we have clearly obligated ourselves during recess to take homework home with us. And for the benefit of the viewing public and the uninitiated who think our jobs start in January and end when we adjourn--in this case, the first part of June--that has never been the case since I've been down here. Whether it's child welfare reform, whether it's trying to balance the budget in a fiscal crisis, we always have homework. We may just be assigning ourselves a little more this year than in past years. The job of a state legislator does not end when we adjourn sine die. Thank you, Mr. President. [LB407]

SENATOR COASH: Thank you, Senator Gloor. Seeing no other lights, Senator Krist, you are recognized to close on AM1307. [LB407]

SENATOR KRIST: Thank you, Mr. President, colleagues, and hello again, Nebraska. The important part of what we just did in this hour was reaffirmed that our...we should all have a great deal of confidence in our committee process. This committee came to a point and then was forced to listen to compromises, did that. I brought this amendment forward, as I spoke to the Speaker about it in the last few days, both for an instructional capability for us...because I think everything that we individuals can learn about TEEOSA makes us more informed about the decisions that are made and whether or not we vote red or green. I compliment Senator Sullivan and her committee on the hard work they did. I know not to get on the other side of Senator Sullivan now. I'll remember that. But I will tell you this: The most important part of what I heard today is there will be an LR, and I am looking forward to seeing it on the list before the end of the year. And I would encourage that committee not to rush through it in one year. No props on the floor, but Senator Sullivan is showing me she's got it in her hand now. I encourage you not to just look at it as a one-year resolution. That's the beauty of a resolution, it may take two years. Senator Campbell can tell you it took much more time than that to put together what we did in areas of foster care and family services. It needs to be looked at. Every facet needs to be looked at. I have one more amendment up here today. I'll be opening on that just shortly. I know it's Friday. I beg your indulgence. But I just think that there are a couple of things that we need to look at. In the time I've been in this body, I think it's important for us all to take a look at that. I thank Senator Lautenbaugh and

Floor Debate
May 10, 2013

Senator Chambers and others for helping us in the OPS reassimilate a board, put good leadership back in place. I think there will be some good things that happen there. And again, I have an incredible amount of faith in the committee process and I'm glad that we went through this short discussion today. I think it's important for us to have these discussions. It's a very complicated process, very complex formula. With that, Mr. President, I'd like to withdraw AM1307. [LB407]

SENATOR COASH: Without objection, so withdrawn. Mr. Clerk. [LB407]

CLERK: Mr. President, Senator Krist would move to amend with AM1041. (Legislative Journal page 1057.) [LB407]

SENATOR COASH: Senator Krist, you're recognized to open on AM1041. [LB407]

SENATOR KRIST: If I could suggest one thing to my colleagues, I would say, do not hit your button, because I really don't think this is worthy of a great deal of debate unless you absolutely need to talk about this. I think that was clear enough. I handed out to you--thanks, Schilz, push your button--I handed out to you a list of the levies around the state, around the state of Nebraska. If you look for your school districts, you will see what levy is present in your own district. What we do in this state is we help everyone achieve a goal. And we try to put the aid and the functions out there so that we're helping each individual student as much as we can. And I don't have any problem with that. I don't have any problem bringing the taxes into the state of Nebraska and executing a formula that will be perfect in the next few years, after these guys get done rewriting it. I don't have any problem sending aid out to, in different forms, to any child in this state. In fact, I wish we could double it. But what I have a problem with, inherently, is when I look at my districts and they are at the top of their levy cap and there's no place to go. And I know there's reasons why--equalized, etcetera--you know, I've heard all the discussions. But I have a problem with my districts who are at the top of their cap with no place to go, and then I look at someone who is paying 46 cents for a levy. And I want you to ask yourself...I want you to go home and I want you to ask yourself, if I'm not doing my fair share as a citizen, paying into the local fund to support my schools, why should I expect the state to give me one dime? Even when it comes to special education...and I think you're very aware with what happened today, this morning, in my time on the mike, I'm all about special ed for a lot of good reasons. But if you're not doing your fair share, then why should the state be subsidizing your school system? I just heard this morning, on the way in, on the radio, that there was a school district that had laid off their teachers a few weeks ago and sent them home because they were out of money, appealing for the governor of that state--I think it was Michigan--to declare an emergency and fund that school system. I'd assume that it was bad management, poor management, or maybe it's one of those areas that was hardest hit by the Great Recession that we talk about. I've brought this up every year I've been here, and I will continue to do it. So you better get me defeated in 2014 so I don't do it again. Every

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

Floor Debate
May 10, 2013

year I'm here I'm going to ask the same question: Why do we not have a common levy across the state if we expect the state to come to our aid and give us aid on top of what we are already doing? Is there anyone in the queue? Then I will end my introduction and listen carefully. Thank you. [LB407]

SENATOR COASH: Thank you, Senator Krist. Members, you've heard the opening to AM1041. Senator Davis, you are...Senator Davis waives. You've heard the opening to AM1041. The floor is now open for debate. Seeing no one in the queue, Senator Krist, you're recognized to close on AM1041. [LB407]

SENATOR KRIST: And Senator Seiler, who is always very knowledgeable, interjected in a conversation we just had very briefly that the problem is we probably have 93 different assessors out there with property taxes, etcetera. Okay, that brings the other LR to mind, LR613 (sic--LB613), in bill form, or Senator Chambers' LR that's coming on, on the floor. Let's look at the tax structure and make sure that we look at all components of the taxes in the state of Nebraska in conjunction with what we're doing with TEEOSA. I think the two of them blend very nicely in terms of a discussion. And we are very fortunate, very fortunate indeed, that Senator Sullivan has a dual role in that, both on the Revenue Committee and the Education Committee. I think I've taken enough of your time. I'll withdraw. [LB407 LB613]

SENATOR COASH: AM1041 is withdrawn. [LB407]

CLERK: I have nothing further on the bill, Mr. President. [LB407]

SENATOR COASH: Senator Murante for a motion. [LB407]

SENATOR MURANTE: Mr. President, I move to advance LB407 to E&R for engrossing. [LB407]

SENATOR COASH: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB407 is advanced. Items for the record, Mr. Clerk. [LB407]

CLERK: Just two, Mr. President: Senator Crawford, new resolution, LR180, be laid over; and Senator Lathrop, an amendment to LB517 to be printed. That's all that I have. (Legislative Journal pages 1303-1306.) [LR180 LB517]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Mr. Clerk, we'll move to Final Reading. Members, you should return to your seats in preparation for Final Reading. Mr. Clerk the first vote is to dispense with the at-large reading on LB3. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB3]

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

Floor Debate
May 10, 2013

CLERK: 37 ayes, 2 nays, Mr. President, to dispense with the at-large reading. [LB3]

SPEAKER ADAMS: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB3]

CLERK: (Read title of LB3.) [LB3]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB3 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB3]

CLERK: (Record vote read, Legislative Journal pages 1306-1307.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB3]

SPEAKER ADAMS: LB3 passes with the emergency clause attached. Mr. Clerk, we'll now proceed to LB99. [LB3 LB99]

CLERK: (Read LB99 on Final Reading.) [LB99]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB99 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB99]

CLERK: (Record vote read, Legislative Journal pages 1307-1308.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB99]

SPEAKER ADAMS: LB99 passes. We'll now proceed to LB299. [LB99 LB299]

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

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

CLERK: (Record vote read, Legislative Journal page 1308.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB299]

SPEAKER ADAMS: LB299 passes. We'll now proceed to LB384. [LB299 LB384]

CLERK: (Read LB384 on Final Reading.) [LB384]

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

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

Floor Debate
May 10, 2013

with, the question is, shall LB384 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB384]

CLERK: (Record vote read, Legislative Journal page 1309.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB384]

SPEAKER ADAMS: LB384 passes with the emergency clause attached. We'll now proceed to LB384A. [LB384 LB384A]

CLERK: (Read LB384A on Final Reading.) [LB384A]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB384A pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB384A]

CLERK: (Record vote read, Legislative Journal pages 1309-1310.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB384A]

SPEAKER ADAMS: LB384A passes with the emergency clause attached. We'll now proceed to LB476. [LB384A LB476]

CLERK: (Read LB476 on Final Reading.) [LB476]

SPEAKER ADAMS: All provisions of law relative to procedure having been complied with, the question is, shall LB476 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB476]

CLERK: (Record vote read, Legislative Journal page 1310.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President. [LB476]

SPEAKER ADAMS: LB476 passes. (Visitors introduced.) We'll now proceed to LB23A. [LB476 LB23A]

CLERK: Mr. President, I have a motion on the desk. Senator Hadley would move to return the bill for a specific amendment, AM1249. (Legislative Journal page 1268.) [LB23A]

SPEAKER ADAMS: Senator Hadley, you are recognized on your motion. [LB23A]

SENATOR HADLEY: Yes. This deals with the ICF/DD bill that we amended with Senator Coash's bill. And we're just getting the appropriations bill straightened out. I've been working with the Fiscal staff and we have to pull it back to make sure it's 100 percent correct. With that, I would ask for your vote. Thank you. [LB23A]

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

Floor Debate
May 10, 2013

SPEAKER ADAMS: Thank you, Senator Hadley. Members, the first vote is on the motion to return to Select File. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB23A]

CLERK: 45 ayes, 0 nays, Mr. President, on the motion to return. [LB23A]

SPEAKER ADAMS: The motion is adopted. Senator Hadley, you are now recognized to open on your amendment. [LB23A]

SENATOR HADLEY: Yes. Again, as I said, this deals with the ICF/DDs, and it's a way of working with that match that we get if we send the money to Washington and then we get back not only the tax we send but an additional 60 cents. And this is just working out the funds between the cash funds and such as that. The bill does have a fiscal note, and you will see that fiscal note on the bill. With that, I would ask for your green vote on this particular bill. Thank you. [LB23A]

SPEAKER ADAMS: Thank you, Senator Hadley, The floor is now open for debate. Senator Hadley, you're recognized to close. There is no one in the queue. Senator Hadley waives his closing. The question before the body is the adoption of AM1249 to LB23A. All in favor indicate aye; all those opposed, nay. Record, Mr. Clerk. [LB23A]

CLERK: 46 ayes, 0 nays on the adoption of the Select File amendment, Mr. President. [LB23A]

SPEAKER ADAMS: The amendment is adopted. Senator Murante for a motion. [LB23A]

SENATOR MURANTE: Mr. President, I move to advance LB23A to E&R for engrossing. [LB23A]

SPEAKER ADAMS: You've heard the motion. All in favor say aye. Opposed? Motion carries. Next bill, Mr. Clerk. [LB23A]

CLERK: Mr. President, LB269A. Senator Campbell would move to return the bill to Select File for a specific amendment, that amendment being AM1291. (Legislative Journal page 1269.) [LB269A]

SPEAKER ADAMS: Senator Campbell, you are recognized on your motion to return. [LB269A]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. This amendment is to ensure that we have authorization language to match what is already set as an appropriation. In LB530, the Children's Commission is continued in order to

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

Floor Debate
May 10, 2013

begin working on the foster care system that Senator Dubas has talked about. Should LB530 pass, we need the authorization language in this A bill. On your green sheet the money is pretty much already accounted for. It's the authorization that's necessary. Thank you, Mr. President. [LB269A LB530]

SPEAKER ADAMS: Thank you, Senator. Are there any senators who wish to speak? Seeing none, Senator. Senator Campbell waives her closing. The question before the body is the motion to return to Select File. All those in favor indicate aye; all those opposed, nay. Record, Mr. Clerk. [LB269A]

CLERK: 45 ayes, 0 nays, Mr. President, on the motion to return. [LB269A]

SPEAKER ADAMS: The motion is successful. Senator Campbell, you can now open on your amendment. [LB269A]

SENATOR CAMPBELL: Thank you, Mr. President and members of the Legislature. Just to amplify, this was a good catch by the Legislative Fiscal Office. Liz Hruska came to me and said, while the money is on the green sheet, we don't have the right language to ensure that if Senator Dubas' foster care bill, LB530, passes...in order for the money to follow the Children's Commission. So I much appreciate the help of the Fiscal Office, as usual, in catching that fine point and would appreciate your green vote. Thank you. [LB269A LB530]

SPEAKER ADAMS: Thank you, Senator Campbell. The floor is now open for debate on the amendment. Senator Campbell, there are no names in the queue. You can close. Senator Campbell waives her closing. The question before the body: the adoption of AM1291 to the underlying bill, LB269A. All those in favor vote aye; all those opposed, nay. Record, Mr. Clerk. [LB269A]

CLERK: 46 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB269A]

SPEAKER ADAMS: The amendment is adopted. Senator Murante for a motion. [LB269A]

SENATOR MURANTE: Mr. President, I move to advance LB269A to E&R for engrossing. [LB269A]

SPEAKER ADAMS: Members, you've all heard the motion. All those in favor indicate with aye. Opposed? The motion carries. Next bill, Mr. Clerk. [LB269A]

CLERK: Mr. President, LB6. Senator Krist, I have AM818 with a note you want to withdraw that amendment, Senator. [LB6]

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

Floor Debate
May 10, 2013

SENATOR KRIST: That is correct. [LB6]

CLERK: Mr. President, Senator Krist would move to return LB6 to Select File for a specific amendment, and that amendment being AM1159. (Legislative Journal page 1160.) [LB6]

SPEAKER ADAMS: Senator Krist, you are recognized on your motion to return. [LB6]

SENATOR KRIST: AM1159 is a necessary cleanup amendment that contains technical changes that result in E&R review. I ask that LB6...return LB6 to Select for the adoption of AM1159. Thank you, Mr. President. [LB6]

SPEAKER ADAMS: Thank you, Senator Krist. The floor is now open for debate on the motion. There are no lights on, Senator Krist. You may close. Senator Krist waives his closing on the motion. The question before the body is the return to Select File motion. All those in favor indicate aye; all those opposed, nay. Record, Mr. Clerk. [LB6]

CLERK: 45 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB6]

SPEAKER ADAMS: Motion is successful. Senator Krist, you are now recognized to open on your amendment, AM1159. [LB6]

SENATOR KRIST: I'll be very brief. Thank you to the Revisor's Office and to the current committee for pointing things out that needed to be changed and harmonizing language with other pieces of...other parts of the statute. But the most significant part of this change was it was brought to my attention by a Mrs. Lauren Kintner in the PRO that we were potentially violating the separation of powers by forming the commission the way that we were. We're also suspect in the foster care area, as well as the Accountability and Disclosure Board (sic--Commission), which we've been doing for about 30 years, but it is true. I had a memorandum from the Attorney General that said that it potentially could be. So we changed the way that the committee is actually brought together. The Governor gives us his proposal for who those people should be. We go through the normal confirmation process in the committee. And the committee with jurisdiction would be our committee in Government--I'm sorry, in General Affairs--and then it would come to the floor for final approval. That, substantially, is the change. And I thank Ms. Kintner for helping me walk through that and make sure that it's going to fly by, I hope. With that, I would ask for your green vote on AM1159. [LB6]

SPEAKER ADAMS: Thank you, Senator Krist. The floor is now open for debate on AM1159. Senator Krist, there are no lights on. You can close. Senator Krist waives closing. The question before the body is the adoption of AM1159 to LB6. All those in favor vote aye; all those opposed, nay. Record, Mr. Clerk. [LB6]

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

Floor Debate
May 10, 2013

CLERK: 46 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB6]

SPEAKER ADAMS: The amendment is adopted. Senator Murante for a motion. [LB6]

SENATOR MURANTE: Mr. President, I move to advance LB6 to E&R for engrossing. [LB6]

SPEAKER ADAMS: Members, you've heard the motion. All in favor indicate by aye. Opposed? It advances. Next bill, Mr. Clerk. [LB6]

CLERK: Mr. President, Senator Mello would move to return LB242 to Select File for consideration of AM1203. (Legislative Journal page 1186.) [LB242]

SPEAKER ADAMS: Senator Mello, you are recognized on the motion to return. [LB242]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. As the body may recall, on Select File LB242 was amended to add the provisions of LB98. After this language was added, Bill Drafting contacted my office about a technical change that was needed which fell outside of the normal E&R process. AM1203 would make that technical change, as well as clarifying that any report filed with the Executive Board by the Ombudsman's Office would have to be filed electronically, as we do with reports received by the Legislature from other state agencies. With that, I'd urge your support of the motion to return the bill to Select File and adopt AM1203. Thank you, Mr. President. [LB242 LB98]

SPEAKER ADAMS: You've heard the opening on the motion to return. The floor is now open for discussion. Senator Mello, there are no lights on. Senator Mello waives closing on the return to Select File motion. The question is the return to Select File. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB242]

CLERK: 45 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB242]

SPEAKER ADAMS: The motion is successful. Senator Mello, you are now recognized to open on AM1203. [LB242]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. As I mentioned, AM1203 contains technical amendments that Bill Drafting said fell outside the normal E&R process after we adopted LB98 into LB242, as well as a technical change in regards to requiring that any report that the Ombudsman's Office ultimately would send to the Legislative Executive Board, that it would ultimately be sent through an electronic means similar to the other reports that state agencies must follow in

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

Floor Debate
May 10, 2013

reference to sending reports to the Legislative Council. With that, I'd urge the body to adopt AM1203. Thank you, Mr. President. [LB242 LB98]

SPEAKER ADAMS: Members, you've heard the opening on AM1203 to LB242. The floor is now open for discussion. There are no lights on. Senator Mello, you're recognized to close. Senator Mello waives his opportunity to close. Members, the question before the body is the adoption of AM1203 to LB242. All those in favor indicate aye; all those opposed, nay. Record, Mr. Clerk. [LB242]

CLERK: 45 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB242]

SPEAKER ADAMS: The amendment is adopted. Senator Murante for a motion. [LB242]

SENATOR MURANTE: Mr. President, I move to advance LB242 to E&R for engrossing. [LB242]

SPEAKER ADAMS: Members, you have heard the motion. All in favor indicate aye. Opposed? Motion carried. Next bill, Mr. Clerk. [LB242]

CLERK: Well, Mr. President, Senator Cook, I have AM989 in front of me but with a note you wish to withdraw that. [LB265]

SPEAKER ADAMS: Senator Cook. [LB265]

SENATOR COOK: I do wish to withdraw that amendment. [LB265]

SPEAKER ADAMS: So ordered. [LB265]

CLERK: Mr. President, Senator Cook has a motion with respect to her AM1349. She would move to suspend Rule 7, Section 3(d), the germaneness rule, to permit consideration of AM1349 as an amendment to LB265. [LB265]

SPEAKER ADAMS: Senator Cook, you are recognized on your motion to suspend the germaneness rule. [LB265]

SENATOR COOK: Thank you, Mr. President, and good afternoon, colleagues. I rise in support of my motion to suspend the Rule 7, Section 3(d). Suspension of this rule of germaneness will allow for the substance of my bill, LB443, to be amended to Senator Coash's LB265. Both pieces of legislation relate to the definition of child-care agencies and child-care placing agencies. In fact, LB265 was introduced to encourage kinship care in foster care cases. And my LB443 is a comprehensive modernization licensure for facilities that provide residential care for youth and those that provide placement

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

Floor Debate
May 10, 2013

services for youth. Our Speaker did approach me to make certain that this procedural motion would be in place to avoid any question of germaneness of the two pieces of legislation, although they do pertain to the similar subject matter. I ask that the body suspend the germaneness rule to ease the combination of these two pieces of legislation. Thank you. [LB443 LB265]

SPEAKER ADAMS: Thank you, Senator Cook. Senator Coash, you are recognized. [LB265]

SENATOR COASH: Thank you, Mr. President. I rise in support of this motion and the underlying amendment. I have worked with Senator Cook on this amendment. I believe that the underlying amendment is germane. However, I support this motion to make it clear in the record that the body agrees with that. The amendment that we are...should this motion be successful, that we will vote on is an amendment that I agree with. I believe that my bill is an appropriate vehicle for this. It does not change the original...my original bill, LB265. It only allows Senator Cook an opportunity to get a similar approach completed with her bill, which she has passed out. So I would urge the body's green vote on this motion. Thank you, Mr. President. [LB265]

SPEAKER ADAMS: Thank you, Senator Coash. Senator Lautenbaugh, you're recognized on the motion. [LB265]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I was going to illustrate a point by making a motion to suspend yet another rule that no one had raised yet because I don't think we need to suspend germaneness preemptorily. I think we have to wait until someone argues it's not germane, or should wait. But people are now looking at me like, oh, my god, why won't you shut up this week? So I will support this motion, necessary or not, and everything that follows. Thank you, Mr. President. [LB265]

SPEAKER ADAMS: Thank you, Senator Lautenbaugh. Are there others that wish to speak? Seeing none, Senator Cook, you can close on your motion. Senator Cook waives closing. This will take 30 votes, members. All those in favor of the motion to suspend the germaneness rule indicate with aye; all those opposed, nay. Record, Mr. Clerk. [LB265]

CLERK: 41 ayes, 0 nays, Mr. President, on the suspension of the germaneness rule. [LB265]

SPEAKER ADAMS: Motion is successful. [LB265]

CLERK: Mr. President, Senator Cook would move to return LB265 to Select File for a specific amendment, AM1349. (Legislative Journal page 1312.) [LB265]

Floor Debate
May 10, 2013

SENATOR COOK: Thank you. [LB265]

SPEAKER ADAMS: Senator Cook, you are recognized on the motion to return. [LB265]

SENATOR COOK: Thank you, Mr. President. The bill represented in AM1349 was originally LB443. I've passed out a section-by-section description of that. You should have that from the pages. The bill, the Children's Residential Facilities and Placing Licensure Act, is currently on General File after being unanimously advanced by members of the Health and Human Services Committee. I'd like to thank Senator Coash for entertaining this motion to allow a friendly amendment to LB265. First, the bill will create...the amendment will create a comprehensive, modernized licensure act for facilities that provide residential care for youth and those that provide placement services for youth. The amendment will also update and clarify existing statutes for facilities that provide residential care for youth and those that provide placement services for youth. Finally, the amendment provides guidance and delegates authority to the Nebraska Department of Health and Human Services Division of Public Health to issue, renew, inspect, and discipline licenses for these facilities. It's important to note that the desired amendment is the result of a collaborative process between the Division of Public Health and the provider network. After a contentious couple of years, it's nice to offer legislation that represents some common ground among these groups. That common ground is an updated licensing statute making procedures more clear and enforcement more flexible. Additionally, the amendment addresses concerns raised subsequent to the committee hearing on the bill. You've seen the small packet of information related to the amendment. Included is a list of stakeholders who were involved in the drafting of this updated licensing statute. Also included in the packet is testimony offered by then-Deputy Chief Medical Officer and now-Chief Medical Officer of our state, Dr. Joseph Acierno. Once again, this amendment will update current statutes to reflect the changes in these facilities, the current statutes that govern licensure of group homes, child-caring agencies, and child-placing agencies are neither efficient nor effective. Unlike other statutes that govern licensure of facilities, these statutes do not address requirement for application, department inspections, investigations of complaints, investigations of unlicensed care, administrative procedure, grounds for license denial, grounds for disciplinary action, and options for disciplinary action that provide both protection of children and youth in care and an incentive for the licensee to come into compliance with regulations. I ask the body to please join me in voting to return LB265 to Select File. Thank you, Mr. President. [LB265 LB443]

SPEAKER ADAMS: Thank you, Senator Cook. The floor is now open for discussion on the motion to return to Select File. Senator Christensen, you are recognized. [LB265]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Campbell yield

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

Floor Debate
May 10, 2013

to a question quick? [LB265]

SPEAKER ADAMS: Senator Campbell, do you yield? [LB265]

SENATOR CAMPBELL: Certainly. [LB265]

SENATOR CHRISTENSEN: Senator Campbell, I see on the bill there was one opponent, the Nebraskan Adoption Agency (sic), on your committee report. Why were they in opposition to this? [LB265]

SENATOR CAMPBELL: I think they were concerned that the language did not allow just anyone in the state to be able to be a person who would arrange an adoption. And, Senator, your question is probably best directed to Senator Cook because she met with the parties and worked it out. [LB265]

SENATOR CHRISTENSEN: Okay, will Senator Cook yield? [LB265]

SENATOR COOK: Yes. [LB265]

SPEAKER ADAMS: Senator Cook, do you yield? [LB265]

SENATOR COOK: Yes, I would. [LB265]

SENATOR CHRISTENSEN: Would you address the question of why they opposed this, and has it been taken care of, or what the deal was? [LB265]

SENATOR COOK: Yes. The amendment in front of you addresses the issue brought by Mrs. Krueger, who was part of the working group for these discussions over the last three years. The concern was the use of the term "individual" in the green copy, and that has been removed, as you can see, from the amended language. [LB265]

SENATOR CHRISTENSEN: Okay, thank you. [LB265]

SPEAKER ADAMS: Thank you, Senator Christensen. Are there others that wish to speak to the motion? Senator Cook, there are no other lights on. You can close on your motion to return to Select. Senator Cook waives. Members, the question before the body is the motion to return to Select File. All those in favor indicate with aye; all those opposed, nay. Record, Mr. Clerk. [LB265]

CLERK: 44 ayes, 0 nays, Mr. President, on the motion to return. [LB265]

SPEAKER ADAMS: The motion is successful. Mr. Clerk. [LB265]

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

Floor Debate
May 10, 2013

CLERK: Senator Cook would offer AM1349, Mr. President. (Legislative Journal page 1312.) [LB265]

SPEAKER ADAMS: Senator Cook, you are recognized to open on AM1349. [LB265]

SENATOR COOK: Thank you, Mr. President, and thank you, colleagues. I want to thank the members of the Health and Human Services Committee and our fearless leader, Senator Campbell, for their support of this legislation and simply ask the body to join in updating these licensure statutes for residential care facilities and child placement agencies. Thank you, Mr. President. [LB265]

SPEAKER ADAMS: You've all heard the opening on the amendment. The floor is now open for debate. Senator Cook, there are no lights on. You can close on your amendment. Senator Cook waives her opportunity to close. Members, the question before the body is the adoption of AM1349 to LB265. All those in favor vote aye; all those opposed, nay. Record, Mr. Clerk. [LB265]

CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB265]

SPEAKER ADAMS: The amendment is successful. Senator Murante for a motion. [LB265]

SENATOR MURANTE: Mr. President, I move to advance LB265 to E&R for engrossing. [LB265]

SPEAKER ADAMS: Members, you've heard the motion. All those in favor say aye. Opposed? Motion carries. Items for the record. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB3, LB99, LB299, LB384, LB384A, LB476. Mr. Clerk. [LB265 LB3 LB99 LB299 LB384 LB384A LB476]

CLERK: Mr. President, one item. Senator Ashford would like to add his name to LB505 as cointroducer. (Legislative Journal page 1313.) [LB505]

Senator Burke Harr would move to adjourn the body until Monday morning, May 13, at 10:00 a.m.

SPEAKER ADAMS: Members, you have heard the motion to adjourn. All in favor indicate with aye. Opposed? We are adjourned.