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Floor Debate
March 06, 2018

[LB44 LB44A LB104 LB117 LB379 LB439 LB439A LB596 LB685 LB773 LB776 LB874
LB903 LB913 LB921 LB935 LB1005 LB1044 LB1120 LB1127 LB1132 LR335 LR336 LR337
LR338]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-seventh day of the One Hundred Fifth Legislature, Second Session. Our chaplain for today is Pastor Raymond Wicks of the First Baptist Church of Plattsmouth, Nebraska, in Senator Clements' district. Would you please rise.

PASTOR WICKS: (Prayer offered.)

SPEAKER SCHEER: Thank you. I call to order the thirty-seventh day of the One Hundred Fifth Legislature, Second Session. Senators, please record your presence. Roll call. Record, Mr. Clerk.

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

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

CLERK: I have no corrections.

SPEAKER SCHEER: Are there any messages, reports, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB935, LB773, LB685, LB913, LB104, LB117 to Select File. Hearing notice from the Retirement Systems Committee. And Mr. President, the Retirement Committee will have an Executive Session at 9:30 in room 2102; Retirement Committee at 9:30 in room 2102. That's all that I have. (Legislative Journal pages 831-836.) [LB935 LB773 LB685 LB913 LB104 LB117]

SPEAKER SCHEER: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda. Mr. Clerk.

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

Floor Debate
March 06, 2018

CLERK: Mr. President, LB44, a bill originally introduced by Senator Watermeier. It was introduced on January 5 of last year. It's a bill for an act relating to revenue taxation and adopts the Remote Seller Sales Tax Collection Act. The bill was advanced to Select File last year, Mr. President. Debated on April 18 and May 4. I have amendments pending from last year. Senator Watermeier, I understand, Senator, you want to withdraw AM1074. Senator Chambers, you want to withdraw, as I've been led to believe, Senator, FA64. Thank you. Senator Watermeier withdraw AM1465. Mr. President, Senator Watermeier would move to amend with AM1822. (Legislative Journal page 684.) [LB44]

SPEAKER SCHEER: Thank you, Mr. Clerk. Colleagues, just as a refresher, this bill was reprioritized this year and is starting over on Select File. Senator Watermeier, would you like to open? [LB44]

SENATOR WATERMEIER: Please. Will I be able to open on the bill and the amendment or just the amendment for the ten minutes? [LB44]

SPEAKER SCHEER: Actually you can open on your bill and then you will have the opportunity to open on the amendment. [LB44]

SENATOR WATERMEIER: Separately, or together just following concurrent? [LB44]

SPEAKER SCHEER: Separately, sir. [LB44]

SENATOR WATERMEIER: Okay. Thank you. Thank you, Mr. President and members of the Legislature. Today, I bring you LB44, which I have again selected as my priority bill. First, I'd like to remind you of the history of this issue. Our current law requires retailers to have a physical presence or a nexus in our state before they are required to collect sales and use tax. This law reflects the U.S. Supreme Court ruling. In 1992 in the case of Quill v. North Dakota, the Supreme Court upheld its original ruling from 1967 that prohibited state and local governments from requiring businesses to collect sales tax unless the business has a physical presence in the state. The court reasoned at the time that the diverse state and local sales tax systems make collecting sales taxes an undue burden on out-of-state retailers. However, this

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Transcriber's Office
Rough Draft

Floor Debate
March 06, 2018

ruling was 26 years ago. States responded by adopting a comprehensive interstate system to streamline and harmonize their complex maze of sales tax rules and administrative requirements. Nebraska is one of 24 states that have taken the steps to change their laws in order to minimize costs and administrative burdens on the retailers that collect sales tax, particularly retailers operating in multiple states in order to comply with the interstate Streamlined Sales and Use Tax Agreement. Legislation has been introduced on the federal level for years to grant the states that have complied with the agreement the authority to require remote sellers to collect sales and use tax, but it is yet to pass. More and more individual states are trying to pass laws due to the inaction of the federal level. Thirty-eight states have considered, with 15 states enacting legislation aimed at requiring out-of-state companies to collect and remit applicable taxes. One of them, South Dakota passed a law in 2016 that was clearly in violation of the physical presence requirement with the intent of asking the Supreme Court to reconsider its Quill ruling. On January 12th the U.S. Supreme Court granted South Dakota's wish and agreed to hear the case of South Dakota v. Wayfair. Arguments are scheduled for April 17th, with a decision expected in late June. To improve sales tax collection, Colorado passed a reporting requirement law in 2010 requiring remote sellers to inform Colorado purchasers annually of their purchases and send the same information to the Department of Revenue. LB44 is patterned after the Colorado law. The Direct Marketing Association sued Colorado in the federal court claiming that the notice and reporting requirements were unconstitutional under the Quill. The Colorado law was affirmed in February of 2016 by the U.S. Court of Appeals with the 10th Circuit. Since the U.S. Supreme Court refused to take up the dispute, the 10th Circuit decision stands. In fact, in 2015, the Supreme Court decision in Direct Marketing v. Brohl, which only involved the procedural question, Justice Anthony Kennedy added a separate statement due to the seriousness of this issue, that he described as a continuing injustice faced by Colorado and many other states. In his concurring opinion, he noted that when the court decided Quill in 1992, mail order sales in the U.S. totaled \$180 billion and the Internet was in its infancy. In 2008, e-commerce sales alone totaled \$3.2 trillion in the United States. He stated that the result of Quill and Bellas Hess has been a startling revenue shortfall in many states, creating unfairness to the total retailers and their customers who do pay taxes at the register. State education systems, healthcare services, infrastructure are all weakened as a result. Justice Kennedy went on to say that although on-line businesses may not have a physical presence in some states, the Web has brought the average American closer to most major retailers. They are just now a click away. As a result, a business

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

Floor Debate
March 06, 2018

may be present in a state in a meaningful way without that presence being physical in the traditional sense of the term. He concluded that it was unwise to delay any longer every consideration of the court's holding in Quill. He urged the legal system to find an appropriate case for the courts to reexamine Quill. Furthermore, in addition to Justice Kennedy's statements, Neil Gorsuch, the newest U.S. Supreme Court judge, previously served on the 10th U.S. Circuit Court of Appeals judge. This is the court that affirmed the Colorado law. If the U.S. Supreme Court wasn't interested in overturning Quill, they could have simply refused to hear the South Dakota v. Wayfair bill...or law. Excuse me, court case. Since the Legislature debated LB44 last year, I have listened to your concerns and suggestions and I have drafted an amendment to address them in AM1822. With AM1822 the language from the South Dakota law requiring remote sellers to collect sales tax was stricken, therefore, eliminating any constitutional concerns. The amendment changes remote seller to noncollecting retailer to better reflect the Colorado law that the court found was not factually discriminatory because it did not distinguish between instate and out-of-state economic interests, but instead imposed differential treatment based on whether the retailer collects sales or use taxes. The amendment also takes out the small individual penalties for failure to follow the reporting requirements which would have been difficult to administer. Furthermore, to address privacy concerns instead of requiring the noncollecting retailer to notify the Department of Revenue listing the amount paid by each purchaser, the amendment simply requires the retailer to submit the total amount paid by all purchasers. The amendment also follows the advice given by the Attorney General in his opinion on LB44 last year, which stated if a collection requirement is enacted, it could be made valid by delaying its effective date to such time as Quill is overruled, or federal legislation is enacted to permit states to require remote sellers without physical presence to collect sales taxes as was done in Vermont. Consequently, the amendment adds a trigger mechanism for the state tax collection requirements specifying that it would not go into effect unless Quill is overturned. Therefore, as proposed in AM1822, LB44 would adopt the Noncollecting Retail Notice and Reporting Act. A retailer that sells taxable items to Nebraska purchasers but does not collect Nebraska sales or use tax would be subject to this act if their total sales exceeded \$100,000 or 200 or more separate transactions. The Notice and Reporting Act requires noncollecting retailers to do three things. The first, at the time of the purchase, notifying Nebraska purchasers that sales or use tax is due on such purchases and that the state of Nebraska requires a purchaser to remit any tax due either by filing a sales or use tax return, or paying the tax through the individual

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

Floor Debate
March 06, 2018

income tax return. Several years ago a line was added to the Nebraska individual income tax return for individuals to report their use tax that was due on the Internet purchasers. The second requirement by January 31st, send notification to all Nebraska purchasers showing the total amount paid for purchases in the previous year. The notification sent separately from any shipment should be in 14-point boldface type, include the words, important tax document enclosed, and inform purchasers that the sales tax is due on their purchases and how it can be remitted and that anyone who fails to remit the tax should be subject to penalties under the Nebraska law which is already in place. A noncollecting retailer who fails to send these notifications is subject to a \$10,000 penalty. By March 1st of that same year, submit an annual report to the Department of Revenue showing the total amount paid by Nebraska purchasers. Failure to submit this report would result in a \$2,500 penalty. The intent of the reporting and notice requirements are to make the erroneous...that retailers will choose to voluntarily collect the sales and use tax. The reporting and notice requirements would terminate if Quill is overturned. Finally, language is added stating that should Quill be overturned, a person who lacks a physical presence in the state and who makes retail sales of property to purchasers in this state shall be deemed to be engaged in business. If purchases to Nebraska consumers exceed \$100,000 or 200 or more separate transactions, since the sales and use tax statute states every retailer engaged in business is to collect any tax due, this trigger language is added to the definition of retailer and engaged in business. It would take effect the latter of either July 1st or the first day of the first calendar quarter after Quill is overturned by either the Supreme Court or with additional federal legislation. I want to remind you that this is not...this is not a new tax. Customers buying from remote sellers have always owed this tax, but they rarely pay it if the remote seller does not collect it. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR WATERMEIER: The longer we wait for passing legislation like this, the harder it will be for the general public to understand that this is not a new tax. I became interested in this issue because I didn't think it was fair to our main street businesses who must collect sales taxes while competing with on-line companies. Main street businesses are placed at a distinct disadvantage even though they support the local community in many ways. If downtown businesses close, it hurts the entire community and surrounding areas. Assuming federal law

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

Floor Debate
March 06, 2018

allows for the collection of sales taxes by remote sellers, the fiscal note indicates that Nebraska would collect between 30 to 40 million dollars in additional sales tax revenue annually. This is on top of the estimated \$30 million from Amazon who recently began collecting voluntarily. In a recent study, the U.S. Government Accountability Office estimated the potential revenue gains to states if Congress were to overrule Quill. The estimates were based on actual and estimated sales taxes for remote sellers. The GAO estimated potential revenue gains in 2017 of \$8 billion to \$13 billion if states could require sales tax collections from all remote sellers. For Nebraska the estimated revenue would be between 67 and 95 million dollars. [LB44]

SPEAKER SCHEER: Time, Senator. [LB44]

SENATOR WATERMEIER: Thank you, Mr. President. [LB44]

SPEAKER SCHEER: You're welcome to open on AM1822. [LB44]

SENATOR WATERMEIER: I'll just follow through with my finishing here, it's just a page of two. Max Behlke, the Director of the Budget and Tax Policy for the NCSL recently was quoted saying, the way we are consuming things is so different. Because of that, the state sales tax revenue is not keeping pace. States have to modernize sales taxes to the 21st century. If they can't collect sales taxes it means higher state income taxes and/or property taxes. In summary, if Quill is overturned, the notice and reporting requirements in LB44 may convince some noncollecting retailers to voluntarily remit the sales tax. Furthermore, the notices sent may motivate more purchasers to pay the use tax owed once they are aware that it is due. If the South Dakota law should be upheld and Quill overturned, the passage of LB44 puts us in a position to start collecting the sales tax immediately. It is predicted that the decision will come in late June and LB44 would allow Nebraska to start collecting sales taxes on July 1. If LB44 does not pass, legislation wouldn't be introduced until next year and would result in a loss of 9 to 12 months of tax revenue and tens of millions of dollars. Should the Supreme Court uphold Quill, but Congress later passes a Marketplace Fairness Act, the Remote Transactions Parity Act or similar legislation, the passage of LB44 will allow us to collect immediately under this scenario as well. With that, I just want to end my comments on AM1822. There's an awful lot of discussion going around behind the scenes. It comes down to this. Do you feel like you ought to be putting a

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

Floor Debate
March 06, 2018

barrier on Nebraska companies who are operating in Nebraska, that poured concrete, they've got brick and mortar, or do you want them to move out of state and ship it in under the Internet? If you have a business sitting in downtown La Vista selling garage doors and those kind of implements and those kind of pieces, would you want to tell those people, let's move you over to Council Bluffs so you can ship it in free of the tax? To me this is a fairness issue. You put the financial issue behind you and you think about the fairness issue of this. What is it telling our businesses in Nebraska? We don't think you should pay this tax. We should put an unfair burden on you, but let's give an advantage to somebody that's a mile across the state line? That's what you're doing with this bill. That's what we're trying to overcome with this bill, the disadvantage that we're giving the Nebraska small businesses. I really find it hard to find any argument other than that. Fiscally is one argument, but the fairness issue to me is why I got so involved in this issue. With that I'll end, Mr. President. Thank you. [LB44]

SPEAKER SCHEER: Thank you, Senator Watermeier. Those waiting to speak, Senator Smith, Hilgers, McCollister, Crawford and others. Senator Smith, you're recognized. [LB44]

SENATOR SMITH: Thank you, Mr. President, and good morning, colleagues. I know Senator Watermeier was making his best attempt at giving me some free advertising, but my business is in Ralston, Senator Watermeier, it's not in La Vista, and...but I appreciate the attempt nonetheless. I hope you were not making a side reference to a competitor of mine. But anyway, he wanted to talk about fairness to small businesses and I'm going to get into this a little bit later in my additional remarks, but this bill is extremely unfair to small businesses. It really targets large conglomerates that are making Internet sales across the country, but caught up in this is going to be small businesses that provide as little as \$100,000 in sales into the state of Nebraska and a relatively small amount of transactions. So colleagues, this bill is extremely bad for small businesses, and part of my businesses are retail business. And I want to say that I absolutely appreciate the effort that's being given to protect the interest of our retailers in our state because our retailers are suffering tremendously. You don't have to drive very far but to see vacant storefronts, but the answer is not this bill. The answer is a bit more complicated. It's not just about Internet sales that are placing a burden and doing great harm to our retailers in this state. So we'll have that discussion a bit further. But I do want to just kind of give a very quick outline as to why I will stand in opposition to the amendment and to the bill because the amendment

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

Floor Debate
March 06, 2018

does nothing, nothing to address the concerns that were brought by...last year in LB44. I will suggest to you, colleagues, that this bill is not needed with the overturn of Quill. That will be taken up this summer. This bill is not needed with the overturn of Quill. And if Quill is overturned, I would say that this bill is not constructive. This bill provides a false hope to our retailers in this state that there will be a level playing field. This bill does not provide for a level playing field. And this bill continues even with the amendment, if adopted, continues to have the same concerns as have been expressed in the Attorney General's letter in response to questions that were raised on LB44. When we talk about reporting, the reporting, frankly, I think the best I can figure out in the reporting is that it's a reminder to those people that do buy Internet sales that, hey, you've got to remit your taxes, but there's no teeth in it. And the burden on the other side of this is on small businesses that have to produce that reporting. The reporting also goes to the state collectively with that particular reseller and I'm not certain what that does either. Again, the best I can figure is that this is, at best, a reminder to those people that buy Internet sales that they should remit their taxes to the state. But there is no teeth in it and then later this summer, whether Quill is overturned or not, the reporting feature goes away. It doesn't make sense to me. The bigger concern to me is the portion of the bill... [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR SMITH: ...on collection. If Quill is overturned, we do need a collection method and we will be talking about an amendment that I do have prepared that will address that need. No question about it, we can do that. But if Quill is upheld, this bill continues to attempt to collect, which again faces the same criticisms or concerns expressed in the response from the Attorney General. I think this is a great attempt to try to level the playing field, but colleagues, this does not level the playing field. It creates false hope, and with that, Mr. President, thank you. [LB44]

SPEAKER SCHEER: Thank you, Senator Smith. Senator Hilgers, you're recognized. [LB44]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues. I rise in opposition to LB44 and I don't want to repeat the comments of Senator Smith, although I agree with the comments that he has made this morning. I listened very carefully to Senator Watermeier's comments in opening and I agree with some of what he said to be sure. One thing that he said

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

Floor Debate
March 06, 2018

that I agree with is that this is...the problem that we are facing today is a problem that has been created by the failure of Congress to act. That is a point that I absolutely agree with. He also made a statement that by Congress failing to act creating this unequal playing field for Internet retailers and our brick and mortar stores here in Nebraska, that that has created an unfair advantage. That also I agree with. And he's also stated that Quill ties our hands because of that Supreme Court decision from the early '90s. I agree with that as well, but where I disagree with him, and I disagree wholeheartedly, is a statement that he made that opposition to this bill is equivalent to us, the Legislature, placing a burden on the brick and mortar retailers. Colleagues, we did not create this issue. We did not create this problem. The U.S. Supreme Court has tied our hands under the Quill decision. I think it's very important to discuss the legal landscape here because it's been discussed to some degree, but I think let's be very clear about where we stand. We have a United States Supreme Court decision, Quill, that we talked about extensively that does not allow us, in my view, to collect dollars from out-of-state retailers, that don't have a physical presence in Nebraska. Full stop. Done. The second point, and I think this has been glossed over a little bit, is that this notification provision which would go into effect if LB44 passed is itself constitutional. I don't agree with that. I don't agree. There is a 10th Circuit decision that has blessed the Colorado law, that much is true, but there is no 8th Circuit decision and there's no direct Supreme Court case law that would say that this law as drafted would be constitutional, even the notification information requirement. And what it...basically AM1822 and LB44 try do is they basically try to make a bet, it's a speculative bet. And the bet is that the Supreme Court when it takes up the Wayfair decision will overturn a very specific holding in Quill. That very well might happen. But as members of this body and citizens of Nebraska have learned in watching the Supreme Court over the years, what the Supreme Court does is not binary. It is not either, we will overturn this previous precedent or we will not. The Supreme Court will surprise you time and again. For anyone who thought that the Supreme Court, as an example, would overturn the Affordable Care Act based on commerce clause grounds back in 2012 would have been shocked to learn that Chief Justice Roberts upheld it based on a taxing authority theory. The Supreme Court is taking up Wayfair, but what it does is a speculative guess, and for me, colleagues, putting a speculative guess into our statute is something I cannot support. There is no instance of which I'm aware anywhere in our statutes in which we have either of some said it, a portion of the law, which is LB44 would do, or enacted...essentially enacted an alternative statutory scheme based on a court decision. That's exactly what LB44

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

Floor Debate
March 06, 2018

does. And if you look at the language, it says the notification requirement will essentially sunset if the holding is abrogated by either federal legislation or by the Supreme Court. That, colleagues, is not something that I think ought to be in statute. Now, if we were in a different world, one in which we weren't going to have an imminent Supreme Court decision, and we were trying to craft a policy that might, might survive scrutiny under Quill, something maybe similar to the Colorado law, and we knew in the next four or five years there was no other hope. Congress wasn't going to take any action. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR HILGERS: Thank you, Mr. President. The Supreme Court wasn't going to act, then maybe we could have a discussion about what might be the best way to approach it. But we are about to have a very significant decision in a matter of months from the Supreme Court and they might...they may, they may not overturn Quill. They may sustain it and they may broaden the physical presence requirement and apply it to the Internet age. We don't know what they're going to do. But as I learned from my grandpa very early in life, it's better to measure twice and cut once and what we're doing is we're cutting before all the measurements are in. This is not...I do not believe if LB44 passes or doesn't pass that we are going to automatically forego tens of millions of dollars of revenue for the rest of this year. The better course in my view, wait for the Quill decision to come out, get all the information that we can, know exactly where we stand constitutionally, and then act in the beginning of January. Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Hilgers. (Doctor of the day introduced.) Going back to the queue, Senator McCollister, Crawford, Linehan, Chambers waiting, as well as others. Senator McCollister, you're recognized. [LB44]

SENATOR MCCOLLISTER: Thank you, Mr. President. Good morning, colleagues. I support AM1822 and LB44 and I salute Senator Watermeier for introducing this bill. You may recall that last year I had a similar bill and that was LB563, which I called the Main Street Fairness Act. And I think the argument that we make saying that local retailers, local Nebraska retailers need to have level playing field with regard to retail sales. It's just not fair to have a retailer have a brick and mortar operation. Somebody comes in there, looks at the...in the case of my family, my

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

Floor Debate
March 06, 2018

wife's toys, looks at the merchandise and then goes on the Internet and buys it seven and a half percent cheaper. It's just not right. So we need to take better care of our main street retailers and this law will do that. Also Nebraska needs the revenue. You know, the 40 or 50 million dollars this LB44 would bring in is critical money for this state. Revenues have been flat. So it's time for us to figure out legal and good ways for us to bring in some more revenue that folks actually owe anyway. So thank you, Mr. President. And I yield the balance of my time to Senator Morfeld. [LB44]

SPEAKER SCHEER: Senator Morfeld, 3:20. [LB44]

SENATOR MORFELD: Thank you, Mr. President. Thank you, Senator McCollister, for yielding your time. I do want to respond to my colleague, Senator Hilgers', comments here on the floor today. And while he may make some good points in terms of we're not quite sure where the case law will be settled, there's a court case obviously pending before the United States Supreme Court that South Dakota brought. But I think I want to make clear that the reason why there is a court case before the United States Supreme Court is because a body just like this decided to take action. Just because the Supreme Court made a decision 30 years ago doesn't mean that that abrogates our duty and our responsibility as a state Legislature to enact laws based on the circumstances of our time. That is called federalism. The whole reason why we have Quill and that court case from the early '90s is because a state, I believe it was North Dakota, decided to take action to collect taxes. And in the end, the court decided against North Dakota. But the only reason why there is even court precedent in that case is because a state decided to take action. That is our duty and our responsibility to the people of Nebraska is to take action. And states are commonly referred to as laboratories of democracy. We're referred to that because we have the ability and the authority to take action. Now, I believe I was listening to Senator Hilgers' comments last session and he advised that we actually not take action last session because there was a Supreme Court case on the books that would, on the face of the Supreme Court case, invalidate whatever action that we took in this case. Well, the bottom line is that since then, South Dakota took action and now they have a court case before the United States Supreme Court that will likely, from what many political observers believe, change the ruling in Quill. Colleagues, we should not...not act simply because there is a court case that is 30 years old. The times and circumstances change. [LB44]

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

Floor Debate
March 06, 2018

SPEAKER SCHEER: One minute. [LB44]

SENATOR MORFELD: Thank you, Mr. President. There are plenty of Supreme Court cases that were reversed for good reason over the past 250 years in our country and they were reversed because of the changing times and circumstances and in some cases, the changing norms. Simply because there is a court case that cuts against an action that we take does not mean that we should not take action. This is called federalism. This is the way the system is supposed to work. Yes, we're supposed to respect the court's opinion, but we're also supposed to take into account the changing circumstances of our time and challenge some of those Supreme Court norms. It's important that we do that. That is a healthy aspect of democracy. And while Senator Hilgers made the same argument last session that we should take no action, there's clearly a case here. And now he's making the same argument this session even though there is a court case before the Supreme Court based on... [LB44]

SPEAKER SCHEER: Time, Senator. [LB44]

SENATOR MORFELD: ...South Dakota taking action. Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator McCollister and Senator Morfeld. Senator Crawford, you're recognized. [LB44]

SENATOR CRAWFORD: Good morning, Mr. President, and good morning, colleagues. Speaking of federalism, I think we've heard on this floor shared agreement from both sides concerning this issue. Those who support LB44 and those who are opposed to LB44 that this is a problem that we're debating here in Nebraska because Congress has not solved this problem. And colleagues, some of our colleagues today are wearing a yellow button saying I support dreamers. We've been asked by the Sergeant of Arms not to wear that button. So I'm standing in solidarity with other people who are complying with that request. I just want to let you know if you're watching, that many of us are standing with you and we realize that we are in this position also because Congress refused to act and we stand with you as we push for changes here in the face of Congress not acting and now again, I stand in support of LB44 and AM1822 because Congress has failed to act. Congress...and members, I want to...yeah, Congress, yes, please

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

Floor Debate
March 06, 2018

listen. All right. But members, I'm talking to this morning, (laugh) I want to address a few of the issues that have been brought up in the debate thus far. So one point that Senator Hilgers brought up is that we should not pass a bill contingent upon a Supreme Court case. That we shouldn't pass a bill that's contingent upon some other body making a decision. Now, colleagues, there is a great University of Nebraska law article that discusses this very issue. Can we pass a law contingent on another body, a federal body making a decision? And let me read a bit, or paraphrase a bit from that law article. It says the critical case in this regard is State v. Padley. That case involved a challenge to the state speed limit at the freeway at the time state law fixed the speed limit at 55 miles an hour, but provided that the speed could go up to 75 miles an hour if the President or Congress eliminated a federal restriction on the speed limits. Same kind of case we're talking about right now. We are going to collect this sales tax if the Supreme Court makes this decision in Quill or if Congress acts. And it should be...and so, and this, our own Nebraska Supreme Court specifically addressed this aspect of the law and whether it was an unconstitutional delegation of authority and it said it was not. And here is what it said. It may also be noted that after fixing a definite speed limit presently effective as our law does the collection, presently effective, the statute proceeds to fix an alternative speed limit to become effective when the Federal Conservation Act is nullified. In doing so, the Legislature has not delegated its power to make the law, but has designated its alternative provision to become effective on the happening of a certain contingency. It is a well-recognized rule of law that, quote, the Legislature cannot delegate the powers to make a law, but it can make a law to become operative on the happening of a certain contingency or an ascertainment of fact upon which the law intends to make its own action depend. This opinion has not been overruled and it has been cited by the state Attorney General in a number of opinions since that time. Going on to quote. It also just makes sense. Conditioning the effectiveness of a state law on an outside event is qualitatively different than delegating the ability to make substantive law, so. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR CRAWFORD: Thank you, Mr. President. It is perfectly appropriate, constitutional here in Nebraska to pass LB44 with the amendment, AM1822. We then put ourselves in line so that if Quill passes, we can begin to collect sales tax immediately. And I disagree with those who say it's not necessary. Colleagues, it could be an additional year and that could be sixty-five,

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

Floor Debate
March 06, 2018

eighty-nine more millions of dollars that we would be behind in collecting revenue, that we could collect were we to pass LB44 and AM1822. Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Crawford. Senator Linehan, you're recognized. [LB44]

SENATOR LINEHAN: Good morning, Mr. President. Thank you, colleagues. I rise this morning in support of LB44 and AM1822. I'm not in support of this as I've heard previously this morning so we can help with our state revenue shortfall. I think we spend way too much time worrying about a shortfall versus worrying about how we could cut back on spending. I have spoken to that before. The reason I'm supporting this is not so we can increase our revenues, but it's a matter of fairness. I don't see how it's fair that a group of taxpayers who buy at the local retail store end up paying sales tax and someone who goes on the Internet doesn't pay the sales tax even though by law they're supposed to pay the sales tax. And this isn't like a little skimping on the law. From what Senator Watermeier said this morning, it's somewhere between 30 million dollars and 95 million dollars. That's a lot of skimping on the law. So I don't know how that's fair. You've got one group of taxpayers paying the tax and you have another group that's skipping out on the tax. And I don't think they're skipping out on it because they know the law or they're doing it intentionally. They just don't know. So, I see this as an effort to level the playing field between all sales, retail sales, whether it be in your local drugstore or the CVS or the Walgreens, or whether you're buying it over the Internet. I just see it as a matter of fairness. Senator Watermeier, could you yield for a question, please? [LB44]

SENATOR HUGHES PRESIDING

SENATOR HUGHES: Senator Watermeier. I don't see him, Senator. [LB44]

SENATOR LINEHAN: Okay. Well, that was a bad plan. [LB44]

SENATOR HUGHES: Here he comes. [LB44]

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Transcriber's Office
Rough Draft

Floor Debate
March 06, 2018

SENATOR LINEHAN: I don't suppose I could save my time and...I will yield my time back.
[LB44]

SENATOR HUGHES: Senator Watermeier, will you yield to a question? [LB44]

SENATOR LINEHAN: Oh, there he is. Thank you. [LB44]

SENATOR WATERMEIER: Yes. [LB44]

SENATOR LINEHAN: Thank you, Senator Watermeier. I know the bill doesn't specifically say this funding generated from LB44 if it passed would go to property taxes or income tax relief, but would that be your...as we move forward the rest of the session, would that be where you think this money should go? [LB44]

SENATOR WATERMEIER: No. I made it pretty clear at the beginning that if we were to decide to segregate the money into a certain pot that it would probably kill the bill. So, my idea is it should go into General Funds. We know there are funds available to us in the future and when we know exactly how much it's generating, they will be in the General File and I'm hoping some day the revenue, we can actually figure out what the dollars are. So I just didn't want to jeopardize the bill. I was approached from all sorts of venues, education, property tax, income tax relief. And it's just a conscious decision for me, let's just get the bill passed. It's important as a fairness issue. [LB44]

SENATOR LINEHAN: But you would agree that we have a tax problem in the state overall?
[LB44]

SENATOR WATERMEIER: We have a revenue problem. This year, we have a revenue problem and we also have a tax problem as far as overtaxation. [LB44]

SENATOR LINEHAN: But...because I'm sorry, earlier I said, just so you realize this, that I am not as concerned about our revenue problem. I think that's more that we should focus a little bit

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

Floor Debate
March 06, 2018

more on spending. But I am very concerned that the vast majority of Nebraskans feel they're overtaxed. [LB44]

SENATOR WATERMEIER: Correct. [LB44]

SENATOR LINEHAN: So it would hopefully before we end the session, we're going to have some kind of agreement in Legislature that's going to reduce both property and income taxes. [LB44]

SENATOR WATERMEIER: And I've been fully supportive of that discussion, yes. [LB44]

SENATOR LINEHAN: Okay. Thank you, Senator Watermeier. Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Watermeier and Senator Linehan. Senator Chambers, you're recognized. [LB44]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I would like to ask Senator Watermeier a question or two. [LB44]

SENATOR HUGHES: Senator Watermeier, will you yield? [LB44]

SENATOR CHAMBERS: Or four or more. [LB44]

SENATOR WATERMEIER: Four or more. Come on. Bring it on. (Laughter) [LB44]

SENATOR CHAMBERS: Senator Watermeier, have you overcome the Governor's objection to this bill by means of your amendment if it were to be adopted? [LB44]

SENATOR WATERMEIER: I'm not sure exactly what his objection is other than what...I understand he's still opposed to the bill, so. [LB44]

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

Floor Debate
March 06, 2018

SENATOR CHAMBERS: If he were to veto it, how many votes would it take to override a veto?
[LB44]

SENATOR WATERMEIER: 30. [LB44]

SENATOR CHAMBERS: Do you have 30 votes? [LB44]

SENATOR WATERMEIER: We have one. [LB44]

SENATOR CHAMBERS: You have one vote? You said you have one vote? [LB44]

SENATOR WATERMEIER: You have mine. [LB44]

SENATOR CHAMBERS: Thank you. We're going to have an...oh, by the way, do you know the meaning...what's the derivation of your name, Watermeier? Let me ask you a question. Do you...
[LB44]

SENATOR WATERMEIER: It sounds like a bet and I don't take bets. [LB44]

SENATOR CHAMBERS: Do you know...not a bet. Do you know what your name means?
[LB44]

SENATOR WATERMEIER: No. [LB44]

SENATOR CHAMBERS: Meier is the short for meister. "Watermeister", the water, the master of the water or the one who carries the water. So if I call you Senator "Watercarrier", then you cannot get angry since you're carrying the name that indicates that, correct? [LB44]

SENATOR WATERMEIER: No, because I've been called water buckets for years. (Laughter)
[LB44]

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

Floor Debate
March 06, 2018

SENATOR CHAMBERS: Oh, thank you. Touche. Members of the Legislature, all of this talk based on what a law professor wrote is understandable by me because the people who follow that are not trained in the law. This is an issue on which people trained in the law can disagree with. However, when you have a contingency, there is a difference between that and pure speculation. Speculation is what you're talking about with the language in this bill that would be amended by Senator Watermeier's amendment and I'm not going to ask a lot of questions because my time would be taken and I see others are going to discuss the bill. But I'll put my light on, I'll have a chance to talk again. Here is what I mean. It says, in the amendment, controlling court decision or opinion. What is a controlling court? Does it mean a court that is higher than a district court? The higher court than circuit court would be a Supreme Court. So you don't know what the Supreme Court is going to do. That makes it purely speculative. A Supreme Court can parse words. It can take a case not just because it wants to settle what that case presents, but it's an opening to deal with other matters. It can rule in a way that you don't like while using the case that it made that ruling on for another purpose. The court can say, we're going to say, A, aye to one, two and three of issues here. We're going to say nay to the remainder. It can split what it's going to decide. Now, when you talk about what Congress may do, you are delegating to Congress the authority of the Legislature. I don't even care about that Nebraska Supreme Court decision. That may not even stand. Here is the point. Congress could pass any kind of law relative to this subject matter and you are trying to incorporate by reference whatever kind of law Congress passes. Suppose it's a law that has more in it than this one item? Are you going to say, well, all we're taking is that one piece out of the law? [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR CHAMBERS: You take the law or you don't. But you can do whatever you please. And I hope you're pleased by whatever you do. But since there are others discussing it, I don't have to carry the ball. When time comes for me to offer an amendment or motion on which I will force a vote, I'll find out if Senator "Watercarrier" has 30 votes. Thank you, Mr. President.
[LB44]

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

Floor Debate
March 06, 2018

SENATOR HUGHES: Thank you, Senator Chambers. (Visitors introduced.) Those in the queue are Senators Ebke, Briese, Thibodeau, Brasch, Morfeld and others. Senator Ebke, you're recognized. [LB44]

SENATOR EBKE: Thank you, Mr. President. Kudos to Miss Boile. She was my daughter's high school speech coach. My daughter won the state championship in 2006 or 2007 in extemporaneous speech. So thank you for being here. I want to talk a little bit about the trigger mechanism or the speculative nature of AM1822 and just draw your attention to previous times when this very Legislature has enacted some speculative or trigger legislation. In 2017, my LB167, which was amended into LB487, enacted legislation which was contingent upon an FDA approval of a pure cannabis oil or cannabidiol extract would be used in the product Epidiolex. Epidiolex has been submitted to the FDA, but it has not yet been fully approved. That said, last year at this time, we were looking at ways because Epidiolex at the University of Nebraska Medical Center research in that program was showing great promise for certain types of very severe epilepsy and we wanted to be prepared should the FDA approve of the drug use. And so we passed LB167 as amended into LB487. This is very common or at least relatively common and certainly not unheard of in the One Hundred and Fifth Legislature. I support AM1822 because like many of you, I purchase a fair amount on-line. I think it's hard to say that we no longer...that Amazon, which is already collecting sales taxes, or any of these other on-line stores are not physically present. They're present on my computer, on my desk, in my office, and wherever I carry my computer, and I can access them every day. They don't have bricks and mortar. Some of them do in the state, but I do a lot of shopping on-line. I'm sure a lot of you do as well. And I do think that it is a matter of fairness that we make sure that the taxes that are owed are taxes that are paid. So if Senator Watermeier could use any of my time, I would be happy to yield to him. [LB44]

SENATOR HUGHES: Senator Watermeier, you're yielded 2:00. [LB44]

SENATOR WATERMEIER: Thank you, Senator Ebke, and thank you, Mr. President. I've had several people approach me on the floor about the handouts that I've handed out and I didn't have a chance to read a lot of this into the record. I would do that at this time, but I think I'll let those behind me that really want to do, add to the conversation. The main thing that I want to bring up

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

Floor Debate
March 06, 2018

is the idea that we don't need the reporting. We definitely do need the reporting because as Senator Hilgers had so eloquently described and he goes into prosecution mode if you talk about constitutional issues, he said this could have and that could have, he just starts rolling and he gets it. I understand that. And he brings of history and a perspective that I really do appreciate. It may not be black and white. It may not be so easy as that it's overturned. That's exactly why we need to keep the reporting mechanism in there. The reporting mechanism may be alive for 30 days this summer. [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR WATERMEIER: Thank you, Mr. President. If it's overturned, it may be just that simple that it's there. But if the Supreme Court does something that we don't expect, that we don't know, we have to have the reporting mechanism in place. One of the things that I've heard on the floor is that it's harmful to small businesses. I'm not sure whose small business, what small business we're talking about. Reminder, if you're in Nebraska already, you have to collect and remit the taxes. And just give me an example, if you're outside of the state of Nebraska with a \$100,000 requirement and 200 transactions, you would have to be the equivalent of a 16 million dollar company or 32,000 individual transactions. Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Watermeier and Ebke. Senator Briese, you're recognized. [LB44]

SENATOR BRIESE: Thank you, Mr. President. Good morning, colleagues. I rise today in support of AM1822 and LB44 and I thank Senator Watermeier for bringing this bill to us, prioritizing this bill, and working on the amendment to address some of the concerns that were brought forth last year. And first of all, I want to address a couple comments that I heard earlier and Senator Watermeier may have alluded to this just briefly, but I heard it's bad for small businesses. This bill is bad for small businesses. But I ask myself, what small businesses? To me, this bill is good for Nebraska small businesses. I heard this bill is not needed with the overturn of Quill. But there is no guarantee that Quill is going to be overturned. We don't know that. I heard someone else suggest that we're making a speculative bet that Quill is to be overturned. But the notice and reporting provisions are essentially a hedge against the notion that Quill may not be

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

Floor Debate
March 06, 2018

overturned. To me, this is a good proactive approach and it's good policy. And for me, this issue is about two things. It's about encouraging the collection of sales and use taxes already owed pursuant to Nebraska statutes, and it's about protecting our main street brick and mortar stores from unfair competition from noncollecting retailers. And to Senator Linehan's point earlier, I, too, would like to see these dollars directed towards tax relief, property tax relief in particular, but that's a discussion for another day. Opponents of this legislation continues to suggest there are constitutional concerns and I disagree. First, we need to remember that what we pass in this body is presumed to be constitutionally sound until adjudicated otherwise. And we need to remember that we are the legislative branch of government. It's not our job to adjudicate constitutionality in this body. One could raise some theory of constitutional objection to almost anything that we pass here. And I submit that we don't want to go down that rabbit hole. If something is patently unconstitutional or if court after court after court had lined up declaring similar legislation, constitutionally unsound, then perhaps we need to hit the pause button. But here, that's not the case. In fact, here we have the opposite situation and that is found in the 10th Circuit Court decision in Direct Marketing v. Brohl. And I admit the 10th Circuit is not controlling here in Nebraska, but the reasoning used by the court there is persuasive. Their three-judge panel reviewed the constitutionality of the Colorado statute and the Colorado statute is much like this bill except the reporting requirements in the Colorado statute are somewhat more burdensome than what we're talking about here. And there the court addressed whether the Colorado statute impermissibly violated the dormant commerce clause to the U.S. Constitution. The issues were whether the statute discriminated against interstate commerce or unduly burdened interstate commerce. And the court held that the Colorado statute did neither. And I don't see any reason to disagree with the 10th Circuit panels reasoning as we look at LB44. The current bill, LB44 does not discriminate on its face against out-of-state interests. LB44 does not give instate retailers a competitive advantage to the detriment of out-of-state retailers. It doesn't alter the competitive balance between instate and out-of-state firms. Instead, it simply helps to level the playing field. And if we want to further discuss constitutional doctrine, principles of federalism, states' rights, etcetera, we can do that also. And I believe that as a state...I know that as a state we have the right to enforce our sales and use tax laws and we have the duty and the obligation to do so. And we have the duty and obligation to protect our main street businesses from unfair competition derived from our inability to collect these taxes. [LB44]

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

Floor Debate
March 06, 2018

SENATOR HUGHES: One minute. [LB44]

SENATOR BRIESE: Thank you, Mr. President. Folks, this is good, sound policy. It's a proactive approach to this issue. This bill...this amendment, this bill should be passed and I'd encourage your green vote on the amendment and the bill. Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Briese. Mr. Clerk. [LB44]

CLERK: Mr. President, Senator Chambers would move to amend Senator Watermeier's amendment with FA113. (Legislative Journal page 837.) [LB44]

SENATOR HUGHES: Senator Chambers, you're recognized to open on your amendment. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, to make it easy to understand what that amendment does, on page 4, starting in line 18, it would strike everything from there through line 31 and then it continues to strike line 1 on the following page. Whether there's a vote on this or not is of no moment to me. This goes to that speculative material. I would like to ask attorney Briese a question or two if he'd be willing to respond. [LB44]

SENATOR HUGHES: Senator Briese, will you yield? [LB44]

SENATOR BRIESE: I don't know if attorney Briese is here, but I'll respond. [LB44]

SENATOR CHAMBERS: Thank you. Senator Briese, people keep mentioning this 10th Circuit decision. Was it a panel of three judges, or was it what they call en banc, which means all of judges of the Circuit? [LB44]

SENATOR BRIESE: It was a panel of three judges. [LB44]

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

Floor Debate
March 06, 2018

SENATOR CHAMBERS: Well, could the Supreme Court if it chose to send a case back for further consideration... [LB44]

SENATOR BRIESE: Pardon? [LB44]

SENATOR CHAMBERS: If the U.S. Supreme Court looked at a case that had been appealed to it, could the Supreme Court rather than rendering a final decision, send it back to the lower court for additional consideration? [LB44]

SENATOR BRIESE: I believe they could. [LB44]

SENATOR CHAMBERS: Now, would the entire 10th Circuit comprising all of the judges that are a part of it, overrule a panel of three? [LB44]

SENATOR BRIESE: Yes, I believe they could. [LB44]

SENATOR CHAMBERS: That's all I'll ask you, thank you. Members of the Legislature, there's so much here that is speculative and some say people say, forget it. Well, I'm concerned and interested in how a process works, especially ours in the Legislature. The final word has not been said, even on this Quill case. There could be some of it upheld, some of it struck down. But I want to call attention to those in the Republican Party, Donald Trump and the Trumpites, today is the 161st anniversary of a Supreme Court decision rendered in 1857, and the Chief Justice at that time was Roman Catholic Roger B. Taney. And the Trumpites and others have never gotten over the fact that that decision was subsequently nullified by the Thirteenth Amendment. That was Taney's explanation of why Dred Scott was not a citizen, could never be a citizen, had no standing to sue in the federal courts and along the way said, black men have no rights that white men are bound to respect. That's what Trump is trying to work his way around. The Republican Party...I don't see Senator Murante. All these people who are still trying to take the right to vote from black people. I think something ought to be done to memorialize that momentous day. The decision was rendered in 1857. This is the date in 1857 when it was rendered, March 6, which is the 161st anniversary. When this highest court in the land told my forebears, and by extrapolation, me, being black, we have no rights of white men are bound to respect and that is

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

Floor Debate
March 06, 2018

the attitude today. There are so many things that happened that white people don't have to pay attention to because it doesn't involve them. Suppose you were going to go to Idaho or Utah or a Mormon state, would you have to consider how they going to treat you as a white person? As a black person, I'd have to think about it. Certain areas of the northwestern part of this country, where the Yahoos are, the white supremacists are, you can go up there and nothing happens to you. I would have to give consideration as to whether I'm going there or not. Then I listen about a hypocritical oath that you all swear to your flag, one nation under God, indivisible with liberty and justice for all. Insults, insults, insults to black people. There is not liberty for black people in this country. There is not liberty and justice for the LGBTQ community in this country. Not liberty and justice for Latinos, native Americans, anybody who doesn't look like you all. And I have to listen to that. You go through that ceremony once every week and what I think and people like me think, means nothing to you. You're a bunch of hypocrites and you lie every time you give that flag salute. There is not liberty and justice for everybody in this country and as backward as Senator Groene is, I don't think he would stand up and say that that's a fact. Racism is here and I'm going to show you something else. I heard somebody say that a badge or a button that said they support the dreamers couldn't be worn on this floor. Take those flags out of your lapel. Take those flags up. Take those...any of those badges you've got, because you are projecting something on this floor and some of those badges are political. When you have a badge showing the two little feet justifying and supporting a position denying a woman the right to abortion, nobody goes up to the senator and says take that off. It depends on what is being said as to whether or not it comes on this floor. And content cannot be banned on the basis of content. If it speaks, anything...anything said in debate on this floor can be said and a person is not subject to any process, criminal or civil. So you all are going to have to get together, you white people and get your rules straight. And you stop favoring certain white people and then anything that relates to somebody not white, you say that can't be on the floor, then ban me because I definitely am not white and you all definitely wish I were not here. But I am here and I'm going to stay here and I'm going to take this time on any issue that comes up. Unfortunately, I take seriously the Legislature as an institution because I voluntarily became a member of it. And when I see slipshod careless legislation being proposed and people jumping up trying to defend it by reading something that somebody gave them to read. They don't even look at the ramifications or the impact on other things that we do on the floor of this Legislature. Those are the times...let me quote what a white guy said, his name was Thomas Paine. George Washington

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

Floor Debate
March 06, 2018

who you all consider a great general was being chased through the Jerseys. There was not just a New Jersey. The American army was in flight. All that George Washington...the only part of George Washington that some British troops saw were his coattails flapping and the soles of his feet as they were running. And Thomas Paine said, these are the times that try men's souls. My soul, if I had a soul, would be tried every single day that I come to this place and I listen to the hypocrisy. I listen to you all pontificate and yet you will not establish a set of principles which are going to obtain and apply. They're all elastic. There was a comic strip character called Plastic Man and he could stretch from here to China if he chose to, from here to New York City if he chose to. Plastic meant he could stretch. That's what your principles are, they stretch, they contract, they are what you say they are. They are not what they say they are by their very terms, they're what you decide to say they are and they're applied in the way you decide to apply them in this particular situation. You can do whatever you want to with this bill. There are bigger things that I'm concerned about that this Legislature does. [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR CHAMBERS: But I'm going to use the opportunities afforded me when this kind of a bill comes before us and the real issues underlying the bill will not be dealt with. The Constitution doesn't mean anything to most people on this floor. Court cases don't mean much to people on this floor. There are things that they're told to say, things they're told to do, and that constitutes the marching orders for the day. As I stated, I don't know whether I will take this to a vote or not, but I wanted the opportunity to speak. And in the interest of collegiality, Mr. President, I'll stop at this point. [LB44]

SENATOR HUGHES: Thank you, Senator Chambers. Senator Thibodeau, you're recognized. [LB44]

SENATOR THIBODEAU: Thank you, Mr. President, and good morning, colleagues. Hopefully my voice will carry throughout. I do rise today in opposition to LB44 and to the amendment. I do appreciate the attempt at levelling the playing field. However, we are at the cutting edge of the Silicon Prairie and we should be making steps to promote rather than discourage e-commerce. Not putting a burden on brick...I don't believe we're putting a burden on brick and mortar. We're

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

Floor Debate
March 06, 2018

imposing a burdensome and costly regulation on small business and I understand that a lot of you think that we are not doing this, but we truly are and we're doing it on small businesses outside of our state. We should not do this any more than other jurisdictions should be doing the same to Nebraska small business. As someone who has started a small business, I know about the burdens that costly regulations impose. LB44 will create mounting costs of dollars and time on tax compliance that quickly eat away at hard-earned income that could otherwise be used to invest, expand, and create new jobs. The Internet is a place where business can be conducted more rapidly, efficiently, effectively, free from many burdensome government regulations. Too often, innovations like on-line retail are seen as threats by policymakers even long after consumers have embraced them. On-line retail is an opportunity for every seller in Nebraska, across the country and around the world to reach new customers, new markets, and do so with low barriers to entry. If we truly believe in limiting burdensome regulation, encouraging the development of free markets and empowering entrepreneurs across our state and our nation, we should not pass LB44. This bill puts ownership on small business to report the dollar amount that consumers spend. And I would like to reiterate what Senator Smith said earlier, it has no teeth to it. So a small business has to report to people what they spent, but there's no collection method in place. This is something that people are already responsible for doing and this bill makes it, I guess, more responsible for doing it but no teeth on enforcing it. Mr. Speaker, how much time do I have left? [LB44]

SENATOR HUGHES: 2:30. [LB44]

SENATOR THIBODEAU: I would like to yield the rest of my time to Senator Hilgers. Thank you. [LB44]

SENATOR HUGHES: Senator Hilgers, you're yielded 2:30. [LB44]

SENATOR HILGERS: Thank you, Mr. President. Thank you, Senator Thibodeau. I rise to discuss a couple of the points made by my colleagues, Senator Crawford, Ebke and Morfeld. And I'll start with Senator Crawford and Ebke's point which I took to mean that, well, look, Legislature does have some power to delegate constitutionally some of the authorities that we would have, and that's true. There's certainly no argument from me and I read the state decision

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

Floor Debate
March 06, 2018

that Senator Crawford cited. And the one thing I noticed in the state decision that isn't here is that they didn't deal with a court case. My point, when I rose earlier, is that we...there is no case in which I'm aware and there's no statute of which I'm aware in which this body has delegated our authority to a court case. The difference between a court case and some other fact, whether it's the fact of an FDA approval as discussed by Senator Ebke in the bill from last year, or the fact that change in speed limit as discussed in the state case as referenced by Senator Crawford this morning, there's a world of difference between those facts and what could happen in a court case. The court holding is not an ascertainable fact in the same way. Senator Chambers outlined in great detail what could happen, what could not happen in a particular case. A case could get remanded. I read the respondent's brief in opposition to the petition for writ of certiorari this weekend and there were a number of arguments, anyone of which the Supreme Court could grasp to send the case back to South Dakota. [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR HILGERS: Thank you, Mr. President. The court could overturn Quill, although in my experience courts very rarely affirmatively state that they will abrogate or that they are abrogating a particular court decision. In fact you...mountains of ink, barrels of ink have been spilt on differing interpretations of particular cases and briefs before courts. So the notion that there's going to be some clean, clear binary fact of what the Supreme Court is going to do in Quill, I think is not a representation of what actually is likely to occur. And I think it takes us from the realm of a constitutional contingency, which the state case and others have supported, and I acknowledge, into the realm of speculation which I believe has no constitutional basis and I don't think is the type of statute we should be putting on the statute books. Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senators Thibodeau and Hilgers. (Visitors introduced.) Those in the queue are Senator Brasch, Morfeld, Watermeier, Baker, Smith and others. Senator Brasch, you're recognized. [LB44]

SENATOR BRASCH: Thank you, Senator Hughes and Mr. President, and good morning, colleagues. I stand in opposition to LB44 and underlying amendment. I have stood before and

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

Floor Debate
March 06, 2018

spoke on my opposition to this bill but this morning I do want to reiterate that when we see a decline on main street businesses, it is a reflection of the community's ability to spend. It reflects rising costs, be it for healthcare or rising taxes, and a lower income and the ability and affordability to pay. I do believe that our main street businesses are strong in the fact that they have a presence. They are a part of our community. And they are present whether it's at our sporting events, at our churches, at our schools, and therefore, they do have that customer loyalty engrained in them. I have talked with constituents, some who have shopped on-line, do so for convenience or items that they may not be able to buy on main street, but main street is their first go-to place. I do believe that we need to continue to look at ways to invest in our communities and investing them is not by raising taxes on the communities. And that is what this would do. I'm a firm believer that we do need to wait for the courts to make decisions before we move forward and enter into a potential court case ourselves, another liability for our state. I would like to yield the rest of my time to Senator Smith. Thank you, colleagues. [LB44]

SENATOR HUGHES: Senator Smith, you're yielded 3:00. [LB44]

SENATOR SMITH: Thank you, Mr. President. How much time do I have? [LB44]

SENATOR HUGHES: 3:00. [LB44]

SENATOR SMITH: Thank you, Mr. President. I stand in support of the FA113 introduced by Senator Chambers. And I think Senator Chambers is making a very valid point. Colleagues, in the matter of collecting sales taxes, what if the Quill decision is not an abrogation, what if it is not a full-out repeal, what if it's a hybrid decision? This bill does not address how the collections take place in that particular case. Again, there's much to be desired in how this...understanding how this bill actually works. Senator McCollister mentioned earlier in some of his remarks and I appreciate his interest in making it more fair for main street businesses and retailers and protecting the interest of small businesses. However, Senator McCollister and those that are listening to Senator McCollister, this bill does not prevent someone shopping around and going out and buying something on the Internet, and this bill does not generate more revenue for the state. This bill as is currently written, gives false hope to retailers that somehow this is going to fix the unbalance and there's more than just the Internet sales competition that's creating

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

Floor Debate
March 06, 2018

difficulties for our retailers in our state. Colleagues, this bill does not address the problem. It only creates a false hope that something will be accomplished with the passing of this bill. Senator Morfeld mentioned that states took action and absolutely, so we have a court case at the Supreme Court. Nebraska passing this bill does not help that case. It doesn't. [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR SMITH: We need to let the Supreme Court make its decision and then we need to set in place a method of collection, depending on what the outcome of that court case is. Whether it's a full-out repeal of Quill, whether it's a hybrid, or I think it varied, you know, probably unlikely case, that Quill is upheld. I think Quill, something will take place, but we need to have flexibility in the way we are addressing that matter. Colleagues, I ask you to support FA113 and continue to oppose AM1822 and the underlying bill, LB44. Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Smith and Senator Brasch. Senator Morfeld, you're recognized. [LB44]

SENATOR MORFELD: Thank you, Mr. President. Colleagues, I rise in opposition to the floor amendment, in support of Watermeier's amendment, and in support of LB44. Just to address a few different comments made by Senator Thibodeau, Senator Hilgers, Senator Smith. First, I guess I don't really see this amendment or this mechanism which that we're putting in place as a delegation of powers. It's actually a trigger. We're not delegating any powers. We're simply saying that if a decision is made in Quill, this will then trigger this mechanism by which people have to report and we collect revenue. So this isn't a delegation of power. And in fact, it's completely permissible under the Constitution, it's completely permissible under our law-making authority. In addition, I also find it hard to really accept the argument that, oh, well, we don't know what the Supreme Court ruling will be so we shouldn't do anything. It could be a really dynamic ruling. Well, of course it will be a dynamic ruling. Most Supreme Court cases are pretty dynamic and nuanced. But that doesn't mean that we can't enact a law in anticipation of it, and if for some reason it contradicts that Supreme Court case, there is a mechanism by which retailers and other individuals can file a lawsuit stopping some kind of action that is found to be unconstitutional, or somebody believes to be unconstitutional, against whatever state law we

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

Floor Debate
March 06, 2018

pass. That's the court system. That's the way we currently do things. So for some reason, our law runs afoul of whatever decision that's made in this upcoming case, there's a mechanism by which people can challenge that law. And quite frankly, I don't think that this law is so stringent and so targeted in nature that it will run afoul of any ruling that Quill may come up with...or excuse me, that the Supreme Court may come up in terms of contradicting Quill. And so, colleagues, I think that this is a reasonable proactive measure that is constitutionally permissible, well within our statutory and lawmaking powers. It's forward thinking and we do have flexibility. Senator Smith said, well, I don't know, we may not have flexibility...we have flexibility. If for some reason, this runs afoul of the court case that's currently pending before the court, we can always come back and change the law. People can decide to put in place an injunction or file an injunction from the law going into effect. There are options. This simply makes it so that we are being proactive and that we are well-placed in a position where we can start collecting revenue and if for some reason it runs afoul of any Supreme Court decision, an injunction can be put in place, we can stop the law, others can stop the law from going into effect under a current court process and then we can come back next session and create a law that conforms more closely with Quill and quite frankly...or not with Quill, but whatever the Supreme Court decision may be. So colleagues, this is a reasonable proactive measure fully within our powers. It's a prudent way of preparing for an eventual decision and quite frankly, it's taxes and a law that I think we should pass anyway, regardless of whatever the Supreme Court's decision may or may not be. Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Morfeld. Senator Watermeier, you're recognized.
[LB44]

SENATOR WATERMEIER: Thank you, Mr. President. I just want to make a couple more points and then I'm going to yield the remaining of my time to Senator Krist if he's close-by here. I've had some questions, you know, when I listened to the colleagues, I had some questions come up at different times, can the state collect without legislation? There are some different opinions on this, but with the passage of LB44 eliminates any uncertainty assuring that Nebraska has the authority to collect the tax. Furthermore, our language is similar to South Dakota's, which would be the language that the Supreme Court has upheld. Members, keep in mind, it is not a matter of turning a switch on and off. If Quill is overturned, it's not an automatic thing for the state of

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

Floor Debate
March 06, 2018

Nebraska, the Department of Revenue, or for us to say this can happen. We have to have language on the books. If it's overturned the day we come out of session, we're waiting another year. I would like to yield the rest of my time to Senator Krist. [LB44]

SENATOR HUGHES: Senator Krist, you're yielded 4:06. [LB44]

SENATOR KRIST: Thank you, and Mr. President, thank you, and good morning. Thank you, Senator Watermeier, for your gracious offer, and thank you and good morning to my colleagues and to Nebraska. I tend to read a lot when there are things that I don't understand and I don't know and I am not a lawyer, but I would strongly suggest that you take a look at the document that Senator Watermeier and I have both handed out. It is written by the Nebraska law...as a Nebraska Law Review by Adam B. Thimmesch and you need to take note of part (c) on page 5 and I want to put this on the record because it sets aside some of the misinformation that's been given to you, both, I think, by Senator Smith and by Senator Hilgers. The biggest question that senators in Nebraska might raise with respect to LB44 is why the state should act now. If the effectiveness of the legislation is delayed unless and until the court abrogates Quill, why not just wait to see what the court does in Wayfair. I think you've heard that a couple of times this morning. The answer to this is multifaceted. First, LB44 would immediately impose information reporting requirements on remote vendors who do not collect the state's tax that would immediately help the state to collect taxes and by Nebraska on their on-line commerce regardless of what the court does in Wayfair, Wayfair v. Quill. More fundamentally, the Legislature should act now to be prepared for the court's decision in that case. This year's legislation ends on April 18, which means that the Legislature would not be in session when the court hands down its opinion. If the court were to overrule Quill and the state did not have LB44 in place, it would have to wait until 2019 to even introduce another bill. This is also a matter of fairness to Nebraska retailers. Let me say that again. This is also a matter of fairness to Nebraska retailers. As currently stands, Nebraska law gives our residents...all our residents a tax incentive to give their business to on-line retailers which is happening all over the state right now. Let me just say this. When you watch the lobbying effort that's going on here this morning and someone stands up here and says, I'm in favor LB44 which I am, I'm in favor of AM1822 which I am, immediately what will happen is someone will call you out there from the Governor's office and tell you why you're wrong, and give you your next dialogue on the mike. Watch it. Watch what

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

Floor Debate
March 06, 2018

happens. You know why it doesn't happen to me? Because so many times I've gone out there and I have argued the issue, whatever the issue is, and I've not come back here and tried to convince you that I was wrong the first time, or that I'm speaking someone else's words. If I'm quoting something, I'm quoting something from the Law Review, I'm quoting something from someone who knows a lot more about the law than I do and I would content a lot more than Senator Hilgers does on this particular issue because it was an opinion written by the Nebraska Law Review, which I think is the school that he went to. [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR KRIST: I honestly believe that when someone gets up and says, it's unconstitutional, or there's a fiscal note, it's assumed to be instant death on a particular issue. Don't let that happen to you in the future. Fight back. Make sure that the facts are clear, that it's not someone's opinion. Opining and defining, whether it's constitutional or not, happens in a different branch of government, it happens back here in the Supreme Court, and in other courts across the state. I would offer that you should read this review in front of you today and pay attention to the opinions that are in there. Thank you, Senator Watermeier, again for the opportunity, and thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senators Watermeier and Krist. Senator Baker, you're recognized. [LB44]

SENATOR BAKER: Thank you, Mr. President. Sometime last year, or maybe it was earlier this year, someone dropped a copy of this book on my desk. I read it and what it turned out to be as I would characterize it, is an alt-right manifesto. You know, on this issue of collecting Internet sales tax, nobody in my District 30 is telling me, this is a bad idea. You know, maybe some of them haven't read the manifesto and that's not the only place it appears by the way. You hear the same rhetoric from ALEC, you hear things pop up on this floor. People got it from one source or the other. But in District 30, people are pushing me, why aren't you approving the collection of Internet sales tax? If you think that's not hurting local merchants, the idea of people buying more and more on Amazon, you've got to be joking. There's a huge trend in this country going on. Shops are closing up across the country, shopping centers are closing. That's no longer the

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

Floor Debate
March 06, 2018

Sunday afternoon pastime going milling around the shopping mall. People do their shopping on their Internet. So I figure out, where in the Sam Hill is this idea coming from that we shouldn't collect Internet sales tax? Well, the answer is right there on page 264 and 265. One hundred principles for restoring our freedom and prosperity is prohibit the collection of sales tax on on-line purchases across state lines. Why? Well, it's unconstitutional. And the other reason, there's better alternatives. You know, the Marketplace Fairness Act is a wrong response to the rise of Internet sales. Brick and mortar operators are free to sell their goods on-line also. How practical is that when the small businesses that you know, the mom and pop stores, or even some of the chain stores say, I can take advantage of this too. I'll just go and start marketing in states where I don't have the nexus and then I can skate the sales tax so that I can give a lower price to my consumers. So just to give you a little highlight of some of the other hundred ideas that are again cited by the same people who say, don't tax Internet sales tax. Of course, repeal and replace Obamacare. Expand the use of direct primary care programs. Global warming is not a crisis. In the world, fossil fuels, hydraulic fracking is safe and beneficial. The schools, there's a rising tide of mediocrity. Common Core is not the answer. Thank goodness, Nebraska never adopted Common Core. Allow parents to choose. School choice benefits teachers. Design guidelines for voucher programs. Design guidelines for educational saving accounts. Design guidelines for charter schools. Higher education in the United States isn't working. There's a whole chapter on the war on universities and colleges. It's nationwide. It's not just the University of Nebraska that's under attack, that's part of the game plan. Privatization is, of course, is big. Firearms, bans on assault weapons are incoherent and self-defeating. Increase in the number of guns does not lead directly to more gun crime. Defensive gun use saves lives. The right to carry laws do not increase crime and may generate social benefits. [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR BAKER: Telecommunication, don't mandate net neutrality. And again, prohibit the collection of sales taxes on on-line purchases across state lines. Don't forward expansion of Internet applications of e-commerce. State fiscal policy keep taxes low. Avoid progressive income taxes. Reform public pension and healthcare programs. Everyone should pay the same income tax rate. Perhaps it's time to repeal the income tax. The national government is out of control. Constitutional reform is a solution. Fear of a runaway convention is unfounded. Require

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

Floor Debate
March 06, 2018

Congress to balance its budget. States can refuse to enforce federal laws. Those are the same...it's a matter of... [LB44]

SENATOR HUGHES: Time, Senator. [LB44]

SENATOR BAKER: Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Baker. Senator Smith, you're recognized. [LB44]

SENATOR SMITH: Thank you, Mr. President. I have so many points to make with the previous comments that have been made by my colleagues. Let me start by...listening to Senator Baker and others, again, this bill, as amended, AM1822 and LB44 does not improve the prospects of collecting sales taxes. It is a false hope for residents of the state and small business retailers. This bill has no teeth in it. It's poorly written and it simply does not do what is being promised here. And I'm probably one of a very small handful of retailers that actually are impacted by remote sales inside the state. And I'm telling you, this isn't going to help me, and it's not going to help our retailers. Not unless you think reporting, sending a reminder, if you would, to buyers of Internet products that sending them a reminder that somehow that's going to encourage them to report their sales taxes if they had not already done so. That's a false hope and that's all that this bill offers. Senator Krist said I'm misinforming you. He mentioned myself and he mentioned Senator Hilgers. I can't speak for Senator Hilgers, but I'll speak for myself. Senator Krist talked about read the review. May I suggest, read the bill, Senator Krist. Read the bill. The reporting function disproportionately burdens small businesses in the state and other states and the collection method does not cover the various outcomes of the Supreme Court decision. Senator Morfeld said, well, we can just come back and fix it next year, so let's go ahead, colleagues, and let's pass a bad bill with a bunch of regulations on businesses, recognizing that this bill is bad, and say we're going to come back next year and we'll come back next year and fix it. That's not what we should be about. Colleagues, I'm going to take some words from Senator Krist. Read the bill. Don't rely on the reviews, read the bill. And tell me, colleagues, if you can explain to me how the reporting function works, tell me, colleagues, if you can explain to me how the collection function works in this bill, or in the amendment. I will continue to work towards finding a compromise with Senator Watermeier. I've made an offer to Senator Watermeier as to

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

Floor Debate
March 06, 2018

how I can become satisfied with the bill. I'm not speaking for anyone else who has opposed this bill, but speaking for myself. I'm willing to work through that compromise with Senator Watermeier, but AM1822 and LB44, bad legislation, creates false hope, does nothing as to what the arguments are suggesting it does. I continue to support Senator Chambers on his floor amendment, AM113 as the best option forward with what we have on the board there this morning. Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Smith. Senator Krist, you're recognized. [LB44]

SENATOR KRIST: Thank you, Mr. President. Good morning again, colleagues. Good morning, Nebraska. I would like to ask Senator Watermeier if he wants any more time or if he'd like me to take a few minutes and then...okay, thank you. Thank you, for his indulgence before. I have read the bill, Senator Smith, and I do agree that the bill could be better, but that's not what this dialogue is about right now. It may be your intention and thank you for stating that. I appreciate you coming on the mike and making sure that people understand that you want to fix it and that the bill may have some issues with it. And if that were the case, then let's start putting some suggestions up there in terms of other floor amendments. I don't know that FA113 is what I'd like to see happen, but I do know this. Most of you know that I've been traveling around the state for other reasons and every group that I have gone to I have asked the question about Internet sales tax and every group that I've been with has said the same thing. Don't make me run a spreadsheet and voluntarily pay sales tax. The voluntary mode of paying sales tax on Internet sales tax is not going to work. It has not worked in the past. I won't put anybody on the spot, but I will tell you that that's the information that I have, is if people are not paying voluntarily, even though they probably should. If this isn't the right mechanism, let's fix it. With that, I would yield the balance of my time to Senator Watermeier. [LB44]

SENATOR HUGHES: Senator Watermeier, 3:23. [LB44]

SENATOR WATERMEIER: Thank you, Mr. President, and thank you, Senator Krist. I just want to have it on the record. I was out in the lobby when I heard someone mentioned something, read the bill, read the bill, read the bill. In the bill it's going to tell you that it hurts small businesses. And someone had said it, and I didn't write it down or quote it, it's going to hurt small businesses

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

Floor Debate
March 06, 2018

in Nebraska. I would go to you and tell you, read the bill. Nowhere in the bill does it say that. It does not, it cannot hurt small businesses in Nebraska. Clearly, the burden we're putting on anybody is outside of the state of Nebraska who is selling items inside of the state and we're requiring them to either, (a) report to the purchaser what they've bought, and another report is to them annually what they bought and how much they spent and that they owe this much tax. And then they're required to take a report and send it to the Department of Revenue that shows their overall annual sales into the state of Nebraska with no Social Securities, no fed ID's. Nobody outside of the state of Nebraska is required to report to the Revenue Department any Social Securities or fed numbers that says Senator Watermeier bought X amount of dollars over the state. This is not a burden to any small business operating in the state of Nebraska. There are conversations going on behind me and in the lobby that would like to take out the reporting mechanism. I am telling you, we have to have the reporting mechanism. Don't buy into the idea that we can do it without it. The reporting mechanism backs up everything in the bill. If Quill stumbles at the last minute in Supreme Court, if Quill doesn't have a very black and white decision, we have to have the reporting mechanism to back us up. I am willing to work on this bill. I've heard nothing new today that I didn't hear 11 months ago on this bill. I have reached out to everybody for the last 11 months, to the public. We've changed the bill...in three regards we changed the bill. It's a much better bill. We've addressed the privacy issues, we've addressed the reporting issues that were erroneous, and we reported the idea that it's unconstitutional. According to the AG's Opinion, we have taken care of that. I'm still open for discussions but I will tell you, I'm not open to discussions that takes out the reporting because it's a backup to what we need. It's a backup to our small businesses in the state of Nebraska. [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR WATERMEIER: Thank you, Mr. President. Think of it as that and that only. It's the backdrop to the Quill decision. If we don't have that, we're going to be floating around here this summer or this year with (a) not collecting the taxes that we think are owed, but more importantly the fairness to the small businesses in Nebraska. I cannot go around this state and tell people, by golly, I just think it's a little unfair. These on-line retailers should have to click a button and collect and remit the sales and use tax. That's ridiculous. Keep your eye on the ball with this bill. It's very simple and very clean. Thank you, Mr. President. [LB44]

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

Floor Debate
March 06, 2018

SENATOR HUGHES: Thank you, Senator Krist and Senator Watermeier. (Visitors introduced.)
Senator Friesen, you are recognized. Senator Friesen, you are recognized. [LB44]

SENATOR FRIESEN: Why, thank you, Mr. President. I stand in support of AM1822 and LB44. And as we've listened to the news over the past couple of years, when it gets around Christmastime and everybody is reporting retail sales and they're down usually in the big box stores and in the mom and pop shops and Internet sales are up a huge percent again. People are buying on the Internet. Things have changed. We keep talking about how important broadband access is to everyone and it has changed our buying habits, it's changed our education, it is changing a lot of things and how we do things. It changes how our kids interact with people on Facebook and everything else and it's caused a lot of social problems and it's helped a lot of social issues. But, again, it's the shopping habits have changed and if we don't somehow adjust to that change, and it's whether we try and fix this problem somehow, or let's level the playing field and let's take away the option of sales tax. Let's take the option on our retailers down to zero. Let's base our tax policy on income tax. Let's get rid of the sales tax, it's not fair. Either we level the playing field for businesses, or try to, and I think this is an attempt to. I think it's a fair attempt to. I think we need to level the playing field for those businesses and it's because of the change in shopping habits. It's not that the shoppers out there are intentionally trying to circumvent the collection of sales tax. There may be a few, but it's the convenience. You sit on your living room couch while watching a TV show in the evening and you order Christmas presents for the kids or birthday presents. You have them shipped directly to where they belong. You don't have to deal with it anymore. You don't have to go out in the crowds. And in the end, you don't pay sales tax in most cases. And if you're careful when you do your shopping in certain spots, you know you won't pay the sales tax. No one is reporting it on their state income tax. No one has noticed that box. There's a few probably political individuals who don't want to get caught by not checking the box, but other than that, everybody ignores it. Our shopping habits have changed. And if we don't change our tax policy, we need to look at how we can level that playing field and the only one I see is let's lower our sales tax obligations here and maybe try to attract some of those buyers back into the brick and mortar stores that are on main street. Right now, in most places, they're at 7 percent disadvantage. That's big. Margins are tight. The big box stores make it up in volume. Our small shops are struggling to stay open. Some cities have sales tax, some don't. Let's level the playing field. It's what we're trying to do. I don't know if we'll

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

Floor Debate
March 06, 2018

change shopping habits by doing this. I would tend to say no, we won't. People will still tend to buy over the Internet. It's the convenience of the thing, but at least we will attempt to try and collect that revenue and help level the playing field in that respect as far as taxes are collected. And again, this doesn't collect that tax. It just notifies you at the end of the year, numerous businesses I do business with, they send you a year-end statement showing all of your purchases, the date, what you purchased, the amount, a lot of businesses are already doing this. It's not that big a burden. [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR FRIESEN: I think it's something that we need to look at and if there's compromise to be had, I'm looking for it. But again to just say that we shouldn't be doing this I think is false. I think it's something we need to look, it's something we need to do. We've been hearing about it too much in the news. We talk about it a lot and we do nothing. This, I guess, is at least an attempt to address it. Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Friesen. Senator Hilgers, you're recognized. [LB44]

SENATOR HILGERS: Thank you, Mr. President. Good morning again, colleagues. I want to first say that I really appreciate the conversation that we've had this morning. I have listened very carefully to all the comments or nearly all of the comments that have been made this morning and I'm grateful for the dialogue on the mike and off the mike. I do want to respond to a couple points made by Senator Krist as well as Senator Morfeld. I'll just take them in reverse order. There was some discussion about whether constitutionality is sort of equivalent to a fiscal note or if we just sort of wave a paper and say, well, this is unconstitutional that the bill should die. I strongly disagree with that for a couple of reasons. One is, I certainly don't think that waving a piece of paper and saying this is unconstitutional that anyone should accept that at face value, but I adamantly disagree that the constitutionality and whether we have the power to do something should not be a core consideration of this body. We live in a rule of law society. We spoke about this in the context of LB117 last week and we're going to talk about it, and we've been talking about it again today. A rule of law society, that means no matter what we feel about the policy outcomes or the policy goals, we have to look, in my view, as part of this analysis, whether or

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

Floor Debate
March 06, 2018

not we have the power to do something. And I would invite all of you not to take my word for it for whether this is constitutional or not, but to actually look at the primary source documents on which my opinion relies. Now, Senator Krist talked about this law review article that I read. And I've read many law review articles in my lifetime and in my career, and they are worth really the weight...they're worth the value of the paper on which they're written and they are worth the logic and the reasoning that guides the particular opinion. I've read many law review articles that are poor and are poorly-reasoned reached, but poor outcomes. And I've read many law review articles that attempt to be provocative and reach conclusions that they know are wrong, but just to make people think. I don't think that the law review article cited by Senator Krist falls in either of those categories. I read it. I thought it was well-reasoned. I thought it was incorrect in some areas and I thought it suggested a hasty action from this body. A suggestion, by the way, that's easier to make when you're not in this body, when you're not the one making the vote, when you are not saddled with the obligation of whether or not your action is constitutional. I think it is very easy from afar to say, well, just go rush and do this because this will make sense down the road because I'm certain that Quill is going to get overturned. Now, Senator Krist quoted from that particular article some language in the argument about why we should do this now and the argument proffered was, well, we should do this now because we should have this reporting requirement. If we have the reporting requirement then that's a good thing. Well, if that's what we want to do, let's be clear about a couple of things. One, that's not what this bill does. This bill does something I have never seen another statute do in Nebraska or anywhere else and that it hinges, it sunsets...part of it sunsets based on a hypothetical court decision, a particular narrow holding of a hypothetical court decision, or enacts essentially an alternative statutory scheme based on that same court decision. Let's be very clear, that's what this does. Okay. That if we just want to take that away and just do a notification form, okay, let's have that debate. That itself is not clearly constitutional. There's one case that I'm aware of is a 10th Circuit decision that has blessed that particular requirement. There's no guarantee that the 8th Circuit would, that's the Circuit in which we sit. And if you think that someone is not going to challenge this, the moment it is signed into law I think you're kidding yourself. Almost every, if not every, and I haven't looked at every single bill that has passed that deals with this particular issue, but I believe almost every, if not all, have been challenged and have been tied up in years of court battles. So the idea that by doing this, just the notification requirement, we will really make a big...a lot of progress here this summer, I just don't think will bear out. I really don't. [LB44]

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

Floor Debate
March 06, 2018

SENATOR HUGHES: One minute. [LB44]

SENATOR HILGERS: The second argument from Senator Morfeld that was made was what I think is maybe a misremembering of some of the arguments from last year which is, last year part of the argument at least that I made on the floor was that there is a South Dakota case that is ahead of us that is a direct challenge to the Quill decision. And if you don't think that our hands are tied on collecting out-of-state tax, read Quill. Just read it. We don't have the power to do it. What we argued last year, or at least I did, is that that South Dakota case is in the queue. It is a direct challenge and has a good likelihood, especially with Justice Gorsuch on the bench giving his concurrence in the 10th Circuit decision, that that will be taken up. So let's wait and see. We're going to get some clarity soon. That was the argument last year. Well, fast forward a year later, now we know we are going to get clarity. One way or the other, in less than two months, this body will have clear direction from the Supreme Court. Now, it could be what some of the proponents of this bill think will happen, which is that LB...the mechanism, that Quill will be overturned and LB44 will be... [LB44]

SENATOR HUGHES: Time, Senator. [LB44]

SENATOR HILGERS: Thank you, Mr. President. [LB44]

SENATOR HUGHES: Thank you, Senator Hilgers. Senator Williams, you're recognized. [LB44]

SENATOR WILLIAMS: Thank you, Mr. President, and good morning, colleagues, and I rise in support of the AM1822, in support of the underlining bill, LB44. Again, I think it's important for us to think about and recognize that we have three branches of government in our state. Three distinct and separate branches that are established by the Constitution and there's a reason for each one of them. We have a judicial branch, and I would tell you that is the group that is qualified and required to wear the black robe. And there are many in this body who oftentimes pretend that they would like to wear that black robe, but they don't. In fact, even as a lawyer I would stand here and tell you I'm qualified to wear a bath robe but not a black robe. The executive branch of our government is charged with the responsibility of carrying out the laws and executing on them that we pass. And then there's our job, the legislative branch, the policy-

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

Floor Debate
March 06, 2018

making group. The group that stands back and doesn't try to just determine whether this is constitutional or not, or doesn't try to determine what the outcomes, it determines what is right, what is fair, what should be and could be based on our responsibility, good public policy. I don't know if I've had a town hall meeting in the last year or year and a half that the issue of collection of sales tax on Internet sales has not come up. It comes up every time. And it's not just driven by the local Chamber of Commerce. It's brought up by those people that care about their communities and are trying to continue to keep businesses there and keep businesses growing. Main street fairness is important and it's a public policy that we can do something about and make a difference on. I've heard someone say this was bad for business. I don't get that at all. This is designed to be helpful for business. Those businesses that have to comply are those businesses that are not...that do not have a Nebraska location currently. And those businesses that would have to comply are those that have either \$100,000 or more in sales or 200 separate transactions on an annual basis. So if there is a burden, it's to those businesses that are not in Nebraska now. But those businesses that are not in Nebraska now are competing every day with my main street businesses and they're competing with your main street businesses also. It's not a new tax. I've heard that a lot. It's not. I reported on my income tax return, if you'd like to look at that, and my business reports it on its Nebraska state income tax form also because, by the way, we were audited by the Department of Revenue because most businesses of any size, it's worth doing those audits. So we pay that tax. We're sitting here with the end of this week the budget bill is going to come out from the Appropriations Committee. We're also sitting in the situation where we've talked on and on about... [LB44]

SENATOR HUGHES: One minute. [LB44]

SENATOR WILLIAMS: ...tax reform. Thank you, Mr. President. And yet all of a sudden we've got people that are willing to look the other way on what could be somewhere, I think, according to Senator Watermeier, a sixty-five to ninety million dollar improvement. And we don't need to wait another year. If we fail to pass this this year and the outcome of the Quill case is turned over, we will be a year behind in the collection. I think it's time to do it now. It's time to take our responsibility of being the public policy-making body seriously. Thank you, Mr. President. [LB44]

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

Floor Debate
March 06, 2018

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Thank you, Senator Williams. Senator Crawford, you are recognized.
[LB44]

SENATOR CRAWFORD: Thank you, Mr. President, and good morning, again, colleagues. This has been a great debate and I appreciate everyone's attention to making sure we're passing strong law here that does benefit our businesses and benefits our state. So, I want to start with a couple of questions to Senator Hilgers who I've talked to off the mike and knows I'm going to ask these questions. So, Senator Hilgers, would you yield to a question? [LB44]

SENATOR HILGERS: I would. [LB44]

SPEAKER SCHEER: Senator Hilgers, will you please yield? [LB44]

SENATOR HILGERS: I would. [LB44]

SENATOR CRAWFORD: Thank you, Senator Hilgers. Now you had noted that the law article indicates that we do have...that the law article discusses the fact that the bill in question there was contingent upon an act of Congress or an act by a president and that an act in terms of a court case was different, and that you hadn't found any cases where that had been supported by law, is that correct? [LB44]

SENATOR HILGERS: That's correct. I thought of the instance in the state case. It was a more binary fact, is the speed limit at X or is it at Y, whereas the court case is multifaceted and not the type of ascertainable fact that I think would allow for that kind of contingency. [LB44]

SENATOR CRAWFORD: So, if we were to look at what happened in the Supreme Court this summer, what would be a conclusion that would allow us to say yes, we know the state has the authority to collect sales tax? What would be the...how is that different than, or than abrogation or how is it broader than abrogation? [LB44]

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

Floor Debate
March 06, 2018

SENATOR HILGERS: So from the perspective...thank you, Senator Crawford. From the perspective of this body not in the context of LB44, if the Supreme Court in its Wayfair decision were to say Quill is no longer the law of the land, states can now tax Internet sales, I think that would be sufficient. And the context of LB44, whether or not that would be abrogation or not, probably. I could envision scenarios in which the court largely says that states can go forward without overturning Quill. I could think of other situations in which we would have the power to go forward without explicitly abrogating that holding, so. But I think for us if the court were to say Quill is no longer operative in this context or states can move forward, I think that would be sufficient. [LB44]

SENATOR CRAWFORD: Thank you, Senator Hilgers. I appreciate that. So some people have talked about whether or not this bill needs more work or concerns about the bill, but colleagues, the only specific wording issue that I have heard in our debate this morning is that about this clause about abrogation and this is the part that Senator Chambers is seeking to remove in his floor amendment. And I stand opposed to that floor amendment. I think this is important language. I think our Supreme Court has affirmed that we can pass a bill that is contingent upon a decision of another body. The fact that no case has come before the court where that contingency was based on a court case doesn't mean that's unconstitutional, it just means it hasn't been challenged. And as Senator Briese noted, what we decide here is assumed to be constitutional until challenged and ruled otherwise. So there's no court case that says that to make a Nebraska bill contingent on a court case is unconstitutional. That is not the case. And so it's very important that you understand that. It has not been tried, it has not been ruled unconstitutional. So, I take the point that the language about when the bill goes into effect it would probably be better if that language said something along the lines of, if the Supreme Court rules that they have the authority, that would be a better catchall category. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR CRAWFORD: Thank you, Mr. President. Catchall category that could catch abrogation, but would also catch the situation that Senator Hilgers mentioned when perhaps they might have a case that somehow affirms Quill but still gives states this authority. So, I think that's one specific point that is very easy for us to correct. And I would be happy to work with people

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

Floor Debate
March 06, 2018

who are concerned about correcting that to make sure that this contingency is very clear and that we don't get caught in the loophole on the contingency. So, I'm happy to work on that issue with others. I think one last point, I think there are...that the reporting requirements are not burdensome and I think they're very helpful to our citizens in Nebraska. It helps them comply because they'll have a list of those things on which they should pay taxes. Talking to other people, most people say they just guess or estimate. My husband makes the spreadsheet to figure it out. [LB44]

SPEAKER SCHEER: Time, Senator. [LB44]

SENATOR CRAWFORD: Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Crawford and Senator Hilgers. (Visitors introduced.) Still in the queue, Senator Chambers, Brasch, Smith and others. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, this discussion has gone far afield and has gotten nowhere really because those who are for the bill are for it, those who are against it are against it, but a record is being compiled. The language that I'm striking relates to this...excuse me. This subsection becomes operative on the later of July 1, 2018, or the first day of the first calendar quarter after a controlling court decision, or federal legislation. Am I to understand, and this is a rhetorical question, that if we pass this bill, it doesn't take effect at all until the latest of these three things will happen. Well, let's say that we pass the bill and another Legislature in the 8th Circuit passes a bill that is to take effect and that case goes before the 8th Circuit of which Nebraska is a part. When that 8th Circuit renders its decision, that is a controlling court case for Nebraska. You all keep thinking about the U.S. Supreme Court. That's why I said the term controlling court decision doesn't necessarily mean the U.S. Supreme Court. It could mean the entire 10th Circuit. If the U.S. Supreme Court sends it back, it could mean an 8th Circuit decision on a case from another Legislature in the 8th Circuit that could happen before these things occur. Well, that controlling decision took place so does that mean that this bill goes away? Because the controlling decision would be against what you're trying to do. But you all aren't listening to that, because you're going in a different

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

Floor Debate
March 06, 2018

direction. So, I'm going to show you how you all don't listen to the most obvious things. The Bible says there's more than one God. God himself said, there are other Gods. In that commandment, God didn't tell you all there are no other Gods. He said, put...thou shalt have no other Gods before me. If there were no other Gods, why say that? I'm the only God, but God acknowledged that there are other Gods, and they have power. But those of you all who worship me don't put any of those Gods before me. So the Bible acknowledges there are other Gods, but you all don't because you've been taught a certain thing by your preachers, and that becomes gospel for you. In the same way somebody might read a law review article that draws a conclusion that comports with what they want the conclusion to be, but that is only an opinion. It's not even an opinion in the context of a court case or a lawsuit where you had an adversary on the other side challenging what you say. When I write an article, I give the...I make this point that are going to buttress what my conclusion is. And if there is nobody challenging any of them, I use that syllogist to look...method of reasoning. If you accept the major premise and the minor premise, then the conclusion is inescapable. All human beings who are male are men. Aristotle is a human being and a male. Therefore, Aristotle is whatever you want to say that that conclusion ought to be. But that doesn't mean that the premise you lay out is correct. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR CHAMBERS: Either the major premise or the minor. So you can go through a logical process and arrive at a conclusion that is logical, but that doesn't mean in the real world it obtains. Senator Briese was right when he said anything we put into law is presumed to be constitutional. All right. We pass a law the earth is flat. That's not unconstitutional, but it doesn't change anything and it's stupid. And that's why members of this Legislature are designated unicameralis ignoramus. Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Brasch, you are recognized. [LB44]

SENATOR BRASCH: Thank you, Mr. Speaker, and thank you, colleagues. I stand again, and against, opposed to LB44 and AM1822. FA113 does make sense and I have been listening to the

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

Floor Debate
March 06, 2018

debate and I can support that amendment. I would like to yield the rest of my time to Senator Smith. [LB44]

SPEAKER SCHEER: Senator Smith, 4:25. [LB44]

SENATOR SMITH: Thank you, Mr. President, and thank you, Senator Brasch, for yielding me time. I wanted to hit on a few things that have been spoken of since the last time I was on the microphone. Senator Watermeier mentioned that he's hearing the same thing now that he heard last year. Well, that might be because that the same concerns that were in the bill last year remain concerns in this amendment. I don't see that we are addressing what the true concerns expressed last year were. So, I think that may be why you're having a moment of *deja vu* and hearing the same arguments. I do have an amendment that I have filed that I hope to be able to take up that we have had quite a bit of discussion in the lobby. And I think it...in fact, I think it helps to address maybe even some of the things that Senator Chambers has in his floor amendment if Senator Chambers does not prevail with his floor amendment. But I'm going to go through a few of those points in that amendment, but I'm going to take it up more later. And if Senator Watermeier does prevail on Select, if we do go to cloture vote and Senator Watermeier prevails on Select, I do plan on repeating this on Final. I will fight this legislation to the end. And I normally don't do that, but it is remarkable to me that we are holding out hope with this piece of legislation for it to do things that cannot be accomplished. And I'm befuddled by what I'm hearing on the floor as to what this bill is actually able to do. You know, Senator Friesen had a very impassioned talk about trying to bring Internet sales dollars back into the communities. Senator Friesen, I don't need you to get on the mike, but would you...you know, in my interpretation I think it can be interpreted this is only Nebraska state that is receiving sales tax dollars from this deal, that local is not included in this. And if you believe it is, show me where that is. So we're only talking about state sales tax now? What about our local communities that have a sales tax? They don't get it, their piece? Senator Watermeier said, well, this isn't an affront to small business. Senator Crawford stood and said the same thing. I would suggest to you, colleagues, that if you don't think this is harmful to small business, you're not a small business owner. And I hate to be that blunt with you, but if you are dealing with regulations as a small business owner, you understand that a reporting requirement, or whatever that may be, is a

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

Floor Debate
March 06, 2018

burden. And, you know, it's only a \$100,000 in sales tax at which point you have to play by these rules. How about...so you're exempt under \$100,000... [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR SMITH: ...what if you're \$110,000? How about you're at \$101,000? What is the difference between someone who is selling \$101,000 and \$100,000? This is silliness. This is bad legislation. I hope that we can dismiss with this soon, get to my amendment, and we can fix it and have a better piece of legislation. But colleagues, this is false hope for retailers in our state. This does not fix the problem. This is bad legislation. Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Smith, but you are next in the queue. Would you like to use your time as well? [LB44]

SENATOR SMITH: Yes, I would. So let me talk to you a little bit about the amendment that may be coming, may not, seeing if Senator Chambers prevails on this or not. So the amendment, I am hoping to address some of the concerns that Senator Chambers has brought forward in his floor amendment. My bill will also implement a simple but broad expansion of our ability as a state to properly implement a collection requirement for our state out-of-state sellers. The proposal only becomes law if the U.S. Supreme Court overturns Quill as opposed to any entity. It gives a little bit more broadness to the way that works and what the Quill decision could be to make certain that it's not an outright repeal of Quill, that it could be some hybrid of it, and that we would be able to address the collection piece of it. It continues to have that small seller exemption, and I'm willing to cave on that. I think it should be higher, but I'm willing to leave it the way it is in the amendment and the underlying bill. It does tie back to the court decision that's set for April 17 and the decision is expected before the court ends its term on June 30, so the proposal sets the effective date as the second calendar quarter following the reversal of Quill. October 1 would be the effective date. Just making that much more clear. The proposal does not require an emergency clause given the implementation date. And something that I know Senator Watermeier is very much opposed to, but I'm just as steadfast as he is on this issue. My amendment will remove the reporting requirement for out-of-state sellers. This was not going to produce the desired result of the inciting Nebraska residents to voluntarily remit the use tax

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

Floor Debate
March 06, 2018

that's due. So I believe that that reporting requirement should be struck entirely. We will have a means by which we can collect the monies once Quill is overturned in full or in part, and I make it very clear that this does include both local and state sales tax. And I do not leave that open for question. I make it very, very clear. Colleagues, I think we can get something done here, but that's my discussion point with the amendment that hopefully we will be able to get to. If we can't take it up here now, and Senator Watermeier prevails as is, I will be coming back on Final to take it up again. We do not need to give our retailers false hope. We need to give them a piece of legislation that actually works. Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Smith. Senator Groene, you are recognized. [LB44]

SENATOR GROENE: Thank you, Mr. President. I stand in support of LB44 and whatever amendment works. The reason I stand in support of LB44 is because, first, we talk about the retailers, the retailers this. Retailers don't pay sales tax, consumers do. The consumer who lives next to me and I buy downtown North Platte and he buys on the Internet, he drives the same streets, he drives the same roads, and he uses the same public services that I do when I pay my sales tax. He doesn't. The UPS truck, the FedEx truck and the U.S. Postal Service truck that goes, drives the streets delivering that stuff that sales tax is not collected on, bounces over the potholes and the curbs and the intersections that aren't well lit. This is a tax that consumers pay, you and I pay, and is not being collected. And I'm paying it and my neighbor is not. Nebraska retail is hurting. We can't get a factory to live here because people want to live on the coast. All right. So the guy...I bought a skateboard locally for my granddaughter for Christmas. That guy can be in California and I can get it from there, he's not going to have a business in downtown North Platte, period. Why would you live here? If you are not attached to the consumer that you sell to because you can ship it on a truck. That's free markets, but the taxes ought to be paid on it and it can help. A 7 percent margin is what some retailers live on. That 7 percent tax needs to be collected. Why am I for this? I'm not going to get into the legal argument and the Supreme Court, I'm standing here as a consumer and a taxpayer. I do know the members of the Supreme Court are humans. I look at history. And I see that the direction of our country in lawsuits and courts have overruled the past because of public demand and public pressure. The more states that have an Internet sales tax statute in place, gives emphasis to the state to the Supreme Court that the public wants something done. Nebraska needs to be on that side of things when the

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

Floor Debate
March 06, 2018

Supreme Court deliberates and sees where the public stands on it. It's not all black and white. You know that. Those individuals are human and they flow with the tide. We need to put something in statute. And this body can react very quickly to change anything we need to do. Maybe Senator Smith's amendment is the way to go. I don't know. I just want something and we can change it. We're unique here. We can react a lot quicker than a lot of elected bodies at the state level. We're going to do it with reacting to the Trump tax. I'm on the Revenue Committee. That happened quick and I'm sure the body is going to adjust to that. So we can adjust present legislation to what the court dictates to us. That's not a problem. But we need to be on the side and send a message, hey, if you're going to live in my state and you're going to live next to me and you're going to buy something and you're going to do the public services I do, you're going to pay your taxes. This is about individuals not paying sales taxes. This is consumer friendly because I'm sure everybody has got a ledger. Every time they get something on the Internet, they put it in that ledger. And when they do their taxes, they calculate it and they send the taxes too. They don't have to do that anymore. You're talking about bookkeeping records. They wouldn't have to do that anymore because I'm sure everybody is. I just avoid it by not ordering anything on the Internet. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR GROENE: We need something in place to send a message. And when the Supreme Court, Senator Hilgers or somebody sues, let them sue. We can change the law so we don't have any legal...AG doesn't have to defend it. We can do it quickly and the lawsuit goes away. But we need something in place, so therefore I stand in support of LB44, some form of it, whatever we come up with. Thank you. [LB44]

SPEAKER SCHEER: Thank you, Senator Groene. Senator Vargas, you are recognized. [LB44]

SENATOR VARGAS: Thank you very much, President. I agree with Senator Groene. Yeah, I know, right? It's a little surprising. And the reason why I agree is...I think there's a couple of different reasons. One is I think that we can wait and see. I know that's what some people are looking. We need to wait to see for the case law what's going to give us the right direction or not. I think modern day e-commerce is changing so quickly that we need to figure out a way to

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

Floor Debate
March 06, 2018

ensure that our state is prepared and that we have an adequate revenue source to continue to keep state government operating. Notice I'm saying operating, keeping it the same as much as we can. If we're going to begin to miss out on the revenue that's coming through and making sure that we're also being somewhat level fair to other industries that are having brick and mortar buildings, we're going to miss out. And sure I'm not the only person that thinks that. This past Friday I was in Chicago with the National Council of State Legislatures, NCSL, and we were there with a conference with about 50 other individuals that sit on appropriations committee and some revenue committee and there was a fear that rose...a fear that rose on what are we going to do if we can't adequately prepare for a world where we can collect a revenue such as Internet sales tax. What is it going to look like? Now, I think people are on different places on whether or not it's the right decision, the wrong decision, but they ultimately did agree that if we're going to wait and we're not going to begin to then try to sort of level this playing field to some extent, we are going to be missing out. And the people that are going to be missing out the most are going to be some of the businesses in our state, some of the retail businesses that are already operating and already collecting and providing the sales tax. Unfortunately, I think this is going to have a really tremendous impact on the other parts of our three-legged stool. If we're going to be losing out on some more revenue coming from sales taxes and inadvertently going to effect some of the other places where we're trying to reform, and we're hearing from rural Nebraska about property tax reform is needing. Also, we're hearing about income tax reform is needed. So I think that this is a responsible way not right or wrong, a responsible way of moving forward that requires some reporting. It does require reporting. There's a threshold level, but times are changing and I believe that there are other states that are beginning to move forward in this direction. There's Rhode island, you know, we have Minnesota, Pennsylvania, Washington, that are ahead of us. And so I think we need to not be left behind. I will yield the remainder of my time...oh, I support LB44 and AM1822 and Senator Watermeier's bill. I yield the remainder of my time to Senator Watermeier. [LB44]

SPEAKER SCHEER: Senator Watermeier, 2:00. [LB44]

SENATOR WATERMEIER: Thank you, Mr. President, and thank you, Senator Vargas. I appreciate the time here just to clear up the record a little bit. It was mentioned, somebody had offered a bill that why \$100,000, why the 200 transactions. There are specific reasons why I put

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

Floor Debate
March 06, 2018

that in the bill. Because that is because what is being debated right...going to be debated at the Supreme Court. If we had a dollar difference than either one of those two, or one transaction is different, it could have come back to the Supreme Court and said, not the same thing, it was overturned. Very specifically why that was in there. There's also language in there being debated about abrogating. And I have to ask Senator Chambers exactly what that means but it's talking about whether it was upheld or returned from the Supreme Court or a court thereof. Once again, I have my language very, very specific. That held up in Vermont which was deemed constitutional. The other argument about the reporting mechanism. I keep that in the bill. I'm going to say that we still need that. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR WATERMEIER: The retailers that I talked to say we need to have the reporting mechanism. The reporting mechanism was drafted in 2010 by the state of Colorado. It's been in work...it's been in force and has been working and in 2016 it withheld a challenge in which the Supreme Court looked at it and said, we're not even going to bring it up. It stands. Game over. The legislation is constitutional on the fact that in Colorado, the reporting is constitutional. South Dakota is being judged whether it is constitutional. My language in AM1822 waits until that Quill decision is overturned. Until that time, we need the reporting mechanism as a backdrop for the small businesses in Nebraska. I mentioned it earlier on the floor, but a small business may mean different things to everybody in here. The \$100,000, if they're doing that across the country, that's a \$16 million business. Two hundred transactions, if they're doing that across the country that's 32,000 transactions. [LB44]

SPEAKER SCHEER: Time, Senator. [LB44]

SENATOR WATERMEIER: Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Vargas and Senator Watermeier. Senator Lowe, you are recognized. [LB44]

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

Floor Debate
March 06, 2018

SENATOR LOWE: Thank you, Mr. President. And the timing is wonderful because I see the leadership in Kearney has shown up, and thank you for coming today. Senator Watermeier, will you yield to a question, please? [LB44]

SPEAKER SCHEER: Senator Watermeier, would you please yield? [LB44]

SENATOR WATERMEIER: Yes. [LB44]

SENATOR LOWE: As we're finally talking about the limits that you have of not to exceed \$100,000 or 200 sales in a single year, you say in the previous year or current year, so if I'm a businessman and I do 199 sales last year and my sales were under \$100,000, I wouldn't owe these taxes, correct? [LB44]

SENATOR WATERMEIER: Correct. [LB44]

SENATOR LOWE: But, I'm a businessman and so this year I'm doing 199 transactions and it is now the 15th of December and all of a sudden I get in five orders and it throws me over that 200 transaction mark. Do I now go back to my customers and put the tax back on their sales? Or where does this tax money now come from? Does it come out of my bottom line that I had not prepared for? [LB44]

SENATOR WATERMEIER: Is that your question? [LB44]

SENATOR LOWE: That's my question. [LB44]

SENATOR WATERMEIER: My understanding is this. In the amendment, it clarifies that the rules and regulations process and the promulgation process that the department has to go through will very clearly clarify that. So I can't answer that if they're going to have to go back, but it will not come off of your bottom line. It's certainly not that of our intent, but the amendment still makes the department go through and do like they do on everything, promulgate rules and that's the process it will have to go through. [LB44]

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

Floor Debate
March 06, 2018

SENATOR LOWE: So if I'm a customer and I have received this product on January 15, and I think that's the end of my sale, at the end of the year I will now have to pay the tax on whatever I have purchased even though I was not planning on paying that tax. [LB44]

SENATOR WATERMEIER: I'm not completely following where you're heading with that question. I could talk to you off the mike if you want and I could explain to you, it still comes back to the rules and regulations process that the department has to go through. We are laying out the groundwork that those thresholds need to be in place and we feel like they have to be exactly like the South Dakota law is in order to pass. Otherwise an on-line retailer come in and say, well, you changed yours to 201 or to \$200,000 and it's not the same. So that's the key in keeping them the same. [LB44]

SENATOR LOWE: All right. Thank you very much. I appreciate it. [LB44]

SENATOR WATERMEIER: You bet. [LB44]

SENATOR LOWE: As Senator Watermeier has said that, yes, we're talking about small...we're supposed to be talking about small businesses. But I don't believe a business that makes \$4 million a year is a small business. And that's what this would enable that person to do would be able to do \$4 million worth of business tax free. It also according to Senator Smith, our cities...city of Kearney, city of Grand Island, city of Hastings are all for this but they won't see any city sales tax off of this bill the way it's written. And I think they're planning on that with this bill. You know, I...we've also talked about our businesses, our main street businesses are closing. Shops are becoming empty. Malls are closing down. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR LOWE: Thank you, Mr. President. I am now unfortunately getting older and as a child I remember running through vacant buildings in downtown Kearney that were closed. And I do believe back in 1960, the Internet was not even thought of. Businesses come and go. Malls come and go. It has been that way since the beginning of time, I believe, because there are even empty buildings in Babylon at that time. So, times will change. What we see is we want an

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

Floor Debate
March 06, 2018

instant answer today for our problems. Our problems are right now stemming from agriculture. If our agriculture market right now was doing well and the price of commodities were up, we would not see closings in these businesses. We would not see the need for this bill right now because our businesses and our people would be making money. We're trying to find an answer and I don't believe... [LB44]

SPEAKER SCHEER: Time, Senator. [LB44]

SENATOR LOWE: Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Lowe and Senator Watermeier. (Visitors introduced.) Back to the queue, Senator Hilgers, you're recognized. [LB44]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues, I think for the final time this morning as this portion of the debate I think will come to a close. Again, I really appreciate the thoughtful deliberation on all sides of this particular issue. I think it's one that implicates a lot of various issues, policy issues. It implicates our sort of thought process about how we look at the future. It implicates a lot of constitutional issues which is where I spent the majority of my time today speaking on this particular issue, although I agree with the comments made by Senator Smith and others about the burden that it places on small businesses. And I just want to turn back to where I was on my last time at the mike just to wrap up my discussion of Senator Morfeld's comments and objection. And Senator Morfeld had suggested at the mike that what the opponents last year argued was that, well, there's a Supreme Court case law, case out there that ties our hands, let's not act. And I think that is not the argument that was being made. The argument that was being made was that South Dakota has already filed a challenge...they've already passed the law that is working its way up in the cues to the Supreme Court. And it's one that looked pretty likely that cert would be granted and that the Supreme Court would take it up based on the composition of the court. Fast forward a year later to where we are today and that argument is much stronger for the opponents. Because not only has the Supreme Court considered cert, it had granted cert and it is set for argument next month, and the court will issue a ruling by June. So the argument made by opponents was not, well, hey, there's a Supreme Court case out there, let's just throw up our hands and never act and just, you know, you know,

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Transcriber's Office
Rough Draft

Floor Debate
March 06, 2018

poor us. It was that discretion and patience on this particular issue would bode well for the future which is, we will get an answer. We have done a lot of speculating on the floor this morning. What if the Supreme Court does this? What if the Supreme Court does that? What if someone challenges this aspect of the law? How would you interpret this portion of the law? All of this is done because we're working through really an uncertain legal landscape at the moment, an uncertain landscape that will have much more certainty very soon. So it seems to me if we're in a world in which whatever comes out of this body, if we pass LB44, I would predict with a near certainty it will be challenged. At least some sort of law so will be filed that will not go into effect immediately. If we're in that world, and I don't believe we're going to all of a sudden be collecting millions of dollars of sales tax this summer. And if a little bit of patience will allow us to get the affirmed legal landscape that will allow us to make the best decision come January, I think that patience is warranted. The alternative is to create what is in my view a new regulatory structure that would be based on very uncertain legal ground, a legal foundation that may have the entire rug pulled out from underneath it here in two months. We very well may start the process of creating a notification requirement and the court in Wayfair could say that's not constitutional. So it seems to me that when given the choice between doing something this body in my view has never done and in my research has never done which is to base its action on a particular holding of a court decision, not whether some binary fact down the road, some ascertainable clear fact, whether the speed limit is 55 or 60 as Senator Crawford and I discussed, not in that instance, but in a...based on a holding which could be multifaceted. There's a lot of shades of gray with a legal holding or waiting a matter of months to allow that clarity, to allow that legal ground to firm up so this body can... [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR HILGERS: Thank you, Mr. President...so this body can make the right decision based on the legal landscape before us. I'll end by saying what I said at the very beginning which is, I do believe that we are here because of the failure of Congress to act. I believe that we're here because of the Supreme Court's decision in Quill from the early '90s. I do not believe this body has made this...has created this problem. Our hands have been tied. And I don't think this is the time for us to try to fix it on this uncertain legal landscape. Let's just give it a few more months.

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

Floor Debate
March 06, 2018

And with that, Mr. President, I encourage you to vote green on FA113 and red on the remaining items on the board. Thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Hilgers. (Visitors introduced.) Senator Crawford, you're recognized. [LB44]

SENATOR CRAWFORD: Thank you, Mr. President, and good morning again, colleagues. I would argue that the fact that the Supreme Court is deciding this case this summer makes it all the more urgent for us to pass LB44. And so I stand opposed to FA113 and in support of AM1822 and LB44. This is not uncharted landscape and I appreciate the...Senator Watermeier clarifying how specific terms in the bill are based on specific law in other states that have been tested in court. And so those specific...the specific ways in which some of these elements of the bill are worded are worded in such a way to reduce the uncertainty of the landscape and that's important. And as we emphasized earlier, there is no court case saying that it is unconstitutional to have a bill going with a component that is contingent upon a court case. And that language about the abrogation just heard, is also connected with a...has been tested in court as well. So there are three other states that have already passed this kind of reporting component in the law. So whether we pass LB44 or not, there are other states that will ask our small businesses of Nebraska to comply with some kind of reporting. Now, again, LB44 with AM1822 does not impose any new reporting on businesses in Nebraska. And if a small business outside of Nebraska, or a...as we've just determined, a quasi-large business outside of Nebraska is concerned about these reporting requirements, there are two simple things they can do to totally eliminate these reporting requirements. Step one, they could simply collect the tax and remit it. That way they don't have to follow any of the reporting requirements. All they have to do is say, like Amazon has said, I'm going to volunteer to give my sales tax to Nebraska and they could do that. And that is something they can do and they don't have to follow any of the reporting requirements. The second way they could get by without having to follow any of the reporting requirements in LB44, is set up shop in Nebraska. Then they wouldn't have to follow any of those reporting requirements. So, there are two simple ways for these businesses to get out of those reporting requirements. And as to the local sales tax requirement, I just talked off the mike with Senator Watermeier and he said that he had conversation with the Department of Revenue about the ability to make sure the rules and regs clarify and that they did not see a problem, that

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

Floor Debate
March 06, 2018

this bill would allow us to also, where appropriate, collect the local sales tax. And I yield the rest of the time to Senator Watermeier. [LB44]

SPEAKER SCHEER: Senator Watermeier, 1:55. [LB44]

SENATOR WATERMEIER: Thank you, Mr. President. Thank you, Senator Crawford. We are getting to the point where I have a motion for cloture up there in front of the Clerk's desk and so I'm assuming we'll be getting to that pretty quickly here. At that point in time I'm going to ask you to vote green on the cloture, red on the floor amendment from Senator Chambers, green on my amendment, and green on the bill. And just let me hold your hand here a little bit again. I mean, we've worked on this bill all yearlong. Retailers and everybody behind the scenes, the cities, league, several groups have really spoke passionately about this bill to me. And I hope I'm not become tied to the bill to where I wouldn't be willing to change it, I'm not. I am still willing to change this bill but right now that's what the industry is saying. In summary, if Quill is not a return the notice and reporting requirements in LB44 may convince some to voluntarily remit as Senator Crawford said. [LB44]

SPEAKER SCHEER: One minute. [LB44]

SENATOR WATERMEIER: Thank you, Mr. President. South Dakota law should be upheld and Quill overturned, the passage of LB44 puts us in a position to start collecting the sales tax immediately. The local option sales taxes are protected. We have them in the bill. I'm sure that they're protected. If not, we'll study that again. The idea behind this hurting small businesses, I just can't get there as I've heard on the floor. The small businesses that are being referred are clearly the ones outside of the state lines. So with that, I would appreciate your green vote when we get to it on the cloture motion, the red on FA113, and AM1822 green, and LB44, I will call for a call of the house at that point in time. So, thank you, Mr. President. [LB44]

SPEAKER SCHEER: Thank you, Senator Crawford and Senator Watermeier. Mr. Clerk, do you have a motion? [LB44]

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

Floor Debate
March 06, 2018

CLERK: Mr. President, I do. Senator Watermeier would move to invoke cloture pursuant to Rule 7, Section 10. [LB44]

SPEAKER SCHEER: Senator Watermeier, for what purpose do you rise? [LB44]

SENATOR WATERMEIER: Mr. President, I'd like to ask for a call of the house and a roll call in regular order. Thank you. [LB44]

SPEAKER SCHEER: It is the ruling of the Chair there's been full and fair debate on LB44. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor please vote aye; all opposed vote nay. Please record. [LB44]

CLERK: 17 ayes, 2 nays to place the house under call. [LB44]

SPEAKER SCHEER: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Bolz, could you check in, please. Senator Walz, would you check in, please. Senator Morfeld, Senator Vargas, Senator Wayne, Senator Friesen, please return to the floor. The house is under call. Senator Kolterman, please return to the floor. The house is under call. Senator Morfeld, would you check in, please. All members are accounted for. The first vote is a motion to invoke cloture. All those in favor voting aye, and this will take 33 affirmative votes; all those opposed voting no. Mr. Clerk, regular order. [LB44]

CLERK: (Roll call vote taken, Legislative Journal page 837.) 35 ayes, 8 nays, Mr. President, on the motion to invoke cloture. [LB44]

SPEAKER SCHEER: Cloture is invoked. First item before us to dispense with is FA113, Senator Chambers' amendment. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record. [LB44]

CLERK: 7 ayes, 35 nays, Mr. President, on the amendment to the amendment. [LB44]

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

Floor Debate
March 06, 2018

SPEAKER SCHEER: FA113 fails. The next question before us is the adoption of AM1822. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record. [LB44]

CLERK: 33 ayes, 7 nays, Mr. President, on the adoption of Senator Watermeier's amendment. [LB44]

SPEAKER SCHEER: AM1822 is adopted. The last item before us is LB44 to advancing to E&R Engrossing. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record. [LB44]

CLERK: 34 ayes, 7 nays on the advancement of the bill. [LB44]

SPEAKER SCHEER: LB44 is advanced to E&R Engrossing. I raise the call. Mr. Clerk, next item. [LB44]

CLERK: Senator Wishart, LB44A. I have no amendments to the bill. [LB44A]

SPEAKER SCHEER: Senator Wishart for a motion. [LB44A]

SENATOR WISHART: Thank you, Mr. President. I move LB44 to E&R for engrossing. [LB44A]

SPEAKER SCHEER: That was LB44A, Senator Wishart? [LB44A]

SENATOR WISHART: Excuse me, LB44A. [LB44A]

SPEAKER SCHEER: Colleagues, you've heard the motion. All those in favor please...I'm sorry, Senator Chambers. [LB44A]

SENATOR CHAMBERS: Thank you, Mr. President and members of the Legislature. I think we will not be able to leave here right at noon unless they adopt a motion to adjourn before I finish

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

Floor Debate
March 06, 2018

speaking on this A bill. I'm not a sore loser. I don't feel that I'm a loser at all. This is one of those bills that burned up a morning, and we will have an afternoon. So you all will be able to maybe move the A bill this afternoon unless you're going to stay through the noonhour to get to a point where I not only have opened, spoken my two times, spoken my closing, and while I'm doing that, prepare another motion to keep us on this bill. Senator Watermeier doesn't mind because he got what he really needed, and he'll also get the A bill, but it won't be without some degree of unpleasantness, not for Senator Watermeier. I've listened to the conversations this morning. I agree with Senator Hilgers' evaluation and assessment of the discussion. It just happens that it reached a wrong conclusion, but that often happens. What I really wanted to talk about, I can now. I want to talk about tariffs. This is one thing that the pumpkin man did that made me, if I had a heart, glad. I hope he doesn't change his mind. Put that 25 percent tariff on steel, that 10 percent tariff on aluminum, or as the British might say, "alumeanium" and I hope he puts a tariff on vehicles that are exported to this country from any EU country. I had heard from some people who are in agriculture that the tariffs might be hard on agriculture. That's why I'm especially glad because the agricultural people put the man in office who is putting the tariffs in place. These ignorant Americans who are so blinded by their ideological idiocy that they put a man in office who has nothing in common with them whatsoever. He is unhinged, he is unstable, he is a serial sexual predator, all of those things, no question about it. But he's suitable for America because what he is is what America stands for. Donald Trump is America's alter ego and now he's showing you what putting somebody like him in office means. He will do whatever he has the power to do. As President, he can impose tariffs or people wouldn't be upset. So he changes from one day to the next, sometimes during a day. He's just like Senator "Absent" Murante and that Royal Cola fellow, Royal Crown Cola or whatever his name is who bowed at the altar... [LB44A]

SPEAKER SCHEER: One minute. [LB44A]

SENATOR CHAMBERS: ...of the NRA. Donald Trump told all these assembled people at one gathering, some of you in this room are terrified of the NRA. That's wrong. You don't have to be that. We need to stand up to the NRA. Then that guy from the NRA came and met with him and thumped him on his head and said, Donald, are you out of your mind? Trump said, certainly I am. Everybody knows that. Well, you stepped over the line when you challenged the NRA. We are your master. Now, you get off those statements you made about AR-15s, about raising the

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

Floor Debate
March 06, 2018

age for having an AR-15 to 21. Stop that. Donald Trump said, yes, master. The next day he came out and changed his position. He had said early on he loves the DACA children. He loves them and he's proving it. What does the song say? [LB44A]

SPEAKER SCHEER: Time, Senator. [LB44A]

SENATOR CHAMBERS: You always hurt the one you love. The one you shouldn't hurt at all. [LB44A]

SPEAKER SCHEER: Time, Senator. [LB44A]

SENATOR CHAMBERS: That's what he's doing. [LB44A]

SPEAKER SCHEER: Senator, time, please. Senator Chambers, you're recognized. [LB44A]

SENATOR CHAMBERS: Thank you. And Mr. President and members of the Legislature, I really mean what I said I'm going to do because I want to mock those in agriculture who are so hardhearted, who are so unfeeling when we talk about the need to make medical care available for people of their kind who are working, but they cannot afford medical coverage. And they say no because the Governor told them no. Well, now Trump is showing you something. Senator Groene, Trump is a rump kicker and that's what he's doing to agriculture with these tariffs. And I want those tariffs to be announced and I want them to stay in place. And he is right about these trade wars. Trade wars are good. What did GEICO say, or Gecko? Greed is good. And besides that, trade wars are easy to win. Didn't Mr. Trump say he wants to make America great again? Well, America was great in the 18th century and that's what Trump is going back to. Trump is making America great again. You all never took the time to ask him at what point in American history did he deem America to be great. What had America done that made America great, and that is what he intends to do in order to deliver on his campaign promises. Now, based on what was done with that last vote in moving that bill showed me that the body is not particularly concerned about the Legislature as an institution. The Legislature which presumably and that presumption can easily be overcome or rebutted by what the Legislature does, presumably comprises thoughtful, intelligent people. Those are words that are subjective. They mean

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

Floor Debate
March 06, 2018

whatever the one using them intends them to mean. And maybe what that one using the words intends them to mean may not be what the one using those words accepts as that meaning. In other words, it could be a fake presentation. I think it is unwise for the Legislature to enact legislation in the way that will be done should that bill that was just voted across the board become law. If you keep your 35 votes, then you can override the Governor's veto. I wrote a poem sometime ago called "Something 101". I don't know if it had to do with voting or calling the question or what. But I'm going to see if I can find it. And it talks about this individual who is... [LB44A]

SPEAKER SCHEER: One minute. [LB44A]

SENATOR CHAMBERS: ...very confident thinking that he or she had enough votes to get the result that he or she wanted. But as time passed, events unfolded, then those votes began to melt away. And when the crunch came, there were not enough votes to do what that person wanted to do. Now the vote that was taken flew in the face of the Governor which in the broad scheme of things is good, but to do so took a course for the Legislature and by the Legislature which I do not think is one the Legislature should take. That type of legislating in my view is slapdash, slipshod, unsustainable. The A bill is necessary to fund it. [LB44A]

SPEAKER SCHEER: Time, Senator. [LB44A]

SENATOR CHAMBERS: Thank you, Mr. President. [LB44A]

SPEAKER SCHEER: Thank you, Senator Chambers. Mr. Clerk. [LB44A]

CLERK: Mr. President, some items. New resolutions, Senator Bostelman, LR335 and LR336; Senator Bolz, LR337; Senator McCollister, LR338. Those will all be laid over. I have a hearing notice from the Education Committee. Amendments to be printed: Senator Lindstrom to LB1132; Senator Larson LB1120 and LB921; Senator Smith to LB44. An announcement, the Health Committee will have an Executive Session at 1:00 in room 2022. (Legislative Journal pages 838-853.) [LB44A LR335 LR336 LR337 LR338 LB1132 LB1120 LB921 LB44]

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

Floor Debate
March 06, 2018

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

SPEAKER SCHEER: Colleagues, you've heard the request to recess. All those in favor please vote aye...say aye, please. All those opposed please say nay. The ayes have it. We are in recess until 1:30.

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, would you please record your presence. Roll call. Record, Mr. Clerk.

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

SPEAKER SCHEER: Thank you. Are there any announcements?

CLERK: Just...yes, Mr. President, I do. Thank you. Hearing notice from the Rules Committee for next Monday. A motion to be printed with respect to LB44A by Senator Watermeier. And an announcement: the Appropriations Committee will have an Executive Session at 2:00 in room 2022, Appropriations at 2:00. That's all that I have, Mr. President. [LB44A]

SPEAKER SCHEER: Thank you, Mr. Clerk. Colleagues, we are going to pass over LB44A this afternoon. We are not sure if the bill requires an A bill or not. So rather than work on something that we may or may not need, we will pass over it and bring that back, if indeed we need that. Mr. Clerk, LB874. [LB44A LB874]

CLERK: LB874. Senator Wishart, I have Enrollment and Review amendments, first of all. (ER110, Legislative Journal page 683.) [LB874]

SPEAKER SCHEER: Senator Wishart for a motion. [LB874]

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

Floor Debate
March 06, 2018

SENATOR WISHART: Thank you, Mr. President. I move the adoption of the E&R amendments to LB874. [LB874]

SPEAKER SCHEER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed vote nay. Pass. [LB874]

CLERK: Senator Wayne would move to amend with AM2057. (Legislative Journal page 767.) [LB874]

SPEAKER SCHEER: Senator Wayne, you're welcome to open on AM2057. [LB874]

SENATOR WAYNE: Thank you, Mr. President. Members of the Legislature, AM2057 is a technical amendment to address the issue that came in light after the bill was moved from General File by this body. LB874 requires that municipalities must conduct a study or analysis of whether the redevelopment project meets the definition of standard...substandard and blighted for each TIF project. While most municipalities already conduct these studies, many municipalities contract out the actual work to third-party consultants to help with the actual studies themselves. So this amendment simply clarifies that municipalities still can contract out these types of studies and in no way were we saying that the cities had to take all this in house. As we know, many small villages and municipalities do not have the expertise necessarily in this area, so we wanted to make sure the bill was clear that they could still contract out this work through their regular procurement processes. With that I would ask for a green vote on the amendment. [LB874]

SPEAKER SCHEER: Seeing no one wishing to speak, Senator Wayne, you're welcome to close an AM2057. He waives closing. The question before us is the adoption of AM2057. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record. [LB874]

CLERK: 29 ayes, 0 nays on adoption of Senator Wayne's amendment. [LB874]

SPEAKER SCHEER: AM2057 does pass. Mr. Clerk. [LB874]

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

Floor Debate
March 06, 2018

CLERK: I have nothing further on the bill, Senator. [LB874]

SPEAKER SCHEER: Senator Wishart for a motion. [LB874]

SENATOR WISHART: Mr. President, I move to advance LB874 to E&R for engrossing.
[LB874]

SPEAKER SCHEER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. LB874 is advanced to do E&R Initial...Engrossing, excuse me. Mr. Clerk.
[LB874]

CLERK: LB439, Senator, I have Enrollment and Review amendments. (ER111, Legislative Journal page 727.) [LB439]

SPEAKER SCHEER: Senator Wishart for a motion. [LB439]

SENATOR WISHART: Thank you, Mr. President. I move the adoption of the E&R amendments to LB439. [LB439]

SPEAKER SCHEER: You've heard the motion for the adoption of the amendment. All those in favor please say aye. All those opposed? Amendments are adopted. [LB439]

CLERK: Senator Wishart would to move to amend with AM2117. (Legislative Journal page 785.) [LB439]

SPEAKER SCHEER: Senator Wishart, you're welcome to open. [LB439]

SENATOR WISHART: Thank you, Mr. President. This is a technical amendment due to a drafting error and so I need the body to vote green on it. Thank you. [LB439]

SPEAKER SCHEER: Seeing no one wishing to speak, Senator Wishart, you're welcome to close on AM2117. She waives closing. The question before us is adoption of AM2117. All those in

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

Floor Debate
March 06, 2018

favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.
[LB439]

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Wishart's amendment.
[LB439]

SPEAKER SCHEER: Mr. Clerk. [LB439]

CLERK: I have nothing further on the bill, Mr. President. [LB439]

SPEAKER SCHEER: Senator Wishart for a motion. [LB439]

SENATOR WISHART: Mr. President, I move to advance LB439 to E&R for engrossing.
[LB439]

SPEAKER SCHEER: Question before us, advancing LB439 to E&R engrossing. All those in favor please say aye. All those opposed say nay. LB439 is advanced to E&R for engrossing. Next item. [LB439]

CLERK: LB439A, Senator, I have no amendments to the bill. [LB439A]

SENATOR WILLIAMS PRESIDING

SENATOR WILLIAMS: Senator Wishart for a motion. [LB439A]

SENATOR WISHART: Mr. President, I move to advance LB439A to E&R for engrossing.
[LB439A]

SENATOR WILLIAMS: Colleagues, you've heard the motion. All in favor say aye. Opposed, same sign. It is advanced. Speaker Scheer, you're recognized for an announcement. [LB439A]

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

Floor Debate
March 06, 2018

SPEAKER SCHEER: Thank you, Mr. President. Colleagues, we'll be passing out the list of late nights that I would like you to put on your calendar. Hopefully we will not need to use all of them. But we will be using some of them without question. The first one will be next Tuesday night. Again, my office will try to facilitate some meals, if indeed we have enough people sign up for them. It will be similar to last year, other than this year we will have beverages available per Senator Kolowski's request. It's self-explanatory. And what we will be doing on the nights that we will be running late, at the beginning of the day I will let you know where we need to try to end up that day. And if we can get there earlier, if we get there at 4:30, we're going home at 4:30. If it takes until 7:30, we'll stay until 7:30. If we don't get there at all, then be prepared to stay until 11:00 or thereabouts, just trying to get as far as we can down the road. So it truly is up to us how quickly we can move the agenda that day to the point that we'll need to have to be successful. If you have any questions, please don't hesitate to contact. The meals, the first group of five, again this year will be Billy's, Valentino's, Lee's Chicken, Da Vinci's, and Dickey's Barbecue. It will be 75 bucks, again. Some may not be that much, and so again, you may get some reimbursement back if we don't use all the dollars that we assume we might. And if we don't, obviously, if we would only have four, we will certainly will refund the money. But we would like to have a list no later than Friday of those that are interested in the meals because if we do have enough, then we have to make reservations for that Tuesday for the catering; and if not, then I need to let everybody know certainly that the meals will be on yourselves on Tuesday on Monday. So again, the memos will be coming out. Take a look at them. Any questions, contact myself or the office. Thank you very much, Mr. President.

SENATOR WILLIAMS: Thank you, Speaker Scheer. Mr. Clerk, we'll proceed to General File.

CLERK: Mr. President, LB776 was a bill introduced by Senator McCollister. (Read title.) Introduced on January 3. At that time referred to the Judiciary Committee. The bill has been discussed. Committee amendments have been adopted. When the Legislature left the issue, Mr. President, Senator McCollister had pending AM2018 as an amendment to the bill. (Legislative Journal page 700.) [LB776]

SENATOR WILLIAMS: Senator McCollister, you're recognized to open on your amendment. [LB776]

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

Floor Debate
March 06, 2018

SENATOR McCOLLISTER: Thank you, Mr. President, members of the body. LB776 was advanced by the Judiciary Committee on a 7-0 vote with one member absent. The bill has no fiscal impact for state government. LB776 would require county and city jails to provide inmates with affordable communications with their families. The bill would also ensure the constitutional right to counsel by making sure phone calls between lawyers and their clients between bars are truly confidential. The jail communication systems would be required to facilitate attorney-client conversations without charge and without monitoring. Over half of Nebraskans in county and city jails are not yet convicted of any crime. They simply lack the money to post bond and go home as they await their trial. All pretrial detainees spend an average, get this...55 days in jail before their trial, whether acceptance of a plea deal. For nonviolent offenders, the waiting period in jail averages 48 days. Maintaining contact with family and members on the outside reduces the chances for reoffending. Keeping family ties strong strengthens the offender's chances of being rehabilitated and it also improves outcomes for children of the incarcerated. 2017 interim research by the ACLU found the Nebraska county and city jails are currently allowed to receive unlimited commissions from phone companies with no limits on rates for intrastate calls and no caps on surcharges. Last year a state survey of all county jails by the ACLU revealed that a 15-minute phone call might cost anywhere between \$2 and \$20, in comparison to the \$1.50 state prisoner would pay for a 15-minute call. County detainees may expect to pay between \$2 and \$20 for the same 15-minute call, depending on the county in which they are housed. When General File debate ended on February 21, we were discussing AM2018 to LB776. The amendment was supported by Douglas and Lancaster Counties and by NACO. I should also note that the Sheriffs Association, during the hearing of the bill, did not object to anything; we had no position from the Sheriffs Association. AM2018 will allow the Jail Standards Board to consider FTC rates when determining reasonable operating costs for county and city jail facilities. Currently, the FCC allows a rate of no more than 25 cents per minute for collect calls, and no more than 21 cents per minute for prepaid calls. By using these rates as guidelines, county and city phone service contracts should be easily...they will easily cover direct costs. Under LB776, the Jail Standards Board would be given the authority to determine reasonable and excessive costs. I submit that the Jail Standards Board would carry out the petitions of this bill in a constructive and problem-solving way. Thank you, Mr. President. I'd be happy to take any questions. [LB776]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: Thank you, Senator McCollister. We also understand you've introduced amendment AM2018. Would you like to open on that and remind us of what it says? [LB776]

SENATOR McCOLLISTER: Well, during the course of the hearing, we determined that some counties were concerned but we didn't adequately define what reasonable rates were. So the amendment that you see before you, if you read it, explains that it does, in fact, have to be reasonable; and we utilize the FCC rates as a guide. We did not prescribe that the counties use that particular rate. So I think it's important to read the amendment. In addition, that amendment is permissive. So it does establish a suggested rate, but the Jail Standards Board does not need to utilize that standard that we set in the amendment. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator McCollister. Clerk for a motion. [LB776]

ASSISTANT CLERK: Mr. President, a priority motion--Senator Groene would move to bracket the bill until April 18, 2018. [LB776]

SENATOR WILLIAMS: Senator Groene, you're recognized to open on your amendment to bracket. [LB776]

SENATOR GROENE: Thank you, Mr. President. I'd like to start off by saying my opposition to LB776 has nothing to do with opinions on punishment or rights of felons and inmates. It strictly has to do with local control. The system isn't broken. It doesn't need any more guidance. And I just gave you a handout which I'd like to go over. Senator McCollister's amendment, AM2018, refers to the federal communication guidelines of January 1, 2017, which maxed out at 22 cents. Those rates were put in place back in 2013 and '15. But in 2016, the FCC decided...found out that the rates were not equitable for smaller jails, 21, 22 cents was not enough. So they broke it down and said state and federal prisons would be 13 cents. Jails at 1,000 or more inmates--Douglas, Lancaster County, would be 19 cents and 14 cents minimum...was the old minimum. Jails with 350 to 999 inmates was going to be 21 cents. Jails with up to 349 inmates was going to be 21 cents... 31 cents. All right? There is 64 institutions in the state. Four of them have over 1,000 individuals where the 21 cents or 19 cents would play into place. Seven states challenged the FCC's ruling and the DC Circuit ruled against the federal communication saying they cannot

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

Floor Debate
March 06, 2018

cap the amount states and cities can charge inmates to make in-state phone calls. So we're going to put into statute a standard that the federal court said has no authority because the FCC does not have the authority to dictate to states and communities what they charge for phone services. We're going to put that in our state statute. We're going to put something into our state statute that 60-plus of our jails are going to lose their phone service because 21 cents is not enough. The FCC admitted that when they revisited it two years after they came out with the first ruling. The district court said that the federal rule kept (inaudible) rates prevented the states and counties from recovering their cost. According to the DC Circuit ruling filed Tuesday, the challenge FCC order came as a result of a variety of market failures in the prison and jail pay phone industry that caused inmates and those they call to incur high per-minute charges and accelerated fees for billing and collecting services. The commission decided in 2015 to set the parameters. The DC Circuit ruled Tuesday that the FCC proposed caps on interstate rates used of industry average cost data and video visitation reporting requirements exceed the statutory authority under the telecommunications act. The FCC is not challenging it. After President Trump was inaugurated this year, the FCC told the DC Circuit that due to a change in the composition, a majority of the current commissioners does not believe that the agency has the authority to cap interstate rates under Section 276 of the telecommunication act. That old section dealt with pay phones back in the '30s and '40s and '60s. So we're going to put into statute a regulation...a statute based on a federal communication's edict that has been called illegal by the district court, Washington, D.C. Is that what we're going to do? Senator McCollister said it's a guideline. The guideline from...the one that's in effect...because the new one at 31 cents was thrown out, caps it at 21 cents. The FCC themselves said a jail under 359 people...prisoners, that's not enough. What's going to happen is the people you're trying to help are going to lose their services. Smaller county jails are going to not offer...the private companies are going to pull their phones out. They already did in some states, as they said earlier in the story, that some of the businesses went broke. So now what's going to happen? We're going to first time ever put into statute...the main guts of this bill is to create a right that you have a right to a phone as an inmate. You have a right to meaningful conversations. You have a right to a reasonable cost. That's an ACLU dream lawsuit. They brought this bill. I admire Senator Chambers, but he brought it in the past. This year Senator McCollister did it. Yes, everybody deserves contact with their attorney before trial. There is a reason they're there. There is a reason the judge did not let them out. There is a reason there was bail placed. There was a reason. They are there for a reason....protect themselves, protect the

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

Floor Debate
March 06, 2018

innocent before trial. This is bad law. It's unnecessary...not needed. It's based on faulty directives from the FCC. There is nobody out there anymore gouging anybody. Douglas County, I'd go along with...I would go along with the...and if I was Lancaster County, I'd go along with the 2017 also at 21 cents because the new edict was going to take it down to 19 cents. That's very reluctant endorsement of the amendment, but I can understand why they would do it. It allowed them at 21 cents instead of the 19 it would have been if the FCC would fight the ruling by the circuit court. Why would we vote for this? Are we just bored that we need to bring statutes and create statutes that are unnecessary to create a new right? A new right that the jail shall...it says the jail shall. So we're now when the private company pulls out, guess what property taxpayers in rural Nebraska, you shall put a phone system in there because the private company is gone. It was a great private-public cooperation. It works well. The rates are coming down in the jails. It's working. There is no need for this. So you're in a jail in Alliance, Nebraska; I don't know how many prisoners they got, what maybe 30, I have no idea, I'm completely guessing. And you're going to try to have a private company come in there and put your phones in there for 21 cents a minute...25 for collect. Doesn't work, folks. But the way this amendment is written, it goes back to what in effect on January 1, 2017, written into statute. Can't change unless we change it. Another generation of senators comes in and changes it. Guess what's going to be...guess what the debate is going to be on the floor. There is only a pay phone back in the corner of the lobby beside the sheriff's office and they can only use it for four hours a day because the jail is understaffed because we can't afford to hire and pay the staff at the jail enough and they don't have the access... [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR GROENE: ...to a phone. Why is that? Because we meddled. We meddled. We are attempting to meddle into a system that works. It works. Nobody is harmed. You don't need the phone. You need to talk to your lawyer. That's all you need to do. There is a reason they're in jail. I want them to change their ways. Once they do, when they're a new man, as the good book says, I forget everything you've ever done. I don't want to know what you did. But until you do and you're going to harm somebody, you're behind those bars. This is a bad bill and I would think 17 individuals in this body would say this is not what we need. We need not vote for something the ACLU wants and set them up for the lawsuit that's going to break a county. Thank you. [LB776]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: Thank you, Senator Groene. (Visitors introduced.) Debate will now continue on the motion to bracket. Senator McCollister, you're recognized. [LB776]

SENATOR MCCOLLISTER: Thank you, Mr. President. I'm grateful Senator Groene brought up a couple of points. I'd like to refute that. Please recall that this bill does a couple of things. It guarantees the right of an inmate to talk to their attorneys. That is guaranteed under the constitution. So I think it's important for us to note that counties need to provide some kind of phone system to simply provide confidential counsel with the attorneys. Secondly, the exorbitant rates that some counties charge, that is the essence of the bill. Let me read you the amendment that this...Senator Groene is talking about. On page 4, line 3, after the period insert--in determining the amount of reasonable operating cost, the Jail Standards Board may...may consider for comparative purposes the rates set by the Federal Communication Commission for inmate calling services pursuant to federal law as the law existed on January 1, 2017, and strike the commission and bonus payment and insert excessive commissions and bonus payments, including but not limited to awards paid to a county. That is the amendment. It's permissive and allows the Jail Standards Board to use their own judgment on what a county should charge for their phone rates. I would hope that some counties, the larger counties, they're going to easily be able to be below the old FCC rates; and smaller counties would probably be some kind of sliding scale. The Jail Standards Board has been involved with jails...county jails for a good long time. And I think we need to consider what the Jail Standards Board does. The Jail Standards Board is a group that exists and they've been working with counties throughout the state, all counties except Douglas county. And they, I'm sure, would do a nice job in telling the counties...and they'll be reasonable in the way they apply those standards. And counties, I would hope, would have the ability to disagree and appeal whatever rates that the standards board would apply. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator McCollister. Senator Krist, you're recognized. [LB776]

SENATOR KRIST: Thank you, Mr. President; good afternoon, colleagues; good afternoon, Nebraska. On several issues I will agree with Senator Groene about the local control on several issues. I take exception to his analysis of the good book allowing us to all forgive those that are

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

Floor Debate
March 06, 2018

in jail. Remember that some of these folks, because of our behavioral and mental health and substance abuse programs across the state, are incarcerated awaiting an assessment by a psychologist or psychiatrist or some other kind of an assessment and are put into jail with no contact with family and very little contact with anyone until that psychologist, psychiatrist, or some kind of an assessment process can happen. So put yourself in that person's place where you are arrested and either it's legitimate or it's not, that will be up to the court to decide when it's time for that court to meet and hear, but they're put into a jail cell, into a system with no contact with the outside, no contact with their family, and no contact with their lawyer. Some jails allow for the contact to be made with the lawyers, but one of the other things that this bill does is it guarantees privacy. Some of your county jails, some of your jails are monitoring the phone calls of the privileged communication between that individual and his lawyer. That's not consistent throughout the state. This bill deals with that consistency. It also deals with an issue of fairness. If you look at what happens in the state institutions, the cost per minute of a phone call is reasonable. And I think Senator McCollister's assessment of what is in the amendment, in terms of dealing with the reasonableness of that charge, is permissive and it's not...this Legislature that is mandating or putting it into statute as Senator Groene would allow you to believe. It is the Jail Standards Board and it is the local jail. Yes, Douglas County is charging one of the lowest rates in the state. Yes, they are. And yes, they would continue to support the reasonableness of those phone calls because they, above everyone else in this state, have a lot of people in their county jail who are waiting for something, waiting for a court date, waiting for adjudication in some other area, waiting for services, waiting for an assessment. You see, whether they can pay the bail or not is another big part of this process. So we have to allow in some way for someone who needs to talk to family, needs some reinforcement, needs to talk to their lawyer in a secure and honestly secure manner; and remember we're not giving this away. These prisoners are either learning it because their family has given them a bank that they can use...cash put into a bank into the system, or they've earned it by doing whatever task it might be. I think it's unreasonable to assume that a jail could and would charge someone \$15 for a two or three-minute phone call in this overly communicative age that we live in. I support the bill, LB776, I supported it out of committee. I support AM2018. I don't support the bracket motion. I think we should have a discussion on what reasonableness is and I do think that until you've been there, done that, and worn that t-shirt, you shouldn't judge people for wanting to be communicative with their family or with the support structure. [LB776]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: One minute. [LB776]

SENATOR KRIST: Thank you, Mr. President. ...with the support structure while you are potentially incarcerated for no reason. Remember, in our society you are guilty until proven innocent and you sit there in most cases, in most jails because you don't have the money to bail yourself out or someone can't bail you out. So let's look at the macro level, the 30,000-foot level of what's happening here and not prejudge the process as though everyone who sits in jail needs to be there to be rehabilitated. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator Krist. (Visitors introduced.) Returning to debate, Senator Friesen, you're recognized. [LB776]

SENATOR FRIESEN: Thank you, Mr. President. Senator McCollister, would you yield to a question? [LB776]

SENATOR WILLIAMS: Senator McCollister, would you yield? [LB776]

SENATOR McCOLLISTER: Yes, I will. [LB776]

SENATOR FRIESEN: Senator McCollister, I missed the first round of debate and I did not hear the details so I'm going to ask some questions just to kind of figure out where we're at. But you talked a lot about when you did your study, you went around and looked at the jail facilities and different charges that were out there and some of them were excessive, some of them were reasonable. Could you tell me a little bit about some of the excessive ones. I was reading somewhere that they offered some programs with that extra money to the prisoners. Is that true or did they use that money elsewhere? [LB776]

SENATOR McCOLLISTER: Yes, I'd like to answer that question. I'm grateful for the question. The study was done by the ACLU this last summer. And with the Freedom of Information Act request, they asked each county what it would cost for a 15-minute phone call. And I think we heard that in the correctional system in Lincoln, it's about a dollar and a half...pretty low cost.

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

Floor Debate
March 06, 2018

But then they range from \$2 nearly to \$20 cost for a 15-minute call. And that's how they determined whether something was reasonable or unreasonable. [LB776]

SENATOR FRIESEN: Did it have anything to do with the volume that the prisoners at the jail held, was it...the smaller the facility, I can see the cost would be higher, so was there any other reason that the costs were such extreme from one place to another? [LB776]

SENATOR McCOLLISTER: I don't think they determined why the costs were so different in the various counties. But they all claimed that they're using that money for programming. And whether or not that's true, we don't know. The study did not conclude where the money was being spent for mandatory programs or voluntary programs. [LB776]

SENATOR FRIESEN: Okay. So were there...is a prisoner ever denied a phone call...or what are the reasons for denying a phone call? [LB776]

SENATOR McCOLLISTER: I'm not aware of any prisoner ever being denied a phone call, but he was denied a confidential phone call. And some of the recordings of those phone calls could generally, jails record the calls of it going outside, were sent to prosecutors. And that is just verboten, that's not proper. [LB776]

SENATOR FRIESEN: So are any calls monitored going in and out of prisons? [LB776]

SENATOR McCOLLISTER: Most of them are in terms of families and things like that. But you're not supposed to monitor phone calls to an attorney or your counsel. [LB776]

SENATOR FRIESEN: So when you're talking to your attorney, it needs to be totally private and confidential. [LB776]

SENATOR McCOLLISTER: Absolutely. [LB776]

SENATOR FRIESEN: Okay. [LB776]

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

Floor Debate
March 06, 2018

SENATOR McCOLLISTER: That's the Sixth Amendment of the constitution. [LB776]

SENATOR FRIESEN: So when the Jail Standards Board is going to set these prices, what are they supposed to look at in order to set these prices? Are they going to look at actual cost in providing that service in each jail or are they going to just use a random formula and try and come up with a spread across the industry? [LB776]

SENATOR McCOLLISTER: Well, they have...if they care to, can look at the FCC rates. And they aren't obligated to do that, but they can if they wish. They can also look at operating costs of that particular county jail or city jail. It's wide open how they consider what a proper rate is. And I would hope that they would make adjustments for some of the smaller counties that don't have the volume of the larger jails. [LB776]

SENATOR FRIESEN: Why was it that counties contracted with...it seemed like you were, in mention here, that there was just one company that goes and furnishing...is it one company that just does this furnishing phones to jails? [LB776]

SENATOR McCOLLISTER: No, sir. There is as many as four separate independent companies that provide these services. How they go out and bid those services is unclear. But I think we need to be more transparent in terms of what those counties are paid in terms of commissions and other moneys, so that... [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR McCOLLISTER: ...should be part of the process, in my view. [LB776]

SENATOR FRIESEN: Thank you, Senator McCollister. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator Friesen and Senator McCollister. Senator Groene, you're recognized. [LB776]

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

Floor Debate
March 06, 2018

SENATOR GROENE: Thank you, Mr. President. I want to start every time I speak out with this statement--we don't have a problem, system works well as is. The existing statute says, number 8 says, the intercourse between prisoners and their counsel and other persons, they must make sure that happens. Of course, the definition of intercourse is free exchange communication. Did you know...Senator McCollister, would you answer a question? [LB776]

SENATOR WILLIAMS: Senator McCollister, will you yield? [LB776]

SENATOR McCOLLISTER: Yes, sir. [LB776]

SENATOR GROENE: Do you know what devices and how prisoners in the state pens communicate now? [LB776]

SENATOR McCOLLISTER: They can also receive visitors during certain times of the day and they can use the telephones during prescribed times of the day. [LB776]

SENATOR GROENE: Thank you. Thank you. I spent the weekend with somebody who works there. They were issued tablets. Every one of them has a tablet. You don't have tablets in here, sir, you're not keeping up with the modern times which your legislation hasn't even passed. Existing statute does. Leaves it wide open. Did you know that prisoners, in my Lincoln County jail they can text. They also get charged for texting; they get texting devices. The sheriffs in our state, Mr. Frakes and the jails, are way ahead of you about what they allow inmates to do. And they do charge them for the services, yes. So they can supply those tablets. This is unnecessary. This is setting up a lawsuit because who gets to define reasonable? The ACLU? Who gets to define meaningful? Girlfriend calls 3:00 in the morning and they refuse them to let the prisoner talk. Something happens to the girlfriend...comes a lawsuit. Who defines meaningful? This is an ACLU dream, this bill. Don't get me wrong, I like the ACLU. I worked with them on a couple of voting rights deals, petition rights deal. They do a good service. But on this one they're wrong. This is unnecessary. You're going to set your local officials up for a lawsuit with the wording in this legislation. It's unnecessary. It is being done now because of the private-public cooperation on providing this. Heard Senator Krist talk about that poor people can't talk to their loved ones. Yes, they are talking to their loved ones. They have phones available, very available, they're just

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

Floor Debate
March 06, 2018

not one in the hallway up against the concrete wall where you got to stand to talk. Phones are available. Tablets are available where they communicate. And yes, an understaffed, at our county level, underpaid staff at our state penitentiaries, underpaid and understaffed, they're also given the duty to try to catch somebody making a drug deal on the phone...or text. They are back logged now. We're giving orders to somebody else in the gang on what to do. They can't keep up. All it takes is a code. But that's fine. It's free communication. I guess Senator McCollister would call that meaningful. Somebody would. This is unnecessary. This is not something a conservative state does, is pass this type of legislation. When we do take care of our citizens who cross the line and end up in prison... [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR GROENE: ...and in jail waiting for a court case, they've always had contact with their attorneys. Nobody denies anybody contact with their attorneys. It would be all over the paper if any small-town sheriff did. It would be...ACLU would be suing left and right if that happened in the state of Nebraska. It does not happen. There is free access to attorneys, except the cost of them. Are we going to give free attorney? I'm not going to go there; there are some in this body would...to everybody. No, this is bad legislation. Putting in the statute something that the federal courts have said the FCC has no authority to even give these guidelines. They have no authority to do it and we're putting a guideline into our statutes from a federal agency that has no authority to do it. That's good government, some would say. Not this senator. Thank you. [LB776]

SENATOR WILLIAMS: Time, Senator. Thank you, Senator McCollister and Senator Groene. Senator Erdman, you're recognized. [LB776]

SENATOR ERDMAN: Thank you, Mr. President; good afternoon. I rise in support of Senator Groene's bracket motion. Contacted some of my sheriffs back home. They do take care of their inmates. They allow them to make the calls that are necessary. They're getting along just fine. One of the things we need to also keep in mind is when those people are incarcerated, they didn't break a county law, they broke a state law. So when we put those people in there and we hold them for whatever period of time it is before they have a trial, the county pays for that and any other charges they pay for those as well. And so going forward, we need to be cognizant of the

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

Floor Debate
March 06, 2018

fact that who's paying for all of these services and it's the county taxpayer. So I listened to Senator McCollister make a comment about the ACLU did an analysis of all the counties and what they charge for phone service. I was wondering if Senator McCollister would stand for a question? [LB776]

SENATOR WILLIAMS: Senator McCollister, will you yield? [LB776]

SENATOR McCOLLISTER: Absolutely. [LB776]

SENATOR ERDMAN: Senator, McCollister, do you have a list of those counties and how much they charge? Do you have access to that? [LB776]

SENATOR McCOLLISTER: Yes, we do. [LB776]

SENATOR ERDMAN: Could you provide that for me, or do you have that handy with you now? [LB776]

SENATOR McCOLLISTER: Not on my person, but we can certainly provide that ACLU report to you. It's fairly voluminous, but we can provide it to you momentarily. [LB776]

SENATOR ERDMAN: I appreciate that. If you would, I have another question. I noticed many times in the bill it talks about telephone or video conferencing. It says in some places it says according to the statute in Section 3, and Section 3 describes telephone or video conferencing. So are these jails going to be required to provide video conferencing? [LB776]

SENATOR McCOLLISTER: No, no, Senator. The Nebraska facilities have video conferencing capability, but there would be no requirement that the counties would have to provide that same service. [LB776]

SENATOR ERDMAN: It doesn't say that in the bill. [LB776]

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

Floor Debate
March 06, 2018

SENATOR McCOLLISTER: But what it does say is they provide telephone service for confidential calls with their attorneys. [LB776]

SENATOR ERDMAN: Right. But then it goes on to talk about video conferencing in several places. So it very well could be that an inmate says I'm obligated or I'm obliged to having video conferencing and it will be up to the county to provide that. It describes video conferencing and the cost of that on several of those sections. I see that. So I'm a little concerned about that. The other question that I have for you is can you define what meaningful means? [LB776]

SENATOR McCOLLISTER: Reasonable and meaningful--I think the bill defines that. And when the Douglas and Lancaster Counties went into those definition, we better defined that by giving them the FCC guidelines. Whether they use it or not is strictly up to the Jail Standards Board. [LB776]

SENATOR ERDMAN: So where would I find the definition on meaningful? [LB776]

SENATOR McCOLLISTER: I think go to the essence of the bill. Perhaps we need to better define that to your satisfaction between General and Select. [LB776]

SENATOR ERDMAN: Okay, thank you. I had conversation with some public defenders. They said they're getting about four or five calls a day. If we pass this bill and give them an opportunity to have meaningful conversation, their question was how many calls might I receive? So until we understand what meaningful means, meaningful to me may be something totally different to you, Senator McCollister. And so because of those things, I think that needs to be defined. I think it also needs to be defined whether we're going to have to provide video conferencing or not because in my county jail, we do not have that provision and we'd have to contract with somebody to do that. And that would be more expensive for the county jail, which would go the taxpayer. [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR ERDMAN: So thank you. [LB776]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: Thank you, Senator McCollister and Senator Erdman. Senator Brasch, you're recognized. [LB776]

SENATOR BRASCH: Thank you, Mr. President; and thank you, colleagues, good afternoon. I stand again in support of LB776 and the amendments, but not the motion to bracket. It seems that we have started to almost become melodramatic in addressing this. We're playing with words--what is meaningful, what is reasonable. We look at cost. And if we're overcharged for something, oh, my gosh, you know, you don't hear the end of it. But if an individual who is incarcerated, has gone through the judicial system, is doing their time, I don't believe that's a reason to dehumanize that individual. Those individuals do have a heartbeat. They have families. They have connections that people on the outside also have. And I just want to kind of help humanize a situation here. One of my constituents called, and actually it was during the time that Senator Chambers had introduced a bill, it's not this one, but very similar to, but it was a very distraught mother about her teenage son was in a lot of trouble and he was in jail. And she expressed her concerns and she was distraught. And as a senator, I decided to make the trip, the hour-some drive and go visit her child in jail. And before I went in there, the sheriff explained to me, yeah, this is a real tough case. He said, this poor little boy had his father incarcerated here most of the time he grew up and the little boy would sit on the curb and stare across the lawn in hopes that he would see his father look out the window so he could just get a glimpse of his father looking out the window at him. It was important to that little boy. And the sheriff thought it was just great that I would come visit with him and give him a little bit of, you know, gosh, we're state senators here, we're leaders, we care about our constituents, which we do. We reach out to them. I did my best to reach out to this young man that had a bright future ahead of him, and in the back of my mind was that little boy watching across the lawn hoping his dad would look out the window through the bars and see him and give him some acknowledgement. We're talking about a phone call. And what this bill, I believe, is about the money here. And if counties are truly using a competitive rate, a rate that is reasonable, a rate that compares to the other...the residential or other business, then we don't have a problem. (Senator) Groene is right. Senator Groene could be correct that they are not overcharging. And if they are not, then this bill would not affect them. But from the testimony, when I was on Transportation (and) Telecommunication, there is a problem. I've heard it before. And I'm hearing it today. And

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

Floor Debate
March 06, 2018

looking at the bill, again, please pull it up, it's saying what Senator McCollister said that there is the Jail Standards Board... [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR BRASCH: ...which could or will or may consider the comparative purposes. And when we're talking about a phone system, I believe that many businesses, buildings, we're not talking about a system that would include medical or scientific or something out of the grasp or reach of counties, but something that is typical, traditional, and ordinary. It would be disappointing to see this bracketed. And again, don't dehumanize anyone. I just think that's wrong. That's not what we're here to do. And support LB776 and the amendment and not the bracket. Thank you. [LB776]

SENATOR WILLIAMS: Thank you, Senator Brasch. Senator McCollister, you're recognized. [LB776]

SENATOR MCCOLLISTER: Thank you, Mr. President. Perhaps we should talk a little bit about the Jail Standards Board since we mentioned them quite a few times this afternoon. Under LB776, the Jail Standards Board would be given authority to determine reasonable or excessive costs. I submit the Jail Standards Board would carry out the provisions of this bill in a constructive and problem-solving way. The Nebraska Jail Standards Board was created in 1978 with statutory authority to develop and implement minimum standards for adult jails and temporary holding facilities throughout Nebraska. The Jail Standards Board is a subdivision of the Crime Commission. The board is composed of 11 members, 9 of whom are appointed by the Governor for three-year terms. The other two members are the State Fire Marshal and the Director of the Department of Correctional Services. Who are these folks? Two county commissioners or supervisors, one county sheriff, one police chief, one juvenile detention facility administrator, one administrator from a large jail with an average daily population of greater than 50 persons, and a member of the Nebraska State Bar Association, and two lay persons. I distributed a current Jail Standards Board member list. As you can see, the Jail Standards Board has an appreciation for local government and jail administration, and understands the challenges and issues that are involved with operating jails. I believe we can

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

Floor Debate
March 06, 2018

trust the board to administer the new jail standards proposed in LB776 in a responsible manner. A couple quick points: Lincoln County itself does not have a written policy about protecting confidentiality of attorney-client communication. That's an interesting situation. The video system--I think that is just a red herring. I don't think the Jail Standards Board would obligate small counties to put a video system; that would simply be unreasonable and I don't think the Jail Standards Board would do that. One thing I haven't heard from Senator Groene is this is feel good legislation. And it truly is feel good legislation. When 60 percent of the women in our correctional facilities have children, and men as well have children, it's great if they can communicate with their families. They're less likely to return to jail once they're released if they have those strong bonds that will be created with those phone calls during the time that person is incarcerated. So this is feel good legislation. It's good legislation because it keeps families together at a hard, hard time. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator McCollister. Senator Chambers, you're recognized. [LB776]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the conversation that has gone forth so far would never be heard if there were an assembly of intelligent, informed, rational, humane people. Senator Groene would not even be allowed to talk...no facts. He says a lot of wild things with no back up whatsoever, and it's supposed to be true because he says it. He keeps talking about the county. NACO, which represents the counties, they're not opposed to this bill. There are some of you all who are not mean spirited and you would not want to deprive a person of the reasonable access to communication with his or her family because they're in jail. That man that I'm pointing to, Senator Groene, gave a tap dance and a crying story about a friend of his or somebody from his area who committed a felony. Nobody invited him to jail. Nobody invited him to commit a felony. But Senator Groene came and gave us a sob story about this felon who should have a law passed in his benefit...to his benefit so he could handle archery material which then qualified as a prohibited weapon for a felon to have. Senator Groene came and he shed crocodile tears because this white guy, and he knew him, so he said change the law for this one felon; and we changed the law. He knew that we were not like him. We were not hard hearted, unsympathetic and mean spirited and say nobody invited him to jail. We would listen, which we did. We believe in second chances. He

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

Floor Debate
March 06, 2018

knew that. So the Judiciary Committee advanced the bill. The Legislature passed it and the Governor signed it for one felon. Anybody else who goes to jail should not even have access on reasonable terms to a phone call to be made to family. I'm not going to waste my time counteracting everything Senator Groene says because it will be a waste of time. In fact, Proverbs says answer not a fool according to his folly, lest thou be likened to him. How many instances have we had people who want to talk about reducing property taxes and giving other concessions that benefit the rural areas, use studies that are put together by various agencies and entities. Then when an agency that is familiar with the setting of rates is made available for comparison purposes, Senator Groene stands up here, because he doesn't read well, and acts as though the bill said you have to let them set the standard. Now you got to run over there and talk to the lawyer that we pay for when he doesn't think young children ought to have a lawyer when they're facing the possibility of very harsh punishments at the hands of the state. I hope the discussion is elevated. Senator Brasch started us in that direction. She gave a concrete example. Senator Groene, I think, has forgotten, if he ever knew, about the relationship between a parent and a child, even if the parent happens to be incarcerated. We hear words like reasonable and meaningful all the time. Reasonable is a term throughout the law. [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR CHAMBERS: Throughout the law, setting standards for various things. But then when it comes to doing something that is decent, Senator Groene you can count on being against it. Congress has put forth criminal justice reform legislation. The Koch brothers spend money and are trying to do all they can to reform the criminal justice system so that the attitudes like Senator Groene, and to some extent Senator Erdman, want to go back to harsh punishment unless it's them. Nobody invited people to go into agriculture. Everybody pays taxes. Everybody pays property tax. They don't want to pay their fair share. And the fair share is what the law says it is. Just like Senator Groene thinks a proper punishment is whatever the law says. He's the one who said laws don't exist to punish people. He said that. And now he's talking about punishment. He said the purpose of law in a civilized... [LB776]

SENATOR WILLIAMS: Time, Senator. [LB776]

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

Floor Debate
March 06, 2018

SENATOR CHAMBERS: ...society...thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator Chambers. Senator Krist, you're recognized.
[LB776]

SENATOR KRIST: Thank you again, Mr. President; good afternoon again colleagues and Nebraska. Senator Erdman had some questions. I hope he's in the Chamber someplace. If you look at the statutes related to LB776, the cover page, words mean almost everything. It is to provide requirements for inmate access to telephone or...it doesn't say "and," it says "or." That same thing is repeated, "or" on page 3 when it comes to county. You'll notice in Section 3 has to do with county...again "or." You'll notice that in Section 5 dealing with city jails, again, the word "or." So we are not mandating, to your question, Senator, that we have a video conference capability. Although I think anybody who wants to save a lot of money may want to look into that as opposed to telephones. Secondly, I wanted to make sure that Senator Friesen had posed the question about is it one...I think it was Senator Friesen...is it one phone provider across the state or is it many? In the testimony to the Judiciary Committee, it was many. And usually you could look at a shaded area that was one particular provider that charged the most. In other words, I believe in terms of equability and reasonableness, you would see that there are few providers out there that were very reasonable. The provider for Douglas County, for example, and the rates that they have seem to be more reasonable than the rest of the state. How the county or city actually contracts for that service is a question in terms of what that kickback is. Another thing I think we need to put on the record that we took in testimony to the Judiciary Committee is that those counties are using...counties and cities are using that money to provide services for the prisoners. Now think about that for just a second. The reason that they don't want to give away the revenue, in some cases up to a quarter of a million to \$450,000 a year in our larger city and county jails, is they're using that money to provide the prescribed and the optional services to the people who are incarcerated. You can argue that on a moral level. You can argue that on a statutory level. You have to come to grips with that between you and your god or what you believe in. I don't necessarily think that those services should be provided at the expense of the prisoner in all cases. Maybe the reasonableness issue, again, comes back into play. Also I was accused this morning of not reading the bill. So I won't aim this comment at anyone, but I will say that I have read this bill, and anyone who has read it understands that we are trying, in

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

Floor Debate
March 06, 2018

general, to look at a system that's in place and make it equitable or reasonable throughout the state for those people who are incarcerated. I would point you to page 2 of the bill beginning on line 12. Again, words mean something. Over one half of Nebraska's in county and city jails have not been convicted. They have...let me say that again...have not been convicted of any crime and are unable to post the money bond required of them. Many of these detainees are indigent and have court-appointed counsel while they are held... [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR KRIST: ...in the pretrial status. Pretrial status is the largest number of folks who are being held at the Douglas County system...pretrial. And those pretrial holds can be 50 to 100 days. Again, to get services required, to get assessments required, and to await a hearing to see if indeed they are guilty or innocent. So, I have read the bill. I heard the bill in Judiciary Committee; I would invite you to do the same. If there are any questions, ask somebody from Judiciary that's in the room today. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator Krist. (Visitors introduced.) Continuing debate-- Senator Hansen, you're recognized. [LB776]

SENATOR HANSEN: Thank you, Mr. President, and good afternoon, colleagues. I rise in support of Senator McCollister's LB776 and his new amendment and oppose the bracket motion. One of the key points that I wanted to make was actually just made by Senator Krist, but I think it's important enough to reaffirm it. When we were talking about our jail population, we're talking about a select group of people. When specifically for jail, it is people who are either awaiting trial, either awaiting trial because they've been denied bond, they can't post bond, or they've been deemed incompetent and are waiting trial via waiting for the regional center, which is it's own issue, or they've been sentenced to crimes of less than a year typically. And as Senator Krist pointed out, obviously depends upon the exact jail and the exact day and the exact situation, but a large number of those people fall into the group of people who have yet to have been convicted of anything; haven't even necessarily gone to trial and are either spending a few days while they find bond money...bail money, are either...or are...have been denied bond or awaiting. Some of those people...that's...so that's the group, sorry, I guess that's the group I

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

Floor Debate
March 06, 2018

wanted to make sure folks know we're talking about. That's a lot of the people we are looking here. People who haven't necessarily even been convicted by the state yet. So these are people who, depending on the situation and the exact circumstances, some of whom, by the way, are going to be found innocent; I understand that's a small number, but some of them who are innocent of what they're accused of and are going to be acquitted are sitting in jail and we are worried about what barriers they face. You got to think of a situation in which somebody who gets sucked into the criminal justice (inaudible), either correctly or incorrectly, they get sucked into the criminal justice system. I mean they still have a job, at least at the beginning, they might still have a job. They might still have a lease. They might still have a car somewhere, family, friends, who knows what, and they've got to be trying to tie up all these loose ends via where they are sitting in jail. And that's one of the things that's really important about making sure these calls are at some level accessible and attainable. There are things you just have to handle when all of a sudden your life gets turned upside down and you get brought into jail. And that is why we need to have something to standardize the rates because there are some situations where I understand every county is different and everything that's cost things, and you know, we have all sorts of different problems and that's why we do outsource it. But if we can just look at some of these numbers and realize if you had to call your boss, your landlord, you had to find a tow truck for your car, you had to call your parents, do that and you're paying \$20, \$30 for five, ten minutes, you're just not going to be able to afford that. You're going to have to prioritize, and you're going to maybe get one five-minute call to your mom and ask her to do the rest and you're just going to have nothing else to do because you just simply can't afford it. So that's something we need to look at just in terms of reasonable rates. This is not people 40 years into a 50-year sentence. This is people waiting for trial. These are people with short sentences who are going to be very quickly back out in the community and how do we help foster them just being as functional as possible when they come out? The other thing I wanted to talk about is we talked a little bit about video conferencing. I think Senator Krist also made a good point in the "or" there. We can certainly...I'm sure Senator McCollister would open to more discussion, not that it needs clarity, but nowadays when you go into jail, some of the newer jails, I'll use the Lancaster County jail, which I'm very thankful Lancaster County invited me on a tour last fall, when you go into Lancaster County jail, if you go to visit a family member at the Lancaster County jail, you will never see that person in person, you will never be in the same room as that person. You

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

Floor Debate
March 06, 2018

walk into Lancaster County jail, check in with the receptionist and go to a room across the hall that looks like a high school computer lab. And in there... [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR HANSEN: Thank you, Mr. President. ...and in there are computer screens that are screening back to a little kiosk in the common room where the person in jail is. And that is how you communicate. Gone are the old days where you're either in the same room or just behind a glass pane with the little black telephones in pop culture. That's kind of the video conferencing system that we've transitioned to. And I understand that's actually cost effective in terms of staff time and for just safety measures in reducing the opportunity for contact there. That's what jails have been trending that way. And if that's already been available, I mean, we're seeing that more and more, let's make sure that that's actually economical. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator Hansen. Senator Halloran, you're recognized. [LB776]

SENATOR HALLORAN: Thank you, Mr. President. We've spoke to this in the first three hours of debate on this bill, and I'm torn between what could be a just cause for making rates more reasonable, and we've had this conversation before, but I'm torn between that, and as Senator Krist brought up, the funding for programming. And I still haven't got a good answer to that. According to Douglas County, they would be unable to fund those programs. This is on your gizmo, as Senator Chambers calls it. It's under the fiscal notes and it's from Douglas County. If LB776 is passed, Douglas County would realize a loss of approximately \$616,000 of revenue and is currently utilized to pay for reentry programs in an annual cost of \$770,000. So Douglas County is contributing \$150,000 on top of the revenue generated. And this is not all about money, but it's what the money pays for, and the money pays for programming. Without a funding source to pay for reentry programs, it would no longer be offered to the inmate population. I repeat, they would no longer be offered to the inmate population. Whether that's a right decision or not, it's a fiscal responsibility or a fiscal question that's being answered by Douglas County corrections facilities. Douglas County Department of Corrections is the largest correctional facility in the state of Nebraska; moreover, we are the largest mental health facility

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

Floor Debate
March 06, 2018

in the state as well. Last year the average daily population was 1,251 inmates. This was the highest annual average daily population in the history of Douglas County Department of Corrections, which follows an increase in 2016. Individuals in our facilities have made approximately 1.6 million telephone calls in 2017. It hasn't restricted them from making the calls. Yes, they had to pay for it themselves. But that's what responsible people do is pay for things themselves. They don't make much money. They make a token amount of money for doing things that...and it's very token amount, I agree, but they are paying for their own funding for programming. These funds were utilized to support reentry programs, to prepare offenders for successful reentry to the community. We talk about this all the time. And it's an important to note that we talk about there is not enough programming being done, and this is an effort upon our largest county to finance that programming by the people that are incarcerated. Yes, they are innocent until proven guilty. I agree with that. But examples of the programming that are supported by the aforementioned funds include but are not limbed to GD supplies and testing materials, GD training is required. The life skill training also, literacy education, victim impact classes, job readiness classes, cognitive behavioral classes, supplies for indigent during incarceration, and upon release and self-help video programs. So I guess my question continues to be, if Senator McCollister would yield to a question. [LB776]

SENATOR WILLIAMS: Senator McCollister, would you yield? [LB776]

SENATOR McCOLLISTER: Yes, I will. [LB776]

SENATOR HALLORAN: Thank you, Senator. I will repeat the question we asked in the first three hours. So according to Douglas County, this program will go away if it's insufficiently funded by these phone calls. [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR HALLORAN: So how do we replace that, Senator? [LB776]

SENATOR McCOLLISTER: Well, first of all, I need to tell you that Douglas County no longer objects to the bill. They withdrew their objection to the bill. Now, I think if you look at those

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

Floor Debate
March 06, 2018

FCC rates, you'll find that Douglas County, with all the volume they have, are going to easily comply with those rates. So they're going to be able to use that \$600,000 for mandatory programs, voluntary programs, however they wish. I think Douglas County is no longer a consideration. [LB776]

SENATOR HALLORAN: But they won't have that \$600,000 that's going to be substantially reduced, correct, no? [LB776]

SENATOR McCOLLISTER: Not so. It's up to the Jail Standards Board to determine that rate. I think Douglas County is going to be able to retain those rates since they are way below that 22 and those 25-cent rates. So I think they're going to be fine, Senator. [LB776]

SENATOR HALLORAN: Okay. So where are the rates the worst across the state? [LB776]

SENATOR McCOLLISTER: Some of the rural counties; and I think that could well be... [LB776]

SENATOR WILLIAMS: Time, Senators. [LB776]

SENATOR McCOLLISTER: ...because the volumes are pretty low. [LB776]

SENATOR HALLORAN: Thank you, Mr. President. [LB776]

SENATOR McCOLLISTER: Thank you. [LB776]

SENATOR WILLIAMS: Thank you, Senator McCollister and Senator Halloran. Senator Chambers, you're recognized. [LB776]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, somebody said responsible people pay for what they get. Farmers get subsidies...not for any work they do, not for any products they sell, it's free money that taxpayers give to these free-loading farmers in Nebraska. And it's the big-shot farmers who get it. Ethanol, another agricultural product

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

Floor Debate
March 06, 2018

subsidized by the federal and the state government. Taxpayers subsidizing the private interest of these agriculture-connected enterprises. These people on the floor of the Legislature and in Trump's organization talk about being opposed to regulations; let the market determine things. Then why don't they let the market prevail where motor fuel is? There is a certain amount of ethanol that they have to put in their gasoline because of a regulation that these free loaders and spongers want because their product can't make it on its own merit. So they talk these things, but don't want them applied. And I'm going to tell you why these educated people come here, they want to see what manner of people occupy this Legislature. And one thing they can see is how few people are here. That's why it's so easy to cut education, because they ain't got no education, so why should anybody have any? They don't need no education. They ain't got no education. Look where it got them. And when you look at them, you see why everybody needs education. They play like they don't understand words like reasonable, meaningful. But then when their interests are involved, they are the most careless, slipshod users of the language. Senator Groene has a bill that's coming up and we're going to have a chance to discuss that with him. And there are other people who are going to have bills coming up. We are more than halfway through the session. I'm going to get my pound of flesh. I spend more time on this floor than any other senator. I've been here every minute of every day. That includes Senator Groene, Senator Halloran, Senator Erdman and all these others that you see absent now. The only person who is always on this floor is the one who is excoriated the most, that person is me, moi. I'm the one. And I take seriously what we do. And I care about the Legislature as an institution. And when we have large numbers of people who come here from the outside world who are sensible, who are intelligent, and who understand what family connection means and they hear all of these so-called conservatives who pray every morning in the Legislature, want to snarl and say, why do they need to use the telephone? It's not necessary. These counties are gouging those prisoners, and the programs that are provided in prison ought not be made to be paid for by the inmates. Those are duties of the state, the county, and the city. The state has determined that some people will be punished by being deprived of their freedom. So it's a double whammy to deprive people of their freedom, then say you have to pay for what's being done to you in this lockup. That is so unreasonable that even the Koch brothers would take Senator Groene to the wood shed and say, hey, you're back there in the eighteenth century. The Koch brothers, they want to see changes in prisons and how all of these programs are carried out. Senator Halloran expressed his concern about Douglas County programs. [LB776]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: One minute. [LB776]

SENATOR CHAMBERS: He's not really concerned about Douglas County. It gives them a cover for being mean spirited, for saying punish, punish, punish until it comes to one of theirs. As I told you Senator Groene did. He persuaded us to change the law for a white felon that he knew so that he could handle, without being in violation of the law, implements that would have qualified as weapons prohibited to a felon. Now he wants to deprive people of even a telephone call. I would say shame, but that's a word the meaning of which they don't know and I won't invite them to go to the dictionary because that might be above their kin. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator Chambers. Senator Erdman, you're recognized. [LB776]

SENATOR ERDMAN: Thank you, Mr. President. I listened to Senator Chambers there talk about how much he's on the floor. I would venture to guess that I may be here as much as he is, and we can argue about that, but I'm here, I'm listening, and I listen to what Senator Chambers has to say. I followed up with some people behind the glass about the information that I asked Senator McCollister about and they provided me that and I appreciate that. One of the things that they gave me that I thought was very interesting, it talks about what are the policies in each county and...if they have a policy...and it's quite obvious that some don't, some do, some are unclear. One of the things that I noticed in my area, the largest county, the biggest detention center is in Scotts Bluff, and they asked them for the information as to what a phone call costs there and they received no information at all. That would have been an interesting conversation to have, why they didn't present that information, but they did not. But as we move through this, my county where I live is Morrill County and they have a policy, and it is in writing, and is not monitored, when they make a call it is not monitored. So they are treating people very fairly there, giving them an opportunity to have the conversation that's necessary. And there are numerous counties on this list that are not monitored, and, consequently, I believe that that's appropriate. I think there are times when that is necessary, but most of these counties don't monitor at all. And so as I said earlier, those people who are incarcerated are there because they broke a state law. So consequently, then we, the county taxpayers, pay for that. And I am one

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

Floor Debate
March 06, 2018

that has come here to talk about property tax. I agree, I'm not apologizing for that, and I will always talk about property tax. And Senator Chambers made comment to the farmers getting the subsidies. That is one of the things that we put in place to guarantee our food supply because in countries where they don't have those subsidies and farmers aren't guaranteed an income, those people know what it's like to be hungry. In Germany at one time they were very hungry and they are tickled to death to have subsidies to help their farmers so they don't go hungry again. So the old saying is, don't curse those people who feed you with your mouth full. So be careful what you wish for. Thank you for your time. [LB776]

SENATOR WILLIAMS: Thank you, Senator Erdman. Senator Clements, you're recognized. [LB776]

SENATOR CLEMENTS: Thank you, Mr. President. This question to me boils down to local control. I'd prefer to allow the county commissioners in each county to control what their policy is and those who don't have a policy, I would encourage them to create one. But I will support the bracket motion and oppose the amendment and the bill. But I would urge all of you to think about the unfunded mandates that do come down from Nebraska. And I'd prefer to let the local authorities in each county decide how this is going to be handled. I would yield the rest of my time to Senator Groene, if he'd like to have it. [LB776]

SENATOR WILLIAMS: Senator Groene, you're yielded 4:02. [LB776]

SENATOR GROENE: Thank you, Senator Clements and Mr. President. I don't like to clarify false attacks, but sometimes you have to keep your good name. The individual that brought me the archery bill I never met before in my life. In fact, I met him face to face 10 minutes earlier than Senator Chambers did when he testified. Found out he was a son of a political enemy of mine. And him and his wife straightened their lives out, started a business, then I got...started getting e-mails from a lot of individuals across the state who had done something foolish in their youth, and they were rural folks and they wanted to hunt. Once you pay your dues, once you straighten your life out, I don't care what you did in your youth; you're a citizen; eventually you should vote. So to clarify, Senator Chambers, if you did have "ESPE" once and you could read minds, you've lost that talent with age because you're completely false on the premise by why I

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

Floor Debate
March 06, 2018

brought that bill. As to Senator McCollister's statement about the Jail Standards Board, the good phone system we have in place right now they have control of it, they make those decisions. The Jail Standards Board may deem (inaudible) prescribe in writing rules for the regulation of government in the jails upon the following subjects: the cleanliness of the jail and prisoners; the classification of prisoners in regard to sex, age, and crime; and also persons with physical and mental disabilities; beds and clothing; warming, lighting, and ventilation of the jail; the employment of medical and surgical aid when necessary; employment, temperance, and destruction of the prisoners; the supplying of each prisoner with a Bible...with a Bible or an (inaudible); the intercourse between prisoners and their counsel and other persons. That is their directive now. LB776 would include...would add to that--including access to telephones and video conferencing required in Section 3 of this act. They do a good job now, the Jail Standards Board. Phones are accessible. Contact with your attorney is simple. You can do it. So I heard urban/rural coming out of Mr. McCollister again...Senator McCollister, about how Lancaster County and Douglas County it won't affect them; they got economies of size, they can handle low rates. I have before me...they passed it out...the appendix of the cost tables on the survey done by the ACLU. Guess what, folks. The folks who are high are very rural, very small counties that have a hard time funding their jails already. [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR GROENE: Antelope, Cheyenne, Custer, Dixon, Fillmore, Garden, Hamilton, Harlan, Kearney, Keith, Nemaha, Richardson, Saline, Valley. You couldn't put the population...you could the population of those counties inside of North Platte, the total. They are not gouging anybody; they are not hard-hearted. They are trying to provide a service to the few inmates they have without forcing the taxpayers...the over burdened taxpayers to fund it. There's no gouging going on in this state, none at all. The cost matches the availability; the price matches the cost. This amendment will bring it down to 21 cents because that's what the Jail Standards Board was instructed to do to use it as a guide, and they will lose their phone service in those...the inmates will in those counties. Because Senator Kolowski's (sic)...I mean, excuse me... [LB776]

SENATOR WILLIAMS: Time, Senator. Thank you Senator Groene and Senator Clements. Senator Brasch, you are recognized. [LB776]

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

Floor Debate
March 06, 2018

SENATOR BRASCH: Thank you, Mr. President; and thank you, colleagues. This discussion could go on and on, and I think it will until the clock runs out. And again, I'm standing to make a few comments to ask that we not dehumanize individuals who are incarcerated, doing their time, to remember they have families. When I was going door to door four years ago, in one of my counties, I walked up to a porch, a woman came to the door with a towel around her shoulders, her hair half wet, and she invited me in her house. She said I'm glad, I recognize you, you are my senator, but I need to talk to you. And in there was a young woman with her and it was her daughter. She was home on a weekend visit from prison, jail, I don't recall the situation, but they did sit down and talk to me about the issues her daughter did have. I think it was with meth and drug issues and she was getting on the right path. And they explained to me the difficulties and one of them was just not being able to talk to each other because they can't afford it. The woman was retired, and she was grateful her daughter was getting clean. I mean, these are real people, real situations, and I don't believe the counties, whether they have money or not money...or without money, should be using this to fund their operation. There's just something wrong with that. It's the poor robbing the poor, something. And I equate that to what's happening with the property taxes right now where in agriculture the commodity prices are not there, and we are asking those without money to help fund our local counties and subdivisions when there isn't any money, that's not where you go to rescue yourself. But aside from that, when I heard Senator Chambers saying I ain't got no education, education, education, it reminded me of a little sign I saw lately, and it said remember not to confuse education with intelligence. And I do believe that it doesn't take a lot of education to have the intelligence to know that there is something wrong when you want to take revenue money, income for family to communicate with family or to take care of business from those who are incarcerated and without means of making a living, at this point a crisis in their life. I would like to call it that. So I again stand and ask you to support Senator McCollister's bill, LB776 and his amendment and not the bracket motion on this bill. Thank you, Mr. President, and thank you colleagues. [LB776]

SENATOR WILLIAMS: Thank you, Senator Brasch. Senator Chambers, you are recognized, and this is your third time. [LB776]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, is Senator Erdman in the Chamber? [LB776]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: Senator Erdman, would you yield to a question? [LB776]

SENATOR ERDMAN: Anything for Senator Chambers. [LB776]

SENATOR CHAMBERS: Senator Erdman, this is to lighten the mood a little bit. I have been here when you were not here when a call of the house was made, you'd come. I'm not condemning you. Can you think of a time when you were here and I was not? [LB776]

SENATOR ERDMAN: There were several times of the call of the house and you had to come from your office. [LB776]

SENATOR CHAMBERS: From my office? [LB776]

SENATOR ERDMAN: Or somewhere. [LB776]

SENATOR CHAMBERS: No. I'm always here. [LB776]

SENATOR ERDMAN: Okay. [LB776]

SENATOR CHAMBERS: Okay. That's all I will ask you. Thank you. [LB776]

SENATOR ERDMAN: Thank you. [LB776]

SENATOR CHAMBERS: I am always here. I'm the one who always votes for a call of the house. As for Senator Groene and why he brought that bill, I would like to ask him a question or two so we can make the record completely clear if he will yield. [LB776]

SENATOR WILLIAMS: Senator Groene, would you yield? [LB776]

SENATOR GROENE: Yes. [LB776]

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

Floor Debate
March 06, 2018

SENATOR CHAMBERS: Senator Groene, I will take it face value what you said that you didn't know the young man and you had met him...I guess you are saying at the date of the hearing, is that correct, that part? [LB776]

SENATOR GROENE: Yes, yes. [LB776]

SENATOR CHAMBERS: You said you had received much mail in his behalf. Did you say that? [LB776]

SENATOR GROENE: No. [LB776]

SENATOR CHAMBERS: What did you say about it? [LB776]

SENATOR GROENE: I said there was a lot of individuals across the state on their own behalf were law-abiding citizens and made a mistake in their youth and wanted to hunt and they were in favor of the bill. It was not one individual's bill, this was for a lot of individuals. [LB776]

SENATOR CHAMBERS: Let me ask you this, did you bring the case of that young person who wanted to go into the archery business before the committee? Did you present that case? [LB776]

SENATOR GROENE: Yes, I did. [LB776]

SENATOR CHAMBERS: And you had to present it because that archery material, or the implements, would have been prohibited for him to deal with because he was an ex-felon, is that correct? [LB776]

SENATOR GROENE: That's true. [LB776]

SENATOR CHAMBERS: And we advanced the bill as a committee and passed it as the Legislature, is that correct? [LB776]

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

Floor Debate
March 06, 2018

SENATOR GROENE: Yes. [LB776]

SENATOR CHAMBERS: Thank you. Members of the Legislature, we don't need to parse. I'll take everything Senator Groene is saying. This was a felon he didn't even know. He didn't know whether he was a good guy or a bad guy, but he brought a bill so he could not be held back as a felon from doing what he wanted to do. So that puts him on even shakier grounds. He hadn't paid his debt to society completely, because part of that debt is to be deprived the right to handle certain implements that can be considered weapons. But Senator Groene wanted to change that, and he did present that person's case. For him and others, the few who are on this floor, to say that local control handles things have no understanding of how the state works. Now Senator Clements was appointed to the Legislature, so he's not expected to know and understand very much. But the state establishes the policies. The Legislature...the state establishes the policies, and the subdivision, such as counties, cities, school districts, and others, carry out those policies set by the state. They want that authority. They like to exercise that authority. They spend money to get positions on those political subdivision boards. Now, the very political subdivision that these people are moaning about have an organization, NACO, who has no opposition to the bill. They have a broader understanding of what happens in the counties than Senator Groene or Senator Erdman or Senator Clements. [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR CHAMBERS: They have no opposition. But if you have a county making in excess of a half million dollars from these phone calls, it's clear they are overcharging. They are doing more than recouping the cost of providing those phone calls. And I hope that this body will reject Senator Groene's bracket motion. I think it would show a kind of mean spiritedness, a backwardness with which I accuse so-called conservatives all the time; head and feet on backwards running into the past. The Legislature doesn't have to do it because a few of our members are so afflicted. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator Chambers. Senator Groene, you are recognized, and this is your third time. [LB776]

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

Floor Debate
March 06, 2018

SENATOR GROENE: Thank you, Mr. President. Let's make it clear why Douglas County came on board on this amendment, why NACO did. Senator McCollister and Senator Chambers mentioned excessive bonuses and payments. What the amendment does, it puts it back in that they can have bonuses and payments. The original legislation said that excessive cost...or reasonable costs but are not limited to...reasonable operating costs include but are not limited to any commission or bonus payment for contract with an entity to provide such service. The original language said they couldn't get a bonus or a commission. But Senator McCollister did, hiding behind the 21 cents is added that they can get bonuses and commission, it's back in the legislation. They can still get it now. Here is one of them who defines it. Instead that it is considered not reasonable. The term now is excessive commissions are not reasonable. Who defines excessive? Who defines that? That's why Douglas County is on board. They weren't charged. They had economies of size that they were down there lower minutes and still making a pretty good profit, but they got the amendment where they can get the commission. So that's back in there with this amendment, which Senator McCollister claims this bill takes out. This is bad legislation, it's not needed. It's completely not needed. The system works. A combination of state involvement with the Jail Standards Board along with the local elected sheriff and the county attorney and the court system. We are putting into statute that gives ammunition to the outlying lawyer who wants to sue, who wants to throw out a conviction because something...somebody didn't get to talk to their girlfriend five years earlier, which was meaningful. Is that who we are here? They are going after some rural counties that maybe have three or four prisoners, if you are lucky, if they are lucky, that have to charge a higher rate in order to have a phone at all. That's what they are going after, the urban senators with this legislation, a couple of them at least. You heard it, right from Senator McCollister. He's not after Douglas County, they're fine, he gave them their commission back with this amendment. He gave Lancaster County their commission back. My sheriff, yes, he said he had no problem with it. And what he told me, he said they're afraid of the bad publicity, the sheriffs were. How do you defend that you don't want to give people a phone when you already give them one? So they just went along with it, threw their hands up. They couldn't win on this one. They are already doing it. And they are doing it without being forced to. And they're doing it with what can be afforded, a good private/public cooperation and it's happening. It's happening. And the rates are going down continually. If we lose those private providers, watch your taxes go up, your property taxes, because we put in the statute they have to have a phone service. And by the way, this

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

Floor Debate
March 06, 2018

whole thing...here's one of those exclusionary things in this bill. Nothing in this section shall require a county jail to provide or administer a pre-paid telephone call system. So basically it says you throw all the language out and you put a pay phone in the corner again like we did in the 1940s and 50s. [LB776]

SENATOR WILLIAMS: One minute. [LB776]

SENATOR GROENE: This is frivolous. All this language points back to one thing, the small county jail can just put a pay phone back in a corner and only take collect calls...you give collect calls. That's what it says. Nothing in this section shall require a county jail to provide or administrator a prepaid telephone. So we go back 50 years, because somebody doesn't understand rural Nebraska and the cost of things and thinks somebody paying \$14.95 for 15 minutes is too much for a phone call. That's what it costs. I guarantee you those counties that are charging that are not getting a commission, they're not even getting enough with that \$14.95 to pay for the phone system they do have. That's economies of size. Folks, this is a bad bill. It's not needed. It's not wanted. It's feel good. Everybody should have a right to contact their lawyer, and they do in the state of Nebraska, nobody is being denied today. They will make it harder for them if this bill passes because the free enterprise will pull out. [LB776]

SENATOR WILLIAMS: Time, Senator. [LB776]

SENATOR GROENE: Thank you. [LB776]

SENATOR WILLIAMS: Thank you, Senator Groene. Senator Albrecht, you are recognized. [LB776]

SENATOR ALBRECHT: Thank you very much. We have Senator Williams up there today. I know that I have been asked to read the bill, and I try to get that done, some of them are a bit longer than others. But I'd like to just...and I have talked to Senator McCollister, on page 3, line 9, they added "and diet." I don't know what the diet has to do with what we are talking about today. And in the line 12, supply the prisoners with a Bible or...which has been added...other religious or spiritual material. Again, if it could be cleaned up, that would probably be nice. But

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

Floor Debate
March 06, 2018

something else I would like to visit a little bit about, since everybody else has kind of had some floor time here. What concerns me, I used to walk through quarterly the Sarpy County jails, when I was a commissioner, and I would hear the stories about how the phones would be ripped off the walls when they would get upset with whatever they might get upset with. It's expensive to replace those. So for each county to decide how they are going to do things, and what they are going to do is one thing. I do agree that they should be able to talk to their families. And when it comes to the counties and their short stays, sometimes they are there just for a few months, six months, under a year, hopefully. But, you know, it...another thing that they...it's one thing to talk to your loved ones, but it's another thing to continue to call your public defender, because you want them to work a miracle for you to get you out of the system and back home. Sometimes when I sit here and I listen to the debate, I think of, you know, is what's good for one...I mean, I look at Douglas County rates that were passed out and it's 13 cents, but yet it might be, you know, 21 cents or more in other areas of the state. But are those other smaller counties looking to cover the cost of being able to afford them the luxury, if you will, of calling their family and staying in touch with them. So I'm still open to listening a little bit more, would like a little bit of this cleaned up here in the bill, the diet part. We just built a brand-new facility in Thurston County and it's beautiful. And they have phones on the walls, and they have video for the prisoners; everything is first class, but they don't have a kitchen. So when you put diet in there, and they're not, maybe, getting everything they are supposed to, it leads to something else. But I know jail standards changes things up periodically. You have to comply with the jail standards, so that concerns me that they just threw "and diet" in there. And then, you know, a Bible...something good for them to have, but other religious or spiritual material, not quite certain why that's in the bill for us to discuss today. So with that, I'd yield my time to Senator Chambers, if you would like to talk a little bit more about this. [LB776]

SENATOR WILLIAMS: Senator Chambers, you are yielded 1:35. [LB776]

SENATOR CHAMBERS: Thank you, Mr. President; thank you, Senator Albrecht. And not to beat a dead horse, so to speak, there are people on this floor who surprise me at their lack of understanding and knowledge about language in the law. I'm going to look...or call your attention to Article 1, Section 9 of the Nebraska Constitution, it says: All persons shall be bailable by sufficient sureties. What is "sufficient?" What does sufficient mean? [LB776]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: One minute. [LB776]

SENATOR CHAMBERS: It's not defined, except for treason, sexual offense, and so forth. Excessive bail shall not be required, nor excessive fines imposed. What does excessive mean? The presumption is that people of ordinary intelligence will understand ordinary English words. When people stand on this floor and act like they don't understand these words, they ought to read what is in the constitution and in the law, not only the state constitution but the U.S. Constitution. So instead of maybe considering the children before they graduate from high school pass a citizenship test, let these people read what's in the constitution and see if they understand that. Thank you, Mr. President. [LB776]

SENATOR WILLIAMS: Thank you, Senator Chambers. Senator Krist, you are recognized. [LB776]

SENATOR KRIST: Question. [LB776]

SENATOR WILLIAMS: The question has been called. Do I see five hands? I do. The question is shall debate cease? All those in favor vote aye; all opposed vote nay. There's been a request to place the house under call. The question is shall the house go under call? All those in favor say aye, all the opposed say nay. Record, Mr. Clerk. [LB776]

CLERK: 16 ayes, 2 nays to place the house under call, Mr. President. [LB776]

SENATOR WILLIAMS: The house is under call. Senators, please record your presence. All unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Vargas, Senator Geist, the house is under call. Senator Vargas, would you check in. Senator Geist, the house is under call. All present. The question is shall debate cease? All those in favor vote aye, all opposed...we started the machine votes, so we have the options for call-ins. Senator Krist voting yes. [LB776]

CLERK: Senator... [LB776]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: Larson voting no. [LB776]

CLERK: Okay. Senator Larson...you want to vote yes, Senator, is that right...voting no, excuse me. Senator Larson voting no. Senator Howard voting yes. The motion is to cease debate. Senator Baker voting yes. Senator Smith voting yes. Senator Hilkemann voting yes. Senator Kolowski voting yes. Senator Hansen voting yes. Senator Ebke voting yes. Senator McCollister voting yes. Senator McDonnell voting yes. Senator Williams voting yes. Senator Linehan voting yes. Senator Crawford voting yes. Senator Wishart voting yes. Senator Vargas voting yes. [LB776]

SENATOR WILLIAMS: Record, Mr. Clerk. [LB776]

CLERK: 25 ayes, 3 nays to cease debate. [LB776]

SENATOR WILLIAMS: Debate ceases. Senator Groene, you are recognized to close on your bracket motion. [LB776]

SENATOR GROENE: Thank you, Mr. President. I would appreciate a green vote on the bracket motion. Of course I will not be voting so I can reconsider it. Anytime Senator McCollister wants to call a cloture vote, I'm willing to go there to cut this debate off if he wishes to. I think the debate has been heard. But if he doesn't want to do that, we can take it all the way for the three hours or whatever...another hour and a half. I would hope we vote on it today, the speaker would allow that. So it is an unnecessary bill. It puts stuff into statute that's not necessary. We have too many statutes already, folks. The system works. This is an ACLU bill that harms rural Nebraska, property taxpayer who wants to help their youth and their individuals who get in trouble with the law by availing a telephone to them. This legislation may take that away from them because it treats everybody the same. It treats every county the same, every small-town county jail the same as Lancaster and Douglas Counties. It does harm. We heard that the larger counties already...I think the market is working, folks, because the larger counties, the larger jails already lowered their rates appreciative. And if you looked at the charts, you can pretty much see the charts, the rates going up with the population of the jail. It's the customer base, and we can afford to do it to pay it. It adds other things into the statute, Senator Albrecht, I didn't bring it up, but diet, what's

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

Floor Debate
March 06, 2018

diet? Gluten free? A diet based on religion? Who decides that? Do we have to segregate the tables that certain foods can't be on a certain table? I understand allergies. But that wasn't there before. It seemed to work out. But that just invites lawsuits. You put stuff in the bills, it brings lawsuits. So anyway, I will let it go at that. And please vote green on the bracket motion, and let's put an end to this thing before it does any damage to our statutes. Thank you. [LB776]

SENATOR WILLIAMS: Thank you, Senator Groene. The question is shall the bracket motion be adopted? All those in favor vote aye, all those opposed vote nay. There's been a request for a record vote. Mr. Clerk. [LB776]

CLERK: (Record vote read, Legislative Journal page 847-848.) 5 ayes, 28 nays on the bracket motion. [LB776]

SENATOR WILLIAMS: Motion fails. Mr. Clerk. Raise the call. Mr. Clerk for announcements. [LB776]

CLERK: Mr. President, some items before we proceed. General Affairs Committee reports LB921 to General File with amendments. Health Committee reports LB1044, LB1127 to General File, and LB903 to General File with amendments. Senator Smith would like to print an amendment to LB44. And a confirmation report for Health and Human Services. Mr. President, Senator Groene would move to reconsider the vote to bracket LB776. (Legislative Journal pages 848-853.) [LB921 LB1044 LB1127 LB903 LB44 LB776]

SENATOR WILLIAMS: Senator Groene, you are recognized to open on your amendment. [LB776]

SENATOR GROENE: Thank you, Mr. President. I just came down here to make sure bad laws were not passed. We have gotten by 150 years without this statute, going on 151. Felon rights, parental rights, whatever you want to call it, families of felons, it's evolved with court cases, with statutes, with different individuals being elected to different county commissions, to sheriff. This is putting into law a lot of what we already do, most of it what we already do. It's an insult to local control. It's unnecessary. It's a guide for a lawsuit for a small county that can't afford a

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

Floor Debate
March 06, 2018

lawsuit. Who defines reasonable? Who defines excessive? Who defines meaningful? That's the words we are putting into statute about telephones in jails, which was never in our statutes before. Never was the word "telephone" put into the jail standards statutes before. Guess what? There's phones in our jails. There's phones in our jails. What the ACLU wanted to do was stop the commissions that the jails were receiving, the sheriff's departments. Guess what? Amendment 2018 puts them right back in there with the word "excessive." Four took them completely out, they couldn't get a commission to give services to the prisoners. The amendment puts it right back in there. So what's the purpose of the bill? What now is the purpose of this bill? The amendment puts into statute a guide for the Jail Standards Board to consider for comparative purposes the rates set by the federal law...by the Federal Communications Commission for inmate calling service pursuant to federal law as such law exists on January 1, 2017. Nobody came up with any information that says I have been wrong on that issue, that the District Court of Washington, D.C., has ruled that the FCC does not have the authority to tell states and local communities or put limits on what they can charge to inmates in a jail. But yet, we are going to put that into statute. Nobody seems to care about that. I heard (inaudible) this, so what, shrug your shoulders, so what. It's meaningless, we feel good. We put into statute what we are already doing; pat myself on the back. But we are putting our small counties and our sheriffs in a bad situation where they could be sued and they don't have the money to defend themselves; because they try to do the best they can. They try to do the best they can with limited resources. And now you are going to take away the resource of a private company supplying phone service because we are going to say around that 21 cents area, and they are at 99. Really? Senator McCollister says we're going to tell the jail standards that they're supposed to use this rate of January 1, 2017, and they say an average of 21 cents, and they are at 99. But that will fit in there. That will fit into their judgment call about what the rate can be. Really? Then why do we even put this in here, this junk into statute, if they will blink and look the other way on the 99 cent charge? That doesn't cover the cost of the phone now in that small jail. I guarantee you, there's very little or no commission. If it buys a three-pound can of Folgers coffee at the end of the day when they get their commission, I would be amazed; which they would probably let the prisoners drink...the inmates drink. So I would ask all of you, as we get closer, and as I said, any time Senator McCollister wants to call a cloture motion to put this to an end, I will agree to do that. All he has to do is stand up and call for the cloture vote. And if he wins, he wins. If there's 33 left-leaning individuals who want to dictate to counties what they can do and slap them on the wrist and

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

Floor Debate
March 06, 2018

punish them for something they are already doing in most cases, but there's always going to be that exception to the rule that said the lawyers just sitting right out there ready to sue, and that's what you are doing with these kinds of statutes. Any time, Senator McCollister, you want to call for the cloture, I will go along with it. If you have your 33 votes, it was a good debate. So if you wish to do that, let's get it over with, let's have a cloture vote. I have a bill coming up behind that Senator Chambers wants to bracket. So fun, fun, we keep...and I'm learning from Senator Chambers. He said earlier that everybody doesn't like him here and we'd like to get rid of him. That's not true, I happen to like him here most days. I like hardheaded people that can give it as well as they take it. There are a few of those. Plus I can do what I'm doing here, because he's done it in the past. But anyway, this thing needs to go away; it should have never got out of the committee because it was written badly, and the amendment is worse. As I repeat myself, it's an unnecessary law. Everybody in a county jail, in a state penitentiary has adequate access to communication and communication devices with individuals outside the prison and their legal counsel. So let's start again. Thank you. [LB776]

SENATOR WILLIAMS: Thank you, Senator Groene. Speaker Scheer, you are recognized.
[LB776]

SENATOR SCHEER: Thank you, Mr. President. As I've done previously last year and this year, at the Senator, the maker of the bill, requests I will put a Speaker hold on the bill. And so we will put a hold on the bill on LB776 and we will move to the next item. Thank you. [LB776]

SENATOR WILLIAMS: Thank you, Speaker Scheer. Mr. Clerk. [LB776]

CLERK: Thank you, Mr. President. LB596 was a bill by Senator Groene. (Read title.) Introduced on January 18 of last year. The bill was referred to the Health and Human Services Committee. It has been discussed on the floor as recently as March 1 of this year, Mr. President. I have the committee amendments. Senator Riepe had opened on the committee amendments. I have other amendments to those committee amendments but I also have a priority motion, Mr. President. (AM621, Legislative Journal page 971, First Session, 2017.) [LB596]

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

Floor Debate
March 06, 2018

SENATOR WILLIAMS: Senator Groene, would you in the next two minutes remind us of what LB596 is all about. [LB596]

SENATOR GROENE: Thank you, Mr. President. LB596...and I'm sorry, I have been talking too much, and I ran out of water. I have a dry mouth. But LB596 is about free enterprise, overregulation. It's a poster child of the overregulation of government and licensure. Individuals who...I seen the...there's a headline today that equestrian event is coming back to Omaha. We have no horse assistants in the state of Nebraska to service those people, those horses. They come from all over the world and they will bring their own in because we don't have a single business operating in the state of Nebraska that offers that service. It was brought to me by a lady out in Senator Williams' area, just on the edge between us in Arnold, Nebraska, who moved to our state or is in our state... [LB596]

SENATOR WILLIAMS: One minute. [LB596]

SENATOR GROENE: ...wanted to start a business. So, anyway, I would appreciate support of LB596. The individuals in this state who have contacted us and who want to start a business and bring economic growth to our communities and to our state, they need this and they want to go forward. We will bring an amendment that fixes that we worked on all summer and worked with on those people who originally were against it, but they are now on board. And as soon as we get to it, we will explain to you how we got those that were opposed to the bill originally in testimony, why they are on board now in support. Thank you. [LB596]

SENATOR WILLIAMS: Thank you, Senator Groene. Chairman of the HHS Committee, Senator Riepe, would you like to update us? [LB596]

SENATOR RIEPE: Thank you, Mr. President and colleagues in Nebraska. As a recap, AM621 is a simple amendment. AM621 strikes "high-performance". This change in language is to allow all horses to receive massages, not just those horses believed to be high-performance. This is an amendment to promote justice and equality under the barn. That's it, Mr. President, thank you. [LB596]

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

Floor Debate
March 06, 2018

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Thank you, Senator Riepe. Senator Krist, you are recognized. [LB596]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues. Good afternoon, Nebraska. I'm not going to get all lathered up about this bill. But in one word, I'll summarize my thoughts on it. (horse sound) Neigh. [LB596]

SPEAKER SCHEER: Thank you, Senator Krist. Senator Ebke, you are recognized. [LB596]

SENATOR EBKE: Thank you, Mr. Speaker. I wonder if Senator Groene would yield to a couple questions. [LB596]

SPEAKER SCHEER: Senator Groene, would you yield, please? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR EBKE: Senator Groene, as has become my norm the last couple of weeks, I have a couple of questions for you. Are you a trained and licensed veterinarian? [LB596]

SENATOR GROENE: No. [LB596]

SENATOR EBKE: Are you a trained and credentialed horse masseuse? [LB596]

SENATOR GROENE: No. [LB596]

SENATOR EBKE: Have you ever massaged a horse or any other equine species or hybrid such as a zebra, donkey, or mule? [LB596]

SENATOR GROENE: Horses and I never got along on the farm. I got bit by one and I got my back about broke by a colt I tried to break, so, no. [LB596]

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

Floor Debate
March 06, 2018

SENATOR EBKE: Not much, okay. Do you believe that your education, your life experiences and the research that you and your staff have conducted into this issue give you a solid basis to recommend the provisions of your LB596 to be enacted into law, even though you have no formal credentials in the subject matter? [LB596]

SENATOR GROENE: A wise person takes counsel from all, and I have taken counsel from veterinarians, from masseuses from...in horses, and I have listened to a few horses lately as I drove down the road and wondered why they were limping and they just didn't have a masseuse. [LB596]

SENATOR EBKE: And you believe that your proposed legislation should become law, even though you don't have that formal expertise? [LB596]

SENATOR GROENE: We are an elected body and we represent those who bring legislation to us, and I used all deductive reasoning and counsel to come up with the best legislation possible. [LB596]

SENATOR EBKE: Thank you, Senator Groene. Colleagues, I support this bill but I felt it necessary to once again take just a few moments to remind the Legislature that if our predecessors had the authority to create these occupational licenses, we must now have continuing oversight authority over them, including the deletion of them if we so choose. Thank you, Mr. President. [LB596]

SPEAKER SCHEER: Thank you, Senator Ebke. Mr. Clerk. [LB596]

CLERK: Mr. President, I do have amendments to the committee amendments, however a priority motion from Senator Chambers to bracket the bill until April 4 of 2018. [LB596]

SPEAKER SCHEER: Senator Chambers, you are welcome to open your bracket motion. [LB596]

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

Floor Debate
March 06, 2018

SENATOR CHAMBERS: Mr. President and members of the Legislature, I would like to ask Senator Groene a question or two if he would respond. [LB596]

SPEAKER SCHEER: Senator Groene, would you please yield? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR CHAMBERS: Now Senator Groene, just so that we have continuity here, the committee amendment simply strikes on page 2, line 15, the words "high-performance". [LB596]

SENATOR GROENE: That's true. [LB596]

SENATOR CHAMBERS: You gave me a somewhat lengthy amendment, but there's not really much in the way of a change. Will that amendment be an amendment to the bill, or does it replace the bill and the committee amendment? [LB596]

SENATOR GROENE: I believe it's an amendment to the amendment, to the committee amendment. [LB596]

SENATOR CHAMBERS: So the green bill would still be before us, and it would just be added to that. [LB596]

SENATOR GROENE: Yes, but a lot of the...in the amendment a lot of that language was struck. [LB596]

SENATOR CHAMBERS: Thank you. Members of the Legislature, this is a bill that lends itself to a lot of satire, a lot of humor, and a lot of getting even, but before I decide that I'm going to do any of those things, I want to call your attention to something. Several have mentioned reading the bill. I'm not going to ask people to raise their hand, but I wonder how many people read this bill? I find a problem with the green copy. If you look at the bottom of page 2, in line 31, no licensure would be required for any of the items on the following pages in the bill. Now, the first

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

Floor Debate
March 06, 2018

one, the second one, the third one, the fourth one, and right on down deal with matters which may not require licensure, but there are others. One talks about, if you go to page 4, selling or applying any pesticide, insecticide, or herbicide. I have read articles about new herbicides that they have which can be used on genetically modified plants, and the herbicides will not hurt those plants. It will kill weeds. But the plants that have not been genetically modified will be killed by the herbicide, and the manufacturer said that they recommend that those who apply it be trained and licensed. You need to look at all of these things which in one fell swoop would no longer require any license. Maybe some of them don't require any now under certain general categories because what this bill talks about is things that people can do, even though they might verge on the practice of veterinary medicine. This listing that I touched on deal with things that do not constitute the practice of veterinary medicine. But at the same time with this new language that Senator Groene is putting in the bill, none of these items would require any licensure. If there are items on here which currently require licenses, they would not be required now. So what I would like to have somebody do, and maybe Senator Groene can since it's his bill, point out those things on this list where licensure is currently required. There are two things here. One, where if you are doing some of these things, it doesn't constitute the practice of veterinary medicine. Even if you are licensed to do it, you're not practicing veterinary medicine, even though you are licensed to do that, that's a separate thing. Not only would it not constitute the practice of veterinary medicine, it would also do away with any licensing of any of these operations. Let me ask Senator Groene one question if he...oh, I can wait. I didn't realize he was in conference. Oh, Senator Groene, I will ask you the question if you will yield. [LB596]

SPEAKER SCHEER: Senator Groene, would you please yield? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR CHAMBERS: Senator Groene, is there any license required for applying any pesticide, insecticide, or herbicide as far as you know? [LB596]

SENATOR GROENE: Yes, there is. [LB596]

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

Floor Debate
March 06, 2018

SENATOR CHAMBERS: And this would say no longer would there be a license required for that. [LB596]

SENATOR GROENE: No, I don't mess with any of that. If you look at my amendment, sir, all that stuff that's there already exists in law. The only thing we're adding is on page 3 where it's underlined, it says equine massage practitioner. We're just adding it to that list that exists. [LB596]

SENATOR CHAMBERS: But the language in the green copy that says, or require licensure, your long amendment does not eliminate anything from the green copy. If you look at the bottom of page 2 in the green copy. I'll give you time. I'm not in a rush. Take your time. And this is not a trick question either, by the way. [LB596]

SENATOR GROENE: No, it doesn't. We're going into a different area with the amendment. We are going into credentials, and the original bill was gone into veterinary medicine, and where it had oversight, over massage and chiropractic and dental, of course, and of livestock. [LB596]

SENATOR CHAMBERS: Okay, I see that, but I do not see where your bill or your amendment does anything about removing anything from the green copy. You insert the following new amendments. Then you insert this list. And that's in addition to what is already in the green copy unless I'm misreading your amendment. [LB596]

SENATOR GROENE: No, you're correct. There's nothing that needs to be struck, only that "high-performance" horses because all we're doing in the original bill is adding a definition of equine massage therapy. [LB596]

SENATOR CHAMBERS: I will look at it further. That's all I'll ask you. Thank you, Senator Groene. On page 4 of Senator Groene's somewhat lengthy amendment, page 4, any person convicted of violating the Livestock Animal Welfare Act shall be denied registration or renewal of registration and shall be removed from the registry if applicable. That is new language that's added. Then on page 2, line 3, strike Section 3, and insert Sections 4 and 7. But I don't see

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

Floor Debate
March 06, 2018

anything affecting Section 5. So maybe Senator...and I don't mind if you talk to your staff. Do you have that information? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR CHAMBERS: Okay. So what does your amendment do that...with reference to Section 5 of the green copy? [LB596]

SENATOR GROENE: Well, I was going to address this all when I introduced the amendment. Originally we were striking equine massage therapy from the licensure on the original bill on the bottom, 1, 2, will require licensure under the act. So what we did in the amendment on the very last page of 4, instead of striking the language, we took out the word "therapy" and put the word "practice" instead. That was the agreement with the medical people, or animal... [LB596]

SENATOR CHAMBERS: That part I understand. [LB596]

SENATOR GROENE: All right. So that's why we didn't need to strike it all, we just put "practice" instead of "therapy". [LB596]

SENATOR CHAMBERS: Would you look at page 2 of the green copy? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR CHAMBERS: In line 31, this is saying that... [LB596]

SPEAKER SCHEER: One minute. [LB596]

SENATOR CHAMBERS: ...no licensure would be required. [LB596]

SENATOR GROENE: That's true. [LB596]

SENATOR CHAMBERS: For all of these items that are listed by number. [LB596]

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

Floor Debate
March 06, 2018

SENATOR GROENE: And all of those were in the existing statutes. [LB596]

SENATOR CHAMBERS: But they...some of them require licensing, and your bill would remove licensing... [LB596]

SENATOR GROENE: No, no, no. [LB596]

SENATOR CHAMBERS: ...for all of them. [LB596]

SENATOR GROENE: No, it says an unlicensed assistant means an individual who is not licensed. A veterinarian...a licensed veterinarian technician or a licensed animal therapist and who is working in a veterinary medicine. An unlicensed assistant is not included, a person engaged. These are individuals that are already doing something they don't need a license like, I believe, if I read it right, I remember reading it. It might be a veterinary student who is doing medical... well, doing an internship. They don't have to be licensed or an employee of the federal, state, or local government. [LB596]

SPEAKER SCHEER: Time, Senators. [LB596]

SENATOR CHAMBERS: That's our time. Thank you. [LB596]

SPEAKER SCHEER: Thank you, Senator Chambers and Senator Groene. Senator Pansing Brooks, you're recognized. [LB596]

SENATOR PANSING BROOKS: Thank you, Mr. President. Well, sometimes, my friends, I do believe in divine intervention and the fact that this bill was...ended up being placed where it is, I find quite humorous. There's some things that I decided that I was going to say and some things that I was going to not say, and some things that I was going to do and some things that I was not going to do on this bill. Number one, I had decided that I was not going to bracket this bill. It's already been done, I guess, so. Number two, unlike LB158, which is the right to counsel, which is my priority, I am not going to say that this bill is, quote, unquote, unnecessary. Also, like the right to counsel, I am not going to say that, quote, no one in LD28 requested this bill, unquote.

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

Floor Debate
March 06, 2018

I'm also not going to be rude and say this is a quote, unquote, stupid bill. I am not going to oppose it because, quote, a bunch of people are sitting around over wine and cheese trying to solve the problem of children, unquote, or maybe it should be beer and brats to solve the problems of horses. I'm not going to say that it's, quote, unquote, not needed. It's completely not needed. Unquote. I'm not going to go on and say that this is a terrible...a quote, terrible, feel-good bill, unquote, even though this is the ultimate feel-good bill, horse massage. I'm not going to say that I didn't hear from any horses because in the opening testimony, Senator Groene talked about the fact that there are, quote, there are horses being denied massage service in Nebraska because of undue government regulation, and I've heard from a lot of horses, unquote. Senator Groene, I've heard from no horses in LD28. I'm also not going to say that no one ever asked me, quote, in any town hall, no elected official asked me, no one ever came to me, no other Nebraskan came to me about horse massage, unquote. So it's not necessary, quote unquote. On Thursday, after the bill that Senator Groene ran the extended debate on for right to counsel, I was asked by a colleague if I was going to, thereafter, immediately withhold my support for Senator Clements bill on LB773 on cyberbullying because I might be upset about the extended debate. And I said, no, of course not, I'm true to my word, and I support bills that are valid and proper. I would like to remind you of a bill that is necessary. It is not stupid. It deals with constitutional rights, and those are the constitutional rights of our youth to have counsel and understand what's going on in the juvenile justice system. The Sixth Amendment of the Constitution confers the right to counsel, so a child can understand the serious charges against them. The transcript underlying this bill for the hearing which is totally priceless, I hope you all go look at it because it is very humorous and I know that Senator Groene, I think, he finds some of it humorous as well. But it even talks about horse and mice getting massages. That's in the closing on 3-9-17. [LB596]

SPEAKER SCHEER: One minute. [LB596]

SENATOR PANSING BROOKS: Meanwhile, I'm talking about 14- to 18-year-olds, 14- to 18-year-old children having appropriate access to constitutional rights. So do we really want to be known as the Legislature that intervened when horses were denied a right to massage, but 14- to 18-year-olds have to buck up and represent themselves? I have a few more things I'll say later. Thank you, Mr. President. [LB596]

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

Floor Debate
March 06, 2018

SPEAKER SCHEER: Thank you, Senator Pansing Brooks. Senator Williams, you're recognized. [LB596]

SENATOR WILLIAMS: Thank you, Mr. President, and good afternoon. I sit on the HHS Committee, and if you looked at the committee statement you might note that I did not vote this out. I was present and not voting, and there was a reason for that. I was absent for this hearing that day because I had a commitment, so I couldn't be there. I was actually really disappointed that I was absent because as those that sit on the HHS Committee know, we have many, many serious topics come before us, and this day was not one of those, and I thank Senator Groene for bringing this bill on behalf of our shared constituent. But I do think, in the sense of having a full and fair debate and having people understand what went on with this, if you haven't read the transcript of the hearing, there are some parts of it that are kind of interesting. And if I would just read a couple of sentences that were in Senator Groene's closing, he was rebutting some of the testimony from a chiropractor that was there, and he said, we are not trying to change animal massage. If you have a mouse that needs a massage, a cat or a dog, smaller animals, or your cow, fine. You have to be licensed. We're talking about horses, big animals. It's hard to hurt them, rubbing on them. I've heard a lot of pride in occupation, that you ought to be trained. You ought to be doing this, but we have a free society. We have absolutely not one licensed animal massage, so the mice and the cats and the dogs are not getting massaged either. I haven't quite decided what I'm going to suggest doing with this bill, because I did miss the hearing, and I will wait and hear. I did have some questions that were only due to having a little fun with my neighbor, Senator Mike Groene, about whether these horses did deserve a right to counsel if they were going to be massaged, and if they would deserve to have a right for a call from their stall, so to speak, and if there was a minor horse involved, if they would be subject to new deposition rules if they had seen or witnessed something. But I will pass on that for another day because we're getting late in the day, and it would be nice to move on. Thank you, Mr. President. [LB596]

SPEAKER SCHEER: Thank you, Senator Williams. Senator Harr, you're recognized. [LB596]

SENATOR HARR: Thank you, Mr. Speaker, members of the body. So I had some questions on this, and I was looking for the chairman of the committee, Senator Riepe, and he's not here, so, I'm going to ask if Senator Groene would yield to a question or two. [LB596]

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

Floor Debate
March 06, 2018

SPEAKER SCHEER: Senator Groene, would you please yield? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR HARR: Thank you. Senator Groene, I'm not trying to kill your bill. Up front, I want it to come to fruition. I want it to have a happy ending, but I do have some questions and it's based on Senator Chambers' questions. On line 2, excuse me, page 2, line 30, the Veterinary and Medicine and Surgery Practice Act shall not be construed to prohibit or require licensures under the act for, and it goes through and lists, with your amendment, 15 different sections. Have you reviewed all 15 sections? [LB596]

SENATOR GROENE: I read them a couple times, yeah. But I didn't add any...we didn't add any of these. These existed in statute now. [LB596]

SENATOR HARR: Fair. Well, 15 you did, any person engaged solely in equine massage therapy. That's...so you added that, correct? [LB596]

SENATOR GROENE: Yes. We added one to it. [LB596]

SENATOR HARR: Okay. So I'm going to go through the list and I'd going to read them one by one, and I want you to tell me, do any of these require licensure today under the Veterinary Medicine and Surgery Practice Act. All right? So the first one, is an employee of the federal, state, or local government from performing his or her official duties. Licensure required now? [LB596]

SENATOR GROENE: Not under the Veterinary Medicine and Surgery Practice Act, no. [LB596]

SENATOR HARR: Okay. A person who is a student in a veterinarian school or from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian. Any licensure requirement? [LB596]

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

Floor Debate
March 06, 2018

SENATOR GROENE: Not under the Veterinary and Medicine and Surgery Practice Act as the statute is written today. [LB596]

SENATOR HARR: Okay. So is that true for all 1 through 15? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR HARR: Okay. So why do we need this language? [LB596]

SENATOR GROENE: Quite frankly, it was put in the bill writing...by bill writing and it goes back to the point that we did not want to...we did not want them to be a licensure under the Veterinary Medicine and Surgery Practice Act because we were moving it over to credential in the point of horse practice, massage practice. [LB596]

SENATOR HARR: And I'm going to use your words. I didn't come down here to write a whole bunch of new laws to create new laws, I came down here to eliminate laws, and yet here you are on page 2, line 31, creating new law. Why is that? When I don't see a need for it, it's rather redundant. Would you object if we just struck that, or require licensure under the act for? [LB596]

SENATOR GROENE: Yes, if we're going to remove...if we can remove it and move it...because we're creating a new, actually definition of a practice, equine massage practice instead of therapy, so we're moving over the credential. [LB596]

SENATOR HARR: But none of these require licensures now. [LB596]

SENATOR GROENE: Some of them do under different acts. [LB596]

SENATOR HARR: So would this negate those? [LB596]

SENATOR GROENE: No. [LB596]

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

Floor Debate
March 06, 2018

SENATOR HARR: Okay, then we don't need this. I have yet to figure out why... [LB596]

SENATOR GROENE: Well, it depends what you consider clarifying the language. I think the bill writing thought they needed to clarify the language because now it says the Veterinary Medicine and Surgery Practice Act shall not be constructed to prohibit, and it stops right there. [LB596]

SENATOR HARR: Okay, but... [LB596]

SENATOR GROENE: And what they thought, we needed to clarify... [LB596]

SPEAKER SCHEER: One minute. [LB596]

SENATOR GROENE: ...the statute by saying, or require licensure under the act. Because it means the same thing. You can't prohibit it or... [LB596]

SENATOR HARR: Well, you could prohibit something and then say unless you have a license. I have a real problem with this bill if we keep that in there because I don't know what the heck it does, and I think you're taking away a lot of licensure requirements that may or may not exist. You say they don't, but then you say, oh, yeah, they do but they're in other sections. I don't see a need for this language... [LB596]

SENATOR GROENE: We can talk and I'll talk to Senator Chambers. If it's unnecessary I'll glad to... [LB596]

SENATOR HARR: It's my time. It's my time, get off the mike. [LB596]

SENATOR GROENE: Oh, I'm sorry. [LB596]

SENATOR HARR: I didn't ask a question. We're short on time. I'm trying to get at, we have to figure out why this language is there. We have to be very specific about it, and I can't figure out

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

Floor Debate
March 06, 2018

why this language is here. That's all I'm going to say about it, and I can't support it until we know why that language is there. Thank you. [LB596]

SPEAKER SCHEER: Thank you, Senator Harr and Senator Groene. Senator Groene, you're recognized. [LB596]

SENATOR GROENE: Thank you, Mr. President. I thought you were asking me another question, because you had asked me questions. Senator Harr, I apologize if I mistook that. That's not a question, when you said "why?" No, I... if we can remove it, we can remove it. It's not pertinent to the...what we're trying to do here. I'm just trying to help some ladies, mostly ladies, in fact, all ladies across the state that want to do this to start a small business. Really, it doesn't affect me. I'm just trying to help some individuals create a business and start up a business, and when we get to the amendment, I'll explain how the veterinarians are no longer against it, the masseuses are standing down, the human masseuses are standing down, how the rodeo associations want it, the benevolent society that runs horse racing are for it, Quarterhorse Society, those folks are for it, it's needed in there. The equestrian groups are for it. It's a good bill. It takes away an over-burdensome regulations, and it creates economic activity so, but we'll look at that. I have my staff and the counsel for the HHS Committee looking at why bill reading...writing wanted to put that in there. It was not something we asked for, but sometimes we all do it, we trust bill writing to know what they're doing, and a lot of times they recommend to the public out there, they recommend to senators, why don't you add this to make clarification to existing statutes, and I believe that's why that's in there, that little phrase. If you want to strike it, we'll gladly do it. Thank you. [LB596]

SPEAKER SCHEER: Thank you, Senator Groene. Senator Hansen, you're recognized. [LB596]

SENATOR HANSEN: Thank you, Mr. President. And good afternoon, colleagues. Folks, I was rising to get a little bit of clarity. I was wondering if Senator Riepe would yield to a question. [LB596]

SPEAKER SCHEER: Senator Riepe has checked out. [LB596]

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

Floor Debate
March 06, 2018

SENATOR HANSEN: Okay, well, that settles that. I would yield my time to Senator Harr if he would like it. [LB596]

SPEAKER SCHEER: Senator Harr, 4:45. [LB596]

SENATOR HARR: Thank you. So, I guess I have a...Senator Groene, would you yield to a question on this? [LB596]

SPEAKER SCHEER: Senator Groene, would you please yield? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR HARR: All right, so we're not quite sure the need for this language. Are you...you're an elected state senator, correct? [LB596]

SENATOR GROENE: Uh-huh. [LB596]

SENATOR HARR: And you've read the bill and you introduced the bill, correct? [LB596]

SENATOR GROENE: Yes. [LB596]

SENATOR HARR: Okay. And now you're looking for help on it, and you're going to committee counsel, is that correct? [LB596]

SENATOR GROENE: That's what we have counsel for. [LB596]

SENATOR HARR: Thank you. That's my point, folks. That's what we have counsel for when we don't know the system. And it goes back to Senator Pansing Brooks's bill. There is...you're not a minor, Senator Groene. You're an adult. You've been elected by the people to come down here. You introduced this bill, you drafted this bill, and now we have questions on it and who do you go to? You go to counsel. It isn't a bad thing. But it shows you, if an adult who's been elected by the people has a question and go to counsel, why don't we give the same right to young kids who

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

Floor Debate
March 06, 2018

have no idea, who have no education, or may not have as much education as Senator Groene. It goes to Senator Brooks's bill...Pansing Brook's bill. Folks, I think we're going to work on this bill. I see people huddled over in the corner, Senator Chambers, Senator Groene. Senator Groene, I think, is amicable, if we do realize this language isn't necessary, to strike it, if not today, hopefully on Select. I have my own questions about it, but there are enough people huddled over there that I don't think I'm necessary for it. But this is why it is so important to read bills because I have no problem with the underlying intent of allowing massages, but sometimes in drafting a bill, we have unintended consequences, and I think that's what we have here, or require licensures under the act, because something may be prohibited unless you have a licensure, and if it isn't, then the language isn't necessary. So either you're striking something, I mean, there was a reason the drafters...the bill drafters thought it was necessary, because you're striking something that is allowed right now. And you're saying, hey, we've got to make sure with this, or licensure. Right. You can't have it both ways. It's either you're striking something that's required to have a license, or it's not needed at all, so why have it in there? I'm not sure why it's there, and I look forward to working with my good friend, Senator Groene, on this, and hopefully we can come up with a resolution on it. With that, I would yield any time...how much time do I have left, Mr. Speaker? [LB596]

SPEAKER SCHEER: 1:45. [LB596]

SENATOR HARR: A minute, 45. If Senator Groene would like any of that time, I would yield my time to him. [LB596]

SPEAKER SCHEER: Senator Harr, you cannot yield the time that's yielded to you. [LB596]

SENATOR HARR: Fair enough. [LB596]

SPEAKER SCHEER: Senator Chambers, you're recognized. [LB596]

SENATOR CHAMBERS: Mr. President and members of the Legislature, you all know that I like to go to the scriptures. Pilate was having trouble dealing with Jesus because he felt Jesus was innocent and hadn't done anything, and he didn't like the way the Jews ran their governments

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

Floor Debate
March 06, 2018

anyway. He didn't think that a man should be killed no matter what he said about religion, so it was a situation where Pilate...oh, and Pilate's wife. She's superstitious. She had a dream. She said Pilate, have thou nothing to do with this just man for I have suffered much in a dream because of him. Pilate was superstitious so he knew things were not going well. So then he found out that Jesus came from Herod's territory, so he decided he would dump Jesus on Herod. And Herod and Pilate talked together and it said, they became friends because before that there was enmity between them. So Jesus brought peace between those two. There was enmity existing between Senator Groene and myself superficially, but there's something that means something to all of us, and that's to try to get well-crafted legislation. So we're over there under the balcony working it out, and here's what my suggestion was since this equine massage therapy is going out the window, no longer is it considered therapy, so it does not have to be an amendment to the Veterinary Practice Act. All that you need to do in that act is strike "equine massage therapy". That's all that you have to do in the green copy. Then that long amendment that Senator Groene offered that talks about equine massage practice, and puts it under the credentialing part of the statute, that's where the amendment goes and not under the veterinary practice. So we're working to figure the best way to eliminate the reference to equine massage therapy that's in the veterinary laws. Since the term therapy was used, and it pertained to animals it had to be put in that veterinary law. Since it's no longer therapy, and whatever else that entails, all we need to do is lift that out of the veterinary law, and then we're through with the veterinary law. We then go with his amendment that defines this activity as equine massage practice, and it is under the credentialing area of the law. So these people would have to do whatever is necessary to be credentialed, but they wouldn't have to have a license. With the way the current green copy reads, because at that time it was not envisioned that therapy would become practice, that phrase that it would...no licensure would be required, would apply to more than just the equine but to all those other items that are enumerated after those words. That can be done away with by lifting the equine therapy out of the veterinary law. So his amendment would make a reference to the veterinary law by saying in section such and such you strike, and then you strike equine massage therapy. That's all you do with that veterinary law. Then his amendment would say that this information about the practice would be what governs those... [LB596]

SPEAKER SCHEER: One minute. [LB596]

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

Floor Debate
March 06, 2018

SENATOR CHAMBERS: ...who engage in this activity. And I'm not sure what my thinking is about the law just yet, because there are some preliminaries we need to get through in order to have what he's presenting say what needs to be said without implicating other statutes and certainly without even by accident doing away with the requirement for licensure in other activities. That's what we've been doing over there and so I'm going to go back and see if something has been worked out, and you all can continue, and even though I'm not over here where you see me, I'm over here working. Thank you, Mr. President. [LB596]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Pansing Brooks, you're recognized. [LB596]

SENATOR PANSING BROOKS: Thank you, Mr. President. I want to thank Senator Harr for his supportive comments regarding the counsel for juveniles and pointing out how even we as adults who are all pretty bright are dependent upon our counsel and our committees, and yet the juveniles who are supposed to wander through...the 14- to 18-year-olds who are wandering through the abyss of the criminal justice system are supposed to just intuitively know what to do. I just wanted to add a couple more things that I thought were important. I would like to say that I stand in strong support of the amendment because the amendment includes all horses, all horses, not just the high-performance horses. So that amendment takes away any ability to discriminate among...between horses. And, as you know, one of my arguments is that we have justice by geography for our children across the state where some counties provide counsel and other counties don't, and without that amendment, which I hope that you will support, and I don't know about the other one that's supposed to be coming, but without that amendment, we would have justice by biology, which is basically that we would have been only giving the right to massage to high-performance horses rather than all horses. So, again, I want to make sure that we do include the amendment. Apparently some horses have been left out of the original bill, and so clearly the amendment is necessary. I also like to just point out that this discussion is important because this is a perfect example of how one bill may be viewed differently by people in various parts of our state. Legislative District 28, where we are standing right now, not one person has ever talked to me about the necessity to change the law so horses can be massaged. Senator Groene talked about that this issue is a crisis. He said that on Thursday, that it's a crisis. And we have very different opinions of what is a crisis. When a child...when even one child is not...does

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

Floor Debate
March 06, 2018

not understand the charges presented against him, if that child doesn't have proper understanding or knowledge of what is happening in a court against him or her, I would call that a constitutional crisis. And as far as...I must admit that it does make me feel good to stand up in this body for Nebraska kids, and this bill, LB596, feels good to horses. But kids will continue to be my priority in this body. I will continue to fight for them, and I hope that you will join me in that battle. Thank you so much, Mr. President. [LB596]

SPEAKER SCHEER: Thank you, Senator Pansing Brooks. Senator Erdman, you're recognized. [LB596]

SENATOR ERDMAN: Thank you, Mr. Speaker. Good afternoon. I listened to Senator Williams lament over the fact that he wasn't at the hearing, and I can tell you, Senator, you missed it. As he had rightfully said, in HHS, we have a lot of serious issues. And the day that this bill came to the committee was an appropriate time, and my wife was in the back that day, and when Senator Groene started talking about the things that he talked about in the closing, she burst out laughing, and I thought Senator Riepe was going to have to call her down. But the little lady that does this horse massage could barely see over the table. She's like five foot tall, great lady, talked about what she was doing for the 4H kids and she was doing this for those kids for a little bit of nothing just to help them get their horses ready for the next performance, and she could no longer do that, and those kids needed that. The horses needed that massage and the help they got. So Senator Groene brought this bill because of her, and I really appreciated that. I appreciated the opportunity to get to visit with the lady about this. Since then in the HHS Committee, we had a massage horse therapist come and testify, and I believe he may be the only one in the state. And so we had a chance to visit with him about what he does, but this is a good bill. It is an opportunity for people out in our area to get the necessary treatment for their horses that they need. I wouldn't say it's a life-or-death situation, but it was an interesting hearing, an opportunity to help some people start a business and do things that they would normally do. It's a chance for us to get out of the way and let people make their own decisions for themselves. I appreciate Senator Harr bringing up about the fact about the amendment. I don't think we need to encumber these bills with a lot of unnecessary language and Senator Chambers is working on that. I do appreciate that as well. But I am in support of LB596 and the amendment, and Senator Pansing Brooks commented that she was glad we didn't discriminate and just do high-performance horses

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Floor Debate
March 06, 2018

because a lot of these 4H kids that have horses are not high-performance, but they sure like their horses. And so, I would appreciate your support on AM621 and also on LB596. Thank you.
[LB596]

SPEAKER SCHEER: Thank you, Senator Erdman. Senator Linehan, you're recognized.
[LB596]

SENATOR LINEHAN: Thank you, Mr. President. I rise today in support of AM621 and LB596. I, too, as Senator Erdman was, was at the hearing when the woman from western Nebraska came and asked us to enable her to keep doing what she had been doing for years. She worked with the kids in 4H, she worked with the kids who were in rodeos. It struck me as incredible, frankly. I think of all the hearings I've attended since I've been in the Legislature, which I realize is only about two years now, this was the most...I would go so far as to say ridiculous thing I'd heard about since being here. We have...we're an ag state. I grew up on a farm. The idea that you couldn't hire somebody without a license to massage your horse, when that horse was your property and you had every right to do whatever you wanted to with your horse except for the fact that you couldn't hire somebody without a license to massage the horse. I just found it very silly. So, from that hearing on, I have been supportive of this bill, supportive of Senator Groene's efforts to get it fixed so this woman could continue doing what she's done for years, as well as others in the third district. I appreciate very much that Senator Groene has worked so hard on this. I appreciate that the Speaker found reason to prioritize the bill, and I hope through the efforts of Senator Chambers, I'm all for making sure it's written right and we're doing what we want to do. I think that's important. I think Senator Chambers has been very productive in this, I hope that's where we're headed. So I just wanted to...for the people that were there that day, it was...it was very obvious, at least to me, you had a situation where people were...I don't want to say abusing, but they were clearly figuring out a way to make turning horse massage into a profit center. And I found it offensive that we would tell a woman who I think is approximately my age, who has been massaging horses for most of her life, that somehow she couldn't do that even though we let people work animals on ranches and farms across the state with much more dangerous procedures than a massage without being licensed. So hopefully we can get the fixes that we need to get made so it's clear, and then we can get this passed, and I would yield any time I have to Senator Groene. [LB596]

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

Floor Debate
March 06, 2018

SPEAKER SCHEER: Thank you, Senator Linehan. Senator Halloran, you're recognized. Senator Groene, 2:12. [LB596]

SENATOR GROENE: Thank you. I'm willing to work with Senator Harr and Senator Chambers. I don't know why that's in there. I know why it's in there, in the original bill. It's not necessary now because what we did was change the term in the amendment from "therapy" to a "practice". So, therefore, that's not necessary, does no harm, but I do understand Senator Chambers, if you look at that list, there is one that any person from selling or applying insecticide, pesticide or herbicide, that's under an entirely different statutes but they do need a license. And one could construe wrongly that they're saying these exceptions to the Veterinary Medicine and Surgery Practice, but let's get down to the basics. This has nothing to do now with the agreement we came up with, the veterinarians and the masseuses as to how we're going to handle these individuals who want to do equine massage. So if Senator Chambers would help me and Senator Harr, we will amend accordingly and work together, but until we do, we need to either take this to Select, or just run the clock for the rest of the day. It's a simple bill. It helps people. I don't need to complicate it, don't want to complicate it, and if anything is deemed unnecessary to get to the end result, I will work with Senators Harr and Chambers to do so. They've got the experience, 44 years plus 8, a little more than my 3 and a half. I'm a wise person, I try to be, and I will take their counsel because they want the same end result. They want these ladies and these individuals to be able to practice what they love and to create wealth for their families by starting a business. That's what we're here for, to help those types of individuals. So, thank you. [LB596]

SPEAKER SCHEER: Thank you, Senator Linehan and Senator Groene. Senator Halloran, you're recognized.. [LB596]

SENATOR HALLORAN: And thank you, Mr. Speaker. I stand in support of AM621 and the underlying bill, LB596. It seems like a fairly simple way to deregulate a very simple process of giving some horses some therapy. Let me tell you a little story about my youth. We had two horses when I was young. I had two older sisters, and I had to share those two horses with my two sisters, so they were ultimately my sisters' horses, because they were older sisters. We had a paint named Ginger. She was a gentle horse. And we had a part-Arabian, three-quarter Arabian we called Lady, and she was no lady. Ginger was a good kids horse. At that age, we had western

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

Floor Debate
March 06, 2018

shows, Roy Rogers, Hopalong Cassidy, all those fun...they had guns, I know, but they were good innocent shows for us kids to watch. Well, one of the things they would do on almost everyone of those shows, there would be someone in distress. And the hero on a horseback would come charging toward that person in distress and that person in distress would hold their arm up like this, and the hero on the horse would grab that person's arm and swing him up on the back of the saddle. Saved! Well, Ginger was a horse that my sister decided that we should try to replicate this, the event. Ginger had this habit for anyone that's been around horses where we put the saddle on the horse, put the saddle on Ginger, we would cinch up the saddle, Ginger would bloat her stomach out. She would exhale, so she would bloat her stomach out. We would cinch it up tight thinking, okay, we're fine. Well, as soon as we got the saddle cinched up, Ginger would let her breath out, and that horse, that saddle was loosey-goosey. Well, my sister decided to be the hero and she was going to charge at me with Ginger, about from here to Senator Chambers. I was standing on the ground with my arm up, and my older sister was going to save me, and she stretched her arm down, grabbed my arm, lifted me up, attempted to lift me up, the saddle proceeded to slip underneath the horse, and my sister and I were drug for a few steps while my mother watched out the picture window, and that was the last time we did that. Now, we survived that incident, but I think Ginger probably needed some therapy after that. Okay. This is a very innocent bill. It shouldn't create anybody any heartache or hardship. We're deregulating a simple process, and I think that we should move on with it. And again, I support both the amendment and the bill. Lady was no lady because she would rear up, and when I would ride on the back of the horse, on the back of Lady, three-quarters Arabian, Lady decided that she only wanted one rider and so she would rear up, and I would go flying off, and the only reason I would fly off in this instance was, I was too proud to hold onto my sister. I wouldn't do that and so I bit a lot of gravel and that's probably the way I look the way I look. So, anyway, I yield the rest of my time, if I've got any, to Senator Groene. [LB596]

SPEAKER SCHEER: Senator Groene, 1:30. [LB596]

SENATOR GROENE: Thank you, Senator Halloran. I love the process. That's why we're here. That's why we debate, and I love the fact that a senator can write his own bills here and work with individuals in professions like veterinarians, and that's what we're doing here. I focus mostly, lately on the amendment to get the support of the veterinarians and masseuses, and was

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

Floor Debate
March 06, 2018

told that we could leave the original language if we just struck a couple of words. I should have read the original language again, but I left it in the past thinking it was okay. But I'm grateful to my colleagues, Senator Chambers and Harr, bringing it up without any animosity about something they thought was unnecessary. So, I am going to ask the Speaker to hold the bill over until tomorrow or the next day. We will have an amendment in the morning to clarify this unnecessary language so we can get to the point of what we want to accomplish, let these ladies do what they want to do, let the lovers of horses have the services they seek without undue influence by government regulation and licensure. So, thank you. If the speaker would do that, I would appreciate it. [LB596]

SPEAKER SCHEER: Thank you, Senator Groene. We will place a hold on this bill, and we'll move to the next item. Mr. Clerk. [LB596]

CLERK: Mr. President, LB379. It's a bill introduced by Senator Harr relating to state funds. It states intent, it creates a fund and transfers funds. It changes provisions relating to the Willa Cather historical buildings. Introduced on January 13th of last year, referred to the Appropriations Committee. The bill was advanced to General File. There are Appropriations Committee amendments pending. (AM1452, Legislative Journal page 655.) [LB379]

SPEAKER SCHEER: Senator Harr, you're welcome to open on LB379. [LB379]

SENATOR HARR: Thank you, Mr. Speaker, members of the body. I want to first thank Senator Groene for allowing us to pass over. I was not trying to stall his bill. I wanted it to pass but it needs some timing, so thank him. I also want to thank the Speaker and the Speaker's office for making this a Speaker priority. I originally introduced LB379 on behalf of a constituent who was concerned with the physical condition of the Willa Cather properties in Webster County. The properties significant to the life and writing of Willa Cather are currently owned by the Nebraska Historical Society. The Historical Society has done a great job in ensuring that the properties have a strong superstructure, or substructure, and are weather tight, but the properties are in need of some further TLC that the Historical Society due to budget cuts have been unable to attend to. LB379 originally proposed the creation of a Willa Cather Historical Building Cash Fund to provide the Historical Society additional funds to address the concerns with the Willa Cather

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

Floor Debate
March 06, 2018

properties. For example, Willa Cather's childhood home is in need of an HVAC to preserve the wallpaper that she hung as a child, and to preserve that. As you can see from the committee statement, individuals from the Tourism Commission and the travel industry originally opposed this bill at its original hearing date last year. This was due to the fact that the Willa Cather Historical Building Cash Fund was funded by a \$300,000 transfer from the State Visitors Promotion Cash Fund. In general, however, individuals were all supportive of finding a way to help preserve Cather properties, and I thank them for their cooperation. From that spirit, AM1452 resulted by working with Senator Stinner, Senator Kuehn, the Willa Cather Foundation, the Nebraska Historical Society, the Nebraska League of Municipalities, and representatives from the travel and tourism industry. The Appropriations Committee conducted interim hearing on AM1452 to LB379 on September 8, 2017, and all parties accepted the changes made by the amendment. AM1452 becomes the bill and provides for the following, and I'm going to go ahead with the amendment and step on Senator Stinner's toes a little bit, but I hope he doesn't mind. AM1452 which becomes the bill retains the Willa Cather Historical Building Cash Fund, but eliminates the original proposed \$300,000 cash transfer from the Nebraska Visitors Promotion Cash Fund. AM1452 does not place any dollar amount into the fund. Instead the funds existence provide an easy and visible way for the Historical Society to accept private dollars for the preservation of the Willa Cather properties. AM1452 provides that the Nebraska State Historical Society may enter into an agreement with the Willa Cather Foundation to transfer the title of the Cather properties from the society to the foundation. The Willa Cather Foundation originally owned the Cather properties but gifted them to Nebraska State Historical Society in 1978. It is my understanding that the foundation was not in the position at that time to support the properties, but the foundation hoped to take back ownership at a future date. This provision does not set a time line but it allows the parties to have a property transfer conversation and make arrangements on their own terms. Finally, AM1452 provides that the civic and community center financing fund dollars may be used to provide grants to assist in the preservation and restoration of historic buildings owned by a nonprofit organization if a contractual relationship is created between a municipality and the nonprofit organization. This change anticipates the transfer of the Willa Cather properties from the Historical Society back to the Willa Cather Foundation, yet it provides an opportunity for the Willa Cather Foundation to receive state assistance in the preservation of the Cather properties. In this future instance, the Willa Cather Foundation would form a contractual relationship with the city of Red Cloud, and Red Cloud would be able to

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

Floor Debate
March 06, 2018

apply for a CCCFF grant. Please note that this change would be applicable to any other relationship between a municipality and a nonprofit that owns a historic building, not just this instance. I would like to thank the Nebraska League of Municipalities and the Department of Economic Development in helping to create this portion of AM1452. Finally, 2018 marks the centenary, the century anniversary of the publication of "My Antonia" by Willa Cather, her seminal novel set in Nebraska. And LB379 as amended by AM1452 will assist in the continued support and preservation of the properties vital to the legacy of one of Nebraska's premier authors. Thank you, Mr. Speaker. [LB379]

SPEAKER SCHEER: Thank you, Senator Harr. Senator Stinner, as Chair of Appropriations, you're welcome to open on your committee amendment. Are you waiving? [LB379]

SENATOR STINNER: I'm waiving. [LB379]

SPEAKER SCHEER: Senator Stinner has waived his opening. Seeing no one wishing to speak, Senator Stinner, you're welcome to close on the committee amendment, and he waives on that. Question before us is the adoption of AM1452 to LB379. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record. [LB379]

CLERK: 29 ayes, 0 nays on adoption of committee amendments. [LB379]

SPEAKER SCHEER: AM1452 is adopted. Seeing no further senators wishing to speak, Senator Harr you're welcome to close on LB379. He waives closing. The question before us is advancement to E&R Initial of LB379. All those in favor please vote aye; all those opposed please vote nay. Have all voted that wish to? Please record. [LB379]

CLERK: 31 ayes, 0 nays on the advancement of the bill, Mr. President. [LB379]

SPEAKER SCHEER: LB379 is advanced to E&R Initial. Mr. Clerk. [LB379]

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

Floor Debate
March 06, 2018

CLERK: Mr. President, one item. The Retirement Systems Committee reports LB1005 to General File with committee amendments. That's signed by Senator Kolterman. (Legislative Journal page 853.) [LB1005]

Mr. President, a priority motion. Senator Ebke would move to adjourn the body until Wednesday, March 7, at 9:00 a.m.

SPEAKER SCHEER: Colleagues, you've heard the motion to adjourn. All those in favor please say aye. Any opposed say nay. We are adjourned.