

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

Floor Debate  
April 04, 2018

---

[LB42 LB104 LB157 LB379 LB389 LB497 LB548 LB627 LB629 LB682 LB685 LB697  
LB701 LB702 LB708 LB717 LB724 LB732 LB733 LB742 LB743 LB749 LB766 LB773  
LB784 LB786 LB791A LB791 LB792 LB793 LB799 LB807A LB807 LB812 LB815 LB840  
LB841 LB847 LB848 LB859 LB885 LB889 LB902 LB913 LB931 LB944 LB945 LB946  
LB950 LB953 LB982 LB983 LB989 LB993A LB993 LB1000 LB1003 LB1005 LB1012  
LB1030 LB1036 LB1038 LB1052 LB1065A LB1070 LB1078 LB1089 LB1103 LB1110  
LR1CA LR363 LR364 LR365 LR385 LR435 LR471 LR472 LR473 LR474 LR475 LR476]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-fourth day of the One Hundred Fifth Legislature, Second Session. Our chaplain for today is Pastor William Ramage of the Nebraska City Baptist Church, Nebraska City, Nebraska, obviously, Senator Clements' district. Please rise.

PASTOR RAMAGE: (Prayer offered.)

PRESIDENT FOLEY: Thank you, Pastor. I call to order the fifty-fourth day of the One Hundred Fifth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present.

PRESIDENT FOLEY: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: Nothing this morning, Mr. President.

PRESIDENT FOLEY: Thank you, sir. Any messages, reports, or announcements?

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

PRESIDENT FOLEY: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following four legislative resolutions: LR363, LR364, LR365, and LR385. (Doctor of the day introduced.) Members, we'll proceed to the agenda, General File, 2018 committee priority bill. Mr. Clerk. [LR363 LR364 LR365 LR385]

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

Floor Debate  
April 04, 2018

---

CLERK: Mr. President, LB791 is a bill introduced by Senator Ebke at the request of the Governor. (Read title.) Bill was introduced on January 4, referred to the Business and Labor Committee, advanced to General File. I have committee amendments pending, Mr. President. (AM2708, Legislative Journal page 1301.) [LB791]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Ebke, you're recognized to open on LB791. [LB791]

SENATOR EBKE: Thank you, Mr. President. LB791 is indeed one of two bills that I introduced at the request of Governor Ricketts to address concerns about the State Patrol. Last year several concerning cases came to our attention from the State Patrol. The initial internal response to these cases was not confidence inspiring. Each of our committees has oversight authority over the agencies we have empowered through legislation. These issues with State Patrol were clearly within the oversight authority of the Judiciary Committee. After inquiries from Senators Schumacher and Harr, my office filed a number of public records requests, yielding over 1,000 pages of documents. Many of these documents have been discussed in the press. Some of them revealed a disturbing lack of accountability and transparency in the agency. The leadership at the State Patrol has been changed by the Governor, and I believe that the new superintendent is a more than capable man. But new leadership is only a part of the real solution. Incentives matter. The way we design our public institutions matter. Our branch of government has a role to play in solving these problems. The Governor brought me two bills, LB792, which was heard in the Judiciary Committee on January 31, and this bill, LB791, which was heard in Business and Labor on February 12. I introduced both bills exactly as I received them from the Governor, and I agreed to help this important policy conversation move forward. As we heard at both bills' hearings, the executive branch has offered many compelling reasons for reforms to better ensure transparency and accountability in law enforcement. As we also heard at both hearings, our law enforcement officers want to make sure that they are treated fairly as they work to serve and protect. LB791, with the committee amendment and Senator Albrecht's amendment, combine the best elements from both of the Governor's bills. A proposal in LB792 to eliminate the Attorney General's role in providing free legal representation to State Patrol members accused of crimes has been removed. A proposal from LB791 to move sergeants out of their current bargaining unit has also been eliminated. My office has spent many hours working with Senator Albrecht's office, the Governor's staff, and law enforcement representatives to find a solution that we can all live with. What remains in the bill after that process are two core elements: first, provisions that give the Crime Commission and law enforcement agencies more information to make decisions on credentialing and hiring; and two, limitations on what can and can't be done in the State Patrol contract to restrict employee discipline. Neither the Governor nor the State Patrol union got everything on their shopping lists, but both sides have agreed that they can live with the compromise. There have, over the last week, also been additional concerns raised about the Crime Commission piece and reporting elements in the amendment language. These concerns

Floor Debate  
April 04, 2018

---

are coming from the state Fraternal Order of Police and their representatives at local law enforcement agencies. Many of them have concerns about the expanded investigatory powers, including a subpoena power that would be granted to the Crime Commission. I believe that conversation is worth having, but I think it may be better reserved for Select File. Our police should be held to a high standard. We believe that, and I know that many officers I have spoken with also believe that. I think that LB791, as amended by the committee amendment, AM2708, and AM2729, is a better bill than what we started with. I would encourage you to adopt those amendments and advance LB791. Thank you, Mr. President. [LB791 LB792]

PRESIDENT FOLEY: Thank you, Senator Ebke. As the Clerk indicated, there are amendments from the Business and Labor Committee. Senator Albrecht, you're recognized to open on the committee amendments. [LB791]

SENATOR ALBRECHT: Thank you, President Foley. Colleagues, good morning. First, the opening remarks, I'd like to tell you about LB791 but first I want to start by thanking all of our law enforcement officers who work very hard every day to keep us safe. I want to reinforce that the vast majority of our law enforcement officers are brave, good, honest, hardworking men and women. I have nothing but respect for our troopers, police, and sheriffs' departments. With that said, unfortunately sometimes some of our officers fail to meet the minimum standard required of them, and when this happens the consequences can be great. People lose their freedom or even their life. Because of this, our law enforcement are held to a higher standard than the rest of us. In order for us and the police to hold them to that high standard, we need transparency and accountability. That's the goal of the original LB791 and LB792. And now the committee amendment AM2708 to LB791: This amendment replaces the bill. To give you a little background, in our committee hearing, LB791, we heard stories of law enforcement misconduct such as an officer rifle-butting a man's head, a woman who's had a sexually invasive physical which was not redressed by the agency, or another woman who has been repeatedly notified...notifying the agency of a sexual harassment only to be ignored. It was apparent that something had to be done. With Senator Ebke's blessing, the committee realized that we could use the ideas from both LB791 and LB792 to bring transparency and accountability to all law enforcement agencies. The committee amendment is the product of work and compromise between the stakeholders. After hearing the concerns of the various groups, we decided not to include any...many of the original provisions of LB791 and LB792 and to focus only on those provisions which are essential to hold law enforcement accountable and improve transparency, and that is what you see in the committee amendment. In Section 1, it creates certain recordkeeping responsibilities, provisions which give us the ability to keep track of our officers from agency to agency, and reporting of misconduct requirements in certain instances. More specifically, Section 1(1) provides that the head of the law enforcement agency or agency employing a law enforcement officer needs to submit a personal change in status form to the director of the Nebraska Law Enforcement Training Center within seven calendar days after the

Floor Debate  
April 04, 2018

---

date the law enforcement officer is hired or the officer leaves employment with the agency. Section 2 would require...or Section 1(2) would require each law enforcement agency or agency employing a law enforcement officer to maintain a record regarding the reason or reasons and circumstances surrounding the officer's separation from the agency. Section 1(3) states that each law enforcement agency or agency employing a law enforcement officer to keep records of misconduct, disciplinary actions, and complaints against the law enforcement officer during the time the law enforcement officer was employed with the agency. This includes records of anything that could constitute a ground for certification revocation or such neglect of duty, dishonesty, incapacity, and others. Section 1(4) requires that the head of the agency to report to the Crime Commission if an officer is fired or allowed to resign in lieu of termination due to conduct that could constitute a ground for revoking their certification. The report shall include a summary of the allegations pertaining to the officer and the identification of any witnesses relevant to the allegations. This shall be filed with the commission within 30 calendar days of the termination or resignation in lieu of termination. If an individual responsible for complying with this section does not comply, the noncompliance shall be deemed neglect of duty. "Felony," "incapacity," "law enforcement agency," and "law enforcement officer" all have the same meaning as they do in the Nebraska Revised State Statute 81-1401. In Section 2, the goal of Section 2 is to make sure each agency employing law enforcement officers has the information they need to make responsible, informed decision on whether to hire that officer or not. This is done by requiring the potential employee to sign a waiver which permits their former employer to release information as to that officer's record of discipline, misconduct, and complaints against them, and the records regarding why they left their former employer. The prospective employer is responsible for providing the waiver to each former employee...employer. This waiver will be executed on a form provided by the Crime Commission to the agencies that employ the law enforcement officers. Anything provided to the prospective employer shall not include any names or identifying information of any individual witness or law enforcement officer other than the person who signed the waiver. The prospective employer cannot hire the potential employee as a law enforcement officer if the prospective employer does not receive these records. Additionally, a prospective employer cannot hire a law enforcement officer, a person, if the former employer has provided notice to the Crime Commission that the person's separation from the former employer occurred under circumstances that may justify revocation of their certification. However, once the Crime Commission reviews the notification and determines the person can keep their certification, the prospective employer can then hire that person as a law enforcement officer. Section 2(6) is the definition of section for Section 2. Section 3 contains provisions regarding the collective bargaining agreement of the Nebraska State Patrol. What you see in the amendment uses many more words than the original provision in LB791, but it is considerably narrower in substance. LB791 originally proposed to take investigatory and disciplinary procedures of the Nebraska State Patrol off the table completely. The amendment seeks to only limit collective bargaining over provisions which prevent or limit accountability or transparency. Under the amendment, the Nebraska State Patrol cannot have their disciplinary

Floor Debate  
April 04, 2018

---

procedures or collective bargaining agreement provisions that: (a) limit the discretion of the Superintendent of Law Enforcement and Public Safety to disclose to the Legislature, Crime Commission, or a complainant of the statute (sic--status) and outcome of internal investigation or discipline; (b) limit the time in which a member may be disciplined for misconduct to less than two years after the misconduct occurred; (c) require the release to a member who is under internal investigation for an allegation that could result in a charge of a Class I misdemeanor, felony, or an allegation involving dishonesty prior to the initial investigation interview, of reports and materials concerning the officer subject to the investigation, however, the officer of the investigation is entitled to know the nature of the complaint underlying the investigation; and (d) it would limit or restrict access of the individual or individuals conducting the internal investigation to materials, including records of current or past discipline or misconduct regarding the member under investigation; or (e) prevent, limit, or restrict access to the Crime Commission to internal investigation reports or materials. I have brought an amendment to the committee amendment which cleans up some language and also adds some entities entitled to know the status and outcome. This language more accurately reflects what was agreed on by the stakeholders. And in Section 4 of the Nebraska Commission on Law Enforcement and Criminal Justice is the agency which certifies and revokes certification of law enforcement offices...officers in Nebraska. The Crime Commission, for the most part, is able to get what they need to do their job, but there are a few cases that they cannot act on because the agencies are withholding necessary materials. This problem is solved by giving the Crime Commission subpoena power. Specifically, Section 4 gives the executive director of the Crime Commission the power to subpoena witnesses and documents, files, and internal investigative materials, administrative files, records, memorandums, reports, personal (sic--personnel) records, disciplinary histories, or any material that the executive director determines to be relevant relating to law enforcement officer certification revocation from any law enforcement agency in the state. And one last section: Section 5 is in response to the allegations of sexual harassment. We heard about that at the hearing. One of the testifiers... [LB791 LB792]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR ALBRECHT: ...alleged that she had continued to notify her superiors of other sexual harassment, but nothing was done. This section provides that any state employee, not just a member of the State Patrol, may report sexual harassment to the Department of Administrative Services. Once there is a report to the department, the department shall investigate the report to ensure that the investigation is conducted by the agency employing the reporting employee. The confidentiality of the reporting employee or any other person who makes a report or participates in an investigation of the internal agency proceeding shall be maintained, and the person who is alleged to have committed the sexual harassment is permitted to know the identity of the person who made the allegations. But the confidentiality of the person making the report or participating in the investigation or proceeding will not be disclosed unless that person authorizes such in

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

Floor Debate  
April 04, 2018

---

writing or when it is necessary for conducting the investigation or imposing discipline. The agency employing the reporting employee shall not retaliate, discriminate against the reporting, initiating or participating in making a report... [LB791]

PRESIDENT FOLEY: Time, Senator. [LB791]

SENATOR ALBRECHT: And I just have a little bit left, but I'll wait. Go ahead. [LB791]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Mr. Clerk. [LB791]

CLERK: Mr. President, Senator Hansen would move to...excuse me, Senator Albrecht would move to amend the committee amendments with AM2729. (Legislative Journal page 1306.) [LB791]

PRESIDENT FOLEY: Senator Albrecht, you're recognized to open on AM2729. [LB791]

SENATOR ALBRECHT: I'll make this brief and go back to the rest of mine, if that's okay. I just have a little bit left. Okay. Opening statements for the committee is, as I stated in my opening to the committee amendment, this amendment to the committee amendment more accurately reflects the agreement and the intent of all the stakeholders. This amendment cleans up AM2708. For example, "and" is changed to "or" on line 26 (sic--1)...on page 26. And on line 13 of page 2, items list separate items and "or" makes that particular area clear. Additionally, we realized that Section 3(3)(c) does not quite accurately reflect the agreement with STAN and SELBA (sic--SLEBC). So AM2729 to AM2708 is not intended to make any substantive changes as to what the intent is, only the changes for clarity. And I'd ask for your support to make the committee amendment better. I'll go back briefly, too, just a little bit left in LB...or AM2708. So the bill does not, let's see, I'd like to state once again for most of the officers obviously are professional and upstanding people, and they help to ensure a law-abiding and orderly society. This bill is not saying otherwise. It is simply ensuring that if there is an instance of misconduct by an officer, we hold that specific officer accountable and that the misconduct and the discipline is transparent. This amendment came out of the committee with 5 yeses and 2 not voting. I want to reiterate that the State Law Enforcement Bargaining Council and the State Trooper Association of Nebraska have removed their opposition based on the amendment, and I would appreciate your support for the adoption and the passage of this bill. Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Debate is now open on LB791 and the pending amendments. Senator Howard. [LB791]

Floor Debate  
April 04, 2018

---

SENATOR HOWARD: Thank you, Mr. President. I can't say that I rise in support of LB791, but I can say that I rise in support of the last page of AM2708, which outlines some provisions that we worked with the state troopers on around sexual harassment and its reporting. It allows individuals who have been sexually harassed in the State Patrol to report it to the Department of Administrative Services. It creates some confidentiality for reporters of sexual harassment. If you have to disclose, you have to have a written consent from the reporter in order to disclose the identity of that employee, and it precludes the State Patrol and the state from any type of retaliation. This is the most important page of LB791. If you decide to kill the rest of it, go right ahead. I won't cry about it. But the last page addresses a broad and systemic issue in our State Patrol that is incredibly concerning--and "concerning" isn't the right word--"appalling" is maybe a better word for it. Our State Patrol has become a place where women are not valued, and their contributions don't seem to matter. And I'll read you some testimony. We had two women come to this hearing, and the first one, Ms. Cleveland, talked about how she made a complaint of sexual harassment, about years, years of ongoing sexual harassment and discrimination that created an entirely hostile work environment to the point where she actually hasn't gone back to her desk in years. And she received a letter from the Colonel after she reported it, and the Colonel said your complaint is important and you speaking up is important, and then nothing was done, nothing was addressed. When nothing happens, that reiterates to women that their voice doesn't matter. And that gets worse, right, because then we also heard from Brienne Splittgerber. And I hope I pronounced her name correctly. And I'm telling you about these women because I want you to know and I want them to know that what they told us mattered and that we heard them. Yes, let's kill LB791, but this last page of AM2708 is the most important thing that we could do for women this session, honestly, for women in the State Patrol. When Brienne reported that she had had, I believe she calls it, an unfortunate experience, but anytime a doctor touches you inappropriately is more than an unfortunate experience for a woman. And when she told her superiors in the State Patrol, she felt ignored and shoved to the back burner when she was trying to have her voice heard. She knew that what had happened to herself and other women was wrong. It felt wrong. She felt violated. And the agency that she worked for had an administration that did nothing to protect her even after being notified. Instead, the administration ignored her. And she said, what is it...what if it was your daughter, your sister, your mother, your granddaughter, or your wife who had experienced this type of violation? Any one of us would have burned the building down, and our administration in our State Patrol didn't do anything. Brienne has since decided to leave the State Patrol and she said that the stress, the lack of respect, the lack of transparency, and the small bits of retaliation isn't worth staying. [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR HOWARD: She has kids at home. And fighting with an administration filled with chauvinism and disrespect of females, she knows that it's an uphill battle for women in law

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

Floor Debate  
April 04, 2018

---

enforcement. They don't do this for the glory. They do this because they care about our state and this is their call to service. I can't imagine going to work here every day with the level of chauvinism and hostility that these women experience in our very own State Patrol. If we gut everything out of LB791 I'll be just aces, as long as we keep that very last page that protects women when they report and protects them from retaliation so that they can keep going to work and keep offering their skills and the wonderful dimensions that they offer to our state, because right now we are silencing voices that are so important for to us hear. And so, Brienne, Tina, I hope you are listening, and I hope you know that I will fight for the very last page of this amendment... [LB791]

PRESIDENT FOLEY: Time, Senator. [LB791]

SENATOR HOWARD: ...to make sure that you never experience what you did again. Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Howard. Senator Blood. [LB791]

SENATOR BLOOD: Thank you, Mr. President. I stand opposed to both amendments and LB791. I would like to echo what my esteemed colleague, Senator Howard--I miss a day and forget a name--Senator Howard has recently and very eloquently said. I would support the last page of AM2708 as well. I think what we're seeing is that where you look at an organization where few women hold core jobs, you look at increased harassment. And I feel concerned that we have these women who have felt less than, have felt unworthy, have felt exposed, and that is not a work environment that I think we should support in any fashion. With that said, I would have several questions and ask that Senator Ebke yield to a question, since we have no transcripts from the hearing available. [LB791]

PRESIDENT FOLEY: Senator Ebke, would you yield, please? [LB791]

SENATOR EBKE: Sure. [LB791]

SENATOR BLOOD: Senator Ebke, can you tell me a little bit about the opposition and what was said in the hearing on LB791? [LB791]

SENATOR EBKE: I can't tell you much because I had another event that I had to be at. I introduced the bill and left shortly thereafter. [LB791]



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

Floor Debate  
April 04, 2018

---

SENATOR BLOOD: So both you and Senator Albrecht have talked in reference to law enforcement participating in some of the upgrades, amendments that you've made. Can you tell me a little bit about who participated from law enforcement and what their input was? [LB791]

SENATOR EBKE: Sure. State Patrol union, because this was mostly their...it had most to do with their issues, representatives from the State Patrol union came in and talked with us. [LB791]

SENATOR BLOOD: Can you tell me who those representatives were? [LB791]

SENATOR EBKE: Well, Bill Mueller was representing the union as a lobbyist. I don't know directly what the names of all of the people who were involved. That was a meeting that took place, I think, in Senator Albrecht's office. [LB791]

SENATOR BLOOD: Okay. And can you tell me what their concerns were and how you addressed those exactly? What were their specific concerns, and were all of them addressed? [LB791]

SENATOR EBKE: I'm not the one to tell you about the committee amendment and what the... [LB791]

SENATOR BLOOD: All right. [LB791]

SENATOR EBKE: ...what the specific concerns were. [LB791]

SENATOR BLOOD: We'll talk to Albrecht. [LB791]

SENATOR EBKE: But my understanding, as my legal counsel was part of the discussions, and he believed and we have...I have spoken specifically with Mr. Mueller out in the lobby and he assures me that they're good. [LB791]

SENATOR BLOOD: Okay. So Mr. Mueller says that they're good. [LB791]

SENATOR EBKE: That the State Patrol union is good. [LB791]

SENATOR BLOOD: All right. Thank you, Senator Ebke. I would ask that Senator Albrecht yield. [LB791]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Senator Albrecht, would you yield, please? [LB791]

SENATOR ALBRECHT: Yes. [LB791]

SENATOR BLOOD: Senator Albrecht, can you please express the concerns that were made by the police union and how those were addressed? [LB791]

SENATOR ALBRECHT: The concerns not only about the sexual harassment but other concerns were brought up about officers moving from a county sheriff's department to a police department, that a man was exposing himself, one of the officers. Nobody knew about that. So this isn't just about sexual harassment within the troopers organization. This is also good cop, bad cop. Do I want...the Nebraska state troopers, do they want to bring on a deputy sheriff that might have a list of inconsistencies in his disciplinary procedures? Does he want...do we want him moving from one agency to the other? That's...those are some concerns, and those have been in the media. [LB791]

SENATOR BLOOD: And those are valid concerns. I guess, the concern that I have is some of the other things I see with the collective bargaining, I think, are problematic. And I hear a lot of the feel-good stuff, and I hear that there's supposedly a lot of communication, but I'm getting a lot of pushback that says the opposite. So the concern that I have is not just the sexual assault part of it. Transparency, of course, is very important. I don't know any law enforcement person that I respect that doesn't believe in transparency. And unfortunately, we had some bad apples. [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR BLOOD: Did you say one minute? [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR BLOOD: Thank you, sir. So the concerns that I have is I'm still not hearing other concerns outside that sexual harassment. I think combining two bills has made it problematic. And I am going to sit and listen to the debate. I'm going to try and get the transcripts because I see there's quite a bit of opposition on both LB791 and LB792. And at this time, knowing what I do know, I do not support any of these amendments nor the bill, with exception of the last page of the second amendment...first amendment. Thank you. [LB791 LB792]

PRESIDENT FOLEY: Thank you, Senator Blood. Senator Krist. [LB791]

Floor Debate  
April 04, 2018

---

SENATOR KRIST: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraska. On my first time on the mike, and there will be many, I will clarify a concern I have for constitutionality of the combination of this bill. And I want to be absolutely as crystal-clear as I can and very concise, so I'm going to read my concern. LB791 and the amendments thereto create obligations upon departments and establish overreaching powers vesting with the commission which strikes at a officer's protected rights. A primary concern is the impairment of an officer's constitutional right to be free from self-incrimination and an officer's occupation does not divest him or herself of those rights. Policemen, like teachers and lawyers, are not relegated to a watered-down version of their constitutional right, and that comes from Garrity, supra. (Statute) 81-1377 provides that nothing in the CBA agreement of the State Patrol shall prevent, limit, or restrict access by the commission. It already says that. (Statute) 81-1425 says it creates subpoena powers and invests them with the commission. Those powers include the right to subpoena witnesses, to compel testimony, and compel production of records, including internal affair investigations. These proposed statutory changes are invalid and contrary to the protections afforded officers by the United States Supreme Court. In Garrity v. New Jersey, 1966, police officers were questioned during an investigation alleging ticket fixing. The officers were ordered to respond to the questions and were informed that refusal to respond to the questions would result in them being terminated from employment. The officers answered the questions and their answers were used against them in criminal prosecution. Now, I do acknowledge that I am drawing a line between criminal and civil, but I am saying that this is an overreach in terms of the way that the bill is written. Let me continue to read. The United States Supreme Court held that the choice composed on the officers was one between self-incrimination and job forfeiture, a choice the court termed coercion. The court ruled statements which law enforcement officers are compelled to make under threat of possible forfeiture of the officer's job could not consequently be used against them or the officers in a criminal proceeding. And I think you know where I'm going with this. It has been established that an officer can be simultaneously questioned under Miranda and Garrity. Here the statute fails. It allows the commission to gain access to compelled internal affair statements, subject to Garrity protection where the statements in theory could support the filing of a criminal complaint. The commission cannot statutorily circumvent the officer's constitutional right to be free from self-incrimination. The commission cannot act as a Star Chamber, accessing not only the protected statements but, further, being empowered to compel officers to testify with the threat of contempt, which such testimony may, again, be led to a criminal complaint being filed. I would note that the commission is not a judicial body and it would not be possible for the actual right to hold a party in contempt. It has no enforcement powers absent the retraction of an officer's license, which then becomes an economic occupational threat, bringing us full circle back to Garrity. Further consideration under the amendment's language in Section 2(3), the language seems to be inconsistent. The language starts by compelling the prospective employer's...former employer to produce records that it is compelled to produce under Sections 1, 2, and 3 for termination or resignation. I think this bill and the actions that we are taking are in response to us standing on this floor... [LB791]

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: One minute. [LB791]

SENATOR KRIST: ...and telling this Governor that Brad Rice was not the right choice for his job, and he went down a pathway that was not well-defined, and it was poor...absolutely poor leadership. Now, I am the last person that would challenge Senator Howard or Senator Blood in her assessment, and I think that part needs to stand. And I think what I'm thinking about doing is dividing the question here because I think there's simply a division that needs to be outlined between the two subject matters. Thank you, Mr. President. And I will, again, get up on the mike and talk to some other issues later. [LB791]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Hansen. [LB791]

SENATOR HANSEN: Thank you, Mr. President. And good afternoon, sorry, good morning, colleagues. Feels like afternoon already, long week. I rise today with hesitations on LB791 and LB...LB791 and the committee amendment. I was present, not voting on both the bill and the committee amendment in committee, and I let Senator Albrecht and the members of the committee know that I was going to do that before I voted. My...one of my fundamental concerns still in this bill is that within the scope of transparency and accountability in law enforcement we are putting restrictions on collective bargaining, and I think shifting a little too much of the focus or at least in the hearing it felt like shifting too much of the focus of the problem on the union when it really should have been on the administration. Senator Howard already shared, and she was on the Business and Labor hearing with us, some of the powerful testimony we heard from the two women troopers who had experienced assault and harassment in the State Patrol. I would like to just remind everyone, if you look at the committee statement, those two women came and testified in opposition to LB791. Now I think we've taken some of their opposition testimony and some of the things that happened to them, and I'm really appreciative that we're starting down the path with some statewide sexual harassment policies and accountability there. But those two women came and testified, and I hope I'm doing justice to their testimony in the hearing, but they came and testified saying they're opposed to LB791 because LB791 was changing how collective bargaining for the State Patrol happened and it was changing who could be in the State Patrol union. Although we've removed some of those provisions, we've left some of those in. They were, basically, LB791 was designed to change the union and what the union can do, and they felt throughout their process the advocate they had and some of the support they had best came from the union as opposed to the administration. So if we're looking at how we can continue to do transparency and accountability throughout all police departments in the state, because LB791 was obviously inspired by the State Patrol but if you read Sections 1 and 2, those apply to all law enforcement agencies. It spires throughout the state. We have to kind of keep that in mind. I have some issues, and I have an amendment following that is addressing some of the collective bargaining issues. I think there's a possibility to handle what we want in terms of accountability, transparency without doing it via limitations on collective bargaining. I think that

Floor Debate  
April 04, 2018

---

opens up its own can of issues. So that was a little bit of where I was coming from throughout the process in LB791 and the committee amendment. You know, because I've had several people pull me out, talk to me on this bill, have had a lot of people talk to me on this bill. I had actually Colonel Bolduc talk to me yesterday, and I let him know that I think we can get to a place where we have a really high and clear and consistent standard for transparency and accountability to make sure that all of our police departments and law enforcement agencies across the state are being held to a high standard. But I think we need to be really careful how we get there, what aspects we choose to do that, and that's where I'm not at this time comfortable doing things limiting collective bargaining. If we want to put a limitation on what can and cannot be in a contract, we can kind of de facto do that by just prohibiting actions in the first place. I think that's a much more appropriate way of doing that, maybe putting it somewhere else in the State Patrol statutes or whatnot. I'm sure I'll get up and talk about my amendment when I have an opportunity. So thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Hansen. Senator Albrecht. [LB791]

SENATOR ALBRECHT: Thank you, President Foley. Just to answer a couple questions about the first Section 1 and 2 for Senator Krist, Senator Blood, and also Senator Howard, you know, again, it's my understanding that if there's any opposition it's to the first part, and this is the truth in reporting. You know, it prevents bad actor cops from jumping from jurisdiction to jurisdiction if they're engaged in misconduct. I'm going to give you a couple examples, and, again, these were in the newspaper, so I don't think I'm speaking out of term here. So reported in the Omaha World-Herald, a Thurston deputy sheriff resigned after exposing himself on a public golf course and obtained employment with the Fremont Police Department 17 days later. Law enforcement agencies don't have to say why officers quit. Loopholes make it hard to revoke certifications. This is where we talk about how important that subpoena power is. The State Patrol failed to disclose (to) the Crime Commission on March 16 the rifle-butt use of force in an incident, allowing an officer to resign and retain his law enforcement certification. Again, that's something that was overlooked. State Patrol has identified total of 12 cases going back to 2008, including cases involving dishonesty, that would raise the Brady/Giglio issues, went unreported to the Crime Commission. Again they didn't have the subpoena power to get into the information. The Crime Commission oversight empowers the director of the Crime Commission to subpoena evidence to officer misconduct. So the Crime Commission is charged with settling the standard for officer certification and conduct but lacks subpoena power to enforce those standards. That's why Section 1 is so important. Currently, it relies on voluntary reporting by police agencies. And then the second part, you know, that we're talking about when it comes to this collective bargaining, State Patrol investigations and transparency. This increases confidence in the State Patrol to investigate themselves thoroughly and transparently. The current labor contracts prevent consideration of misconduct for more than 24 months in the imposition of discipline. The state can't impose discipline for conduct more than 12 months in the past. The state is required to

Floor Debate  
April 04, 2018

---

disclose to officers accused of misconduct evidence against them before they were interviewed. It is prevented from sharing investigative findings with the public, Legislature, Crime Commission, or complainants. So this bill will grant the superintendent the direction to inform the Legislature, the Crime Commission, the complainants the status and results of the investigation; to consider all misconduct in the last ten years of imposing discipline for new violations. This would withhold investigative evidence from suspect officers before their initial interview and provide Crime Commission with the investigative results. Those are simple things to make transparency and accountability what they should be. And I really don't believe that the public and/or any trooper, deputy, or police officer would not want these things for themselves. If they're out on a call they need to know that the guy that's backing him up, or the woman, is a good person and that they can count on them, that they don't have a list of issues that might be subject to question. So with that, we can continue. Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Senator Quick. [LB791]

SENATOR QUICK: Thank you, Mr. President. And first I want to thank Senator Howard for her comments. I do agree that sexual harassment or sexual assault in the workplace should never happen. The one, I guess, a piece for me that I'm opposed to in this bill is anything that would reduce collective bargaining rights for employees. And Nebraska became a right-to-work state and for doing that they brought in...they established the Commission of Industrial Relations. And I'll just read the definition of that or what they are. The Commission of Industrial Relations is a state agency designed to resolve public-sector labor controversies with jurisdiction over state and local government employees, including public utilities. Jurisdiction was originally over only public utilities but was expanded to include all public employees in 1969. The state constitution authorized the creation of such an agency, and state legislation in 1947 created the CIR, originally known as the Court of Industrial Relations. The name was changed to the Commission of Industrial...to the commission with legislation passed in 1979. I can tell you, as someone who's actually represented people in grievance procedures and for discipline and those type of things, we did it mainly...I mean the main process for that was actually bringing fairness and justice to the workplace, making sure that all employees were treated the same, and making sure that they were all represented when they were being disciplined. We also followed what we called the Seven Tests of Just Cause, and those were whenever we'd go in we would talk about was the employee adequately warned of the consequences of his conduct? Was the employer's rule or order reasonably related to efficient and safe operations? Did management investigate before administering the discipline? Was the investigation fair and objective? Did the investigation produce substantial evidence or proof of guilt? Were the rules, orders, and penalties applied evenhandedly and without discrimination? And last, was the penalty reasonably related to the seriousness of the offense and the past record? Those were the seven things that we followed when we went in to represent someone and felt that they were extremely important. Within our own bargaining units or bargaining contracts, we had grievance procedures. We also

Floor Debate  
April 04, 2018

---

followed whatever discipline was also outlined either in the contract or personnel rules. And if it was in the personnel rules, usually it would define in the contract that whichever parts we would have what we followed in the contract and then we would relate...or then that would relate to the personnel rules if it wasn't within the contract. Sometimes I could tell you that representing employees, you would get in there and sometimes they weren't totally up-front and you would find that they had some things that happened that they hadn't been totally up-front with us about and we would have to try to correct that and correct their issues as well. And then there were times when we found where the employers or the supervisors weren't doing exactly what they were supposed to do. And I would say it probably happened an equal amount of time in each case. And I know several times we would tell some of the supervisors, if you just follow the procedure... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR QUICK: ...then the discipline can be followed through with, but make sure you're following all the procedures and we'll make sure that the employees are following that exact same procedure so they're not, you know, getting in trouble. But again, I agree with Senator Howard on the portion she talked about and...but as far as anything that would do with collective bargaining, I would have to say that I would like to see that removed from the language or changed somehow. So with that, thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Quick. Senator Kolowski. [LB791]

SENATOR KOLOWSKI: Thank you. And I appreciate this time to...I want to read something into the record that has come to me. I stand in opposition of both amendments as well as this particular bill. I had this come from a member of my district and I'll talk about his position as well after I read this completely: Senator Kolowski, On behalf of the members of the Fraternal Order of Police, I'm asking you to oppose LB791. We have reviewed this piece of legislation and feel that it would be detrimental to many of the union contracts currently in place and LB791 will violate those contracts by circumventing the negotiation process. We've been more than willing to work on this legislation; however, we were not consulted until after the fact and our suggestions have been ignored. The Governor's Office and the Crime Commission have been strongly in support of this piece of legislation and are not willing to work with us on finding a viable decertification process for law enforcement officers which will not violate contractual agreements and leave areas that could and will be challenged in the courts. As police officers, we don't want to work alongside those who do not represent the communities they have sworn to protect. Thank you for your time in this matter. The Nebraska Fraternal Order of Police is willing to work on the interim...in the interim on sound legislation that will address this issue. Signed, John Francavilla, Nebraska Fraternal Order of Police national trustee. It sounds like

Floor Debate  
April 04, 2018

---

someone dropped the ball on this issue. This feels like union busting and anti-contract behavior on the part of the Governor and others. I do not support such behavior. Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Kolowski. Senator Chambers. [LB791]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. I support the committee amendment. I support the bill. This has to do with police officers who commit actual criminal conduct, but because of union agreements the information could not be turned over to the Crime Commission. The commission has the responsibility under the law to certify these officers. They cannot do their job in terms of decertifying officers because the information they need is not released to them. It is not going to impair any existing contract because it specifically says it will not touch any contract which currently is in place. I wish that there were people who are not so turned off by the fact that the Governor's Office originally was involved that they'll accept this claptrap that they're getting from the police. Garrity applies only to criminal matters. Even in the statement that Senator Krist read that the police gave--I hope Senator Krist will pay attention--they didn't put in the statement they gave, Senator Krist, that this was a case in a court already. The court told the Attorney General to conduct an investigation. The investigation was then undertaken. There existed a law, at that time, that had to do with forfeiture of office. If you didn't answer certain questions, you could forfeit your office. So when these officers were called to be questioned, they were given their Miranda warnings. They weren't called that specifically, but they were warned that anything they said could be used against them; however, if they refused to answer a question on the grounds that it would incriminate them, they could be fired. When it went to court, because some or at least one was fired, the court said that voluntariness would be what would be looked at. If there was any coercion or pressure to require this person to give up a Fifth Amendment right then that conviction was thrown out. The Fifth Amendment relates to criminal charges, not civil actions. When you get a job with a company, they can set terms under which you will work. They can tell you that if you're accused of violating what it...like theft or something like that, and you refuse to answer questions, you can be fired. That is not unconstitutional. It becomes unconstitutional if that coerced statement is going to be used in a criminal prosecution. These revocation issues, these revocation hearings are not criminal. They are civil. They are civil, and any statement that would be made during that revocation hearing cannot be used in a prosecution. If there were an attempt to use it then the testimony would not be allowed to be presented. The statements that are used by the Crime Commission are not public records. They are not revealed. When these issues are discussed by the commission to determine whether decertification should occur, that discussion does not take place in a public setting. Now, I've been dealing with the police down through the years. I'm the man most hated by the police. I'm more hated by them than the most heinous criminal because I go after them and try to call them to account, and I'm...if we had more time in the session I would give you all articles to show where the police complained about the work that I was doing. Never committed



Floor Debate  
April 04, 2018

---

a crime, never pulled a gun on anybody, but my loaded brain was more powerful and threatening to them than a loaded gun... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR CHAMBERS: ...in the hand of a crook. This that we're talking about relates to information pertaining to wrongful conduct by a cop, which currently does not have to be submitted to the commission. So the cop's certification stays in place. The cop, when he seeks, or she, another job does not tell why he or she left. In that information I gave you about this guy named Moats, one of the things he had done was to assault the daughter of an elected official while he was a cop. That person called me and told me about it. I then contacted the place where he was working, and they wound up firing him. Had I not got involved, Moats may have retired as a police chief. You all talk this stuff on the floor and you won't do anything when these real issues of police misconduct come up. I'm going...oh, you said time? Is my time up, Mr. President? [LB791]

PRESIDENT FOLEY: Time is up, Senator. [LB791]

SENATOR CHAMBERS: Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Hilgers. [LB791]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues. I also rise in support of LB791 and the underlying amendments, and I rise in particular to speak on the issue that Senator Chambers and Senator Krist have been discussing, this Garrity case. And I agree completely with the analysis from Senator Chambers and I think it's important to maybe dive in a little bit as to why, why it's relevant and why it's important to this particular discussion. As Senator Krist noted when he referenced the Garrity case, this is a decision from the Supreme Court from the mid-1960s. It was a case that dealt with a criminal proceeding that dealt with, essentially, whether or not you could be forced to give a statement that could then be used in a criminal proceeding, or whether or not...or whether you could lose your job. And Senator Krist, to be fair, he did mention that that was limited to criminal proceeding, not civil, which is what the Crime Commission proceedings are, and that distinction very much matters, colleagues, from a constitutional perspective. Because, as Senator Chambers mentioned, the Fifth Amendment to the U.S. Constitution gives us our right to not self-incriminate. That's a constitutional provision. But the language of the constitution does not say incriminate generally. It's very specifically tied just to criminal cases. Specifically it says "nor shall anyone be compelled in any criminal case to be a witness against himself." So it's very specifically tied to a criminal matter, not a civil matter, as Senator Chambers points out. And it's that constitutional nature of the right, that coercive

Floor Debate  
April 04, 2018

---

choice that was...or lack of a choice that was being imposed upon those particular officers in the Garrity case, that was the basis of the decision. And that's not my...don't take my gloss for it. I will actually quote from part of the discussion itself. As Senator Chambers noted, that case actually did deal with a criminal provision, and the choice was whether to provide the comments and have them be used in a criminal proceeding against those individuals or whether they would lose their job. There is no dispute that that was the question in the case, and the court's analysis was very clear. The court said, and I'm quoting, "There are rights of constitutional stature whose exercise a state may not condition by the exaction of a price." So very clearly, the court says these are constitutional rights and it's because of the constitutional nature of those rights that we cannot require and impose this type of a choice. The court goes on to then cite a number of other constitutional rights in previous cases of the Supreme Court in which the court had similarly said we cannot condition these types of...we cannot create...put these conditions on the exercise of constitutional rights. So, for instance, engaging in interstate commerce, interstate commerce, that's a constitutional right that we have, and they cited to a specific case. Resort, I'm quoting again, "Resort to the federal courts in diversity of citizenship cases is another." Again, another constitutional right that we have. "Assertion of a First Amendment right is still another." And the court wrapped up its analysis by saying, "The imposition of a burden on the exercise of a Twenty-Fourth"...oh, I'm sorry, that was the fourth example that they used. The court wrapped it up by saying, "We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office." Now the court cited the Fourteenth Amendment, colleagues, because the Fourteenth Amendment is one of the Civil War amendments and that has...that is used as sort of a lexicon, and incorporates the Fifth Amendment as to the state. So the U.S. Constitution applies, generally applies to the federal government but the Fourteenth Amendment has been held generally to incorporate the various Bill of Rights as to the states. So the reason why the U.S. Supreme Court cited the Fourteenth Amendment was because of that incorporation process. But what it was referring to was the Fifth Amendment right against self-incrimination. So the court very clearly says, because of the criminal nature and because of the specific constitutional protections we have, that is why that condition cannot be imposed. So Senator Krist is correct, that was criminal only and, as he noted, it's not civil. But Senator Chambers is absolutely right to say that distinction, that is what matters, because what you can do in a civil matter, you cannot do with a criminal matter. [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR HILGERS: Thank you, Mr. President. So I think that Garrity discussion, as we're building a record, as we're thinking about these issues, is incredibly important and I think it does not apply to this circumstance because the Crime Commission is not dealing with a criminal proceeding. With that, again, I support the bill and underlying amendment. I've had some conversation with the police union this morning and, of course, I will continue to listen to them

Floor Debate  
April 04, 2018

---

and their particular concerns. But want to thank Senator Ebke and Senator Albrecht for their work on this and urge you to vote green. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator McDonnell. [LB791]

SENATOR McDONNELL: Thank you, Mr. President. I rise in opposition to LB791, AM2708, AM2729, except, as Senator Howard mentioned, page 7 I believe is quality work and it's definitely needed. But I appreciate the work that Senator Ebke and Senator Albrecht have put into this. I believe we're having this discussion and it's a good discussion, but the people that need to have it is the people that can sit at the collective bargaining table. And those are the people that, with the collective bargaining process, the union process, that's what brings meaningful democracy to the workplace. Police officers, state troopers are far from perfect. They're a cross-section of society like any organization. But do I believe 99 percent of them do a great job, are there to serve, to protect? Yes. Do I believe there is some that should be removed? Yes. I think through the process of collective bargaining, sitting at the negotiating table and having a chance over the years to be on both sides of that table, representing union members, representing management, both sides consistently wanted a fair process. And if someone was not representing the organization in a professional manner, they wanted them removed. How do you get to that process? How do you go through that? How does that person that possibly was falsely accused have a fair opportunity to defend themselves and face their accusers? That's part of the collective bargaining process. There is a bill of rights for the employees. There's also management rights. This is not what we should be doing today with this issue. What we should be saying is to the people, state trooper level, Omaha Police level, throughout the state, east, west, north, south, we want you to go to the collective bargaining table. We want you to work together. We want a fair process. We want to have the ability to remove people that are not representing the organization, that is not committed to the oath they took to protect and serve, removed. You start the collective bargaining process with that, I believe everyone in the room, both sides, will say absolutely. Now how do we do that in a fair manner? How do we go through the process? As Senator Quick started mentioning about the CIR, there is a way for us to encourage the people that should be sitting at the table working together to improve things, to help improve their organizations, at the same time improve the service that they're giving to the citizens of Nebraska. That's what we should be concentrating on today. Looking at what some has been discussed about possibly dividing the question, yes, we could talk about that today. But also I think we need to make sure that we are encouraging the process. We respect the collective bargaining process. And we're asking those people in leadership positions, as management and as union leaders, to go to the collective bargaining table, improve on what you have now in the contracts, protect those 99 percent of law enforcement people that work extremely hard, put their life in harm's way to protect us. At the same time make sure that we're looking at those bad actors, those ones that are not being professional, and how do you fairly remove them from the system and protect those other 99 percent that do a great job protecting us? Thank you. [LB791]

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Thank you, Senator McDonnell. Senator Thibodeau. [LB791]

SENATOR THIBODEAU: I would like to yield my time to Senator Albrecht if she wishes. [LB791]

PRESIDENT FOLEY: Thank you, Senator Thibodeau. Senator Albrecht, five minutes. [LB791]

SENATOR ALBRECHT: Thank you very much. You know, when I think about this whole process and knowing that we had two bills to address some very serious problems that we've had in our state, and when you have a lot of media interaction and people are asking questions, well, how did this happen, you know, they watch people get fired or quit early or retire early, you know, those are some serious issues. And whether it is across the state or just in one particular law enforcement agency, it doesn't matter. You know, the people who are working with those individuals want to know that they have their back. The public wants to know that we can count on them. And in most cases, we can. But this is simply saying, in Section 1, that the Crime Commission will have subpoena power to come in and get the information that they need, because they are the people that give you that certificate when you become a new officer and they are the ones that can take it away. So you have to have someone that can do that. And again, in Section 1, it's recordkeeping, it's making certain that you comply when somebody is going to go to another agency within our state. You know, these are protections that we're putting in, not only for the officers but for the public, and I don't feel like this is something that...we're not bargaining here. We're the State Legislature that sets the tone for what we expect. And if this is what it takes to make certain that everyone is protected, then it's something that we have to think about. And I really believe that, you know...I just hate to read any of the stories but Senator Chambers has left you with some information this morning on your desk and I hope that you've taken the time to open it up and just read about some of these stories. We're not asking much of the departments, simply keep the records so that the bad cop doesn't come back into another agency where he shouldn't be. And if they're making the same...if they have the same patterns, they're not going to stop that. I mean sometimes you leave your job, you know, for one reason and when you go to the next one you're probably going to leave the second job for the same reason you left the first one. So, people, I mean that's just the way we are. But this should not be something about bargaining. I mean this is what we're asking for, transparency and accountability. When you are disciplined at work, it gets put into your file. These folks are held to a higher standard because they are protecting us, as people; they're protecting our property; they're protecting themselves; they're protecting themselves from bad guys. But we want to protect them, too, and allow them to have the ability to talk about these problems that they're having, because you might even have somebody in upper management that has an issue with this person. Was it the right reasons to discipline them the way they did? We're not trying to get into the weeds with all this. We simply want you to keep good records. And my biggest question to those who want to divide this question or to not think that Section 1 and Section 2 are serious

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

Floor Debate  
April 04, 2018

---

enough, what do you have to hide? What are you trying to keep from the public? What are you trying to keep from the other officers? Just record the disciplinary actions taken and we can go forward. But I believe that Section, you know, 1, when it comes to the Crime Commissioner having the subpoena power,... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR ALBRECHT: ...is very important. And the bargaining portion for the State Patrol and how we outlined that, it was all agreed on from them. They're not going to fight it. So they're perfectly fine with it. If you have a question whether they are or aren't, I'm sure that Kurt Frazen (sic--Frazey) is out in the lobby. I'm quite certain the Colonel is out in the lobby. I'm quite certain that Gary Young is probably out in the lobby, who's their...the gentleman that defends the troopers. I think you need to start asking yourselves questions outside of the glass to know and understand that we're not asking for any more than transparency and accountability for the departments. Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Senator Krist, you're recognized. [LB791]

SENATOR KRIST: Thank you, Mr. President. Once again, good morning, colleagues, and good morning, Nebraska. And, Senator Albrecht, I have nothing to hide. And I think that 99 percent of the law enforcement officers that are out there have nothing to hide. My point I made earlier was we're living with the "entailment" of Brad Rice and really poor management, and fixing it right now the way we're doing it is not, I don't think, in our best interest. So we have a difference of opinion. But I don't think accusing someone of hiding something because they don't want to be forthcoming when their potential constitutional rights would be affected, I think is disingenuous. I have a question for Senator Chambers, if he'll yield. [LB791]

PRESIDENT FOLEY: Senator Chambers, would you yield, please? [LB791]

SENATOR CHAMBERS: Yes, I will. [LB791]

SENATOR KRIST: I know we've had several conversations off the mike and just finished one of them. What, in your mind, would prevent...and just for the record, what is the difference between civil and criminal proceedings? [LB791]

SENATOR CHAMBERS: In a civil matter, there is no punishment imposed by the state. It is strictly between citizen and citizen. A criminal matter is when the state files a charge against a person, with the intent of punishing that person, and the Nebraska Constitution says all such

Floor Debate  
April 04, 2018

---

matters shall be brought in the name of the state. Civil matters are brought in the name of the individuals and they battle it out. And the protections that apply in criminal matters do not have any application whatsoever in civil matters. [LB791]

SENATOR KRIST: Okay. Understanding that and now laying that as groundwork in a legislative record, what in Senator Albrecht's amendment and bill that you voted out of committee that gives the Crime Commission more power and subpoena power along with it, what prevents them from finding an infraction that would be considered criminal and proceeding in any way through the discovery process that's defined in this bill? [LB791]

SENATOR CHAMBERS: Right now the Crime Commission does not do anything with reference to any information they have, even if it might be criminal, until any and all possible criminal prosecutions have been terminated. So if there was ever any time they turned information over to a prosecutor, it wouldn't be at a time when it could interfere with a criminal prosecution. And nothing that the Crime Commission has, in terms of those reports, is subject to disclosure by a public records request. [LB791]

SENATOR KRIST: So it's your interpretation that if we do start out with a civil process that terms criminal, that turns--I'm sorry--criminal, that those proceedings would cease and that that information could not be used against that person because he self-incriminated or reported in this process. [LB791]

SENATOR CHAMBERS: If...and I'm not trying to be evasive, if information that was obtained by saying, and it's in a civil matter, first, if you don't answer these questions then you can be terminated. Let's say that the person gave answers that would be incriminating. If there was an attempt by anybody to use those statements in a criminal prosecution, they could not be used. All that would have to be shown is that these statements were not voluntary. And if the prosecutor tried to present them, that person's lawyer would object on the basis of it having been coerced, taken in violation of the Fifth Amendment, and the court would not allow that testimony to be entered. [LB791]

SENATOR KRIST: Thank you, Senator Chambers, for helping me put that on the record and establish a legislative intent that will help the Supreme Court when this does go to court, if it goes to court, in terms of any proceedings that started with the Crime Commission as a civil matter. I think that's important that we have this discussion this morning. I think it's an important point. I don't necessarily think that... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

Floor Debate  
April 04, 2018

---

SENATOR KRIST: Thank you, Mr. President. I don't necessarily think, as I thought earlier, that we would have to divide the question to get to this, but I think we have to clearly define and understand what we are doing. I still believe, and I will support Senator Hansen's, rather than a division of the question I will support Senator Hansen's concern that comes up in his amendment after we dispense with the Albrecht amendment that takes all of the public bargaining, the bargaining process out of this process because I think it's very important. We stand to set a precedent on state employees to limit collective bargaining, and I stand against that. I want to be on the record saying that now and when I take my final vote. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Crawford. [LB791]

SENATOR CRAWFORD: Thank you, Mr. President. And good morning, colleagues. I'm going to give a little context of this bill, as someone who is on the Business and Labor Committee. When LB791 came to our committee, we had the hearing, as you can note on the committee statement, we had numerous people coming in opposition to the bill and I think a strong and interesting conversation about what needed to be done with transparency and accountability and how that related to collective bargaining and the union. And what we, as Senator Howard and others have noted, we also heard concerns from female employees about how they were treated and how allegations and misconduct was treated in their case. And again, they felt the union was supporting them and were not in favor of limiting collective bargaining for the sake of addressing these very serious accountability and transparency issues. So from the perspective of the committee, it was decided that we would try to tackle what the core problem was, which was transparency and accountability. And that was my understanding of going in as a committee member, that this would be our effort to pull in some of the elements from LB792 and to address some of the concerns we heard from the women at the hearing as well, and to try...and to do our best to put together a bill that increased transparency and accountability and that we could do that in a way that did not interfere with collective bargaining. And, colleagues, it is the case also that we recognized that, as we were working on this bill, as conversations were going on with the State Patrol, that was initially part...a key part of the conversation, is how do we make sure that we provide the transparency and accountability necessary, and let's do that. Let's do those specific concrete things that are needed to improve accountability and transparency. And if we do that, we don't have to interfere with collective bargaining. And, again, there was a lot of effort has gone into the language that is in the amendment. And I appreciate also and will speak in favor of Senator Hansen's amendment coming up next that we can do many of these same things without engaging...without putting this language on transparency and accountability into the collective bargaining section. And I know that there's been conversation that the...that the specific union agreed to that, but as a member of the Business and Labor Committee, I feel I have an obligation to stand for the integrity of collective bargaining as part of our key core processes. And this is a problem that's solvable without putting that language in the collective bargaining statutes. And even though at this time, in this case, it's only for state troopers and they

Floor Debate  
April 04, 2018

---

have agreed to it, it still sets a key precedent and it's simply not necessary for dealing with, again, the transparency and accountability issues that need to be addressed. Now the other thing that happens in this, what we saw in the deliberation was, again, we were talking about transparency, talking about accountability, and then in the end some of the collective bargaining language came back. [LB791 LB792]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR CRAWFORD: Thank you, Mr. President. And was very disappointing to me, as a committee member, that that happened. It's also the case that as this conversation was happening with troopers among people who are doing the deliberations, it is true that time is of the essence and there are agreements made, and then it is the case that one other piece of unfinished business that I'm glad we're debating right now on the floor is trying to assess how this impacts other people. The FOP did show up at both hearings, LB791 and LB792. And so I do think it is fair to make sure that as we move forward, we're also considering the ways the bill impacts them as well as the state troopers as we're thinking about what loose ends may need...or what changes may need to be made to make sure that we're moving forward in a way that is fair and constitutional on their front as well. So I think it's an... [LB791 LB792]

PRESIDENT FOLEY: Time, Senator. [LB791]

SENATOR CRAWFORD: ...important conversation that we're having and I would urge your support of the Hansen amendment when it comes up and raise some concerns about the... [LB791]

PRESIDENT FOLEY: Time, Senator. [LB791]

SENATOR CRAWFORD: ...bill and amendment as it is now. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Hansen. [LB791]

SENATOR HANSEN: Thank you, Mr. President. And good morning again, colleagues. I think we're touching on some important issues here and some kind of important history around this process and the controversy surrounding the State Patrol, again, the need for some of this bill and some of these changes. I want to take a step back and just kind of remind everybody. I know about two-thirds of us were here when...two years ago when we confirmed Colonel Rice and I know, I assume some of the other members were at least aware of the process. But I remember when Colonel Rice or Superintendent Rice or Mr. Rice came before the body as the appointment



Floor Debate  
April 04, 2018

---

to the State Patrol, there were various allegations surrounding him. And I at that time served on the Government, Military, and Veterans Affairs Committee which heard his appointment, and I was kind of really stuck as a committee member because I was dealing in a situation where there a lot of concerns had been expressed to me privately. Several people had called me and contacted me and weren't willing to go on the record but had shared their concerns in working with him, but nobody came forward in the hearing to share any of them. So I, as at that time a freshman first-year committee member, was trying to struggle...was trying to decide, was struggling with how do I deal with the information that was presented to me in private, people who are afraid to come forward, and the fact that he had an otherwise clean committee hearing and did not flat-out deny a lot of the allegations against him. And I ultimately ended up supporting him out of committee. Upon learning more, talking with more of my colleagues, I ultimately realized how big of a mistake that was, not that I was a swing vote. It was a unanimous vote out of committee at that time. Ultimately realized that was a mistake and withdrew my support upon his final...withdrew my support and explained my position of finally going to the floor. I bring up this history to see...to say that a lot of us and a lot of people kind of saw these problems in the State Patrol coming down the line when Brad Rice became the superintendent. A lot of the things we're hearing in terms of dismissing sexual harassment and sexual, you know, assault, sexual discrimination, those things were brought up as concerns before, and then they happened, and now instead of saying, hey, we're going to pin this on an administration, both the Governor's administration and the State Patrol administration that made the mistakes, we're going to say we are kind of shifting the focus and saying, no, no, no, the real problem was collective bargaining, collective bargaining is what tied our hands. Regardless of the fact that it was an agreement that this Governor's administration put in, that Colonel...that Superintendent Rice put in, we're going to say...we're going to say it was really the union gumming things up. That was the focus of LB791. And I would appreciate, you know, sometimes I know the transcripts aren't necessarily available, I mean LB791, some of the testimony on the bill in support was really just ragging on specific members. I mean we were getting into nitty-gritty e-mails of what attorney said what, when, in just a real unproductive manner, and it was really clear to me at that time that there was some attempt in LB791 to try and pin this on the union. It was trying to say, no, no, no, we all have clean hands in the administration; this was not our problem, despite the fact that we were the ones ignoring the report, that the administration was the ones ignoring the report, the administration was the one that had the opportunity to change it and try to shift the focus. That was when I felt we were in a tough position where, obviously, LB792 had some very admirable elements and LB791 didn't, but LB791 was in the element that could get a committee priority. And that's where I was coming from, thinking I cannot support LB791 while it still has the limitation of collective bargaining, for multiple reasons, including that it is an attempt to shift the focus away from where the problem in the State Patrol lied, which was at the high levels of the administration. And that's the repeated, repeated thing that came up and caused problems there. [LB791 LB792]

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: One minute. [LB791]

SENATOR HANSEN: Thank you, Mr. President. That was the repeated, repeated thing to come there. So I'm hopeful we'll get an opportunity to continue discussing and getting to discuss what we could do there. But I just want to remind people, I mean the way to solve a lot of these things in the State Patrol, probably one of the biggest ways to solve a lot of these problems in the State Patrol we've already done, and that was getting new leadership at the superintendent level with Colonel Bolduc. And I'm very hopeful his administration can do some of the things on their own, within their own power, as kind of the direct administrators and the first people on the ground addressing claims of sexual harassment, sexual assault. I'm hopeful they can solve a lot of this and I'm...and that needs to be where a lot of the focus comes from. I know we can support transparency and accountability for all law enforcement and hopeful we can get something done. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Hansen. Senator Blood. [LB791]

SENATOR BLOOD: Thank you, Mr. President. Again, I rise against the amendments and the bill. I do thank Senator Ebke and Senator Albrecht for all the work they've put into this, but the more I listen to the debate the more questions I have. As many of you know, today is 50 years...the 50th anniversary of when Dr. Martin Luther King was assassinated in Memphis, Tennessee, April 4, 1968. And whenever we talk about issues like this, there is a sentence that he said over and over again that always rings in my ears and that is labor rights are human rights. So I'm listening to some of the concerns that pertain to these bills and I still am not seeing an explanation as to how we protect the other public safety officers and their collective bargaining rights. I'm not hearing an answer to that question. I'm worried about the FOP, the POA, the NSA, and I truly believe, because this was about collective bargaining, at least a portion of this, that they should have been brought to the table and were not. You know, all good cops want transparency. All good cops want a workplace that is free from harassment. They want to know that the people they work with are backing them up, not just when they're out in the field but when they're in the office as well; that they know that everybody is on an equal playing field. And although we know that the State Patrol, especially when it pertains to women, has far to go when it comes to creating an equal playing field, I don't know these bills are necessarily the solution. Do I think something needs to be done? Absolutely. But I have grave concerns of how these were combined. I have concerns about who was brought to the table. And the real concern I have is that I'm not seeing any clear definition of "incompetence," and I think that's very important. I do know, with the way that this is phrased right now, that when it comes to recordkeeping that it can be used as an intimidation in the future against an employee. So I wonder if we're creating more problems than we're solving, if we need to maybe go back to the table, pick this apart and do it right. With that, I would yield any extra time that I have to Senator McDonnell, if he'd like it. [LB791]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Thank you, Senator Blood. Senator McDonnell, 2:30 if you care to use it. [LB791]

SENATOR McDONNELL: Thank you, Mr. President. Thank you, Senator Blood. In the opening, we talked...is Senator Albrecht near? Okay. Oh, would you please yield to a question? [LB791]

PRESIDENT FOLEY: Senator Albrecht, would you yield, please? [LB791]

SENATOR ALBRECHT: Yes, I will. [LB791]

SENATOR McDONNELL: You mentioned in your opening 12 cases going back to the year 2008. [LB791]

SENATOR ALBRECHT: Correct. [LB791]

SENATOR McDONNELL: Do you know how many of those were civil versus criminal cases? [LB791]

SENATOR ALBRECHT: I don't know but I could certainly ask and find out for you. [LB791]

SENATOR McDONNELL: Okay. Please. Thank you. [LB791]

SENATOR ALBRECHT: Uh-huh. [LB791]

SENATOR McDONNELL: I'm struggling with the idea that we're looking at 12 cases-- potentially X criminal, X civil--but as a person that was in a position as a manager and had to terminate people, there was a process. And with that process, those decisions were not easy, because not only were you affecting that person that you were terminating, but you were affecting their family. And that was...that was not an easy decision. But you looked at it from the perspective of what is best for the organization. Was their actions to the point where that it harmed the organization and it would continue to harm the organization if they remained part of it? Now you look at discipline and discipline is supposed to correct action. Improve that individual, therefore, you improve the organization. But sometimes the right decision is termination. Now we're talking about 12 officers that are serving their community, and some, ten years later, we're still looking at taking a disciplinary action against, possibly terminating? Going back to the collective bargaining process, going back to the idea of bringing meaningful

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

Floor Debate  
April 04, 2018

---

democracy to the workplace, is that fair possibly ten years later? There should be a process based on that it is... [LB791]

PRESIDENT FOLEY: Time, Senator. [LB791]

SENATOR McDONNELL: Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator McDonnell. Senator Erdman. [LB791]

SENATOR ERDMAN: Thank you, Lieutenant Governor Foley. I've been listening this morning to the debate, trying to figure out what exactly my position should be on this bill. I guess the question that comes to mind, if this had been in place, if this statute had been changed, would we be able to figure out, would we be able to know what happened to Colonel Rice? Would we be able to figure out why the troopers out in the Panhandle got thrown under the bus and why they got thrown under the bus? Trooper Flick had two grand jury hearings, no fault found. Then they charge him with vehicular homicide. So the question I'm trying to figure out today, if this had been in place, would we be able to figure out exactly what happened there? Something happened and there's only a few who know what that is. And so as I listen to the debate, I listened to what Senator McDonnell had to say, I listen to Senator Chambers, I understand that this is an all-encompassing bill that reveals...that could reveal things that perhaps we need to know. But I'm having questions about what exactly happened and where is the management of the State Patrol? And I would hope that the new director has got his hands around that. Time will tell. And maybe eventually the information will come out, what happened to those exemplary troopers in the western part of the state. We were short troopers out there for a long time because people were on administrative leave. And when they had the hearing for Trooper Flick a while back, the courtroom was full. Couldn't hold all the people that came to support the young man. He's tremendous, tremendous service he gave to the state. So I'm at a quandary as to does this solve that issue? Does this help us understand what happened? I don't know. But I'll continue to listen to the debate and try to make a decision on this. Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Erdman. Senator Schumacher. [LB791]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. I think this bill is a good bill, to the extent anything on the fifty-fourth day can be a good bill. And of course, the prairie tailed dog...or prairie dog--prairie tailed dog maybe--is a good bill. (Laugh) But...and I say that because when it comes to law enforcement, people who are held in a great deal of esteem, have a great deal of influence and can command people's attention, there has to be a review mechanism. I recall a decade or so ago advising a small town who had a police officer that had been around for a while and he had an affinity for high school seniors. And so when his

Floor Debate  
April 04, 2018

---

cruiser was rocking you better not come a knocking. And apparently it wasn't the only time it happened. But everybody danced around the issue because no one wanted to get sued because nobody was running a camera at the time and really could absolutely prove what were the allegations. But they, I think, established a pattern. So I think all of this is a good idea. Now, sometimes the devil is in the details. So would Senator Albrecht answer a few questions? [LB791]

PRESIDENT FOLEY: Senator Albrecht, would you yield, please? [LB791]

SENATOR ALBRECHT: Yes, sir. [LB791]

SENATOR SCHUMACHER: Thank you, Senator Albrecht. Senator Albrecht, on page 1, line 2 of AM2744, it says nothing in the procedures of the parole...of the Patrol shall limit the discretion of the director to disclose to the Legislature. I kind of got a little edgy when I read that. Do you feel that the director should have any discretion in withholding information from the Legislature? [LB791]

SENATOR ALBRECHT: Well, obviously, we go back to what happened with Colonel Rice and there were questions throughout the summer. Certainly it wasn't from me but there were other legislative senators that were asking questions and nobody would give them any answers. So if there was a situation and it escalated to the point that it did, yes, I do believe we need to have answers to our questions. [LB791]

SENATOR SCHUMACHER: So basically, to the extent we're saying to the ground-level troops, look, your information is going to be reported up the chain of command to the Crime Commission to make sure that we have good people, shouldn't, while we've got the books open on this, include something that the upper level of the Patrol should have to report to somebody, some review organization in this body? You know, what's good for the goose is good for the gander, as Senator Harr used to say. [LB791]

SENATOR ALBRECHT: May I answer? [LB791]

SENATOR SCHUMACHER: Yes. [LB791]

SENATOR ALBRECHT: I'll tell you, if this passes, Section 1 gives that Crime Commissioner the subpoena power to go in and get the information. But then they can also disclose it to us if we ask about it. [LB791]

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

Floor Debate  
April 04, 2018

---

SENATOR SCHUMACHER: Do they have to? [LB791]

SENATOR ALBRECHT: I would say they shall and I do believe...I'd have to look for it in here exactly. [LB791]

SENATOR SCHUMACHER: Okay. [LB791]

SENATOR ALBRECHT: No, they do not. Oh, I'm getting a, no, they do not, from... [LB791]

SENATOR SCHUMACHER: Okay. Well, that's something I would suggest, if this bill moves along, that we shore up, because getting information out of a protected bureaucracy is just really difficult. Second thing, the...it says the executive director has subpoena authority. Now does the executive director have to go to a judge and say, judge, here's why I want it, or can he just issue it? [LB791]

SENATOR ALBRECHT: I could get that answer for you and... [LB791]

SENATOR SCHUMACHER: Okay. [LB791]

SENATOR ALBRECHT: ...and let you know. [LB791]

SENATOR SCHUMACHER: I would certainly feel a lot more comfortable if the executive director had to... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR SCHUMACHER: ...get a judge's permission. And finally, what's protecting the grass-roots officer from getting into a personality clash or just being blackballed by a higher up? Some of the language is very loose, because you can be put on this list for violation of the officer's oath, code of ethics, and statutory duties. That's very nebulous stuff, unlike some of the other stuff. And so you could see where somebody could get blackballed or...in a personality match. Is there anything in here for an appeal if there was some inaccurate information that had been relayed on? [LB791]

SENATOR ALBRECHT: And I will say that a lot of the information came right out of their contract at the Nebraska state troopers. [LB791]

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

Floor Debate  
April 04, 2018

---

SENATOR SCHUMACHER: Okay. [LB791]

SENATOR ALBRECHT: So we didn't make that up or...what you just read off. It came right from their contract. [LB791]

SENATOR SCHUMACHER: But not all of this is under all officers. [LB791]

SENATOR ALBRECHT: No. No, but the last part of what they would be (inaudible). [LB791]

SENATOR SCHUMACHER: So really, something on Select File we should be looking at is some appeal in case they're being blackballed by a superior. [LB791]

SENATOR ALBRECHT: Absolutely. Happy to. [LB791]

SENATOR SCHUMACHER: Thank you, Senator Albrecht. [LB791]

SENATOR ALBRECHT: Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Schumacher and Albrecht. Senator Quick. [LB791]

SENATOR QUICK: Thank you, Mr. President. You know, again, I want to talk about the fact that we have within the language, within the bill, it removes the collective bargaining. And actually that would relate to the discipline and grievance procedure and termination. I can tell you that, again, I will tell you that as...when we would sit down with employers in a grievance procedure, and it usually was the result of maybe a discipline that was given, there were times that we would find when the employee was wrong and then, like I say again, there were times that we found out that the employer didn't follow the rules. And I think that's where it goes wrong sometimes. I mean, you know, whenever we had the employee that did something wrong, we were always there to make sure, you know, they were treated fairly and then we made sure that they righted their wrongs, I mean that they came back and did the right thing. And we would try to work with the employer to make sure that, as stewards in representing that employee, that we wanted the best workers in the workplace. And I think that's really, even for the State Patrol, that's what they want too. They want to make sure that all of their fellow officers are doing things the right way. And then going forward, then you have, you know, really good employees in the workplace. Taking out the collective bargaining protections for unjust and wrongful discipline and termination will actually hurt, I believe, their rights as employees in the workplace. One of the things that, like I talked before about, was just cause in the workplace. And you know, of course, for us mainly when some of our locals were...or units were formed, it was because of

Floor Debate  
April 04, 2018

---

safety, also because of...but one of the other reasons that they were formed was because of...well, I'll just read this and that will explain it. Workers join unions to gain protection against unfair and unjust discipline that employers hand out. Stewards must be ready to handle all sorts of discipline cases, from warnings to suspensions to firings. Stewards must be ready to deal with situations of gross discrimination by the boss who gets disciplined, to dealing with union members who sometimes seem to go out of their way to get themselves fired. Our main contractual weapon is oftentimes summed up in one short sentence: Employees shall be disciplined or discharged only for just cause. In some contracts, the words used are proper cause or fair cause. The importance of a sentence like that is that it binds the employer to imposing discipline, not just for any reason/cause but the reason has to be just reason. Many arbitrators have gone so far as to hold employers to a just cause standard whether the contract uses the words or not. And that's, I believe, that's one of the reasons that it's important that we keep that...or take the collective bargaining piece out of this bill. It would remove one of the rights of employees to have justice in the workplace, democracy in the workplace, and have a voice. You can also at times...if the...when we're at the bargaining table, you could change some of the rules within the grievance procedure or discipline. It didn't happen very often but once in a while we...I know we changed our grievance procedure for one of the last contracts that I did with the city of Grand Island. You know, the discipline stayed there, but we changed the way the grievance procedure worked and we sat down with the employer to make sure... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR QUICK: ...it was fair for both sides. And if we take the collective bargaining piece...if it remains in this bill, the State Patrol union would not have that right to sit down at the table and make sure that everyone was treated fairly. So, again, I would say I'm opposed to LB791. I'm interested to see what Senator Hansen has in his amendment, and I would prefer that we take collective bargaining out of this language. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Quick. (Visitors introduced.) Continuing discussion, Senator Lowe. [LB791]

SENATOR LOWE: Thank you, Mr. President. You know, every fall I enjoy going to the SCALES meeting, which is the South Central Area Law Enforcement Services, and meeting with the law enforcement officers. Members of that association are the Hall County Sheriff, Grand Island Police Department, the Adams County Sheriff, the Hastings Police Department, the Kearney Police Department, Buffalo County Sheriff, Dawson County Sheriff, Holdrege Police Department, Phelps County Sheriff, the Aurora Police Department, the Lexington Police Department, the Cozad Police Department, the Merrick County Sheriff's Department, Clay County Sheriff's Department. They also have a affiliate members of Gosper County Sheriff, the



Floor Debate  
April 04, 2018

---

Harlan County Sheriff, and the Nebraska State Patrol. This year they talked about this bill. I'm going to read an e-mail from my captain of the Kearney Police Department, Captain Dan Lynch. He responds to me: I am certain that the Nebraska State Patrol bargaining unit is against this bill. As president of the Police Chiefs Association, we have asked for the support of our position. I feel most bargaining units will or do object to this, as it encroaches in on their power base. If you have any knowledge of the recent situation with the trooper in northwest Nebraska and the result dismissal of the superintendent, the forced retirement of the Lieutenant Colonel and the motion and firing of others, you can see why they are so opposed to this. I would encourage you to vote for this as it gives law enforcement the ability to honestly report a problem law enforcement officer and it diminishes the likelihood that they would be allowed to resign in lieu of termination. It says, John, we have people in this line of work who should not be in law enforcement. They float between departments and become very difficult to deal with as employees. Cities and counties are afraid to provide information on them to prospective hiring agencies for fear of being sued by this employee. This has to stop. This was the talk at the South Central Law Enforcement Services meeting. There is a problem or there has been a problem and we're trying to correct it. I'm in support of LB791, AM2708 and AM2729. And with as many miles as I put on my vehicle a year in western Nebraska, I constantly wave at the State Patrol because I know they are trying to do the best that they can and that 99.9 percent of them are good people, just trying to do their job and trying to look out for the safety of us as Nebraskans. And I have talked with the committee and I do have a small problem with the bill, but they're willing to work that out. And I believe in them and when it comes to Select File that will be taken care of, because we do need to hire good people and we can't let them sit and wait. So with that, I'd like to yield my time to Senator Albrecht, if she would like to have it. [LB791]

PRESIDENT FOLEY: Thank you, Senator Lowe. Senator Albrecht, one minute. [LB791]

SENATOR ALBRECHT: Sure. You know, it's evident to me in some of the discussions that the big heartburn here is the bargaining, the collective bargaining. So I'd like to go to that part of the amendment and I'm probably going to run out of time. But you know, let's see, on page 4...so line 21, "Nothing in the disciplinary procedures or collective bargaining agreement of the Nebraska State Patrol shall," and I'm going to run out of time, but I want you all to go to that area and...if I run out of time and just understand that this is about the disciplinary part of it. You know, how long do they keep the records? We're talking Nebraska State Patrol only. We're not talking about any of the other agencies. Now, if between now and Select people want to talk about bringing all the bargaining to the table, I don't think that's what they want. But if it's something that we want as a legislative body to ask all of them to do the same thing, I'm not hearing that that's what... [LB791]

PRESIDENT FOLEY: Time, Senator. [LB791]

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

Floor Debate  
April 04, 2018

---

SENATOR ALBRECHT: ...they were...thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Senator Chambers. [LB791]

SENATOR CHAMBERS: Thank you, Mr. President. And to the students up there, I'm glad you come down here. I don't get many visitors, so welcome. I wish that people would not say that they're against the entire bill. When they say that, they don't understand what the bill does. The law requires the Crime Commission to discharge the duty of certifying people as law enforcement persons. Along with that must be the power to decertify. A decertification has to be based on specific items set out in the statute. That's why when you see the types of conduct that would be a basis for decertification, they are listed, because those things are in the statute. Senator Lowe kind of stole my thunder but I'm glad he did it by telling you from what he heard from sheriffs and chiefs. Here is what will happen. One of these rouge officers will be fired or allowed to resign in lieu of firing so that the certificate stays in effect. Then a lawyer will threaten the head of that agency with a lawsuit if anything is revealed to anybody. These small agencies do not have legal counsel. The counties don't have resources. So the information is not given over to the Crime Commission and these bad thuggish cops in fact go from department to department and some of them have been exposed because they will do it at a department where it's large enough and the head of it is not afraid to give the information to the state...I meant to the commission. By giving the Crime Commission subpoena power, it takes these small agencies off the hook. I don't object to the court being involved in the issuance of a subpoena, but once the subpoena issues, then the chief or the sheriff, as the case would be, is off the hook, has no choice. The information is turned over to the Crime Commission and the sheriff or the chief can tell the lawyer sue the Crime Commission. Those lawyers who handle cases for these thuggish cops, it's almost like a racket for them and the threat of the lawsuit is what they use. I am not carrying water for the Governor. Even a stopped clock is right twice a day. Somebody can do the right thing for the wrong motive. The wrong person or wrongdoer may bring a right issue. These people who will stand up and say, I'm against the whole bill and these amendments, haven't read the bill and haven't read the amendment. And I bet not one of them, as well-intentioned as they are, could go through the committee amendment that's offered and discuss each one of those sections. Some cop told them this is bad, so that's what they say. So I hope there are enough members of the Legislature who recognize the problem in law enforcement that even the sheriffs and chiefs explained to Senator Lowe and realize that this bill must move forward. We on the committee, those not on the committee who support the bill have never been opposed to discussing any element of the bill with anybody. But when Senator Hansen offers his amendment, I will state why I'm opposed to it. I don't think that by... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

Floor Debate  
April 04, 2018

---

SENATOR CHAMBERS: You said time? [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR CHAMBERS: Oh, thank you...that by collective bargaining they should be able to say that these issues will not be a basis for decertification. Dishonesty is not going to be allowed to be mentioned. All of those items that are specifically mentioned where the discretion of the chief or the sheriff or whoever is in charge of the agency, those things might be bargained away and they shouldn't be. If they're in the law, then let the contract reflect the language of the law. But don't let them bargain away what the law says because that wouldn't stand anyway. So I'm going to support this to the extent that I can, all the way across the board, and I'm willing to answer any questions about what we put into the amendment. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Chambers. (Visitors introduced.) Continuing discussion, Senator McDonnell. [LB791]

SENATOR McDONNELL: Thank you, Mr. President. Back to where I left off a few minutes ago: So in the process of that termination, you know you have a collective bargaining agreement. You know the person being terminated, they have the employee's bill of rights, and you have management's bill of rights. During that process you're going through, you're making sure that those individuals know their rights. You are going to make that decision on what's best for the organization. Also, you welcome that individual to have the people with them to make sure they know their rights. And with the people that I had to make that decision on and terminate, I welcomed that to be appealed. And not once was those, through that appeal process, through arbitration, was that decision overturned, again, not an easy decision to make. But sitting at the table, sitting at the collective bargaining table, at one time representing the union, at one time representing management, my position did not change. We wanted to make sure that process was as fair as possible, but that the process would work to protect the organization and possibly those people that had made those poor decisions, that no longer could be part of the organization, had a fair right to have their...face their accusers, have the right to make their case. And now we're talking about possibly 12 cases going back ten years and we're looking at some possibly civil, some possibly criminal. And is it really fair? I don't disagree with what's in the bill. I disagree on the process. I believe that if you looked at the organizations and they were sitting at the table, those representing both sides, I believe they would find common ground on how to improve the situation and make sure you are protecting those officers that are fulfilling their oath, doing their job properly, versus those ones that should not be part of the organization any longer. I believe they would work that out. Now we talk about those officers that do the heavy lifting. You've got management that 99 percent of the time will take credit for what is going on and what other

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

Floor Debate  
April 04, 2018

---

people are doing based on their doing the heavy lifting. I have a letter from the Fraternal Order of Police that...in opposition of LB791 and they're stating on behalf of the Nebraska State Fraternal Order of Police, the Omaha Police Officers Association, the Lincoln Police Union, and all the local FOP lodges, representing over 4,000 members of law enforcement, please receive this letter as notification to our collective opposition of LB791. At the same time in the letter--and I believe we all received this letter--our livelihoods are based upon law enforcement certification and we take any change to it very seriously. We are committed to ensuring accountability and transparency for all law enforcement officers, stating that they want to work together. Now you talk about the organizations, where are they from, all these...representing these 4,000 people from east, west, north, south in the state of Nebraska. We've got Omaha, Douglas County, Adams County, University of Nebraska-Lincoln, Ralston, Omaha airport, Lancaster, North Platte, Washington city... [LB791]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: One minute. [LB791]

SENATOR McDONNELL: ...sheriff's office, Gering, Douglas city sheriff's office, Hastings, Norfolk, Papillion, Holdrege, Lincoln, York, Plattsmouth, Fremont, Scottsbluff, Sarpy County, Hall County, Dodge city sheriff, Cass city sheriff, Grand Island, La Vista, Lancaster, Boys Town, Scotts Bluff, Sidney, Bellevue, Columbus, Nebraska City, Beatrice, Kearney, Crete, Lancaster, Buffalo County, Chadron, South Sioux, Hall County, Blair, Fairbury. None of these correspondence that I've had have said they're not willing to work on how to improve things through the collective bargaining process and make sure those people that are hurting the organization and not keeping their oath to serve and protect the citizens... [LB791]

SPEAKER SCHEER: Time, Senator. [LB791]

SENATOR McDONNELL: Thank you. [LB791]

SPEAKER SCHEER: Thank you, Senator McDonnell. Waiting in the queue to speak: Senator Pansing Brooks, Kolowski, Wayne, Kuehn, and others. Senator Pansing Brooks, you're recognized. Not seeing the senator, Senator Kolowski, you're recognized. [LB791]

SENATOR KOLOWSKI: Thank you, Mr. Speaker. I yield my time to Senator McDonnell. Thank you. [LB791]

SPEAKER SCHEER: Senator McDonnell, 4:50. [LB791]

Floor Debate  
April 04, 2018

---

SENATOR McDONNELL: Thank you for the time. The point I am trying to make is that if you're...you bring people together, you look at the concept of collective bargaining, of having that opportunity to bring meaningful democracy to the workplace, both sides equally want to protect the organization. And looking at this letter, with 4,000 they're representing throughout the state, east, west, north, south, 4,000 law enforcement officers stating that we want to work with you, but at the same time we want to be respected and have a voice at the table. Now, if we had this bill in front of them sitting there, both sides trying to be reasonable...and I've been in the position to where I was brought in to negotiations and those negotiations were failing, not based on what was at the table, what was on the table, what was being discussed, but a lot of times it was based on personalities. It was based on something that had happened within that organization but had nothing to do with what they were disagreeing about at the collective bargaining table. I am not saying that every police officer is a perfect human being. Police officers will tell you that. Law enforcement officers will tell you that. But I do believe that 99 percent are doing their job and doing it in the manner that is professional, that is dedicated to helping people and protecting and serving. I do truly believe that. And there's just something that's just a little bit off about this whole situation we're in. And right now we have a legislative resolution, LR435, that Senator Brewer and I have proposed and the purpose of this resolution is to review how the Nebraska State Patrol conducts internal affairs investigations into potentially civil and criminal violations of its members. I think we should be looking at it. We want that transparency. The people representing those officers that do 99 percent of the work, the heavy lifting, are not saying they don't want transparency. They're saying give us an opportunity through the collective bargaining process to have a seat at the table, to address issues, and how to improve, how to improve the process. Because when you're going to terminate someone, that is an extremely serious decision and it should be difficult. It shouldn't be a situation where one person decides possibly, not based on the conduct of that officer but based on personalities, based on something that possibly happened ten years ago with what we're looking at with 1 of these 12 cases at least, that now this person should no longer be able to protect and serve. Ten years later? That makes absolutely no sense to me. If they were bringing down the organization to the point where they had to know...they felt there was no longer a position for that person to serve in based on their conduct and their poor decisions, you're going to do it ten years later? There's just something that's not quite right. [LB791 LR435]

SPEAKER SCHEER: One minute. [LB791]

SENATOR McDONNELL: Not saying that the bill, not saying the concept isn't something that should be discussed. What I'm proposing is that it should be discussed at the collective bargaining table. And I will talk about this later when I have more time. At that point, if it fails, if I'm wrong and both sides don't work extremely hard and diligent to try to come up with ways to improve things in the process, then you have the CIR, and Senator Quick has mentioned the CIR. We can talk about that process. I believe they will be successful at the table if we give them

Floor Debate  
April 04, 2018

---

a chance, because both management and those union representatives, their goal will be the same. To start off with, we must protect the organization and make sure those officers, those people out there serving that are doing the job right, are protected and those that aren't are removed. [LB791]

SPEAKER SCHEER: Time, Senator. [LB791]

SENATOR McDONNELL: Thank you. [LB791]

SPEAKER SCHEER: Thank you, Senator Kolowski and Senator McDonnell. (Visitors introduced.) Next in the queue, Senator Wayne, you're recognized. [LB791]

SENATOR WAYNE: Thank you, Mr. President. The fundamental issue I have with this bill, and there's parts of the bill I really like and parts of the bill I don't really care for too much that I can live with, but one area I can't live with is Section 4 which deals with subpoena powers. The way the language is written now, and which I can't vote to support this bill, is it applies to any and all witnesses. What that means is, without a court order, without any justification, the executive director, if they believe a person is a witness, can subpoena them, make them testify. If they don't, could be held in contempt. So that means all the people up in the balconies who might have witnessed something or believed to have witnessed something could just be subpoenaed. There is no check and balance on a subpoena power. Typically, whether in the legal system or outside, even the Legislature committees have the ability to subpoena. One, we are an elected body. Two, there are steps we have to go through. We have a check and balance with the Exec Board to make sure you just cannot subpoena anyone. Why? Because I thought about subpoenaing one of the cities who wouldn't come to testify at one of my TIF hearings this year, until I figured out the process was too long. So my point is there is always a check and balance when it comes to the right to subpoena and compel someone to testify. But the way this is written in the vague language of "witness," that could be a witness to anything or everything, which goes beyond the scope of an internal investigation which deals with State Patrol. If they want to subpoena a State Patrol, they can rightfully do so, or their commander can command them to be there, or colonel could command them to be there on state time or off state time. That could be a responsibility of their duties. So my issue is, and why I couldn't support...why I can't support this bill on this first round is because it goes beyond the State Patrol and applies to any individual, any individual citizen. So imagine a government agency or quasi-agency, with no protections or no checks, to be able to subpoena any and everybody that we represent. That is a dangerous, dangerous path to walk down when dealing with law enforcement or when dealing with anybody as it relates to the power of subpoena. That is a significant power. Now, one could walk in and testify and maybe incriminate themselves. One may have to hire an attorney. One may take the Fifth Amendment and not choose to testify. But underneath this broad language it would seem

Floor Debate  
April 04, 2018

---

that one would be compelled, if not found in contempt, to do so. So that is a fundamental concern that I can't...it's one of those issues that I can't say I'll ignore and we can fix on Select, because it often relates to people that I represent who have interaction with law enforcement, who could be not only compelled to testify but possibly put in harm's way to do so. And with that, I will yield the rest of my time to Senator McDonnell. [LB791]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Thank you, Senator Wayne. Senator McDonnell, 1:30. [LB791]

SENATOR McDONNELL: Thank you, Mr. President. Thank you, Senator Wayne, for the time. So as we're talking about the process and if you have both parties sitting at the negotiating table and things are not working out, things are not being agreed upon, and it gets to that point where there is an impasse...and this was discussed prior to a number of us being here but in 2011 on how to improve the CIR. And one thing I believe that those changes have helped with is it discourages people to a point to go to the CIR. It keeps them at the table. It keeps them negotiating and trying to work out something between the two parties. But when that fails and you need to have someone step in, we have the CIR. And with that process, I believe it's a fair process and I don't think a lot of us realize quite how it works. And when impasse...when impasses are reached, one of the parties may request the CIR to establish wages and conditions of employment. If the parties agree, the case may be bifurcated into two separate parts: part one, to determine the array; and part two, to determine wages and conditions of employment, if necessary. To determine wages and conditions of employment, the CIR must take into consideration... [LB791]

PRESIDENT FOLEY: Time, Senator. [LB791]

SENATOR McDONNELL: Thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator McDonnell. Senator Kuehn. [LB791]

SENATOR KUEHN: Thank you, Mr. President. Thank you, colleagues. I stand in support of LB791 and the underlying amendments. I have been following this issue through the media as it's emerged over the course of the last year. I appreciate the work of Senator Albrecht and the Business and Labor Committee regarding the issue and trying to bring forward a piece of legislation that addresses those issues, as well as the willingness they've demonstrated on the floor here this morning to continue to address concerns. I'm a little bit bothered that a lot of the discussion seems to be off point or misdirected from many of the substantive issues of the bill. I

Floor Debate  
April 04, 2018

---

will say I have certainly appreciated Senator Chambers' very eloquent but also very descriptive detail of the bill and what his process has been as he's worked with the committee to develop this piece of legislation. I'm not quite ready to throw out my conspiracy theory that he's really working as an emissary for the Governor on this one, so I'll keep holding that one out. But with that, I will yield the remainder of my time to Senator Chambers. [LB791]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Chambers, 4:00. [LB791]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Kuehn. And I think you all have heard me say in the past how intelligent he is and he just demonstrated it again. But the issue that Senator Wayne raised is important, but even that should be kept in context. It's not just a wide-ranging authority to issue subpoenas by anybody. If go to page 5--and this is for the record--starting in line 28, "The executive director of the commission." That's the Crime Commission is the one who'd have this subpoena power. Then when you go to the next page, in the language Senator Wayne was mentioning, starting in line 27: subpoena witnesses, documents, and so forth. You drop down to line 30, all of this information would be relating to law enforcement officer recertification...officer certification revocation. All of this takes place in the context of a hearing where an officer is charged with misbehavior. Information may not be turned over by the head of the agency for which the officer works. The commissioner could then--the head of the Crime Commission--could issue a subpoena for the documents and the witnesses, but they would have to be limited specifically to the matters involving revocation. But when Senator Schumacher raised the issue earlier and suggested that it would be wise to have court involvement, I have no objection to that whatsoever. I doubt that anybody who is for the bill would object and I don't think the head of the Crime Commission would object. Whenever you put another layer in this process and the judiciary is that layer, it creates what is needed in terms of an aura of objectivity. The court is not going to take sides. If the commissioner...if the director of the commission and the commissioners are asking for information that does not pertain to the narrow issue of revocation of certification, then the court would say this is the subpoena that we'll issue, but these are the specific items, these are the specific persons that can be subpoenaed. Before you can subpoena persons, you're going to have to specify exactly what it is you expect to get from them. We're not creating a wide-ranging, roving commission that can go anywhere it chooses, do anything that it pleases, look at whatever it takes a mind to look at. This is a, if you want to say, a comprehensive look at what the commission is doing... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR CHAMBERS: ...that has been assigned by law the duty of certifying officers and the correlative duty of decertifying them when they've misbehaved. I strongly support the bill. Having worked with those who have helped put it in the condition it is now, I'm sure that people



Floor Debate  
April 04, 2018

---

such as Senator McDonnell, Senator Wayne, Senator Krist, who have shown...and Senator...well, "Professor" Schumacher, of course, who have shown an interest, we would be more than willing to work together because what we want is a good bill. We have an end or a goal in mind. And I think everybody can contribute something to it. I think Senator McDonnell is not seeing really what is in the bill with reference to collective bargaining. I don't have the time to address everything he said, but we're not doing away with collective bargaining. [LB791]

PRESIDENT FOLEY: Time, Senator. [LB791]

SENATOR CHAMBERS: But there are some matters I think should be outside that realm. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Krist, you're recognized. This is your third opportunity. Is Senator Krist on the floor? I do not see him. We'll move to Senator Quick. Senator Quick, this is your third opportunity. [LB791]

SENATOR QUICK: Thank you, Mr. President. And I'm still opposed to LB791 as a whole. I'm sure there are portions in there that probably need to be looked at, but I'm still opposed because of the fact that it has the collective bargaining piece in there. And, you know, one of the things that...in our collective bargaining agreements, I talked about this before, but it was just cause. So I'm going to read some of the examples of the Seven Tests for Just Cause and why they're important to collective bargaining agreements. The first one is, was the employee adequately warned of consequences of his conduct? And the description is the warning may be given orally or in printed form. An exception may be made for certain conduct, such as insubordination, coming to work drunk, drinking on the job, or stealing employer property, that is so serious that the employee is expected to know it is punishable. And number two, was the employer's rule or order reasonably related to efficient and safe operations? An example is a boss makes a rule that all employees must wear red T-shirts and they must be tucked in so they don't get caught in the machinery. An employee is fired for wearing a blue T-shirt that was tucked in. Making a rule that T-shirts must be tucked in so they don't get caught in machinery may be reasonable and related to safety, but demanding the T-shirt be blue (sic--red) isn't related to safety or efficiency. Did management investigate before administering the discipline? An example is the boss fires a worker for stealing and then demands evidence from the union that the worker isn't guilty. At the grievance meeting between the boss...meeting, the boss admits he never investigated the incident, just took another employee's word. This probably wouldn't hold up if the union has facts to prove the employee's innocence. They should be presented to the boss even though he failed to properly investigate the case. Was the investigation fair and objective? An example is if an accident happened, does the employer interview everyone present or only management people who were present? If the employer refuses to interview nonmanagement workers, then the

Floor Debate  
April 04, 2018

---

investigation may not be fair. Number five, did the investigation produce substantial evidence or proof of guilt? It is not required that the evidence be proponent...preponderant, conclusive, or beyond reasonable doubt except where the alleged misconduct of such a criminal or reprehensible nature as to stigmatize the employee and seriously impair his chances for future employment. An example is here is an...here it is obvious that the workers have less rights inside the workplace than they would have in civil court, but still the boss must have real evidence, not guesses. Again, the boss cannot try to...cannot just try to make a worker prove his or her innocence without presenting proof or guilt. Number six, were the rules, orders, and penalties applied...were the rules, orders, and penalties applied evenhandedly without discrimination? If enforcement has been lax in the past, management cannot suddenly reverse its course and begin to crack down without first warning employees of its intent. An example is--this is the most common form of discrimination--an employer decides to suspend Mary for taking too long at lunch but lets the employees who eat lunch with a supervisor take extra time every day. This would not hold up. However, if the employer tells everyone that starting on Monday employees will be disciplined for taking too long at lunch and Tuesday Mary comes back late and everyone else has been on time, she may be disciplined. Number seven, was the penalty reasonably related to the seriousness of the offense and past record? If employee A's past record is significantly better than employee B, then the employer probably...properly may give employee A a lighter punishment than employee B for the same offense. An example is the...the classic example is two employees get in an argument and shove each other. One has 25 years of service with a clean record; the other has three years' service with lots of warnings and discipline. Based upon the worker's seniority and records, the employer may give the older worker less punishment than the other worker. And these are examples of the seven... [LB791]

PRESIDENT FOLEY: That's time. [LB1110]

SENATOR QUICK: ...tests for just cause, which I feel is... [LB1110]

PRESIDENT FOLEY: That's time, Senator. [LB791]

SENATOR QUICK: ...extremely important to be within the... [LB791]

PRESIDENT FOLEY: That's time, Senator. [LB1110]

SENATOR QUICK: Okay. [LB1110]

PRESIDENT FOLEY: Thank you, Senator Quick. Senator Brewer. [LB1110]

Floor Debate  
April 04, 2018

---

SENATOR BREWER: Thank you, Mr. President. Let's back up a little bit, and especially for the ones that aren't that familiar with the situation. It isn't just Colonel Rice and the bad decision that was made in the case of him being the superintendent for the Nebraska State Patrol and the actions that happened. But the sequence of events that happened, that was a breakdown of leadership on many levels. Now remember, Tim Flick was a Nebraska State Trooper who did what was called a TVI maneuver. That happened in northern Sheridan County almost on the South Dakota border, October 3, 2016. This event resulted in a grand jury hearing in Sheridan County where Trooper Flick was given an opportunity to go completely through that process and was not found guilty of anything, was cleared on all charges. But it became an issue of something in the paperwork, something that was said, something that was done, but because it was an IA, it was not available for us to review. In the sequence of events that happened after that, a Sergeant Kevin Waugh, who was in Chadron, his supervisor also was tangled up in it, along with the entire chain of command. And as you remember from a few months ago, a number of people were moved, demoted. Kevin Waugh was retired early and Tim Flick was terminated. We can say what we want about the situation with Rice, but that's history. The new superintendent is in place. When he came before the Government Committee, I spent an hour grilling him on these issues and I was pleased that he seemed to have a good handle on it. I was disappointed I couldn't get answers, but I understand, too, that they're...because of the rules that we're trying to address here, he was limited in what he could tell us. But it needs to be addressed because 16 months after the incident, now a special prosecutor has charged former Trooper Tim Flick and he potentially could spend two years in jail as a result of this. The process was deplorable and we need to figure out how to fix it. Now the troopers' union has helped to work on the AMs and I think it's a big step forward. I think we're getting wrapped up in union issues with lunches and shirts and all this. It's about leadership. It's about doing the right thing when the time comes that you're put in a position where you need to do that. And I'm not sure that all of those issues have been corrected, but I think the new superintendent is working hard to get the right people in the right place, or at least I'm hoping he is. But as we look at this bill, it is not perfect. There are things I'm not completely happy about it, but I think it's a great step forward and so I'm going to support LB791 and the attached amendments and...thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Brewer. (Visitors introduced.) Continuing discussion, Senator Crawford. [LB791]

SENATOR CRAWFORD: Thank you, Mr. Lieutenant Governor, and thank you, colleagues. I think we've had a very good conversation about many of the components of this bill, and I want to stress that I am very much in favor of the transparency and accountability components of the bill and we want to make sure that we have the corrections and protections that we've discussed in our debate already. We've mentioned the importance of attention to court involvement in the subpoena and Senator Schumacher mentioned the importance of an appeal. I think those are

Floor Debate  
April 04, 2018

---

important issues to be addressed as we move forward. I want to stress that a big part of the heartache and deliberation that has been raised here can be solved very simply. So some of these issues are tough issues to solve and some of them are very simple issues to solve. And, colleagues, with Senator Hansen's amendment, we can make sure we have exactly the same transparency requirements that are in place in the Business and Labor amendment. We simply put that in as that, as clear and clean, that the...nothing in the disciplinary procedures of the Nebraska State Patrol shall: limit the discretion of the Superintendent...and Public Safety to disclose to the Legislature, the Nebraska Commission on Law Enforcement and Criminal Justice, the Nebraska Police Standards Advisory Council, the Nebraska Equal Opportunity Commission, or a complainant on the status or outcome of an internal investigation or discipline; or limit the consideration of the patrol, for purposes of progressive discipline, or disciplinary action in a prior case; or limit the time during which a disciplinary investigation may be initiated or discipline may be imposed; or require the release to a member who was under internal investigation for an allegation that could result in a charge of a Class I misdemeanor or felony; or limit or restrict access by the individual or individuals conducting the internal investigation to materials including records of current or past discipline or misconduct; or prevent, limit, or restrict access by the Nebraska Commission of Law Enforcement and Criminal Justice to internal investigation reports or materials. So Senator Hansen's amendment that's coming has all of those same exact protections that are in the current Section 3. It simply says directly and cleanly nothing in the disciplinary procedures of the Nebraska State Patrol shall limit any of these transparency or accountability measures. So it's a very simple fix. We can keep all of this accountability and disclosure language in the bill without having it appear in a collective action section of statute. And it maintains all of those same transparency elements, so it seems to me that it's a very appropriate way to move forward, to reduce concerns of some who are concerned about the precedent that's set by putting this language into a collective bargaining statute. Even if that one bargaining unit is okay with the language, it's simple and easy to simply put those same exact restrictions in with very clean language that takes away the opposition in terms of concern about collective bargaining specifically. And it seems an easy solution and I urge my colleagues to adopt that solution. It's a good way to move forward to reduce one of the concerns that some people have about this bill. I think it is important that we move forward in transparency and accountability, move forward in protecting women who are victims of sexual harassment. Those are all important aims of the bill and we can move forward on those aims with appropriate...  
[LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR CRAWFORD: Thank you. ...with appropriate corrections and protections. And Senator Hansen's amendment is a simple change that leaves in, again, all of those transparency protections. It simply puts it in, in clean language that doesn't have other baggage with it that raises concerns by other people outside of...they were outside of the stakeholders discussion and

Floor Debate  
April 04, 2018

---

concerns of many people, of some of the people on the committee who are concerned about making sure that we protect the integrity of those collective bargaining statutes themselves. I have no concerns with putting those restrictions in on the disciplinary procedures and fine with having that language in place. I just hope and urge my colleagues to put it in clean so it comes in and can really focus on transparency and accountability, which I think is the core focus of this bill is to protect transparency and accountability. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Chambers, you're recognized. This is your third opportunity. [LB791]

SENATOR CHAMBERS: Mr. President, members of the Legislature, this is a...it can appear to be a wide-ranging bill, but the scope is really narrow. And I've talked to Senator McDonnell. I'm sure that Senator Krist and Senator Wayne and even if Senator Blood was interested enough, and I'll say "even," not diminishing, but she's just against everything in the bill and the amendments, but people who have a genuine interest in seeing, first of all, that there is a problem. I could read some of these stories about these cops who one guy exposed himself in one location. The information couldn't be given. He went to work. He left that county and went to work in Fremont and did the same thing and they were letting him resign in lieu of firing. And these are the kind of things that happen because nobody wanted to turn the information over to the Crime Commission. Now most of you all are good citizens and you never have any cross words with the police. But I'm aware of how many wrongful things the police do. I don't give them a clean bill of health and say that a cop said it. My first inclination is that the cop is not telling the truth. I have yet to see any incident...even where the cops lied and said this black kid in Chicago was coming toward them with a knife and they shot him 16 times, the police union justified the cops and defended them. This young man who was shot in his grandparents' backyard in California, the police union came out immediately and defended the police and said, well, if he didn't have a gun, he probably had a crowbar that looked like a gun. But there was a helicopter heat sensor, and they recorded him running all the time and never faced the police and also that he was shot in the back six times. Then the union went quiet. I have yet to see any cop do anything against a black person and the union not immediately defend the cops--immediately! When that black man in South Carolina was running and the cops shot him in the back, the union defended him, and even though they showed the cop taking his own Taser and placing it by the man after he had shot him, and the union defended him. Don't tell me about a police union. They are worse than the mafia as far as I'm concerned, not every individual, but when every time and incident happens, they immediately take the side of the cop and they haven't even investigated anything. I'd say ban unions, but that's not my reaction. I'm aware of the roles that unions play. You see, if was the electrician's union that kept us from working. They wouldn't let black people in the union. Construction unions, we couldn't get in the union. They were taking care of white men against black men, and yet it takes a black man to defend the union. So some of you white people need to understand what I'm talking about. You've never confronted what I have

Floor Debate  
April 04, 2018

---

confronted and you couldn't take it because I look at how you fold right now under small things. Then you're going to cry for these wrongdoing cops who have committed what amounts to crimes and they can go from department to department to department and it's documented even in newspaper stories and you all don't want to see anything done about it, not everybody here, but this bill is an attempt to do something about those matters. It's not the Governor's bill anymore. [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR CHAMBERS: And I hope that this bill can move and I'm confident that those who have shown an interest will work to make sure we do with the bill what is designed to be done. And I'm going to bargain. Now, I'm the only one who is processing a complaint against that doctor who messed over that female trooper that Senator Howard talked about, and she thanked me at the hearing. The media didn't mention that. They don't mention what I do. And I'm still processing it, by the way. But I don't get that kind of consideration here from anybody, and I don't expect it because I'm doing what I do because I think that is right. And I'll keep doing that. And that's why I'll fight for this bill and hope that the others who have less negativity can persuade the rest of you to let this bill live and we turn it into what it ought to be. Thank you, Mr. President. [LB791]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator McDonnell, you're recognized, your third opportunity [LB791]

SENATOR McDONNELL: Thank you, Mr. President. It's been a good discussion. I believe...this bill, I believe people are trying to find ways to improve things and look out for those public safety officers, those people out there doing the job every day in the right way, professional way. At the same time, we have to make sure we understand that there's a process, and that's why I'm so adamant about respecting the collective bargaining process. As I've mentioned earlier, you have, in most collective bargaining agreements, you have an employees' bill of rights, you have a management bill of rights. You look at those in the process you go through, because if you're going to take away someone's livelihood because of their actions and those actions reflecting poorly on the organization and the professionalism, it's very serious. And the idea that you...it forces both sides to follow the same set of rules, no matter if that person, as a manager, you possibly have a friendship with that person, you possibly have had some ill feelings in the past with that person. That's not supposed to come into play. As I mentioned earlier, we're...you know, we have a resolution to look into some of the things that have happened internally with the State Troopers. I believe that 99 percent of them are doing the job the right way. That's been my experience if you look at personalities coming into play and people not being professional. At one point I was, as the state of Nebraska president for the firefighters, I

Floor Debate  
April 04, 2018

---

was asked to go into another department that I wasn't very...I wasn't familiar with, but asked to help with their collective bargaining. And as I sat there and was educated on what they had discussed, it wasn't that they were disagreeing about what was on the collective bargaining table at that point, it was more about personalities. And I think Senator Groene would appreciate this. At one point I learned, away from the table, that it had to do with the boarding of a horse and the payment--two people, two adults, one representing management, one representing the union, and their real problem was about a payment and boarding of a horse, no massaging, but the idea that that had nothing to do with what they were supposed to be talking about. But still, we're human and we're not perfect. And what bothers me about this bill is not the idea of how it's trying to improve things. I think it's the way without respecting that collective bargaining process and having those people sit at the table. And as I read earlier, those officers, they want transparency, they want to make sure that people are looking at them, because, again, 99 percent of them do a great job and they work hard and they're dedicated. They don't want to have all of a sudden that one, two, three, four people, whatever it might be, that make poor decisions that have not...they do not respect the process and the people they're serving, to bring down the organization and reflect poorly on them. Internally I felt that. I felt that there was times, and I mentioned some of the terminations that I had to... [LB791]

PRESIDENT FOLEY: One minute. [LB791]

SENATOR McDONNELL: ...I had to go ahead and make that decision as fire chief, taking that extremely seriously. I wanted to be wrong. I wanted information to come in at some point to say, no, that's not what happened, because I didn't want to take away their livelihood. But after we went through the process and that decision was made by me, I encouraged it to be appealed and there was times to where the union did not support that individual's appeal because they said they were treated fairly. Unions aren't perfect. People that run unions aren't perfect--again, a cross-section of society. But I believe 99 percent of the people that are working in unions and doing those jobs are doing it for the right reasons. I think they're doing it to basically bring meaningful democracy to the workplace. There's surveys that have been done by people joining unions and of course you talk about improving safety and wages and benefits. But also what they wanted to be treated, number one, treated fairly, treated as human beings and have some respect... [LB791]

PRESIDENT FOLEY: Time, Senator. [LB791]

SENATOR McDONNELL: ...from the people that are...thank you. [LB791]

PRESIDENT FOLEY: Thank you, Senator McDonnell. Before moving to the 11:45 agenda, items for the record, please. [LB791]

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

Floor Debate  
April 04, 2018

---

CLERK: Mr. President, quickly, Senator Stinner offers LR471; Senator Crawford, LR472. Both will be laid over. That's all that I have. (Legislative Journal pages 1376-1377.) [LR471 LR472]

PRESIDENT FOLEY: Thank you, Mr. Clerk. We'll now move to the 11:45 agenda, which is on page 2 of your agendas, members. First bill is LB497. Mr. Clerk. [LB497]

CLERK: Senator Wishart, I have no amendments to LB497. [LB497]

PRESIDENT FOLEY: Senator Wishart for a motion. [LB497]

SENATOR WISHART: Thank you, Mr. President. I move to advance LB497 to E&R for engrossing. [LB497]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB497 advances. Moving to LB629. [LB497 LB629]

CLERK: LB629, I have no amendments, Senator. [LB629]

PRESIDENT FOLEY: Senator Wishart. [LB629]

SENATOR WISHART: Thank you, Mr. President. I move to advance LB629 to E&R for engrossing. [LB629]

PRESIDENT FOLEY: Members, you've heard the motion to advance LB629 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB629 advances. Moving to LB799. Mr. Clerk. [LB629 LB799]

CLERK: LB799, Senator, I have no amendments to the bill. [LB799]

PRESIDENT FOLEY: Senator Wishart. [LB799]

SENATOR WISHART: Mr. President, I move to advance LB799 to E&R for engrossing. [LB799]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB799 advances. Moving to LB812. [LB799 LB812]



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

Floor Debate  
April 04, 2018

---

CLERK: LB812, Senator, I have no amendments to the bill. [LB812]

PRESIDENT FOLEY: Senator Wishart. [LB812]

SENATOR WISHART: Mr. President, I move to advance LB812 to E&R for engrossing. [LB812]

PRESIDENT FOLEY: Members, you've heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB812 advances. LB815. [LB812 LB815]

CLERK: LB815, Senator does have Enrollment and Review amendments. (ER150, Legislative Journal page 1258.) [LB815]

PRESIDENT FOLEY: Senator Wishart. [LB815]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB815. [LB815]

PRESIDENT FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. E&R amendments are adopted. Mr. Clerk. [LB815]

CLERK: Nothing further on the bill, Senator. [LB815]

PRESIDENT FOLEY: Senator Wishart. [LB815]

SENATOR WISHART: Mr. President, I move to advance LB815 to E&R for engrossing. [LB815]

PRESIDENT FOLEY: Members, you've heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB815 advances. LB733. [LB815 LB733]

CLERK: LB733, I have no amendments, Senator. [LB733]

PRESIDENT FOLEY: Senator Wishart. [LB733]

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

Floor Debate  
April 04, 2018

---

SENATOR WISHART: Mr. President, I move to advance LB733 to E&R for engrossing. [LB733]

PRESIDENT FOLEY: Members, you heard the motion to advance LB733 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB733 advances. LB848. [LB733 LB848]

CLERK: LB848, I have no amendments. [LB848]

PRESIDENT FOLEY: Senator Wishart. [LB848]

SENATOR WISHART: Mr. President, I move to advance LB848 to E&R for engrossing. [LB848]

PRESIDENT FOLEY: Senator Chambers, you're recognized. [LB848]

SENATOR CHAMBERS: Thank you. Mr. President, this will not be long. If the Attorney General is listening, I want him to get this message. If he's not and he's got a friend in here or somebody who will talk to him, give it to him. If I were vindictive like the Attorney General, I know why he needs this bill, but I'm not vindictive like the Attorney General. That's all that I have to say. Thank you, Mr. President. [LB848]

PRESIDENT FOLEY: Thank you, Senator Chambers. Seeing no further discussion, you've heard the motion to advance the bill to E&R for engrossing. The motion is to advance LB848 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB848 advances. Moving to LB847. [LB848 LB847]

CLERK: LB847 does have Enrollment and Review amendments. (ER151, Legislative Journal page 1289.) [LB847]

PRESIDENT FOLEY: Senator Wishart. [LB847]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB847. [LB847]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Members, you've heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB847]

CLERK: Nothing further on the bill, Senator. [LB847]

PRESIDENT FOLEY: Senator Wishart. [LB847]

SENATOR WISHART: I move to advance LB847 to E&R for engrossing. [LB847]

PRESIDENT FOLEY: Members, you've heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB847 advances. We'll move to LB732. [LB847 LB732]

CLERK: LB732 does have Enrollment and Review amendments. (ER152, Legislative Journal page 1289.) [LB732]

PRESIDENT FOLEY: Senator Wishart. [LB732]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB732. [LB732]

PRESIDENT FOLEY: Members, you've heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB732]

CLERK: Nothing further, Senator. [LB732]

PRESIDENT FOLEY: Senator Wishart. [LB732]

SENATOR WISHART: Mr. President, I move to advance LB732 to E&R for engrossing. [LB732]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB732 advances. Moving to LB840. [LB732 LB840]

CLERK: I have no amendments to LB840, Senator. [LB840]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Senator Wishart. [LB840]

SENATOR WISHART: Mr. President, I move to advance LB840 to E&R for engrossing. [LB840]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB840 advances. Moving to LB708. [LB840 LB708]

CLERK: LB708 does have Enrollment and Review amendments. (ER154, Legislative Journal page 1293.) [LB708]

PRESIDENT FOLEY: Senator Wishart. [LB708]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB708. [LB708]

PRESIDENT FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB708]

CLERK: Nothing further, Senator. [LB708]

PRESIDENT FOLEY: Senator Wishart. [LB708]

SENATOR WISHART: Mr. President, I move to advance LB708 to E&R for engrossing. [LB708]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB708 advances. LB885. [LB708 LB885]

CLERK: LB885, Senator, I have no amendments to the bill. [LB885]

PRESIDENT FOLEY: Senator Wishart. [LB885]

SENATOR WISHART: Mr. President, I move to advance LB885 to E&R for engrossing. [LB885]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB885 advances. We'll move to LB1012. [LB885 LB1012]

CLERK: LB1012, Senator, I have E&R amendments, first of all. (ER155, Legislative Journal page 1294.) [LB1012]

PRESIDENT FOLEY: Senator Wishart. [LB1012]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB1012. [LB1012]

PRESIDENT FOLEY: The motion before us is to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB1012]

CLERK: Senator Harr would move to amend with AM2706 (Legislative Journal page 1378.) [LB1012]

PRESIDENT FOLEY: Senator Harr, you're recognized to open on AM2706. [LB1012]

SENATOR HARR: Thank you, Mr. President. AM2706 amends...is a technical cleanup. Specifically, AM2706 strikes Section 2 from the committee amendment which amends Section 44-3910 on page 7, lines 22-23. AM2706 also strikes a reference to a precicensing education requirement in Section 44-3909 to 44-4913. This is necessary due to passage of LB743, which was approved by the Governor on March 21, 2018. This was brought to my attention by Bill Drafters during E&R process. However, it was Bill Drafters' opinion that it could not be corrected by an E&R amendment, hence, I brought AM2706 and would ask for your support on AM2706. [LB1012 LB743]

PRESIDENT FOLEY: Thank you, Senator Harr. Is there any discussion on AM2706? Seeing none, Senator Harr waives close. The question before the body is the adoption of AM2706. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. [LB1012]

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Harr's amendment. [LB1012]

PRESIDENT FOLEY: AM2706 is adopted. Mr. Clerk. [LB1012]

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

Floor Debate  
April 04, 2018

---

CLERK: Nothing further, Mr. President. [LB1012]

PRESIDENT FOLEY: Senator Wishart. [LB1012]

SENATOR WISHART: Mr. President, I move to advance LB1012 to E&R for engrossing. [LB1012]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB1012 advances. We'll move to LB701. [LB1012 LB701]

CLERK: I have E&R amendments to LB701, Senator. (ER156, Legislative Journal page 1294.) [LB701]

PRESIDENT FOLEY: Senator Wishart. [LB701]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB701. [LB701]

PRESIDENT FOLEY: The question is the adoption of the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB701]

CLERK: Nothing further, Mr. President. [LB701]

PRESIDENT FOLEY: Senator Wishart. [LB701]

SENATOR WISHART: Mr. President, I move to advance LB701 to E&R for engrossing. [LB701]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB701 advances. LB742. [LB701 LB742]

CLERK: LB742, I have no amendments, Senator. [LB742]

PRESIDENT FOLEY: Senator Wishart. [LB742]

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

Floor Debate  
April 04, 2018

---

SENATOR WISHART: Mr. President, I move to advance LB742 to E&R for engrossing. [LB742]

PRESIDENT FOLEY: Members, you've heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB742 advances. We'll move to LB1070. [LB742 LB1070]

CLERK: LB1070 does have E&R amendments, Senator. (ER160, Legislative Journal page 1350.) [LB1070]

PRESIDENT FOLEY: Senator Wishart. [LB1070]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB1070. [LB1070]

PRESIDENT FOLEY: The question is the adoption of the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB1070]

CLERK: Nothing further, Senator. [LB1070]

PRESIDENT FOLEY: Senator Wishart. [LB1070]

SENATOR WISHART: Mr. President, I move to advance LB1070 to E&R for engrossing. [LB1070]

PRESIDENT FOLEY: Motion is to advance the bill. Those in favor say aye. Those opposed say nay. LB1070 advances. LB889. [LB1070 LB889]

CLERK: LB889, Senator, does have E&R amendments. (ER162, Legislative Journal page 1352.) [LB889]

PRESIDENT FOLEY: Senator Wishart. [LB889]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB889. [LB889]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: The motion is to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB889]

CLERK: Nothing further, Senator. [LB889]

PRESIDENT FOLEY: Senator Wishart. [LB889]

SENATOR WISHART: Mr. President, I move to advance LB889 to E&R for engrossing. [LB889]

PRESIDENT FOLEY: Members, you heard the motion to advance LB889 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB889 advances. We'll move to LB766. [LB889 LB766]

CLERK: LB766 has no amendments, Senator. [LB766]

PRESIDENT FOLEY: Senator Wishart. [LB766]

SENATOR WISHART: Mr. President, I move to advance LB766 to E&R for engrossing. [LB766]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB766 advances. LB717. [LB766 LB717]

CLERK: LB717, I have no amendments to the bill. [LB717]

PRESIDENT FOLEY: Senator Wishart. [LB717]

SENATOR WISHART: Mr. President, I move to advance LB717 to E&R for engrossing. [LB717]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB717 advances. LB859. [LB717 LB859]

CLERK: LB859, Senator, once again, no amendments to the bill. [LB859]



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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Senator Wishart. [LB859]

SENATOR WISHART: Mr. President, I move to advance LB859 to E&R for engrossing. [LB859]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB859 advances. LB1000. [LB859 LB1000]

CLERK: LB1000 does have Enrollment and Review amendments. (ER161, Legislative Journal page 1352.) [LB1000]

PRESIDENT FOLEY: Senator Wishart. [LB1000]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB1000. [LB1000]

PRESIDENT FOLEY: The question is the adoption of the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB1000]

CLERK: Nothing further, Senator. [LB1000]

PRESIDENT FOLEY: Senator Wishart. [LB1000]

SENATOR WISHART: Mr. President, I move to advance LB1000 to E&R for engrossing. [LB1000]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB1000 advances. LB1003. [LB1000 LB1003]

CLERK: LB1003, I have no amendments, Senator. [LB1003]

PRESIDENT FOLEY: Senator Wishart. [LB1003]

SENATOR WISHART: Mr. President, I move to advance LB1003 to E&R for engrossing. [LB1003]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Members, you heard the motion to advance LB1003 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB1003 advances. LB983. [LB1003 LB983]

CLERK: LB983, Senator, I have no amendments to the bill. [LB983]

PRESIDENT FOLEY: Senator Wishart. [LB983]

SENATOR WISHART: Mr. President, I move to advance LB983 to E&R for engrossing. [LB983]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB983 advances. LB982. [LB983 LB982]

CLERK: LB982, Senator, I have no amendments to the bill. [LB982]

PRESIDENT FOLEY: Senator Wishart. [LB982]

SENATOR WISHART: Mr. President I move to advance LB982 to E&R for engrossing. [LB982]

PRESIDENT FOLEY: You've heard the motion to advance LB982 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB982 advances. LB1036. [LB982 LB1036]

CLERK: LB1036, I have no amendments to the bill. [LB1036]

PRESIDENT FOLEY: Senator Wishart. [LB1036]

SENATOR WISHART: Mr. President, I move to advance LB1036 to E&R for engrossing. [LB1036]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB1036 advances. Moving to LB1038. [LB1036 LB1038]

CLERK: No E&Rs. Senator Thibodeau would move to amend with AM2790. (Legislative Journal page 1379.) [LB1038]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Senator Thibodeau, you're recognized to open on AM2790. [LB1038]

SENATOR THIBODEAU: Thank you, Mr. President. This is a friendly amendment. Basically it is putting the E clause on LB1038 so that this bill can become effective for the upcoming primary election. Thank you. [LB1038]

PRESIDENT FOLEY: Thank you, Senator Thibodeau. Is there any discussion on the amendment? Seeing none, Senator Thibodeau, you're recognized to close. She waives closing. The question before the body is the adoption of AM2790. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please. [LB1038]

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Thibodeau's amendment. [LB1038]

PRESIDENT FOLEY: The amendment is adopted. Anything further, Mr. Clerk? [LB1038]

CLERK: Nothing further. [LB1038]

PRESIDENT FOLEY: Senator Wishart. [LB1038]

SENATOR WISHART: Mr. President, I move to advance LB1038 to E&R for engrossing. [LB1038]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB1038 advances. LB682. [LB1038 LB682]

CLERK: LB682, Senator, has E&R amendments, first of all. (ER163, Legislative Journal page 1356.) [LB682]

PRESIDENT FOLEY: Senator Wishart. [LB682]

SENATOR WISHART: Mr. President, I move the E&R amendments to LB682. [LB682]

PRESIDENT FOLEY: Members, you heard the motion to advance the E&R amendments...to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB682]

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

Floor Debate  
April 04, 2018

---

CLERK: Mr. President, Senator Blood, I have AM2794 in front of me. (Legislative Journal pages 1379-1380.) [LB682]

PRESIDENT FOLEY: Senator Blood, you're recognized to open on AM2794. [LB682]

SENATOR BLOOD: Thank you, Mr. President. This is just a minor change. It does not change the subject matter. It would change line 3...excuse me, page 3, line 13, where we've inserted: Upon termination of a rental agreement to the service member, that service member is entitled to the return of any deposit or prepaid lease agreement. It changes the word "lease" to "rental agreement." [LB682]

PRESIDENT FOLEY: Thank you, Senator Blood. Is there any discussion on the amendment? Seeing none, Senator Blood, you're recognized to close. She waives closing. The question before the body is the adoption of AM2794. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please. [LB682]

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Blood's amendment. [LB682]

PRESIDENT FOLEY: AM2794 is adopted. Mr. Clerk. [LB682]

CLERK: Mr. President, Senator Blood would move to amend with AM2755. (Legislative Journal page 1380.) [LB682]

PRESIDENT FOLEY: Senator Blood, you're recognized to open on AM2755. [LB682]

SENATOR BLOOD: Thank you, Mr. President. This amendment is in direct response to Senator Schumacher's concerns during our General File debate. We wanted to make sure that obligations prior to the effective date do not pertain to this bill so we're not in violation of the constitution. [LB682]

PRESIDENT FOLEY: Thank you, Senator Blood. Is there any discussion on AM2755? Seeing none, Senator Blood, you're recognized to close. She waives close. The question before the body is the adoption of AM2755. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please. [LB682]

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

Floor Debate  
April 04, 2018

---

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of Senator Blood's amendment. [LB682]

PRESIDENT FOLEY: AM2755 is adopted. Mr. Clerk. [LB682]

CLERK: Nothing further, Mr. President. [LB682]

PRESIDENT FOLEY: Senator Wishart. [LB682]

SENATOR WISHART: Mr. President, I move to advance LB682 to E&R for engrossing. [LB682]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB682 advances. LB749. [LB682 LB749]

CLERK: LB749, Senator, I have no amendments to the bill. [LB749]

PRESIDENT FOLEY: Senator Wishart. [LB749]

SENATOR WISHART: Mr. President, I move to advance LB749 to E&R for engrossing. [LB749]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB749 advances. Moving to LB786. [LB749 LB786]

CLERK: LB786, Senator, I have no amendments to the bill. [LB786]

PRESIDENT FOLEY: Senator Wishart. [LB786]

SENATOR WISHART: Mr. President, I move to advance LB786 to E&R for engrossing. [LB786]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB786 advances. LB1030. [LB786 LB1030]

CLERK: LB1030, Senator, I have no amendments to the bill. [LB1030]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Senator Wishart. [LB1030]

SENATOR WISHART: Mr. President, I move to advance LB1030 to E&R for engrossing. [LB1030]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB1030 advances. LB1052. [LB1030 LB1052]

CLERK: LB1052, Senator, I have no amendments to the bill. [LB1052]

PRESIDENT FOLEY: Senator Wishart. [LB1052]

SENATOR WISHART: Mr. President, I move to advance LB1052 to E&R for engrossing. [LB1052]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB1052 advances. LB1110. [LB1052 LB1110]

CLERK: Mr. President, LB1110. I have E&R amendments, Senator. (ER165, Legislative Journal page 1358.) [LB1110]

PRESIDENT FOLEY: Senator Wishart. [LB1110]

SENATOR WISHART: Mr. President, I move the adoption of the E&R amendments to LB1110. [LB1110]

PRESIDENT FOLEY: The question is the adoption of the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB1110]

CLERK: Nothing further on LB1110, Senator. [LB1110]

PRESIDENT FOLEY: Senator Wishart. [LB1110]

SENATOR WISHART: Mr. President, I move to advance LB1110 to E&R for engrossing. [LB1110]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Members, you heard the motion to advance LB1110 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB1110 advances. Items for the record, please. [LB1110]

CLERK: Mr. President, just one. Senator Vargas would like to add his name to LB548 as cointroducer. (Legislative Journal page 1380.) [LB548]

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

PRESIDENT FOLEY: Members, you heard the motion to recess till 1:30. Those in favor say aye. Those opposed say nay. We are in recess.

RECESS

PRESIDENT FOLEY PRESIDING

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

ASSISTANT CLERK: There is a quorum present, Mr. President.

PRESIDENT FOLEY: Thank you, Mr. Clerk. Any items for the record?

ASSISTANT CLERK: There are, Mr. President. I have a Reference report from the Executive Board for the various interim study resolutions. Amendments to be printed to LB791 from Senator Blood; Senator Smith to LB1089. New resolution, LR473, by Senator Bolz, that will be laid over. That's all I have at this time. (Legislative Journal pages 1381-1391.) [LB791 LB1089 LR473]

PRESIDENT FOLEY: Thank you, Mr. Clerk. (Visitors introduced.) And we will proceed right to the agenda, General File, 2018 committee priority bill. Mr. Clerk. [LB548]

ASSISTANT CLERK: Mr. President, first bill this afternoon, LB548 by Senator Lindstrom. (Read title.) Bill was introduced on January 18 of 2017, was referred to the Nebraska Retirement Systems Committee, placed on General File with committee amendments attached. (AM2595, Legislative Journal page 1207.) [LB548]

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Lindstrom, you're recognized to open on LB548. [LB548]

SENATOR LINDSTROM: Thank you, Mr. President. Thank you, colleagues. This bill is going to be uncomfortable, this issue will be uncomfortable, but I ask that you listen. Please ask me any question that you have. This is a complicated issue and I'm going to walk you through it from where we were, where we are now, and where we're going. And I introduced LB548 in large part because I believe it saves my taxpayers money and it will save all of Omaha taxpayers money. I'm asking that you grant us local control. This is not a tax increase. This is a restructuring of existing debt. I've been working with OPS and the administration on this issue for 18 months and I'd just like to walk you through, again, where we're...where we've been, where we are right now, and where we are going. So the pension plan currently is in the 60 percent funded ratio. Of course, you always want to work towards getting that to 100 percent, but this did not happen overnight. This has been an ongoing process through investments, poor investment decisions, and which has led us to this solution, which, again, I want to say and make this clear, this is the best worst solution that we have. And I think it'll come out today as we have this discussion. I want to ask all the senators who, if you don't understand the issue, please let me know. So the first issue that has come up, this is issues and I'd like to talk in it as far as buckets and where the funding source will come from. Currently we make actuarial required contributions. You'll hear the word "ARC" often today. Those payments, those ARC payments, are made out of the General Fund. Okay? That is out of the General Fund which is \$600 million of the budget, of the OPS budget. Eighty-five percent of that \$600 million is payroll. So over the course of the next 30 years, because we'll see actuarial data, we have to make payments starting next year in the tune of \$21 million, going up the next following year \$23 million, \$25 million, \$27 million, \$29 million, till the year 2041 where it's going to be above \$45 million. So by restructuring the debt and issuing pension obligation bonds, this shores up the plan and infuses \$300 million up-front to work in the asset allocation model that the Nebraska Investment Council has. I want to give you a little history on the two different plans. There are two different plans in the state of Nebraska dealing with teachers' pensions. We have the Omaha teachers' pension and we have the Nebraska teachers' pension. The reason why we have two plans is that the Omaha teachers' pension is the oldest plan. So at one time years ago, the Omaha teachers' pension plan looked pretty good and NPERS had contemplated taking on that plan. But because of different investment decisions that transpired, not unlike anything that has happened in '08-09 in the rest of the country and the United States, the trustee and the board of trustees at OSERS made reactionary decisions. So through the process of '08-09, they started to unwind the asset allocation, the assets, which led us to a 35 percent equity to 65 percent fixed income, noncorrelated assets, dealing with private equity, real assets, investment instruments that will never achieve the 7.5 percent that we will get...or need to get year over year. So by putting us in a situation where we cannot achieve that 7.5 percent, we're behind the eight ball. Now last year, January 1, 2017, the...we had a bill, working with Senator Kolterman, that we took over the



Floor Debate  
April 04, 2018

---

investments as the state of Nebraska. We took over the \$1.2 billion pension fund from the OSERS board. By doing this, we now are able to make future investment decisions based on their asset allocation, which is 70/30: 70 percent equities to 30 percent fixed income on bonds. And that's all well and good and we're...we want to continue to do that. The one portion of this that creates a little bit of a problem--actually a big problem--is that we have to unravel the investment decisions that the previous group made before, and it's going to take at least five years to unravel those to get us into an asset allocation model that is on-line and achievable at that 7.5 percent. So while I understand that issuing these pension obligation bonds is not comfortable, it is under the \$1.05 levy. This does not require an override, a vote of the people for an override. This is simply restructuring the debt to take advantage of where interest rates are. Interest rates, these bonds would be issued at 25 years at 5 percent, all the while we have to achieve assumed rate of return of 7.5 percent and that's in statute; we have to do that every year. By issuing the bonds now, we get to take advantage of the arbitrage between 7.5 percent and 5 percent. And over the course of time and using the actuarial math, this gets us into a better position than if we did nothing. And so by issuing these bonds we infuse that \$300 million up-front where the Nebraska Investment Council would invest those at a 70/30 blend which gets us to the 7.5 percent, all the while the current investments that we have are being unraveled to then shift. And so under the actuarial statements, you'll see that this is a predictable payment, not unlike what happened when interest rates, when they were low and people refinanced their debt or refinanced their mortgage. If you remember when interest rates...you could get a mortgage at 3 percent, 3.5 percent, people took advantage of that, refinanced. That is what we're doing here. The unfunded liability is not going away. We are going to have to pay it regardless if we do this or if we do something else. But by doing this, it gives us a higher probability by authorizing OPS to take these...issue these bonds, it will give us a higher probability of achieving that 7.5 percent over time. So we're...I know that there's been reservations about the...where the two buckets and the funding mechanism comes from. I want to emphasize that that bucket that's under the \$1.05 is going to be used for the ARC payment; it's also going to be used for the pension obligation bond. So it's the same source of money that is being utilized in paying off the unfunded liability, which is around \$700 million. The other argument that has come up is, how will OPS operate at 93 cents? Well, I can tell you that we already are operating at 93 cents. So as I described before, this ARC payment is not going away and it's rapidly climbing because the investments will not be able to catch up. So 2019 through 2047, you'll continually get this ARC payment that needs to be paid. Well, as that goes up, the amount of OPS and what they're able to utilize continues to diminish. So the 93 cents will turn to 92 cents, will turn to 91 cents, turn to 90 cents, so on and so forth. By stabilizing the pension plan, by infusing the \$300 million up-front, one, it takes away the ARC payment for some time, but it also stabilizes the payments to be around \$18-22 million based on the actuarial numbers which, again, if...I look at this as somebody, if you're dealing with a mortgage, if you have a predictable mortgage payment--let's call it \$1,000--you could make that. You could budget around to make those particular payments. If you have a balloon payment in a mortgage, you can't necessarily...if you're budgeting and you have limited

Floor Debate  
April 04, 2018

---

resources, limited money, yeah, you can make cuts but you're still going to have to make that payment. The other portion is, well, why doesn't OPS just continually cut? Why don't they just keep cutting? Well, they're going to have to cut this next year in the tune of around 200...or \$26 million. Based on doing this, based on the pension itself, by cutting--like I said, 85 percent of it is payroll--every time we cut people paying into the system, it exacerbates the problem, it widens the gap on that funding ratio. So what this bill is trying to address, one, we talk about local control quite often around here. This is an Omaha problem. This is an Omaha problem that us as Omahans need to address and fix. I can assure you that if this does not get fixed, Nebraska, this Legislature will be dealing with the unfunded liability, probably not when any of us are around, but at some point it will happen, because unless we stop the bleeding, unless we ensure that this plan is solvent, this will fall on the doorstep of Nebraska. So again, I want to make sure that people understand that what we are trying to do here... [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR LINDSTROM: ...is take advantage of where interest rates are. The feds increased interest rates a quarter percent a week ago. They...there's talks that they will increase another two times this year. Every time the feds increase that rate, it closes the gap between the 7.5 percent and that 5 percent which we would issue those bonds. So again, this is not a silver bullet. This is the best worst solution that we have, and I have not been presented with any other solution on this issue. This is not an easy issue. This is an uncomfortable issue and I know it is a problem and a lot of questions are going to come up today and I will be more than happy to answer any of those questions. I believe that this is the way to go. And I think there will be some people that might disagree with me, but I'll let them make their case and we'll come back. We're going to have a back-and-forth on this but I just...well, I want people to understand this bill. And if there's something that you do not understand, ask me. I do not want a no vote because you do not understand what we're doing. So with that, Mr. President, thank you. [LB548]

PRESIDENT FOLEY: Thank you, Senator Lindstrom. As the Clerk indicated, there are amendments from the Retirement Systems Committee. Senator Kolterman, you're recognized to open on committee amendments. [LB548]

SENATOR KOLTERMAN: Good afternoon, colleagues, and thank you, Mr. President. In order to make a complete record on this bill, I want to go into the committee actions this year on LB548. LB548 was held in committee last year in mutual agreement between Senator Lindstrom and I. During the interim a number of meetings were held with representatives from Omaha Public Schools, Omaha School Employees Retirement System, Nebraska Public Employees Retirement System, the Nebraska Investment Council, the Nebraska State Education Association, the Omaha Education Association, and all these were around funding issues and

Floor Debate  
April 04, 2018

---

what would need to happen in order for the Omaha School Employees Retirement Plan to be administered by the Nebraska Public Employees Retirement System. Our ultimate goal would be to manage this system. We're...Senator Lindstrom and I, and I believe the committee, are all completely in agreement of that. This session Senator Lindstrom and I introduced separate amendments to LB548 that strike the original bill and insert new provisions. The Retirement Committee held public hearings on the two amendments to LB548 on February 14, 2018. AM1529, introduced by Senator Lindstrom, authorized school districts to issue pension obligation bonds for payment of obligations to the retirement system without a vote of the electorate. And under AM1529, beginning September 1, 2018, the difference between sums paid for voluntary termination of employment as of September 1, 2016, and levy necessary to pay for pension obligation bonds would be exempt from the property tax levy lid as long as such amounts are utilized to make pension obligation bond payments. AM1529 would require the Public Employees Retirement Board to perform an actuarial valuation on the OSERS plan beginning January 1, 2023, and every five years thereafter, to determine if additional contributions are required to maintain the solvency of the Class V system based on methods and assumptions in the school plan. If additional amounts would be needed, the Class V employer contribution rate would be adjusted by the actuary. The Class V school district was directed to make a single unspecified contribution amount to the Class V system on or before January 1, 2019. The employer contribution above the 7.37 percent would be exempt from the General Fund operating expenditures and the budget lid prior to September of 2018. The proponents of this bill were Lou Ann Goding, Omaha Public Schools; Mr. Snow from the Omaha Public School Board, Jason Hayes from the Nebraska State Education Association. Opponents were Randy Gerke from the Nebraska Public Employees Retirement System, and they were opposed because there was language in there that dealt with them and they weren't even managing the plan yet. Neutral: Michael Walden-Newman from the...administrator of the Nebraska Investment Council; and Cecilia Carter, Omaha Public Employees Retirement System, executive director. For the record, I want to mention that a portion of the amendment I introduced, AM1758, was incorporated into LB1005 in the committee amendment to that bill. LB1005 is currently on Final Reading. The provisions from AM1758 insert "August 31" of each year as the date ARC payments must be made to the retirement plan and inserts a new definition of solvency, which is the amount annotated in the actual...annual actual valuation report. It also incorporates into the Class V School Employees Retirement Act actuarial assumptions changes from the 2017 experience study. So a summary of this amendment, AM2595, is this. The committee amendment was advanced from the committee on a 5-1 vote. I was a dissenting vote. I would tell you that I could have held this bill in committee but I felt that it needed to be discussed, and so we...I asked my colleagues to advance it to the floor. But I didn't support it, so I didn't vote for it. This is a tough issue and it needs to be addressed. There's no question about that. And Senator Lindstrom and I, no matter what the outcome is, we know that we've got to continue to work on this. The committee amendment strikes all the provisions in LB548 and it becomes the bill, so what I'm explaining to you is the new bill. School districts are authorized to issue pension

Floor Debate  
April 04, 2018

---

obligation bonds for payments of obligation to the retirement system without a vote of the electorate. That's one thing I didn't appreciate about this amendment. We're going to issue \$300 million without a vote of the electorate. Pension obligation bonds would be repaid within the \$1.05 property tax levy lid. The School (sic--Class) V school district shall make a single or series of contributions totaling \$300 million to the retirement system on or before August 31 of 2019. Beginning September 1 of this year, the requirement for the school district to pay their annual ARC amounts to the OSERS retirement fund is removed from the Class V School Employees Retirement Act. From 2019-2026, the school district is obligated to only pay the 101 percent employer contribution, even if the actuary determines that an ARC or ARCs are due. Beginning January 1, 2026, and every four years thereafter, in addition to the annual actuarial investigations, the board of trustees is directed to perform an actuarial valuation to determine if additional contributions are required to maintain solvency of the Omaha School Employees Retirement System. If additional amounts are needed, the actuary is directed to calculate the increase in the Class V employer contribution rate to pay the additional amounts. The Tax Equity and Educational Opportunities Support Act is amended to exclude from the General Fund...TEEOSA...from the General Fund operating expenditures the Class V employer contribution amount above the rate of 7.37 percent prior to September 1, 2018. All that does is we put that language in there so that it wouldn't affect their TEEOSA formula to protect them. And then beginning September 1, 2018, the employer contribution amount, the rate of 7.37 but less than 9.99, are exempt from the budget lid. The severability and emergency clauses are added. So in essence that's the legislation that was brought to me and my committee by Omaha Public Schools. We worked very closely with Omaha Public Schools to make sure that if this bill did advance, they had all the protections necessary and we were in complete agreement on that. So this has been worked on, as Senator Lindstrom said, probably for 18 months or longer. We started working on this actually when we started three years ago when we took over their finding investment returns. So now I'm going to go into a few talking points since I still have a little bit of time. You're going to hear discussion today about acronyms, ARCs. As Senator Schumacher would tell you, it's not a big boat with animals on it. It's the actuarially required contribution that the actuary calculates each year. It reflects the amount of money that needs to be contributed to the plan in order to maintain the plan's solvency, which also includes reducing the unfunded liability. OSERS? OSERS stands for Omaha Schools Employee Retirement System. It's administered by the OSERS board of trustees. The Omaha Public School district is responsible... [LB548 LB1005]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR KOLTERMAN: ...for paying any necessary ARCs. POBs--pension obligation bonds--you're going to hear a lot about pension obligation bonds as we go forward. NIC is Nebraska Investment Council. And as I've indicated earlier, as of January 1, 2017, it's taken over the investments of the OSERS assets. NPERS is the Nebraska Public Employees Retirement

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

Floor Debate  
April 04, 2018

---

System. In addition to the judges and State Patrol plans, it administers the school plan, which includes all other school districts in Nebraska. It's also administered by the state and county employees retirement plans. So with that, I would say we're going to have some lively discussion. We need to talk about this on the floor of this Legislature because Omaha Public Schools is our largest school district in the state. This needs to be addressed. Whether this is the right answer or not, I'm not going to make that decision. I don't necessarily agree with the pension obligation bonds... [LB548]

PRESIDENT FOLEY: Time, Senator. [LB548]

SENATOR KOLTERMAN: ...and I'll talk more about that as we get into it. [LB548]

PRESIDENT FOLEY: Time, Senator. [LB548]

SENATOR KOLTERMAN: Thank you. [LB548]

PRESIDENT FOLEY: Thank you, Senator Kolterman. Mr. Clerk. [LB548]

ASSISTANT CLERK: Senator Lindstrom, I had an amendment to the committee amendments from you--that was AM1529--but there is a note to withdraw. [LB548]

PRESIDENT FOLEY: Amendment is withdrawn. We'll now proceed to debate on LB548 and the pending committee amendment. We've got Senator Stinner and 11 others in the queue. Senator Stinner, you're recognized. [LB548]

SENATOR STINNER: Thank you. Thank you, Mr. President. Members of the Legislature, I am a member of the Retirement Committee and I think I've been involved in most, if not all, the discussions on this subject. I did vote it out of committee. I think it's a big issue. I think it's an important issue. I think Senator Lindstrom needs that opportunity to explain his case for this, but I think we need to have this discussion and I think we need to have a long-term solution. But for my purposes right now, I'm going to talk about pension obligation bonds, which I've spent considerable amount of time researching, and I do want to read to make sure that I'm accurate on what I say. This is out of the Government Finance Officers Association advisory. The use of pension obligation bonds rests on the assumption that the bond proceeds, when invested with pension assets in higher yielding asset classes, will be able to achieve a rate of return that's greater than the interest owed on the term bonds. Now Senator Lindstrom is hoping that he can get 5 percent on 30-year bonds. I'm more in that 6 percent range right now on a 30-year fixed. These are taxable bonds and many times these taxable bonds are issued without a call provision

Floor Debate  
April 04, 2018

---

so you can't just pay them off in advance. And if you do get a call provision, you're going to have to pay just a smidgen more for that call provision, so you need to keep in mind this is a 30-year obligation in most cases. It says also on the other side of things is that, okay, if I pay 6, then I'm going to have to beat 6. Now our Chief Investment Officer has indicated over a long period of time he thinks he can do 6.6 percent in the pension fund, but we all know about economic cycles, we all know that actuarial projections and assumptions change, mortality changes within it, and interest rates change. Over a 30-year period of time, we have actuarial projections that go I think up to 2000. Let me take a look. In your packet is 2031. Obviously these bonds extend well beyond that. That's the analysis. So there's some risk out there. Failing to achieve the target rate of return burdens the issuer with both the debt service requirements, which will be somewhere in the \$20-22 million category on the taxable bonds and the unfunded pension liabilities. In other words, if you go below those assumptions, you're going to have an ARC and you're going to also have to pay for the pension. So that, that compounds the problem. But I'll go through their recommendations. The Government Finance Officers Association recommends that state and local governments do not issue pension obligation bonds for the following reasons. The pension...the invested pension obligation proceeds might fail to earn more than the interest rates, which we just talked about, in the arbitrage that we talked about. The pension obligation bonds are complex instruments that carry considerable risk. Many times the structures may incorporate the use of investment contract swaps and derivatives. I've talked to Senator Lindstrom about this. He believes that he's trying to arbitrage it off of the investment portfolio in the pension fund so that there is a chance that they won't include swaps, derivatives, and other complex contracts. But I have been involved in swaps before and, believe me, they go over, many times, over a five-year period of time, seven with resets. You need to know counter-party risks and the like of that and I don't want to go into that because it truly is brain surgery. Issuing taxable debt to fund pension increases the jurisdiction's bonded debt burden and potentially uses up that capacity that could be used for other purposes. [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR STINNER: Also additional taxable debt typically issues without cause, which I talked about before that they are actually 30-year obligations. Now remember, Omaha also wants to go out for a \$400 million bond issue in back of this, which will put their total liability somewhere north of \$1.5 billion. My computation is more like \$1.7 billion. So a fairly highly indebted situation here. The other positive is that the agency may not view the issuance of pension obligation bonds as a credit positive situation. In order for it to be a credit positive situation, you have to have a debt service coverage over and atop and above this and show your financial strength in your plan, cutting \$20 million out of a \$600 million budget is about 3.5 percent. My recommendation would be probably to take a look at a 5 percent cut, which would generate... [LB548]

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Time, Senator. [LB548]

SENATOR STINNER: ...\$30 million, and then go to the people for... [LB548]

PRESIDENT FOLEY: Time, Senator. [LB548]

SENATOR STINNER: Thank you. [LB548]

PRESIDENT FOLEY: Thank you, Senator Stinner. Senator Larson. [LB548]

SENATOR LARSON: Thank you, Mr. President. I think we kind of have to ask ourselves why we're here with LB548. And it's kind of something that I've continued to preach throughout my time in the Legislature about how certain groups continue to care about themselves more than educating kids. I've made this argument for six years now. Specific organizations will say that OEA, we got a letter from the OEA right here, or the NSEA that build these unworkable contracts, and yes, we have to honor them; that's true, or we will get sued. But who does it hurt most? The kids. And moving forward...and I've made this argument in the past, moving forward, and in the past, they have fought innovative teaching models, innovative schools because it doesn't benefit them continually hurting the kids. And what Senator Lindstrom is asking us to do will limit how much they have of their levy to spend on the kids, and they're going to have to do it anyway, he's not wrong, they're going to have to put the money in, but this goes back to the historical context of what the OEA, NSEA, and other organizations have done. And we are here to fix it and that's unfortunate. Because the people that suffer are the kids. And you know what? The OEA, the NSEA, they're going to stand up and they're going to spend however much money in all the elections. We continue to hear from how many people on this floor about what the Governor spends on elections and how he influences the body; well, the same can be said for that organization. And that organization has sent the marching orders to many members. If you want to say Governor Ricketts sends the marching orders, here are your marching orders, here is what you need to do. That's what LB548 is. And it goes back to the historical precedent of what they have always done, they will continue to do. They will continue to fight in this Legislature against educational reform because it doesn't benefit them. It doesn't matter what it is for the kids. They'll craft their argument however they want to say that they're really the beneficial ones for the kids; but in the end, in the end we have seen across this nation what innovative teaching models can do, innovative schools can do and that is not what is happening in Nebraska. And that is unfortunate. So I guess it will be interesting...I guess...how this goes, and like I said, I love hearing from all of my colleagues about the marching orders from the right, or the involvement in the Legislature from the Governor or whoever else, yet if you don't think the unions have just as much involvement and spend significantly more money, I think I've mentioned in my first year we had three of us termed out--myself, Senator Brasch and Senator Smith, if you go into the

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

Floor Debate  
April 04, 2018

---

independent expenditures of the NSEA and our three election, they're close to \$200,000 on the three of us. So if you say they don't have the influence or they're not trying to put their influence in this body and it's for issues like this, and it's about themselves and who is it going to hurt? It's going to hurt the kids. [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR LARSON: Thank you, Mr. President. [LB548]

PRESIDENT FOLEY: That was one minute, Senator. [LB548]

SENATOR LARSON: I'm done. [LB548]

PRESIDENT FOLEY: Thank you, Senator Larson. Senator Kolterman. [LB548]

SENATOR KOLTERMAN: Thank you again. I want to talk a little bit about LB548 and the changes we've seen since the great recession of 2008. And this is just a brief history that I think everybody needs to understand. There has been a lot of legislation enacted since 2009 on the OSERS plan which was created in 1909, and the school plan which was created in 1945. In 2007, before the recession, the OSERS plan was 89 percent funded and the school plan was 91 percent funded. In 2009, in response to the tremendous investment losses in the plans, the Retirement Committee under Chairman Dave Pankonin worked with the representative of the plan members and the school districts in both Omaha and throughout the state to seek an increase in member and school district contributions to make up investment losses to keep the plan sustainable. Over the next three years, the members agreed to increase their contributions from 7.28 percent to 9.78 percent. Because the school districts contribution rate is 101 percent of the member contribution, the school district's contribution rate throughout the state, including OPS, increased to 9.88 percent. The state also increased its schedule percent of compensation contribution from .7 to 1 percent in 2009. That was when Lavon Heidemann was Appropriations Chair. In 2013, due to the continuing growth and actuarial required contributions, payments to Retirement Committee, under Jeremy Nordquist, again worked with the members to create a lower tier of benefits for new employees in order to lower the funding obligations over the long-term. The state also increased its scheduled contributions from 1 percent to 2 percent. The lower tier...and also had lower tier for new employees that was included. That was under the Appropriations Chair of Heath Mello. The maximum annual COLA for retirees went to 1 percent rather than 2.5 percent. The final salary averaged over five years instead of three years. Also during this time period, a side-by-side comparison of the OSERS and school plans was created by the committee. It became apparent that the OSERS plan offered greater benefits for its members, including receipt of a medical COLA for OSERS retirees. Receipt of a state service



Floor Debate  
April 04, 2018

---

annuity funded by the state of Nebraska provided in addition to OSERS retirement benefits. OSERS members were eligible for early retirement five years earlier than the school plan members in the state. Final average salary of OSERS members was not capped. School plan members final salary has been capped for many years, capping limits spiking a final salary. During the past five years, the committee has initiated legislation to reduce and align the OSERS benefits with the school benefits so employees in all school districts throughout the state would receive substantially similar benefits. In 2016 and 2017, experienced studies were completed on the school plan and the OSERS plan. As a result, in both plans, new mortality tables were placed in a statute and will be applied to calculations for new members' annuities. The 8 percent assumed rate was also decreased to 7.5 percent as a result of these studies. By the way, by reducing that to 7.5 percent, we created a liability. But we as a state have lived through that and it created more liability for the OSERS plan as well. [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR KOLTERMAN: Though it's good news, the members are living longer, it impacts retirement plan because benefits are paid out over a longer period. In order to maintain the long-term stability of the plans and to reduce funding obligations, the Retirement Committee further reduced benefits in both the school and OSERS plans. I'll talk more about this and how there is a difference between the Omaha Public School plan and the state teacher retirement plan or education plan next time I get up to speak. But I'll quit at this stage. Thank you. [LB548]

PRESIDENT FOLEY: Thank you, Senator Kolterman. Senator Vargas. [LB548]

SENATOR VARGAS: Thank you very much, Mr. President. This is actually great in terms of what we're going to do. We're going to debate and talk about policy. I encourage everybody that's listening, that's on the floor, that's outside or in your office, whatever you're doing, that we can actually make a decision with the most informed policy, not good or bad policy, I don't think this is binary, and so I want to preface that because I think it's unique that we get to actually be informed debate to both Senator Lindstrom and for Senator Kolterman. We're going to have the conversation of what might be the best pathway forward. The first thing I'll say is I've been coming to this sooner rather than those that have been working on it for the last year and a half, and part of my reasoning is because as I've become more informed about this issue and this potential solution, I don't believe that this is the panacea or the silver bullet to address this issue of an unfunded pension. So I want to say that because everybody is thinking we're saying that this is the solution to the problem, it's not. Do we need to figure out some meaningful steps in the right direction? Yes, I think we do. Is it acceptable for us to do nothing, this right now outside of what is already happening in the retirement? That's going to be left up to us. What we do know and these are the facts, we do know that there are payments that need to be made, these acronym

Floor Debate  
April 04, 2018

---

payments, Senator Kolterman, the ARC payments, that need to be made every single year, regardless of what we do in this body, those payments have to be made. We also know that the payments are going to continue to increase, not necessarily steady. I think it's by 2041 you're going to see payments from 2019-2041 they're going from \$21.3 million in required payments to \$45.4 million. So the truth is that every year the payments are going to go up. Again, required, they're going to have to be paid. So the question that I think we're dealing with in terms of a policy decision has more to do with what is a good step in the right direction, a tool that we can allow that's being requested by Omaha Public Schools to utilize that we can say, all right, you're taking responsibility for one component of this that you really think is going to get you a step in the right direction and it's this pension obligation bond, that we can make sure addresses the original concern, which is they have to make payments and these payments are going to continue to increase. By issuing this bond under the current levy, which is not new debt, I repeat, not new debt, this is not General Funds from the Legislature, from the state government, under the current levy, this would allow stability and more predictability in the payments that would be required. I think that is one of the main issues that...main reasons why we should consider going down this route. Do we do something in the right direction that provides for more predictability in the payments, that provides for some easier stability in terms of what they're expecting? I think that that's a sound policy decision to make. And I want you to think about it in your own scenario. We're thinking about a loan that we potentially have. I think it's easier to think of when we have payments that are increasing and year to year are changing, how that impacts the decisions you would make in your household... [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR VARGAS: ...or for business. And if we can simply change just the structure and stability of payments, what that can do. I'll be on the mike a couple more times because I think this is a good discussion for us to have and I hope that people are going to side with what's a good step in the right direction that OPS is asking the ability to do and not asking us to then infuse money into addressing this issue. The other thing that I want to make sure to come to is that this is going to impact the classroom whether or not we do anything. Senator Larson is right. But I think it's easier to address the impacts in the classroom with more stability in the payments that are going to happen every single year rather than having to prepare for increased payments. Now you've seen in the editorial, you should read all the documents, that OPS is taking steps in the right direction, which is unique in this circumstance. Where they're taking additional responsibility to then make cuts while in addition asking for the ability to issue this special bond. [LB548]

PRESIDENT FOLEY: Time, Senator. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR VARGAS: Thank you. [LB548]

PRESIDENT FOLEY: Thank you, Senator Vargas. Senator Krist. [LB548]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues, and good afternoon, Nebraska. Going back to ten years ago in my experience, not much has changed on this floor except the names of the innocent. There have been many Chairs of Retirement and smart people like Senator Lindstrom that have tried to come to agreement on how to fix our education programs and our guaranteed benefits programs and our teachers' benefits. I have to say that I am going to support this bill, LB548, for a number of reasons. But I want to make sure that we establish a record in terms of where we are today. With that, I would ask Senator Lindstrom to yield to a couple of questions. [LB548]

PRESIDENT FOLEY: Senator Lindstrom, would you yield, please? [LB548]

SENATOR LINDSTROM: Yes, I will. [LB548]

SENATOR KRIST: And I'd like this to be more of a dialogue, so please interrupt me when I go astray or off the rails. Is it fair to say that we arrived in this place because of questionable management in the past? [LB548]

SENATOR LINDSTROM: Yes. That would be fair to say. The investment decisions that happened after '08-09 were reactionary, where people started to...just to give you a little historical data. In '08...'09, March '09, the Dow Jones was at 6469. That was the low point. 2008 it was down 37 percent on that date of '09; on March 9, we were down 55 percent. So people were reactionary to that. So they decided to get out of equities, out of stocks and go into what they deemed as safe investments. Well, safe investments don't yield a whole lot. So when the market turned around, they were behind and could not catch up and that's what led us in this situation. [LB548]

SENATOR KRIST: So folks, this is a great example of the reactionary process that we went through in a special session that I attended in 2009 and in subsequent years with the market the way that we reacted to it, making cuts and making some bad decisions all over the state. And I think I will not blame or look at anybody else. I'll look at myself in the mirror and say I voted for some of those things. Senator Lindstrom also, could you describe to us, Senator Kolterman brought forward the '16-17 time frame, my understanding, and I think I was voting on that issue as well is who was actually managing the investment program for this program? Go ahead. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR LINDSTROM: So January 1, as Senator Kolterman mentioned, we have been taking steps, necessary steps to shore up the pension plan. One of the first steps was to take over that investment plan; and so now that the Nebraska Investment Council handles that. By doing that alone, the internal cost of those funds and the ratio within the cost of the funds that we were allocated to was 60 basis points, or .60 and change. By putting it under the state plan, because it's a bigger plan, because it's a \$14.8 billion plan as opposed to \$1.2 billion plan, those investments, the internal costs dropped to 34 basis points. So by doing that alone, by Nebraska taking that over, we cut costs significantly in the internal costs of those underlying assets. [LB548]

SENATOR KRIST: And I think that's important to measure. And I believe that in the future, I think it was Senator Kolterman, it might have been Senator Stinner that recognized that we have to think in long term in fixing this, not just putting a band-aid on it. But I would suggest to you, colleagues, that in the next few years, you need, we need to come together and make sure that these plans are not independent within school districts, but that we as a state can find more economy and more benefit to combining these plans. I would say and I would argue that the teachers go from one plan to another just in the metropolitan area and that's compromising, I think, the individual plans as well. [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR KRIST: It may not be very popular...thank you, Mr. President,..that may not be very popular, but I really think that the efficiency in the economies that have been described by Senator Lindstrom are key to making those long-term decisions. Thank you for your courtesy, Senator Lindstrom. Thank you for the time. And thanks, colleagues, for listening. [LB548]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Williams. [LB548]

SENATOR WILLIAMS: Thank you, Mr. President; and good afternoon, everyone. And I do, as other people have said, appreciate the conversation and the debate that we're having on this. And for some of you that your eyes glaze over when we do talk about numbers, these are important numbers that are vital to the long-term survival and the ability of OPS to continue to provide high-quality education. So our decisions do make a difference. I have some deep concerns and some troubling concerns about the bill and the amendment. Historically, I have had the opportunity to be involved with defined benefit plans and defined contribution plans over a period of years. In fact, three times during my career I've been involved with organizations that have had to terminate those plans. There was a constant similarity in those situations. The first part was ignoring situations until they became a little bit too deep, and plans that became under funded over time. And when you allow that to happen, you create a real Catch-22 for whether it's a business or a school district, or whatever you're looking at. And I have personally been a strong

Floor Debate  
April 04, 2018

---

advocate for the teachers and maintaining a defined benefit plan with one big caveat, and that caveat is that plan has to be adequately funded. What we've seen over time, in particular is the statics show since the 2008 collapse, the plan for Omaha Public Schools is woefully underfunded. It has to be brought back in line. That's not the issue here. The issue is how is it brought back in line? I'm concerned about the use of pension obligation bonds and the arbitrage effect and not being certain that you can lock that in over time. And I would suggest there are some other solutions. And I know that when anything is described as the best worst solution, I struggle with thinking that's what we ought to pass on the floor of this Legislature. And that's the way this has been described. I also find it interesting that the term "we" has been used many times in the discussion today. And I want to be sure that we understand that we the Legislature are not the partner here. This is an issue of Omaha Public Schools and it's to their benefit and their responsibility to solve that problem. Now, they certainly need our help to pass legislation to allow the issuance of pension obligation bonds. But there are other opportunities and those would include an override vote, which would actually be a vote of the people. And as you noticed here, there is no vote of the people presently under consideration here to issue these \$300 million worth of pension obligation bonds. I would suggest we need to continue this debate and talk about those budget restrictions. Senator Stinner talked about moving from a 3.5 to a 5 percent budget situation, a 5 percent cut, and moving towards that. And also considering the other alternatives that are available for the Omaha Public Schools. Thank you, Mr. President. [LB548]

PRESIDENT FOLEY: Thank you, Senator Williams. (Visitor introduced.) Senator Bolz. [LB548]

SENATOR BOLZ: Thank you, Mr. President. I hope folks are still on the floor and listening and I still hope that folks are still thinking through all of the angles on this particular bill, because as one of the newest members of the Retirement Committee, I spent a lot of time trying to understand this bill and trying to work my way through all of the options, all of the possibilities, and all of the stakeholders impacted. And so what I would like to do with my time on the mike is just to walk you through my process in coming to support this piece of legislation. And I started with trying to get a better understanding of the history of our retirement funds. And it was worth walking back through that history because my first year, some of our first year in the body, we did make some significant changes in 2013, which required increased contribution rates and reductions in employee benefits from both NPERS and OSERS and when we got that commitment, then we increased our contributions to 2 percent. And the reason I think that's worth revisiting is to remind us that things have been done in the past to try to keep things on track or get them more on track in spite of some of the significant challenges that exist in the Omaha Public Schools Retirement System. The second thing I wanted to share is that part of my process was listening at the hearing. And very important to me in the hearing was the unanimous support of the Omaha Public Schools school board for this solution. And I think I asked a couple

Floor Debate  
April 04, 2018

---

of questions on the mike making certain that there was support by the whole board to move this forward. And it's my understanding the one person was abstaining at one point, but that the whole board is now speaking with one voice in support of this legislation. And why that's important to me is because for them to say that on the microphone in the record tells me that they're taking responsibility, that they're taking responsibility for this solution and for making this solution work into the future. I also thought it was significant that from a school and a teacher education perspective, it's important that teachers have that security in their retirement program. And if we want OPS to be the best that it can be, we need to make sure that teachers want to teach there. And I think it's part of our responsibility in terms of people who are stewards of education to make sure that teachers have a retirement plan that they can count on. Next, I sat down with some stakeholders and they reminded me, as Senator Lindstrom has reminded all of us, that these obligations don't go away, that they will be there regardless of the action that we take. And they also reminded me that especially in the short-term, if we take no action, very difficult choices will need to be made in the short-term. So that was process and it really comes down to decision making, right? The simplified version of the question in front of us is should we allow the Omaha Public Schools to issue pension obligation bonds under their existing levy? There are three principles that I looked at when ultimately and finally casting my vote in support. The first was I'm typically in support of local control. And so the commitment from the Omaha Public Schools, as well as their existing articulation of cuts that they're already planning to make, and the opportunity for us to have this conversation on the floor, this conversation that makes it more transparent, all of those things not only help me be more comfortable with local control, but also that they will take responsibility of that control and do the right thing by the kids in their school district. Which was my next principle. Are we protecting kids? Are we protecting education by making these choices? [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR BOLZ: And this was the most difficult thing for me because moving this forward kind of locks in moving their levy...moving the amount of money they have in their levy to spend on kids to about 95 cents rather than \$1.05 we have now. And I was reminded by some of the people who have been doing this work for a long time that Omaha Public Schools already has the tools to do a levy override if they need it for school needs. So in the future, if they are not able to make their school district work under this new rubric, under this framework, they already have the tools in their toolbox to do a levy override on school buses or technology or whatever other issue they may need to bring forward. And the last principle was fiscal sustainability. And I do think that these predictable payments, along with the lower interest rates that Senator Lindstrom has articulated, help bring me a little bit of a comfort level in terms of sustainability and predictability. So colleagues, I understand that... [LB548]

PRESIDENT FOLEY: Time, Senator. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR BOLZ: ...it's a complicated and difficult descision... [LB548]

PRESIDENT FOLEY: Time, Senator. [LB548]

SENATOR BOLZ: ...but that's my process and I'll stand with my vote in support. Thank you, Mr. President. [LB548]

PRESIDENT FOLEY: Thank you, Senator Bolz. Senator Geist. [LB548]

SENATOR GEIST: Yes, thank you, Mr. President. This type of legislation is, I have to tell you, not in my wheelhouse as far as how I operate in my thought process every day. So I have spent quite a bit of time trying to understand. I attended Senator Lindstrom's workshop on this in order to understand it better and came away with some questions. I'm also fortunate that I have a husband who does similar investment strategies as this, who got to speak with Senator Lindstrom last night and I got to be included in that. So in light of that, then Senator Lindstrom, we went home and went through the paperwork again. I just love making an informed vote. And I always promise that to my district. So in an attempt to be more informed, I wondered if Senator Lindstrom would yield to a question or two? [LB548]

PRESIDENT FOLEY: Senator Lindstrom, would you yield, please? [LB548]

SENATOR LINDSTROM: Yes, I will. [LB548]

SENATOR GEIST: Thank you. Now, I'm looking at one of the handouts that you had in your workshop and it talks about future value calculation and you have the different average annual returns, the 7.5, that worksheet. And I noticed that it's a 30-year commitment, but the payments are only paid for 25 years. Would you explain that, please? [LB548]

SENATOR LINDSTROM: Sure. Absolutely. So there's the two different plans. There is the Omaha plan and then the Nebraska plan. Right? They operate on two different actuarial formulas. The OPS plan, the OSERS plan operates on a 27-year-closed plan. The Nebraska plan operates on a 30-year open. So by essentially using different years and actuarial assumptions, and through the actuarial math in these smoothing out process, that's where you get the differential between state of Nebraska plan versus the OPS plan. That's a big distinction between the two and why some of the math sometimes is different when you plug in an assumed rate of return like 7.5 percent. [LB548]

SENATOR GEIST: Gotcha. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR LINDSTROM: And the bonds would be issued at 25 years, yes. [LB548]

SENATOR GEIST: To the 25? [LB548]

SENATOR LINDSTROM: Right. [LB548]

SENATOR GEIST: Okay, thank you. Another question I have is, let's say worse-case scenario, it goes belly up; I hate to bring this up, I'm sorry, but so who gets the first obligation? Would the bondholder or the pension holder be the first to be paid? [LB548]

SENATOR LINDSTROM: It would be...under this...you know, that's a good question, I'd have to revert to, maybe, Retirement's legal counsel on that one as far as who is in line. Typically the bondholders will be. But in pension obligation bonds, I would think that would be who this would go to first. [LB548]

SENATOR GEIST: Okay. Okay. Well, I'll work on finding out that answer. And then I had one more question. And I was listening as Senator Kolterman was talking about the amendment and he added a severability clause. Can you speak to that and what that covers? And if not, I can ask Senator... [LB548]

SENATOR LINDSTROM: Yeah, if you want to Senator Kolterman, I'll look at that one and get back to you. [LB548]

SENATOR GEIST: Okay. Thank you. May I ask Senator Kolterman if he would yield to a question? [LB548]

PRESIDENT FOLEY: Senator Kolterman, would you yield please? [LB548]

SENATOR KOLTERMAN: Yes, you may. [LB548]

SENATOR GEIST: Would you explain the severability clause and why that's included and how that works with this legislation? [LB548]

SENATOR KOLTERMAN: Just a minute, I want to make sure I get this right. [LB548]

SENATOR GEIST: All right. [LB548]



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

Floor Debate  
April 04, 2018

---

SENATOR KOLTERMAN: Still there? It deals with the constitutionality of the bill and it doesn't fall back to us. [LB548]

SENATOR GEIST: Okay. Thank you. That's exactly what I wanted to know. And the jury is still out for me. I'm listening, obviously. And so I'm really interested. I think this is innovative. I'm so excited that I understand it, and so I think it's innovative and helpful. So thank you for what you've done and it's evident you've put a lot of hard work into it, both of you gentlemen actually and the committee. So I appreciate that and I'll continue to listen. Thank you. [LB548]

PRESIDENT FOLEY: Thank you, Senator Geist. Senator Erdman. [LB548]

SENATOR ERDMAN: Thank you, Lieutenant Governor. I've been trying to make heads or tails out of this one; a little difficult sometimes. I wonder if Senator Lindstrom would yield to a question. [LB548]

PRESIDENT FOLEY: Senator Lindstrom, would you yield, please? [LB548]

SENATOR LINDSTROM: Yes, I will. [LB548]

SENATOR ERDMAN: Senator Lindstrom, how did Omaha Public Schools get into this problem? [LB548]

SENATOR LINDSTROM: We've talked about it a lot as far as the past, it's been numerous years of the problem. I would...probably...well, it's long before my time, but essentially what's happened in more recent years, in the last, I'll call it ten years, poor investment decisions. [LB548]

SENATOR ERDMAN: So could I conclude it was mismanagement of their funds, would that be a fair analysis? [LB548]

SENATOR LINDSTROM: I would say that's fair, reactionary, a lot of different ups and down, yes. [LB548]

SENATOR ERDMAN: Are you an investment adviser? [LB548]

SENATOR LINDSTROM: I am. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR ERDMAN: So if they had sought their services as investment adviser, would they be in this position? [LB548]

SENATOR LINDSTROM: My services? No. [LB548]

SENATOR ERDMAN: So as I listen to this, and one of the comments that Senator Williams made that I had seen in the bill as well, is we're going to let them do this \$300 million in bonds without a vote of the people. Seems to be a problem. And you said this will be our problem, and Senator Williams alluded to the fact that they'll get...they'll make a misconception here who "we" is, whatever that means. Are they too big to fail? Is that why we have to do something about this? [LB548]

SENATOR LINDSTROM: No. They're not too big to fail. But I will say if they do fail, this will be the Legislature's problem. Right now this can be a local problem and a local solution can take place here by allowing us to issue these bonds. If you don't mind, I would like to address that under the levy. The debt exists, it's \$712 million, that's not going away. This just restructures the debt to be able to take advantage of the 5 percent bonds and that arbitrage between the 5 and 7.5 percent to give us a long-term predictable payment up front to stabilize the plan. [LB548]

SENATOR ERDMAN: So if we don't do anything with this bill, what's going to happen to the retirement of OPS? [LB548]

SENATOR LINDSTROM: They're going to have more cuts. You're going to have less people paying into the plan. The ARC payments will continue to go up. And if they can't make those payments, they're going to continue to lay off people and then this will be a Nebraska problem, not a local Omaha problem. [LB548]

SENATOR ERDMAN: Okay. All right. Thank you. I will yield the rest of my time to Senator Kolterman. Thank you, Senator Lindstrom. [LB548]

PRESIDENT FOLEY: Thank you, Senator Erdman. Senator Kolterman, 2:20. [LB548]

SENATOR KOLTERMAN: Thank you very much. Before we get a lot deeper into this, and I'm in the queue again, I have a few questions I'd like to ask. I was wondering if Senator Wayne would answer a question. [LB548]

PRESIDENT FOLEY: Senator Wayne, would you yield, please? [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR WAYNE: Sure. Yes. [LB548]

SENATOR KOLTERMAN: Senator Wayne, what years did you serve on the Omaha Public School Board? [LB548]

SENATOR WAYNE: Omaha Public School Board, that would have been 2010 to 2016; and I was on the OSERS Board from 2010 to 2012, I believe. [LB548]

SENATOR KOLTERMAN: How often did the OPS school board discuss the OSERS funding obligation? [LB548]

SENATOR WAYNE: When we first...when I first got on the board, not at all. Even when I was in the OSERS board, we put investments that we made and decisions that as a board we made and the OSERS board on our agenda and it was regularly voted on without any discussion. When we had the restructure of the board in 2013, there was more discussion because some people who were on the OSERS board didn't like some of the investments, so there were a little bit. And then when President Goding...President Goding, at the time, got on the board, there were more concerns. But as a board, we did not have great talks about the OSERS pension obligation or funding. [LB548]

SENATOR KOLTERMAN: Do you recall any discussions about payments or nonpayments of the ARCs in 2013? [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SENATOR WAYNE: Actually when I looked at that sheet and saw we didn't pay a full ARC, I couldn't recall actually having a discussion about not paying the ARC. That was kind of news to me. But again, we had restructured the board, so I wasn't sure. Maybe I missed it somewhere along the line. But I do not remember having a full conversation about that. [LB548]

SENATOR KOLTERMAN: All right. How much time do I have, Mr. President? [LB548]

PRESIDENT FOLEY: Half a minute. [LB548]

SENATOR KOLTERMAN: I'll yield the rest of my time to you. [LB548]

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

Floor Debate  
April 04, 2018

---

PRESIDENT FOLEY: Waive the time. Thank you, Senator Kolterman. Senator Schumacher. Excuse me, Speaker Scheer, you're next in the queue. [LB548]

SPEAKER SCHEER: Thank you, Lieutenant Governor. Would Senator Kolterman please yield? [LB548]

PRESIDENT FOLEY: Senator Kolterman, would you yield, please? [LB548]

SENATOR KOLTERMAN: Yes, I would. [LB548]

SPEAKER SCHEER: Just a couple of questions. The \$300 million in relationship to the amount needed to relieve the pressure on this, so that they would not face ARC payments, how much additional would it have to be above the \$300 million to do that? [LB548]

SENATOR KOLTERMAN: You know, that's a fair question. In fact, I was going to ask Senator Lindstrom how we arrived at the \$300 million, because that came from Omaha Public Schools. I will tell you this, we're \$700-and-some million underfunded. And when we factor in, over the next years, the future ARC payments, we're looking at close to \$900 million, just a little under \$900 million. So \$300 million really doesn't do enough. I think that they arrived at that figure by backing into what they could afford to pay. But again, that's something we'd have to ask Senator Lindstrom because I didn't pick that number. That was picked by Omaha Public Schools. [LB548]

SPEAKER SCHEER: Okay. Then Senator Lindstrom, would you please yield? [LB548]

PRESIDENT FOLEY: Senator Lindstrom, would you yield, please? [LB548]

SPEAKER SCHEER: Senator Lindstrom, I don't know if you were listening, I'm curious what the amount would be to relieve Omaha future ARC obligations to bring it up to sustainable point at this time; and we have a \$300 million number in front of us, but what would the actual number be in order to take care of the problem in the future? [LB548]

SENATOR LINDSTROM: Well, we came up with that number through conversations and dealing, Senator Kolterman, I believe, we had conversations about \$350 million; he did not feel comfortable with that, so we decided on \$300 million by backing into that number; and the actuarial assumptions, we made it more in line with what they would have as a payment the following year. So for example, in 2019, that payment is going to be around \$21 million. By

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

Floor Debate  
April 04, 2018

---

issuing these bonds, we would have a steady payment over the next seven, eight years of having around \$20 million. So that's...it was more... [LB548]

SPEAKER SCHEER: I understand that. The concern I have is it will take care of the obligation for the six to eight years from a flat line, but then at some point in time, your ARCs will reappear in order to stabilize this. So this does not...this, by far and away, is not the solution to the problem, and I'm curious then if the 350 is the answer to that or if any actual numbers from any actuarial area came in that said you need \$342 million or \$475 million or did we just decide, well, if we can get the bonds at X percent, then the payment would be so many dollars and we can afford so many dollars a year? [LB548]

SENATOR LINDSTROM: It is partly that we can afford only so much per year. There was an actuarial study that came in with about \$419 million, that over a course of 25 years would get us to 100 percent, but the committee did not feel comfortable with that. The reason why...I understand having the ARC payment in seven years, I will tell you that by doing nothing, that problem gets worse; and the reason I say that is because over the next five years, the current allocation is set up at 35/65 blend. There is no way that under that allocation you will get to 7.5 percent. By infusing the \$300 million up front, that gets us more in line with the Nebraska Investment Council's allocation as a 70/30 blend that would eliminate those ARCs and make predictable payments... [LB548]

PRESIDENT FOLEY: One minute. [LB548]

SPEAKER SCHEER: Excuse me, Senator Lindstrom, I just want to make one final comment, and I apologize. The problem I have with this is if we allow it to go another eight years, the ARCs return. And when the ARCs return, then those dollars become part of the TEEOSA formula, which then on essentially a 55/45 split, then the state is going to be taking care of that obligation. That's fine if we all understand that. Personally, I would rather have, if we're going to deal with the problem, rather than having the problem come back to another Legislature in five to seven to eight years because we can't afford either the ARC payments or between the two we can no longer afford the bonding and the ARC, we're right back where we are. And I would rather be bonding amount that takes care of the problem, but I think we should all realize this does not solve the problem, it will come back and that ARC payments in the future will cost the state additional dollars in TEEOSA funding. And that's how the system works. I'm not complaining, but that is what will happen, so we will have an obligation on the state's part to help fund those retirement dollars. Thank you, Mr. Lieutenant Governor. [LB548]

PRESIDENT FOLEY: Thank you, Mr. Speaker. Senator Schumacher. [LB548]

Floor Debate  
April 04, 2018

---

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Doesn't this look like fun? Everywhere we turn, there is more obligations on the horizon. We pat ourselves on the back and we say, you know, we're great, we're Nebraska, we have no debt. That's bologna. We've got all these little children running around called subdivisions, many of whom are loaded to the gills with debt. Now, if it's just a little town, maybe we can say tough luck, you know, they went belly up and look the other way and have their taxpayers somehow deal with bankruptcy court. But at a certain level, when you get to the bigger cities and bigger school districts, they're too big to fail, and so we got to figure out what are we going to do. The big answer and the mean answer that you guys are going to have to deal with is, that there is only one answer and that is an extremely strong reserve. If you have a strong reserve, whether it's this snake that comes up to bite a future Legislature or an unexpected expense for baby boomers or for drought or who knows, you can handle it. And you can handle it without a ginormous tax increase or just the state having to jettison a bunch of its pieces. The fantasy we've been in on, let's find revenue to give tax relief away is just that. We have these problems. This particular problem came from make believe. And you could make believe that you could get something for nothing. You could go to a teachers union and say, look it, we'll chintz on you a little bit on your salary now, but by gosh, we got this magical thing called defined benefits program. In your old age, you're going to get really, really good payments because we're guaranteeing benefits according to some formula. And the system will make up the difference if it's short. Well, that future was a long way off, so you didn't have to really bother about these fishing boats with animals on it. You could spend money now without making the ARCs. But as baby boomers and your population ages, and the accountant starts putting a pencil to all this and saying, gosh, there is not enough money to meet these obligations giving current rates of interest, giving current age of population that can be expected, you've got to have more. And so the first inclination as human nature, blow it off for a while, just don't make those ARC payments, nobody is holding a gun to your head just right now. And that digs you in deeper. And so now they're at a point where they've got to gamble. They say, look, we can borrow some money at 5 percent interest. And by gosh, if the stock market keeps on going and if we get to 7.5 percent, gee, we can make a difference and we have 2.5 percent free money and a free lunch for Senator Linehan. Of course, we know there is no free lunch, right, Senator? I can't even get a reaction out of her. There is one, she says. So here is how we're going to make it work. The problem with that is who in this room is sure they're going to get 7.5 percent on anything? I mean, the only place I can get 7.5 percent is at Senator Williams' bank. And that's not for about very long, like two seconds and that one dries up. But the money... [LB548]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: One minute. [LB548]

Floor Debate  
April 04, 2018

---

SENATOR SCHUMACHER: ...if you miss that bet, you are deeper in the hole. You got to raise the revenue. Raising revenue means taxes at a local level. If you're going to go borrow this money and you're going to gamble it, it should be with the consent of the voter, not just a board who wants to pretend that, oh, nothing bad is happening and not let the voters know what's happening. There has got to be consequences to being wrong. And that's what's happened. And they're trying real hard to dig themselves out of it, but their voters have got to be brought into this loop and they've got to get realistic on the 7.5 percent figure because that's not going to work and then how many years it is before their ARCs kick back in, they'll be in the same boat and whoever is unlucky enough to be in these chairs then is going to have to find some money, along with money for a lot of other things. So enjoy. Thank you. [LB548]

SPEAKER SCHEER: Thank you, Senator Schumacher. Items? [LB548]

ASSISTANT CLERK: Thank you, Mr. President. Communication from the Governor. (Read re LB42, LB104, LB157, LB379, LB685, LB697, LB702, LB724, LB773, LB913, LB931, LB993, LB993A, and LB1078.) Your Committee on Enrollment and Review reports legislative bill LB841, LB902, and LB807 all to Select File. Motion to be printed...amendment to be printed to LB1065A from Senator Murante. New A bills: (Read LB807A, LB1065A, and LB791A by title for the first time.) I have a conflict of interest statement from Senator McDonnell that will be on file in the office. That's all I have at this time. (Legislative Journal pages 1392-1394.) [LB42 LB104 LB157 LB379 LB685 LB697 LB702 LB724 LB773 LB913 LB931 LB993 LB993A LB1078 LB841 LB902 LB807 LB807A LB1065A LB791A]

SPEAKER SCHEER: Thank you, Mr. Clerk. Those waiting in the queue to speak, Senator Kolowski, Wayne, Linehan, Kolterman, and others. Senator Kolowski, you're recognized. [LB548]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. I stand before you with a great deal of consternation about this problem with the OPS Retirement System, but I do want to thank Senator Kolterman and Senator Lindstrom for their leadership in the Retirement Committee that has brought us to where we are with this choice today that we have to make, and it is the best of a worst decision. We have to look at it realistically and openly as we examine where we are and how OPS got to this particular situation. As a 41-year instructor and administrator in the public schools in Nebraska, 38 of those in the Millard Public Schools, when we look at where we are and where OPS was with their whole system over time, I was never a fan of there being a separate entity outside of the rest of the districts and the entire state. I say that directly. I stated it for years and I never understood why they had to be separate and be their own funding agency and doing what they were doing in their own situation. They made bad decisions, very bad decisions. That's come back to haunt at this particular time and now we're here trying to figure

Floor Debate  
April 04, 2018

---

out again the best of a worst decision that we can pass on and work on to try to get them on an even keel as far as the time they will be folding into our state funding and state retirement system. I think that's important to remember. And it has been stated we're looking at a local control issue, a local problem, and a local solution. Keep that in mind. This is all built around where OPS is and what they're trying to get done. Now, you heard a little bit of a rant on former...previous senators speaking about quality education in the state, and all of you as parents or grandparents know the quality of the districts you come from and what your children and grandchildren are learning in the public schools in Nebraska, and we're very proud of that. I hope we will look at all the different situations that we have going on and understand in Omaha with 52,000-plus students in the OPS district, and growing, it will continue to grow; they need more schools; they need to renovate. They need to do the things they need to do with new leadership coming in and with the new superintendent and I'm very optimistic about where they'll be and what they will do in the future. Lincoln Public Schools, over 40,000 students; Millard Public Schools, 24,000 students; the difficulty of some of us grasping and understanding the budget repercussions within those districts of that size and that caliber needs to be understood. It's not where most of us have come from. I hope we'll be open-minded on this. I think we have great opportunities to look at a direction that OPS can be headed now and the difference that can make over time as we assist them with this direction and put the onus on their shoulders to make the payments and work this out at the local level. [LB548]

SPEAKER SCHEER: One minute. [LB548]

SENATOR KOLOWSKI: Thank you very much. [LB548]

SPEAKER SCHEER: Thank you, Senator Kolowski. Senator Wayne, you're recognized. [LB548]

SENATOR WAYNE: Good afternoon, colleagues. Thank you, Mr. Speaker. I ask everybody just to listen for a second, because I'm the only one in this body who actually served on the board, the OSERS Board who made some bad decisions, and I own some of those decisions, although I will tell you that I am not an investor and always raised the question of why I am voting on investments, which is what I don't do. In fact, one member of the board who was appointed to the OSERS Board never went because he was uncomfortable making these investments because he was a small business owner and said, I'm not an investor, I'm not comfortable making these investments. But I do want to mention real quick a couple of things of how I think we can solve this. But one thing is, the state has a role in this and I don't think we should ignore that. At one point before I got on the board and during my first two years on the board, legal counsel in statute was the same legal counsel as the board. Although they were separate entities, in state statute they had to have the same attorney. So when OSERS wanted to do something that maybe



Floor Debate  
April 04, 2018

---

OPS school board didn't want to do, who do you think the attorney often sided with? The person who is probably paying their bills. So oftentimes there was disagreement and tension between Omaha Public School Board and the OSERS Board, which led to some changes, including that provision to be removed. I do have to agree that this is not, as Speaker Scheer said, not a true solution. In fact, we're just kicking the can down the road. The fact of the matter is, Millard, Westside have all done levy overrides. And when you look at it from a political perspective, Millard and Westside, if you want to go on the spectrum of conservative to liberal, are a little more conservative, but yet those levy overrides have passed. OPS can do a levy override to help address this problem and can do it, not necessarily in May, but can do it in November election. The second thing that I have a problem with is the key date of 2027. If you look at the handout that Senator Kolterman handed out, 2027, when my daughter becomes a ninth grader, there is going to be a payment...additional payment to \$20 million to pension and a \$20 million payment to the pension bondholder. That's \$40 million that's going to have to be cut in some form, where my daughter is a ninth grader. Now, you're asking me to have faith that in seven years they're going to develop a plan, when I was on the board and watched the board, since I've been off of it, struggle with implementation of longer school days, the ELI selection process, the transition of moving sixth grade into middle schools; and now you're saying that seven years from now, they are going to be able to be astute enough to come up with a plan to address a \$40 million cut when my daughter is starting high school. I have huge concerns over that. So what I would offer today on the microphone is a temporary solution that can work toward a long-term solution of merging the plans. If you look at the first five years, the average payment that is obligated is \$20 million. The concern is by the year five, \$25 million would not be attainable. I say in law we can sit here and make a \$20 million necessary ARC payment that they have to stick with. How can OPS do it? Well, it's pretty simple. I have more and more reports, but one right here that I did when we were on the board, both Senator Vargas and I, that the average cost of a bus is \$70,000 in the district. To contract that out, which we also do in Omaha Public Schools is \$56,000. By my estimation, they could save \$5 million by contracting out their busing every year. We also have feasibility studies on...you look around to Millard and Westside who have both contracted out their food service, save anywhere from \$10 million to \$15 million. If you haven't calculated, I'm at \$15 million to \$20 million without touching a classroom. [LB548]

SPEAKER SCHEER: One minute. [LB548]

SENATOR WAYNE: There is a way for us to do this. And if we get to \$20 million, I would ask this Legislature to make sure that we put in at least one or two good faith efforts. Then years five through ten, we up that to \$30 million and this Legislature puts in \$5 million. We all got our skin in the game, we're all making a difference, but at the same time, OPS can make these cuts and we can move forward over the next 20 years to solve this problem. But I wasn't brought to the table, although I have been on the OSERS Board. I haven't gotten engaged in this conversation until the last three weeks. I think it's too late for us to do it with nine days left. I think we need to

Floor Debate  
April 04, 2018

---

look at an over-all comprehensive plan to address this issue that starts with OPS telling us what they are going to do, how they are going to make cuts, and how they are going to make payments. Thank you, Mr. President. [LB548]

SPEAKER SCHEER: Thank you, Senator Wayne. Senator Linehan, you are recognized. [LB548]

SENATOR LINEHAN: Thank you, Mr. President. I rise in opposition to both AM2595 and LB548. I'm hopeful that both rural and urban senators are listening to debate today because it is one that's just like looking at the tip of the iceberg of a problem that we have. Let's talk about OPS. First of all, they do have 52,000 students, but that's not all the kids that are zoned to OPS; 12,270 children, students, that's 12,270, who are zoned OPS go to private schools. In addition to those 12,270 students who have chosen not to attend OPS, 10 percent of the students, over 5,000 students, who are zoned OPS opt out of OPS and go to another public school in the Omaha metro area and we, the Legislature, and the state taxpayers pay for it. For those kids who opt out of OPS and go to another urban school, we put \$50 million in the state TEEOSA fund to pay for it. For the kids who stay at OPS, we pick up half the tab. Their equalization funding amounts to \$5,500 a child. We spend well north of \$300 million supporting OPS every year. They have 20 percent of kids who are in public schools in that one school district. People have said they're too big to fail. Okay. On money too big to fail? Let's look at their ACT scores. This is from the first year that all juniors in Nebraska were to take the ACT. Omaha Benson High School: 3 percent of their juniors were proficient in math, 3 percent; 3 percent were proficient in science; 6 percent proficient in English. Omaha Bryan: 4 percent in math, 6 percent in science, 10 percent in English. Omaha Northwest: 4 percent in math, 6 percent in science, and 8 percent in English. I agree. Think of the number of students who are not, not ready for college; they're not ready for career. They couldn't get into a trade. If they get in the community college, if they're lucky enough with Pell Grants, they'll have to spend at least a year taking remedial courses. It was earlier said that OPS is highly indebted. Highly indebted sounds a lot like near bankruptcy. They already have a bond they passed a few years ago, which was close to half a billion dollars. They have another bond they need in May for \$400-and-some, I think it's \$410 million, and now they want to bond another \$300 million. Now, if any of you were bankers, I don't think if somebody walked in your door and told you...well, on the \$300 million, as we just were explained to us by Senator Kolterman, it's actually \$700 million. [LB548]

SPEAKER SCHEER: One minute. [LB548]

SENATOR LINEHAN: So they're \$700 million behind on their retirement program. They're almost another billion in debt, and they're talking about cutting staff and building schools. How

Floor Debate  
April 04, 2018

---

can you cut staff and build schools? It doesn't work. This whole conversation has huge holes in it. Thank you for your time, Mr. President. [LB548]

SPEAKER SCHEER: Thank you, Senator Linehan. Senator Kolterman, you're recognized. [LB548]

SENATOR KOLTERMAN: Thank you again. As many of you know, I've really struggled with the dilemma that we're facing with OPS. Their current projected funding obligations in the retirement system concerns me. And I want everybody to know that I understand and acknowledge that OPS is in a truly difficult situation, and I think Senator Lindstrom and I have worked very hard, along with my committee, to try and come up with ideas. There's some things that I think people do need to know, though, for the record. At the present time the unfunded liability is \$713 million. That came right out of the actuarial projections. And it projects that OPS will have to pay over \$880 million in ARCs and payments over the next 30 years to eliminate the unfunded liability. That's a tough situation, particularly for a district that's up against the \$1.05 levy limit already. But I'm also aware that OPS School Board members have made decisions over the last decade that have helped create this problem. We've talked, we listened about the investments, but decisions that have not been included in the briefing materials, I want you to take a look at the very first page of the "2004-2017 History of OPS ARC Obligations and Payments for OSERS Plan." It's open, it's the very first page that you have there. In LB548 fact sheet distributed by Senator Lindstrom at the briefing one of the questions and answers is, how did we get to this place? And it lists the causes of investment losses in 2008 and actuarial assumption changes in 2017, but nowhere in there does it include the school district's nonpayment or underpayment of over \$15 million in ARC obligations from 2004 to 2017. So the chart shows you the obligations from 2004 through 2017, which means the payments the actuary determined that OPS needed to make each year in order to cover current plan costs to reduce the unfunded liability. The current...the chart shows the amounts OPS school district paid towards these ARCs and amounts OPS did not pay. As you can see from the chart, since 2004 OPS has neglected to pay over \$15.7 million in actuarial determined payments that were necessary to keep the plan solvent. So focusing in on more recent history, since 2010, the district failed to make any of its ARC payments that were due in 2010, '11, and '13. And last year, though the actuary determined an annual valuation report that a \$15.5 million ARC was needed to maintain the solvency of the plan, the district found a technicality in the statute definition of "solvency" and allowed them to underpay the ARC by \$2.75 million. As a result, 2017, OPS paid \$12.75 of the \$15.5 million. You can...I can confirm all this information by the actuary in the Omaha school employees actuarial valuations from 2017, 2013, 2011, 2010. In the 2010 valuation report, the actuary notes in the box entitled "Unfunded Actuarial Accrued Liability, September 1, 2009," that there were contributions less than the ARC of \$2 million that contributed to the \$390 million unfunded actuarial accrued liability. In 2011 valuation report, the actuary again notes in the box entitled "Unfunded Actuarial Accrued Liability,... [LB548]

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

Floor Debate  
April 04, 2018

---

SPEAKER SCHEER: One minute. [LB548]

SENATOR KOLTERMAN: ...September 1, 2010," there were contributions less than the ARC of \$4 million that contributed to the \$406 million UAAL for September of 2011. And it goes on and on. And finally, from the most recent 2017 valuation report, the actuary notes that the description of the funded ratio chart changes in actuarial assumptions and methods coupled with investment returns below the assumed rate and contributions below the actuarial rate significantly reduced the funded ratio over much of this period. So it's dropped from 89 percent in 2017 to the current funding level of 65 percent. It's very clear that those nonpayments had a big impact on the \$713 million of unfunded liability that we have today. [LB548]

SPEAKER SCHEER: Time, Senator. [LB548]

SENATOR KOLTERMAN: Thank you. [LB548]

SPEAKER SCHEER: Thank you, Senator Kolterman. Senator Lindstrom, you're recognized. [LB548]

SENATOR LINDSTROM: Thank you, Mr. Speaker. Just want to get us back on track. I know we've been talking about some of the past history, what should have, could have been done before. I understand all the issues that have occurred. It has been a problem. It still is a problem. I think that there has been a lot of things that have been made right. And when looking at this issue, I'm looking at this in the present, I'm looking at this in the future. I do have an answer for you, Senator Geist, if you're in the room. The bondholders take priority in the case of the pension obligation bond. So if...I'm sure someone will fill you in on that at some point. Again, I feel like there's a little confusion with regards to the unfunded portion of this just going away based on cuts. The unfunded portion of \$713 million is not going away. That is with us regardless if we do this or if we do nothing. And like Senator Kolterman, this does get to...into the \$800 and, I believe \$80 million in unfunded liability at some point. If we continually cut, and they're going to have to cut to make payments this year, again, that filters down to the kids. School classrooms increase as far as kids in the classroom, and there's less people paying into the plan. I have yet to hear another solution that is not a tax increase. People have said a levy override to pay for the pension--again, that's above \$1.05--that is a tax increase, anything above that. We have discussed utilizing early leave incentive, which is part of that equation, but the pushback we got was that's above the \$1.05. So we went a different route, making sure that we stayed under that \$1.05 by restructuring this debt. That is simply what we're doing. You know, this is about Nebraska kids, at the end of the day. We are not asking the Legislature for money. That is not what we are doing here. At some point, if this doesn't get corrected and if we don't do something, that could be a problem, but we are not asking for that. What OPS is asking for is the authorization to allow this

Floor Debate  
April 04, 2018

---

to be a local issue and a local fix. The one thing that hasn't been discussed, yet I think it's important because, again, this does deal with the taxpayer: OPS is going to have to continue to issue bonds. They're going to issue or go to the ballot for \$409 million. There are people that want to see another high school built on about 156th and Ida. There are issues with some of the buildings that have to be revamped. Anytime that the School Board will issue these bonds, rating agencies are going to come in and look at the viability of the unfunded liability and what are...what is OPS doing to address that. If they come in and choose to cut our rating, that increases taxes to the taxpayer. They are going to have to be on the hook for an extra quarter point, half point percentage based on those interest rates because of the unfunded liability number. So again, I want to emphasize that we are not adding new debt. We are not asking for a tax increase. We are restructuring \$713 million, taking advantage of where interest rates are to add address the unfunded liability. People say, and I've heard, oh, why, just wait for it, we can wait, let's have more discussions. We've had 18 months of discussions. We have gone through every scenario possible. The longer we wait the worse the situation will get, I will assure you that, because interest rates will continue to go up,... [LB548]

SENATOR HILGERS PRESIDING

SENATOR HILGERS: One minute. [LB548]

SENATOR LINDSTROM: ...the arbitrage will continue to close, and we will continue to not be able to invest in the way that we need to invest to get us back on track. So if we do nothing, the ARC will continue to increase year after year after year after year. Yes, there are assumptions in any investment that you make always. But not doing anything is not an option. And I will, for the naysayers that have been on the floor saying things, I will ask you, please punch your light and give me an alternative because I have yet to hear it, one that is not an increase with the pension or the levy override with the bonds. Provide me a solution. Provide me another solution that doesn't involve cuts, because we are making...they are making cuts. OPS is making cuts. That is part of the package, part of the solution. So we are addressing those issues. I can't control what OPS did in the past, nor can we, but we can address how we approach this moving forward, and the clock is ticking. So again, I'd be more than happy to answer questions, but I have yet to hear an actual solution other than this. [LB548]

SENATOR HILGERS: Time, Senator. Thank you, Senator Lindstrom. Senator Stinner, you are recognized. [LB548]

SENATOR STINNER: Thank you, Mr. President. Members of the Legislature, I want to correct the record. First of all, I did say 30-year bonds, meaning that's the general maturity of pension obligation bonds. This is a 25-year bond. I admit to that. I think I started by talking about that

Floor Debate  
April 04, 2018

---

this is a significant subject. OPS is our largest school district and it certainly is in need of some long-term solutions. I don't deny any of that. Now, is this the right way to go to have that solution? I guess that's something that we needed to debate. But I was talking about pension obligation bonds when I ran out of time, and really the key to this is the rate of return that you make from your investments has to be greater than the cost of those bonds. It's an arbitrage deal. We use a 7.5 percent rate. I think Senator Lindstrom was at 5. I'm at 6 percent on fixed rate taxable bonds. And we can quarrel about that. But I want you to understand that we took over this, meaning the state took over this obligation and started to invest those monies. And still, 30 percent is still invested in private equities that are making substandard returns, so that's kind of over a ten-year period of time will release itself, but it will be an anchor on the rate of return, and it could possibly end up into a negative arbitrage. The other thing that I want to point out to the people who are listening at this point in time is maybe look at Exhibit 5-A, which is 7.5 percent, \$20 million reduction in payroll, and look at that schedule. And you can see over on the right-hand side of the schedule, the "District Additional," you'll see the \$300 million coming in. Now that relieves them of additional payments for a period of time, and I believe it comes down to 2027, or 8 years, 9 years, whatever it comes out to be. So that is the relief that you're getting. But look across to the other one, "Current Provisions," and go to that 2027. You see that \$32.7 million? That's an ARC. That's an ARC, okay? That means it has to be paid. So just work yourself down. You go from \$41 million total district obligation to \$62.6 million. So at that point in time OPS has got to make a considerable cut, a considerable decision in which to fund this. Now that doesn't...this schedule does not include the additional \$20 to \$22 million of bond payments over a 25-year period of time. It's a significant impact. And as we sat here today, I was given 12 basis points away from 105, so I got to run my school district on 93 basis points. I got to be sure through all business cycles. And if we have a prolonged business cycle that's up, that's great. But if we have a prolonged business cycle that's down and we don't hit this, mortality tables change, actuarial assumptions change, and you could have an ARC right in the middle of what we're trying to do here. These are assumptions. But there is another schedule on 11, page 11, that's 5.5 percent, shows the significant impact of this. Now this shows that actually the district is better off \$21.3 million. But if you go back to 5.5 (percent), if you assume 6 (percent), whatever the number you assume, but you go back to 5 (percent), it's a \$53 million impact, negative impact, on the district. So be careful with these obligation bonds. It looks like that might be the only solution. I will tell you that it is not the only solution. I believe the cuts are appropriate in this situation. They got themselves into this. Three and a half percent... [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR STINNER: ...cut is not enough. Five percent cut gets you to \$30 million. Then you go for your tax levy override. At least try it and then come back. But if we don't get this resolved, I agree with you, this becomes...this becomes a problem that we'll have to confront in future

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

Floor Debate  
April 04, 2018

---

Legislatures. So on that, I would give the rest of my time, if there is any time, to Senator Kolterman. [LB548]

SENATOR HILGERS: Senator Kolterman, 35 seconds. [LB548]

SENATOR KOLTERMAN: I'll yield. Thank you. [LB548]

SENATOR HILGERS: Thank you, Senator Stinner and Senator Kolterman. (Visitors introduced.) Senator Hilkemann, you are recognized. [LB548]

SENATOR HILKEMANN: Thank you, Mr. Speaker. I'm wondering if Senator Lindstrom would take a couple questions. [LB548]

SENATOR HILGERS: Senator Lindstrom, would you yield? [LB548]

SENATOR LINDSTROM: Yes, I will. [LB548]

SENATOR HILKEMANN: Senator, I look at this and I...is this really sound financial practice to refinance this type of a loan, particularly with really a rather questionable rate of return on that investment? In other words, we're talking about get 5 percent. We think we're going to get 7 or 7.5 percent in this economy where we've...where our market sits and so forth at this point. Is that realistic? [LB548]

SENATOR LINDSTROM: I can tell you that the way that we are sitting right now, to achieve 7.5 percent based on the allocation that we have now is not realistic. It is impossible. And I can tell you historically, if you have just 30 seconds, as to why. [LB548]

SENATOR HILKEMANN: Okay. [LB548]

SENATOR LINDSTROM: You mind? Twenty-five years ago, so if we're going to issue these bonds, is twenty-five years. April 4, 1993, the Dow Jones is at 3,360 close, and that's all equities. Today it's a little shy of 24,000. That's essentially a 620 percent return. Annualize it at 8.2 percent. That is all equities, okay? So when I talk about the 70/30...7...35/65, 35 percent of those assets could potentially achieve that return. The 65 portion will never achieve that. Now if we issue bonds and are able to allocate in the 70/30, 70 percent of that has a chance to hit on an analyzed return of 8.2 percent. That 8.2 percent does not include dividends and interest. Over 25 years, if you include that in there, it's 10.7 (percent). But based on the parameters and the risk-

Floor Debate  
April 04, 2018

---

adjusted reward in how we'd invest this and damping the volatility, we would never do 100 percent equities. So the way that we have it structured now, we actually can achieve it. How we are doing it now, I promise you that how it's allocated on (inaudible) five, this number, this actuarial required contribution, will continue to go up. And again, these are all assumptions and all we have in actuarial math is assumptions, market valuation assumptions. [LB548]

SENATOR HILKEMANN: Okay. And then my concern is could OPS be worse, in a worse situation in 20-25 years than it is today if we do this? [LB548]

SENATOR LINDSTROM: If we do this, I...the probability of being worse, no. If we do nothing, probability of being worse if we do nothing is much greater. [LB548]

SENATOR HILKEMANN: Okay. Thank you, Senator. If I have additional time, I would surrender it to Senator Lindstrom, if he'd like it. [LB548]

SENATOR HILGERS: Senator Lindstrom, 2:10. [LB548]

SENATOR LINDSTROM: Sure. And again, this bill...I like math. I like numbers. The numbers that I see I can stand here confidently and tell Senator Hilkemann and the rest of the senators in this room, the numbers don't lie. Okay? I know that, again, this is not the ideal situation. I have said that many times. And again, I have yet to hear anything to a solution other than a cut or a tax increase. But the math alone works in the tune to save the taxpayer over time anywhere from \$20 million to it could be \$120 million, based on the assumed rate of return. And again, we are talking about assumptions. We can look at historical data. We can look at modern portfolio theory. We can look at asset allocation returns in different sectors, and that is the only guide we have for future results. So when the naysayers say, well, if there's a correction in the market this year, there's a correction in the market next year, there's been...there's always been an excuse as to why to not invest. Look at the last 25 years: 1999-2000 we had a the tech bubble burst;... [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR LINDSTROM: ...9/11 happened in '01; '08-09 the recession. Were any of those times a good time to invest? No. But if you stayed disciplined on the approach, which OPS and the board of trustees did not before when they started to be reactionary to the underlying investments and how we got in this mess. The Nebraska Investment Council has investment individuals on there with a lot of history and a lot of experience and I think they would agree with me on this that a disciplined approach utilizing more equities over time will get to that 7.5 percent while



Floor Debate  
April 04, 2018

---

being and having a risk-adjusted return. Math does not lie. Historical data does not lie and it's the only indicator of future results and that is what we're doing. [LB548]

SENATOR HILGERS: Thank you, Senator Lindstrom and Senator Hilkemann. Senator Vargas, you are recognized. [LB548]

SENATOR VARGAS: Thank you, Senator Hilgers, President. (Laugh) Thank...I know, it's...anyway, thank everybody. I think this is a really great discussion. There's a couple points I want to continue to touch upon. The first is, one, I get this is a complicated issue to dismantle. I do not believe...and with every bill that we have here, we don't...we're not experts on every single subject matter. We can't be. There's just not enough time. We have policy experts that help elevate these issues and weigh the pros and cons of whether or not we should go down a route, which is why it encourages me that there are...there is some level of unity to take a step in a direction towards part of a solution, not the solution, not the panacea, no silver bullet. We're talking about Omaha Public Schools Board of Education, supportive of this. We're talking about members of the community, including the Omaha Chamber. We're talking about individuals that are district leaders, including the superintendent, outgoing and incoming. This is a very unique set of circumstances of unity. But politically I will say that that's one of the reasons why I'm supportive of this bill, after being on the board and after recognizing that we're not always unified on things. There have been divisive issues. But to bring people together saying that this is something that they need the authority from us to be able to do, that's not incurring new debt, that's not taking General Funds, that's not taking all of the amount that they need to make up all in this bond sounds responsible. I think we heard historically that there have been things that Omaha Public Schools can and should have done differently. I don't think we're debating that whatsoever. We've all accepted that. I think we also have accepted that there have been steps in the direction for humility of saying that we're...we need help, and they've come and done that to us. And in a similar set of circumstances I believe they're asking us the exact same thing: We need your help. We need you to give us the authority, as senators, in statute to be able to put forward this very specific, unique bond that would allow us to then infuse, put money back into the pension, create some predictable payments. Help us put it to work as quickly as possible, that amount, while also keep in mind being responsible about their spending. I think some people are saying that it's not a good solution or good step forward. I think Senator Lindstrom said this, that if somebody is not supportive of it there should be an alternative solution, and I haven't heard it yet. I'm more encouraged to take a step in a direction for what they're asking for than to do nothing. With the amount of unity that we're seeing and the amount of minds and the policy background that people have, while, in addition, taking into account that it is actually responsible to not take these special bonds and take the entire amount to fill the gap. If you look across the country where there are bonds that are done in the responsible way of going about doing it is ensuring that there is some level of reduction in spending. We talk about that all the time. We've

Floor Debate  
April 04, 2018

---

been doing it here in the Appropriations and in this body talking about how we control spending. And talking with Omaha Public Schools and talking with the board president... [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR VARGAS: ...and the members, they are...they have convened a committee that is looking at reduction in spending. You heard about the \$26 million already. There is going to be continued strategic planning on how they're going to reduce over the next five years and ongoing. That's part of the plan. And the reason why they're doing it is because that is a responsible way to going about reducing debt and addressing this problem. There's not one way to do it. But if we say, take responsibility for this but we're not going to allow you to have this tool, I'm afraid we're being hypocrites and I don't want to be that. In the meantime we have the ability to oversee. We're going to be here, especially for the freshman class, the sophomore class now. We are going to be here to then see and oversee how effective they are with overseeing and going in the right direction with this, with this ability to actually do this. [LB548]

SENATOR HILGERS: Time, Senator. [LB548]

SENATOR VARGAS: Thank you very much. [LB548]

SENATOR HILGERS: Thank you, Senator Vargas. Senator McCollister, you are recognized. [LB548]

SENATOR MCCOLLISTER: Thank you, Mr. President. Good afternoon, colleagues. I was encouraged by Senator Vargas' remarks about fiduciaries. And that position of being a fiduciary is so important. It's a valued position of trust. And anybody that takes on the assignment of serving on a board, particularly when you're responsible for money, investments, or things like that, you need to be aware of the trust element involved. I've done that a number of times, from a church board that I was on where we invested a couple hundred thousand dollars, to a community health center whose board I'm on and they've got tens of millions, to MUD and they had \$350 million worth of investments that we needed to protect. So it's important for a group that's responsible for that amount of money, whether it's a couple hundred thousand or \$350 million, to engage people that actually know what they're talking about with regard to these investment funds, so important. You need to get counselors that have experience and understand how the market works and how the assignment of assets needs to be done to maximize your return. And obviously, the OPS folks did not do that. In fact, they sold at the wrong...the wrong...they made the wrong decision at the wrong time and they're paying the price now, and that's unfortunate. I'd like to ask Senator Lindstrom a question, if he'll yield. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR HILGERS: Senator Lindstrom, would you yield? [LB548]

SENATOR LINDSTROM: Yes, I will. [LB548]

SENATOR McCOLLISTER: Senator Lindstrom, I noticed that with regard to actuaries, you really don't require an actuary report until 2026 and then four years thereafter. I think that may be foolhardy not to engage an actuary sooner and then perhaps more often. Can you respond to that? [LB548]

SENATOR LINDSTROM: Yeah, that was a conversation that we had. I think as we talked about the cost of these actuarial studies are pretty pricy and we still do the experience studies and, if requested, we can do actuarial studies, but they are expensive. But after the...we did it based on after the ARC payment so we could continue to monitor this over the next several decades. [LB548]

SENATOR McCOLLISTER: Thank you. Thank you. I know that's true, but making the wrong decision is expensive, too, and an actuary can kind of point out how you are moving along the road. And if you're not doing things right, you can adjust the amount of benefits that you get or require the parties to make more contributions to the fund. So I think perhaps an actuary is something we should do more often. You know, the time period is so important in this. We saw what happened to this OPS fund in 2008. They made all the wrong decisions, and now they're significantly under water, and that's a problem. Senator Lindstrom, another question. [LB548]

SENATOR LINDSTROM: Sure. [LB548]

SENATOR McCOLLISTER: Can you tell me about guaranteed returns? Are they truly guaranteed? Can anybody guarantee returns? [LB548]

SENATOR LINDSTROM: No, that's illegal. (Laugh) [LB548]

SENATOR McCOLLISTER: Oh, okay. [LB548]

SENATOR LINDSTROM: You could do...you could do it under an annuity, in a sense. But, no, if anybody ever guarantees your return on assets, it's illegal. They can't do that. [LB548]

SENATOR McCOLLISTER: But the guaranteed assumptions... [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR LINDSTROM: Yeah. [LB548]

SENATOR McCOLLISTER: ...that people use can sometimes be fairly foolhardy. You know, if you estimate that you're going to make a 7.5 percent return, you know, that's probably on the outer limit, or maybe even 8 percent. But, you know, I don't think anybody can guarantee a 7.5 or 8 percent return year after year. Correct? [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR LINDSTROM: That's correct. And actually over the long term there's never been a market that actually will return you that particular percentage in any given year. So again, this is based on the actuarial assumptions and market assumptions where you smooth it out over time. You'll have peaks and valleys around that 7.5 percent. But at the current allocation we'll never hit that. And that's why on the actuarial study you'll have three different, distinct returns, to give us kind of the parameters in which we can operate under. [LB548]

SENATOR McCOLLISTER: Thank you. [LB548]

SENATOR LINDSTROM: Yeah. [LB548]

SENATOR McCOLLISTER: Thank you. Well, we'll know whether LB548 was a good bill or not in ten years. Well, we won't know anytime before, and so we have to make a decision and go with it and hope for the best. Thank you, Mr. President. [LB548]

SENATOR HILGERS: Thank you, Senator McCollister and Senator Lindstrom. Senator Bostelman, you are recognized. [LB548]

SENATOR BOSTELMAN: Thank you, Mr. President. I yield my time to Senator Kolterman. [LB548]

SENATOR HILGERS: Senator Kolterman, 4:50. [LB548]

SENATOR KOLTERMAN: Thank you very much, Senator Bostelman. A couple things: Senator McCollister, they are still required to do an...they're required to do their actual annual actuarial study, so we're going to get that. But we won't get every four years a study that we've been getting. And actually there will be a seven-year ARC holiday, which continues to kick the can down the road for seven years, in addition to the amount of money that we're going to dump in.

Floor Debate  
April 04, 2018

---

The clock is still ticking and it amounts to about \$7 million a year or \$6 million a year. So over that seven-year period they fall behind another \$42 million, somewhere in that vicinity, depending on which rate you look at. The points that I wanted to make that I feel are very important, the annual pension obligation bonds that they're going to have to make a payment once a year, it's going to be somewhere between \$20 and \$22 million. And in essence, that takes 12 cents off of the \$1.05 that they are currently getting in their budget authority. My concern is if you take 12 cents, you're getting them down to 93 cents. That means OPS will have to operate a school system on 93 cents for the next 25 to 30 years. It locks in the amount not only for the current OPS board but also for future boards. I don't think it's fair. And one of the main reasons I'm opposed to this is I don't think it's fair for a new superintendent that they just hired coming in. She's scheduled to begin July 1, and I think everything I've read about her is very, very qualified person. We are going to tie her hands up. Puts her in an extremely difficult position and it potentially sets her up to fail. The holiday, again, this creates a seven-year ARC holiday. They'll not have to pay any ARCs through 2026. They talk about how they want to do this because of predictability of pension payments. One of the rationales of the pension obligation bonds that's been repeated throughout Senator Lindstrom's briefing materials is a need for predictability in the amount budgeted. If it's predictability that is sought, OPS, just like the Appropriations Committee and the Governor, have access to the yearly projections provided by the actuary. These projections provide a 5-year period and a 30-year projection. So even if the market drops or has strong returns, those investments are smoothed so the ARC amount due remains in the projected ballpark. Senator Lindstrom says nobody has brought him options. I want to talk about the options, because I think that's important. Option number one, in my opinion, I don't think OPS has exhausted all things available to them as a board. OPS has the authority to seek a levy override, which would require a vote of the people. They haven't done that, much like Millard, much like Westside,... [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR KOLTERMAN: ...many other districts. If OPS wants to pursue a path of issuing 300 in pension obligation bonds, the electorate, in my opinion, has a right to vote on the decision. A second option would be \$20 million annual payments to OSERS, that increases 3 percent a year, plus increased district contribution from 101 to 102 percent. We have actuarial studies that we actually looked at in November and laid that out to them. So this came out after we talked about that. But what that does, it keeps the flexibility and I don't think we want to give up that flexibility. Now the last thing I want to make on the record is when we're talking about the decisions that were made about the finances, it wasn't just OSERS. Senator Wayne has already indicated that he was on that committee when many of those decisions were made, so it was members of the board of education as well as OSERS members. [LB548]

SENATOR HILGERS: Time, Senator. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR KOLTERMAN: In the past, they were on the committee together. Thank you very much. [LB548]

SENATOR HILGERS: Thank you, Senator Kolterman and Senator Bostelman. (Visitors introduced.) Senator Larson, you are recognized. [LB548]

SENATOR LARSON: Thank you, Mr. President. I understand that we moved the Omaha retirement system under the Nebraska Investment Council, but I still have some questions because of how we got into this situation. So would Senator Lindstrom yield to a question? [LB548]

SENATOR HILGERS: Senator Lindstrom, would you yield? [LB548]

SENATOR LINDSTROM: Yes, I will. [LB548]

SENATOR LARSON: Obviously, there were a number of things that must have went wrong that we...why we put them into the Nebraska Investment Council. But I'm looking at this one example specifically that talks about...and I guess my question is, are you aware of this, when the Omaha School Employees Retirement System invested \$16.2 million in bonds that they don't have, that they're in a lawsuit over getting back? Is that a real thing? Are they going to recover that \$16.2 million? Do you know? [LB548]

SENATOR LINDSTROM: I don't know about that, about that particular investment. I know that there were a lot of investments made that were illiquid and a lot of different varieties of private equity and real asset deals that again the Nebraska Investment Council will spend the next five years unwinding. [LB548]

SENATOR LARSON: And so why do we still even...why do we have OSERS anymore and that board? What do they do? If the Nebraska Investment Council handles everything, why are they still in exist...or what do they do? [LB548]

SENATOR LINDSTROM: Well, they do administer the checks that go out to these participants. Because OPS has the greatest amount of teachers or Omaha has the greatest amount of teachers per capita, they are a resource locally for them to access. [LB548]

SENATOR LARSON: Do they get to travel much or go visit their investments or anything like that? [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR LINDSTROM: I don't know if they do anymore; I think before. They do have a budget that they utilize. And I believe they do take some investment trips or have in the past. [LB548]

SENATOR LARSON: Okay. Thank you, Senator Lindstrom. Colleagues, I guess obviously we get to see how they're moving forward in the Nebraska Investment Council, and maybe that's for the best. In the end, I come back to this concept of...and this isn't...I understand what Senator Lindstrom is trying to do, but this is again a issue where a certain set of people or a certain organization care more about themselves and their retirement than ensuring the best education for the children. I mean maybe we...maybe if the kids started paying dues then NSEA would care about them more. Maybe that's the solution: The kids should pay dues and then they'd have a voice in the union. This...I guess I just have fundamental problems on that side of things, of poor contracts, poor investments made by a select group of people and bargained. When I look at the board members and what they were made up of then and now, it just...it's worrying. And I guess I understand what Senator Lindstrom is trying to do and I understand that it's from the heart. And he's right, in ten years we'll see if he's right or wrong today. But I don't know if I'm ready, because of poor contracts negotiated to benefit specific individuals, specific unions at the detriment of children, if that's our job, to bail them out. And I guess I'm continuing to be frustrated on the floor, and I spoke to this the last time, of us...of us continuing to try, whether it's Senator Linehan or myself, continuing to try to push education reform and tried-and-true methods, things that have been done in other states, and specific unions that spend a significant amount of dollars, more than any group on the right... [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR LARSON: ...has ever spent, to influence policy in here. Did you say one minute, Mr. President? [LB548]

SENATOR HILGERS: Yeah, one minute. [LB548]

SENATOR LARSON: They have spent significantly more money. Unions have spent significantly more money in this Chamber to get people elected than any organization on the right. Yet, it's liberals that continue to stand up and bash those on the right for...whether it's getting help from the Governor or other organizations. There's money in politics. But I guess, as I said, I take a little bit of offense when we could go through, and I'm sure they're going to spend a significant amount of money. I know our...the President in the Chair has probably been hit harder than anybody in this body, total, by the unions, and that's unfortunate. [LB548]

SENATOR HILGERS: Time, Senator. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR LARSON: Thank you. [LB548]

SENATOR HILGERS: Thank you, Senator Larson and Senator Lindstrom. Senator Clements, you are recognized. [LB548]

SENATOR CLEMENTS: Thank you, Mr. President Hilgers. LB548, I have a problem with it also. The \$300 million bond issue is a problem for me, especially without a vote of the people. I was thinking about the fact that I could probably go out and get a 5 percent, 25-year mortgage on my house and put it in the stock market, hoping to make 7.5 percent return. One problem with that, though, is I would need a vote of the people. My wife, she might not want to do that and her signature. And we're asking to give a board ability to go out and get a mortgage without a partner's signature. But then, of course, if the market would crash after I mortgaged my house, somebody could sell it and she and I would be having to find somewhere else to live. And that's an analogy that I think is a definite possibility in this case. And I'm sure that my partner would not risk her security on that. And I think Senator Wayne has a good point that there are other options, that we need a better plan, some more studying on this, and that's why I oppose LB548. With that, I'd like to yield the rest of my time to Senator Kolterman, if he's here. Or, well, Senator Wayne, would you like my time? [LB548]

SENATOR WAYNE: Senator Wayne, 3:10. [LB548]

SENATOR WAYNE: Yes, pursuant to Rule 8, Section 2(8), I would like the Chair to rule Senator Larson out of order for his comments on the unions and everything else he's talked about today and for the last two days. [LB548]

SENATOR HILGERS: Senator Wayne, I'd rule those comments in order. [LB548]

SENATOR WAYNE: Okay. Then I would like to, pursuant to the rules, strike this amendment as not germane. [LB548]

SENATOR HILGERS: Senator Wayne, it's a committee amendment. It is germane. [LB548]

SENATOR WAYNE: Okay. Thank you. (Laughter) [LB548]

SENATOR HILGERS: Senator Schumacher, you are recognized. [LB548]



Floor Debate  
April 04, 2018

---

SENATOR SCHUMACHER: Thank you, Mr. President. I'd like to suggest to Senator Clements that when he's in that situation, he always hedges his bet with a good doghouse on wheels just in case that investment goes south. Would...I'd yield my...rest of my time to Senator Kolterman, if he is in the building. He is not. [LB548]

SENATOR HILGERS: I do not see Senator Kolterman. Oh, he is coming. [LB548]

SENATOR SCHUMACHER: Here he comes. [LB548]

SENATOR HILGERS: Senator Kolterman, 4:20. [LB548]

SENATOR KOLTERMAN: Thank you very much. I was talking earlier about options that would be available other than this option and I didn't get through that. But as we were talking about the levy override, I believe the electorate has a right to understand the effect of these pension obligation bonds repaid under the \$1.05 levy limit. And again, I think that's tying them up for 25 or 30 years, but at least that's an option that has not been explored. The second option, which probably is the best option, we did some actuarial valuations back in November, December, and they were actually put together by Cavanaugh Macdonald in conjunction with some of the ideas that we had, as well as Omaha Public Schools. And one of them was to pay \$20 million annual payment to OSERS that would increase 3 percent a year, plus increase district contribution from 101 to 102 percent. That would get the plan 80 percent funded in 30 years. The language would be in statute, which could be amended if necessary. And it means it maintained--here is the most important thing, in my opinion--it maintained the flexibility for OPS and the ability of the Legislature to continue to work with the OPS district. The last thing that I think we want to do is tie up OPS so that they can't function as a school district. They are by far our largest district in this state. They have a huge obligation. If we start doing some of these things, I believe what we're going to do is we're going to tie their hands even more and hurt the kids that we're supposed to be educating. Part of this whole scenario is cutting \$12 million in payroll. That's part of their proposal. If they cut \$12 million in payroll and they pass a bond issue for \$409 million to build some more schools, how are we going to fund that? Again, I'm really anxious to try and figure out solutions. I just don't see this as the right solution. I've talked a lot about...we covered a lot of the things that we've talked about, but again I think probably in my opinion the most important things that we need to realize through this whole process is if we do it with the pension obligation bonds, there's a huge risk involved. Yeah, does it give them some continuity? Possibly. But we have the flexibility to give them that continuity by working through my committee and the Legislature. The other thing as far as risk is concerned, that's important. And then the other thing is the ARC holidays are a big concern to me. If we take seven years and we don't make any car payments... [LB548]

Floor Debate  
April 04, 2018

---

SENATOR HILGERS: One minute. [LB548]

SENATOR KOLTERMAN: ...for seven years, all we've done is kicked the can down the road another seven years. And again, we're talking about, at that point in time, somewhere between \$40 million a year or more. I really appreciate the opportunity to work with Senator Lindstrom, my committee, and the people from the Education Committee and try and figure out how we can make this work. This just doesn't seem like the right option to me. Thank you very much. [LB548]

SENATOR HILGERS: Thank you, Senator Kolterman and Senator Schumacher. Senator Williams, you are recognized. [LB548]

SENATOR WILLIAMS: Thank you, Mr. President. Good afternoon again. I think, very quickly, and then I intend to yield the balance of my time to Senator Kolterman, the two words that I think we need to really consider at the end of the day are "risk" and "flexibility." And I think you're hearing some conversation about the fact that the pension obligation bonds and this approach, the arbitrage over a 25- or 30-year period of time, creates additional risk. And I'm not sure that's something that I can support. It also, at the same time, removes flexibility. It lowers the limit of the mill levy that the school will be able to operate on during this period of time, as I understand it, to 93 mills. And I know they have at least said they can do that before, but going forward I think that's problematic. So as you're thinking and contemplating where you are on this, use those two words, "risk" and "flexibility." As a long-term investor, those are things that I want on my side, not in opposition to what I am trying to accomplish. With that, I'll yield the balance of my time to Senator Kolterman. [LB548]

SENATOR HILGERS: Senator Kolterman, 3:30. [LB548]

SENATOR KOLTERMAN: Thank you very much, Senator Williams. A couple other things I want to point out: You know, pension obligation bonds have been used in other states. That's been alluded to. Kansas is an example. Kansas has over a billion dollars of pension obligation bonds on the books and it's working. But nobody has talked about this, and I don't want to go there, but here is the reality. When they sold a billion dollars' worth of pension obligation bonds, they also took their teachers from the traditional defined benefit plan to a cash balance plan. I don't think anybody wants to talk about that. That's a huge concession. Maybe that's the answer. I'm not promoting that. But when you take a risk like that, you usually have to figure out how you're going to fund it, and that's one way that they did it in Kansas. The other thing I would tell you is the benefits in the OSERS plan in the past have been much greater than anybody's in the state's plan. For example, the state service annuity that they get, that's funded by the state of Nebraska. We pay that. It's almost \$900,000 a year. Our teachers don't have that in the education

Floor Debate  
April 04, 2018

---

plan. The retirees receive that in addition to their OSERS benefit. The state service annuity is not paid by school plan members. Now we eliminated that in July of 2016. They also have a medical COLA that's not available to our school employees. We eliminated that for new OSERS employees hired on or after July 1 of 2016. In the early retirement arena, available for OSERS members at age 55 with ten years of service, our plan is not available until age 60. Between ages 55 and 62, early retirement benefits reduce 3 percent per year. In the school plan, this early retirement benefit is between 60 and 65. Benefits change to school employees' early retirement benefit for OSERS' new employees hired on or before July 1 of 2016. Those are things... [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR KOLTERMAN: ...that we've been doing. There's no capping on their final average salary, no capping on the final average salary of OSERS employees until 2015. We're still paying under this plan for sins of the past. Now we've made huge strides the last three to five years, but we haven't made the complete changes that we need to make. We need the opportunity to continue to work with OSERS and continue to work with Omaha Public Schools. I want you to give us that flexibility as a committee and not tie us up for 25 or 30 years. Thank you. [LB548]

SENATOR HILGERS: Thank you, Senator Kolterman and Senator Williams. Senator Linehan, you are recognized. [LB548]

SENATOR LINEHAN: Thank you. Thank you, Mr. President. I just...I wanted to review a little bit the annual financial report of Omaha Public Schools. This is available on-line through the Department of Ed. So in their 2016-17 school year, their local effort money that OPS found locally, mostly property taxes, was \$307,236, excuse me, \$307,000. And then when you go to total state receipts, it's almost \$290 million. I'm confused here. And then federal funds, almost \$50 million. So right now OPS, all their receipts, the \$654 million, over half of that already comes from the state and the federal government. So I think, again, we have to be very careful here what we're doing, because we, as we know, we want local control but when the state and the federal government is picking up over 50 percent of the cost I think we need to pay very careful attention to how we're spending the state taxpayers' money. And with everything I've said today I do want to mention, I am very excited about the prospect of the new superintendent, Cheryl Logan, at OPS. I think over the last few years, as I've watched OPS, this could be, seems to be, maybe one of the best decisions they've made. So I agree with Senator Kolterman that we don't want to put her in a place where she cannot succeed. So we need to...we need to figure this out. I just don't agree that borrowing money to make money has ever been a good idea. It's not very Nebraska-like. So with that, I'd like to yield the rest of my time to Senator Kolterman. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR HILGERS: Senator Kolterman, 3:00. [LB548]

SENATOR KOLTERMAN: Thank you again, Senator Linehan. I had a few more questions. I hadn't asked Senator Vargas any questions yet. I wonder if Senator Vargas would yield to some questions. [LB548]

SENATOR HILGERS: Senator Vargas, would you yield? [LB548]

SENATOR VARGAS: Sure. [LB548]

SENATOR KOLTERMAN: Don't sound so enthusiastic, Senator Vargas. [LB548]

SENATOR VARGAS: I don't know what I need to be enthusiastic...no, just kidding. Go ahead. (Laugh) [LB548]

SENATOR KOLTERMAN: So a question for you, and again I'm just trying to set up the time frame. When did you serve on the OPS board? [LB548]

SENATOR VARGAS: Two thousand thirteen, winter, till two thousand sixteen, November. [LB548]

SENATOR KOLTERMAN: Were...during that period of time, were you on the OSERS board like Senator Wayne was? [LB548]

SENATOR VARGAS: I was not. [LB548]

SENATOR KOLTERMAN: So you weren't part of that board. [LB548]

SENATOR VARGAS: Uh-uh. [LB548]

SENATOR KOLTERMAN: Can you... [LB548]

SENATOR VARGAS: I was on the Americanism Board. [LB548]

SENATOR KOLTERMAN: You were on...okay. [LB548]

Floor Debate  
April 04, 2018

---

SENATOR CRAWFORD: (Inaudible) you were? [LB548]

SENATOR VARGAS: I was. [LB548]

SENATOR KOLTERMAN: Okay. [LB548]

SENATOR VARGAS: I was. [LB548]

SENATOR KOLTERMAN: That's great. So how often, in your recollection, as we continue to talk about this, how often did this pension obligation problem come up when you were on the board? Did you ever discuss it in the actual meetings of the board or was it handled by committees of the board or...? Give us a little more background on that, if you would, please. [LB548]

SENATOR VARGAS: Yeah. So my understanding is in 2013 I was appointed to the board, so before I got on, there were conversations because of the legislation in 2013; 2014-15 what we did start to do is we realized that--and Senator Wayne said this--there was a transition to having more individuals that were on the actual OSERS board that had more financial background, that had an experience in that so we can make better investments. And then we started having more conversations, and this is when Senator Nordquist started doing more to try to address the issue. [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR VARGAS: And it became a big conversation piece here for you and the rest of us here. That was 2014-15. [LB548]

SENATOR KOLTERMAN: That was 2014. And as you know, we've talked about this for a couple of years and it's been an ongoing dialogue. I just wanted to get that on the record that we have two School Board members from the past that have worked very closely on this, both on the School Board level and now on this level, and I appreciate that because, again, our sole goal here is to make sure that we come up with some solutions to this. With that, I thank you and appreciate your conversation. [LB548]

SENATOR HILGERS: Thank you, Senator Vargas, Kolterman, and Senator Linehan. Senator Harr, you are recognized. [LB548]

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

Floor Debate  
April 04, 2018

---

SENATOR HARR: Question. [LB548]

SENATOR HILGERS: 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 those opposed vote nay. Senator Lindstrom, for what purpose do you rise? [LB548]

SENATOR LINDSTROM: (Microphone malfunction.) [LB548]

SENATOR HILGERS: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB548]

ASSISTANT CLERK: 26 ayes, 1 nay to go under call. [LB548]

SENATOR HILGERS: The house under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Howard, Geist, Kuehn, Pansing Brooks, Wishart, Chambers, and Groene, please return to your desks. The house is under call. Senator Harr, everyone is here and accounted for. Will you accept call-in votes? [LB548]

SENATOR HARR: Yes. [LB548]

SENATOR HILGERS: The motion is to cease debate. Senator Howard voting... [LB548]

ASSISTANT CLERK: Senator Howard voting yes. [LB548]

SENATOR HILGERS: Record, Mr. Clerk. [LB548]

ASSISTANT CLERK: 25 ayes, 1 nay to cease debate. [LB548]

SENATOR HILGERS: Debate does cease. Senator Kolterman, you are recognized to close. [LB548]

SENATOR KOLTERMAN: Thank you very much, Senator Hilgers, Mr. President. Wow, time goes by when you're having fun, right? We started out this conversation, Senator Lindstrom and I, we actually had lunch together. I ate lunch and he was too nervous to eat. (Laughter) And I

Floor Debate  
April 04, 2018

---

told him, well, when you get to be my age it doesn't matter, you can still eat. But anyway, we started out this conversation talking about how difficult this whole situation is. And it is a very difficult situation. There's no silver bullet to this idea of how we're going to fix Omaha Public Schools' pension plan. There's two things that I think need to...we need to focus on. Number one is risk: Are we willing to take the risk that we can make the difference up on a margin with the unpredictability markets that we have right now? That's a huge contention of mine. Having been in the investment business, I've seen the markets go up and down. We'd be tying this up for 30 years and that does...25 to 30 years. That gives us some opportunity. But there's still risk involved with that. But more importantly to me is the lack of flexibility that we would take away from Omaha Public Schools. I've stood here and told you that I will make a commitment to work, continue to work on this problem with Senator Lindstrom, Omaha Public School Board, OSERS, NSEA, Omaha Education Association, the School Boards. They've all been at the table and we've worked on ideas. Is this the answer? That's something you're going to have to decide because they can't move forward with this without a vote of the body. I don't happen to believe this is the answer. But again, I'm really happy about how this discussion has gone today because as Legislatures that...legislators, that's why we came down here--to talk about the issues, to bring them to the top, to raise the concerns that needed to be raised. And at the end of the day, it's our decision to make. Are we going to allow them, the school district, the flexibility to do this or are we not? That's the real question here. So with that, I would encourage you to vote no on AM2595 and no on LB548 and appreciate what we've accomplished this afternoon in the last 2.5 hours. Thank you very much. [LB548]

SENATOR HILGERS: Thank you, Senator Kolterman. The question before the body is the adoption of the committee... [LB548]

SENATOR LINDSTROM: (Microphone malfunction)...roll call vote. [LB548]

SENATOR HILGERS: A roll call vote in reverse order has been requested. Mr. Clerk, please call the roll. [LB548]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1394-1395.) Vote is 22 ayes, 17 nays, Mr. President, on the adoption of committee amendments. [LB548]

SENATOR HILGERS: The amendments are not adopted. I raise the call. Mr. Clerk for messages. [LB548]

ASSISTANT CLERK: Mr. President, a communication from the Governor. (Read re: LB944, LB945, LB946, and LB950.) New resolution: LR474 by Senator Schumacher; that will be laid

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

Floor Debate  
April 04, 2018

---

over. That's all I have at this time. (Legislative Journal pages 1395-1396.) [LB944 LB945 LB946 LB950 LR474]

SENATOR HILGERS: Thank you, Mr. Clerk. Mr. Clerk. [LB548]

ASSISTANT CLERK: Mr. President, Senator Kolterman, you had three amendments filed to the bill--AM1758, AM1652, and AM1506--all of which I have notes to withdraw. [LB548]

SENATOR KOLTERMAN: That's accurate. Thank you. [LB548]

ASSISTANT CLERK: Mr. President, I have nothing further on the bill. [LB548]

SENATOR HILGERS: Thank you, Mr. Clerk. Continuing debate on LB548, Senator Wayne, you are recognized. [LB548]

SENATOR WAYNE: I'd like to yield my time to Senator Kolterman. [LB548]

SENATOR HILGERS: Senator Kolterman, 4:50. [LB548]

SENATOR KOLTERMAN: Oh, I'd love to talk some more about this bill, but the reality is we need to take a vote up or down. The amendment became the bill and so with the failure of the amendment, Senator Lindstrom is, I think, going to talk some more. With that, I would yield the rest of my time. Thank you. [LB548]

SENATOR HILGERS: Senator Kolterman, you were yielded time. I don't think that you can...oh, back to me. Okay. Thank you. Senator Harr, you're recognized. [LB548]

SENATOR HARR: Thank you. So I've been sitting in my office listening to this debate, listening to how terrible Omaha Public Schools are, about how greedy administrators are, how awful the history is, the testing. What I didn't hear once was a solution. Let's talk about it. You know what? My kids are in school right now at OPS. Let's talk about it. You guys sit around and laugh and giggle and think this isn't a big deal, this is about dollars, this is about cents. Not once did I hear anyone say, what's in the best interest of the children? How are we going to ensure that those kids, my kids, Senator Wayne's kids, all our kids, they're all our kids, folks, what are we doing for them? How are we going to make sure that there's a quality education? Speaker Scheer talked about, hey, if we don't have this, if we don't address this issue, it's going to get wrapped up in TEEOSA. We're going to pay for it one way or another. Do we want to kick the can down the



Floor Debate  
April 04, 2018

---

road? Do we want to try something? Do we want to refinance our credit card debt and make it into a house mortgage at a lower rate? Or do we want to continue to have the money go to interest? You decide. Am I willing to pay more? Do I want a bond issue? You know what? I have listened and listened and listened to individuals--and I'll use Senator Erdman's words--whine about property taxes. And then I ask them, what's your levy for education? And unless you live in Elkhorn, Gretna, maybe Millard, your levy is lower than OPS. Folks, we have poverty, and to use a phrase that you see on T-shirts all over, poverty sucks. But what are we going to do about getting kids out of poverty? It's education. We have a duty to make sure that every kid in this state receives an education. So let's start talking about the kids, because if we don't do something, guess what happens. OPS cuts staff and the teachers who are left, well, they're going to get paid less because we've got to pay for this retirement. And teachers are going to see, well, maybe there isn't money for retirement so maybe I go to a different school district, and the circle continues. And then what do you have? You have the largest metropolitan area in the state, the economic driver of the state with a rotted-out core. Is that what we want? Senator Linehan appropriately noted Benson, a high school in my district, has abysmal numbers. It's the first year and we're going to work hard. We've got a new principal and we're going to raise those numbers. It's a baseline. Luckily, we have almost nowhere to go but up. But shouldn't we be addressing those issues of how do we improve OPS instead of saying,... [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR HARR: ...well, they screwed up in the past and they got this investments here and they got investments there? You know what? You're right. They made bad investments. Hindsight is always 20/20. So what are we going to do about it? We're going to sit around and talk about it some more while the school district goes bankrupt and my kids get stuck in a terrible school. You want a kid transferred out of OPS, you're just encouraging it here. I hear local control. Let the School Board decide if they want to do this or not? But, oh, no, no, no, we don't want local control when it comes to 20 percent of the kids in Nebraska, to OPS, to many of the poorest in this state. Folks, we got to do something. Now, apparently nothing is going to happen today, but I hope between today and the next six, seven days we do something to help make sure our kids have a better tomorrow. Thank you. [LB548]

SENATOR HILGERS: Thank you, Senator Harr. Senator Vargas, you are recognized. [LB548]

SENATOR VARGAS: Thank you very much, Mr. President. Colleagues, I appreciate Senator Harr. That was pretty spot on. We could use a lot of analogies to understand this issue and this issue is not done. It's still within our ability to do something about it. I know there's people that were still trying to wrap their heads around the policy. I'm going to tell you, none of us are going to become experts in financing for bonds in the matter of hours. And I know that's not the

Floor Debate  
April 04, 2018

---

outcome that we're expecting. But we're dealt with a hand. We have to do what we can with the hand that's been dealt to us. That's how I view this. And normally I wouldn't necessarily...and you can call me on this, when I was on the School Board I was very open to being...I was pragmatic about data-driven decisions given where we currently are. We worked on a strategic plan. Senator Wayne worked on that plan. He was leading the effort when he was the board president. He doesn't give himself enough credit. We tried to do a lot in a little amount of time. We tried to fix a lot of things. More importantly, I think the humility that OPS brought at that time when we were there is that we recognized that there are shortcomings in the way that we operate, wasn't always perfect. And that gets us to where we are today. I think there's been an acknowledgment of shortcomings, an acknowledgment of help that's needed and steps in the right direction to be more responsible. And now it is being placed upon us, in front of us on whether or not we do something about it. And I really hope that we grapple with a yes doesn't mean that we agree with the decisions that the district is making or that we agree or disagree with the notion of pensions or agree or disagree we're supporting unions or not. A yes vote for that amendment and making sure that we can provide this potential tool is giving them the ability to help themselves rather than for us to directly intervene. That's what this is about. I know it seems hard or it seems a little confusing, but if you're wrapping your head around this, they are asking for our help statutorily to ensure that they have another tool to not address the entire problem, because I do think that would be an irresponsible way of addressing this debt--to take it all in one way, that is irresponsible in a lot of different ways--but using it as one piece of a larger, comprehensive plan to address the unfunded liability. So, colleagues, in this meantime, I hope that you read the Op-Ed in the World-Herald; that we still have people outside, that you talk with the individuals that are lobbying on behalf of this because they are there not for some competitive advantage, not to skirt a loophole, not to do anything other than to be afforded the opportunity to have this tool in their toolbox to be able to get themselves out of this problem, a step in the right direction, ability, just like refinancing our mortgage, figuring out a way to take advantage right now of the current market, to take advantage right now of some of the conditions of better investment decisions, to take advantage right now of some increased political will, change in leadership, and also a change in our ability to make an informed policy decision when somebody is asking for help. Wouldn't be the first time we did it. We've done that in the past with a couple different other entities that were asking us to potentially allow them to either increase, you know, a tax levy or provide some more opportunities for something... [LB548]

SENATOR HILGERS: One minute. [LB548]

SENATOR VARGAS: ...else in statute. People do that all the time here. And keep in mind, there wasn't an opposition to this in terms of an entity or a group. I think the opposition, which is appropriate, is that they're concerned about risk. But if so many individuals are on board and have evaluated that risk and are asking for that, then now we're weighing who has the most informed information and is asking for us to help them. I do trust that OPS and the other entities

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

Floor Debate  
April 04, 2018

---

supporting this have made this decision and it's informed by policy, and they're not using it as the only tool to then move forward to address this issue. But, colleagues, they won't be able to do that if we say no. And they may come back next year and ask for the same exact thing... [LB548]

SENATOR HILGERS: Time, Senator. [LB548]

SENATOR VARGAS: Thank you very much. [LB548]

SENATOR HILGERS: Thank you, Senator Vargas. Speaker Scheer. [LB548]

SPEAKER SCHEER: Thank you, Mr. President. We will move on to the next item. We've met the time allocation on this bill so if you'd please proceed to the next item on the agenda. Thank you. [LB548]

SENATOR HILGERS: Next bill, Mr. Clerk. [LB548]

ASSISTANT CLERK: Mr. President, LB389 which was introduced by Senator Friesen. (Read title.) The bill was introduced on January 13 of 2017, referred to the Transportation and Telecommunications Committee. That committee placed the bill on General File with committee amendments. (AM1456, Legislative Journal page 748.) [LB389]

SENATOR HILGERS: Senator Friesen, you're recognized to open on LB389. [LB389]

SENATOR FRIESEN: Thank you, Mr. President. What if I told you that some of the largest technology companies in America, if not in the world, were preparing to invest hundreds of millions of dollars and maybe even more than a billion dollars in Nebraska? What if I told you the timing of that investment would either be slow, perhaps over a ten-year period, or it could be faster, bringing the technology benefits to Nebraska sooner? That's right. The investment could come to Nebraska quickly or the investment could be spread over a decade. And I would tell you that these technology companies, wireless companies, in fact, are not asking for tax incentives. They're not asking for LB775 money. They're not asking for the Nebraska Advantage Act. They're not asking for tax increment financing. They're not asking for income tax cuts or property tax relief or any kind of government subsidy. But what they're asking for is three things. First, they're asking for access to the public right-of-way. In fact, wireless companies already have access to right-of-way under federal law and even in Nebraska law, but our statutes need updating. Second, if they're asking for streamlined and uniform permit application process at the local level for review and approval of their investments, instead of a few hundred different sets of rules, they want some commonsense uniformity in terms of requirements, reviews, and approval.

Floor Debate  
April 04, 2018

---

In other words, they want regulatory relief. And third, they want a reasonable fee, both for their application to be in the right-of-way, but also for the annual pole attachment fees thereafter. LB389 and the committee amendment, AM1456 which becomes the bill, boils down to one fundamental question. Should Nebraska encourage the accelerated deployment of 5G and related small cell wireless technology? A yes vote for LB389 is a vote to encourage and invite the wireless telephone companies to invest hundreds of millions, if not a billion dollars or more across our state in the next several years. A no vote on LB389 is a vote to discourage accelerated deployment of small cell technology in Nebraska. It will send a chilling message about whether Nebraska is open for business, whether Nebraska wants the 5G technology, and whether this Legislature can provide the needed regulatory and fee relief. Legislation similar to LB389 has passed in over 13 states in the last two years. The bill is currently pending in other states and, again, the states that have passed legislation similar to LB389, includes our neighbors, Kansas, Iowa, Colorado, and nearby Minnesota. Nebraska should do the same. So as we discuss LB389, we're going to talk about changing the technology and growing consumer demand for wireless technology and data and why small cells and 5G are desirable and needed. We're going to talk about what LB389 does and why it is needed in terms of support for our growing economy and the support for consumers, business, education, healthcare, public safety applications for wireless technology. We're going to talk about the efforts by the wireless companies to work through the details of LB389 with stakeholders, address concerns and make concessions and agree to amendments. I also expect we're going to hear from opponents with their misleading arguments and misguided opposition to LB389. The truth is Nebraska is one of the highest taxed phone states in the nation, and that is in part due to the telecommunications occupation tax that our constituents are paying to the cities on their land line and wireless phone bills. The truth is that under LB389 cities retain their permitting review authority. The truth is that if safety were jeopardized under LB389, similar bills would not have passed overwhelmingly in other states. The truth is that a year ago the wireless industry agreed to exempt cable from the requirements of LB389 and under the bill as it's written today, cable can deploy micro wireless facilities without jumping through the hoops and processes established under LB389. The truth is, there needs to be a statewide solution so that cities and towns across Nebraska have a clear and standardized process for siting small wireless facilities. Finally, I'm going to return the fundamental choice this Legislature faces. A yes vote supports accelerated deployment of small cell or 5G technology, while a no vote lets other states leapfrog Nebraska and send a signal that we aren't open for business in technology as we think or say we are. It's a simple question. Do we want Nebraska to stay in the mix for these private investment dollars or are we going to do nothing this session on this issue and let other neighboring states get better wireless technology before we do in Nebraska? You may hear this technology will come to Nebraska without this bill, that deployment has begun and we don't need legislation. The fact is other states have now passed bills setting reasonable rates. Are wireless companies going to invest in Lincoln at rates of \$1,995 per pole attachment annually while Des Moines charges 20 bucks? No, they won't. Nebraska will not be in line for 5G investment without passing LB389. The wireless companies

Floor Debate  
April 04, 2018

---

are saying to this Legislature that their consumers, who also happen to be our constituents, are demanding more data from their wireless devices. In order to meet that customer and constituent demand, the wireless companies are planning a massive deployment of new technology, thousands of small cell facilities in Nebraska and hundreds of millions of dollars in investment. Before large scale work begins, the wireless companies are asking for regulatory relief in the form of uniform applications and procedures, access to the right-of-way, and a fee that resembles the current SEC rate of about \$11.50 per attachment. Colleagues, LB389 is arguably the most important economic development legislation that this Legislature will address this session. And I urge your support of LB389 and the committee amendment, AM1456. Thank you, Mr. President. [LB389]

**SPEAKER SCHEER PRESIDING**

**SPEAKER SCHEER:** Thank you, Senator Friesen. As the Clerk noted, there are committee amendments. Senator Friesen, you're welcome to open on the committee amendments. [LB389]

**SENATOR FRIESEN:** Thank you, Mr. President. The committee amendment to LB389 strikes the original sections and replaces them with provisions of AM1456. Many accommodations were made by proponents of the bill between the bill introduction last year and the adoption of this amendment by the Transportation and Telecommunications Committee. Sections 3 through 30 are defined terms. Section 31 applies to activities of wireless providers within the right-of-way and their deployment of small wireless facilities and associated utility poles. New poles could extend no more than 10 feet higher than existing poles. Provisions are made for prohibiting occlusive arrangements for the use of right-of-way, capping fees, permitted uses for collocation or installation or replacement of utility poles, the powers of an authority in historic districts, and the power of an authority to require repairs. Section 32 applies to permitting of small wireless facilities inside or outside the right-of-way and the installation, modification, and replacement of utility poles by a wireless provider inside the right-of-way. Regarding permit application. An application shall be deemed approved if an authority fails to approve or deny an application within 90 days. Batch applications would be allowed and denial of one or more facilities in a batch application would not be the basis for denial of the entire batch. An authority could not institute a moratorium on filing, receiving, or processing applications or issuing permits. Also, we provide that the Department of Transportation require a preempt of the provisions of this act. Section 33 applies to collocations on authority poles and authority wireless support structures that are located on authority property outside the right-of-way. Section 34 applies to activities of the wireless provider within the right-of-way, and no person controlling authority poles could enter into exclusive arrangements for attachment rights. Make-ready work provisions are also covered in this section. Section 35 of the amendment relates to fees. Application fees for collocation of small wireless facilities on existing replacement poles shall not exceed \$100 for the first five small wireless facilities on the same application and \$50 for each additional small

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

Floor Debate  
April 04, 2018

---

wireless facility on the same application. The yearly fee for small cells could not exceed \$20. The application fee for installation of utility pole and associated collocation in the right-of-way is \$250 and if it is not a permitted use, the permit fee can't exceed \$1,000. The remaining sections of the amendment relate to technical issues regarding cable television provisions and language relating to zoning agreements between authorities and wireless providers, ordinances, and court jurisdiction over the disputes. I urge you to adopt the committee amendment to LB389. Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Friesen. Mr. Clerk, for a motion. [LB389]

ASSISTANT CLERK: Mr. President, a priority motion. Senator Smith would move to bracket the bill until April 18, 2018. [LB389]

SPEAKER SCHEER: Thank you, Mr. Clerk. Senator Smith, you're welcome to open on your bracket motion. [LB389]

SENATOR SMITH: Thank you, Mr. President. And good afternoon, colleagues. Having served on the Transportation and Telecommunications Committee for four years, I completely understand the complexities of addressing small cell and broadband technology. So I certainly can appreciate Senator Friesen's attempts here. However, the attempts at a solution or creating a plan as provided in LB389 and the committee amendment are tilted completely, completely toward the preferences of the wireless industry with complete disregard of input from local governments, our power industry, and disregard for maintaining a competitive balance with other communications providers that have invested significantly in our state and particularly in our urban areas. Three major concerns, and if you look at the committee amendment you will see that I was one of the opposing votes to moving this bill out of committee. Three major concerns that I have and that I will be laying out the case for here: First of all, it creates a subsidized and unlevel playing field for our wireless communications companies. It gives them a competitive advantage in the urban areas. And that is, I would say, very damaging to the companies that have invested significantly in our urban areas. The bill and the committee amendment takes away local government's right and responsibility to regulate location and appearance of small cells. We have local governments for a reason. We have city municipal governments for a reason. We have zoning requirements for a reason. And we are now overriding that, overruling that with this legislation. And then, finally, there's a potential risk to the operations of our utility companies. I know that there is an exemption attempted later on for the rural electric cooperatives, REAs, to exempt them out of this. Why? Because this isn't going to be used in the rural areas, this is going to be used in the urban areas. So our public power companies like OPPD, NPPD are not exempted out and that creates a significant problem for the operations of those companies, including safety. In the committee statement, there's a few things that I pulled out of the

Floor Debate  
April 04, 2018

---

committee statement that LB389 is supposed to do. It's supposed to modernize Nebraska telecommunications statutes to allow greater investment by wireless providers in small cell technology. Yes, but it disincentivizes other communication providers, doing great harm to the incentives necessary for that further investment. It says it delivers 5G wireless capabilities to Nebraskans, improving public safety, helping businesses, and creating jobs. I cannot for the life of me see where this addresses 5G frequencies. There are risks in this bill and amendment to the safety of our line workers with our utility operations and it harms investment and it risks jobs. So I don't see where it's meeting the objectives of that part of the committee statement. It says legislation is needed...this legislation is needed for uniform siting practices, but why? We already have small cell networks in Omaha and Lincoln. Why is the statewide overreach necessary? And it says it does all of this while maintaining local control. Colleagues, it does not maintain local control. It takes away local control. How much time do I have, Mr. President? [LB389]

SPEAKER SCHEER: 5:10. [LB389]

SENATOR SMITH: Pardon? [LB389]

SPEAKER SCHEER: 5:10. [LB389]

SENATOR SMITH: We heard a little bit from Senator Friesen that other states have done this, but what have other states done? I think it's worth looking into that. Very simply, other states have not overreached on some of the right-of-way privileges that this bill and underlying committee amendment allows for. There's a 28 cubic foot on pole and unlimited on ground in this amendment and in this bill. It excludes setback site distances, pretty much free reign, free reign to do anything that you want in the right-of-way. Other states have not been so generous. Other states have worked with municipalities, they've worked with utilities, they've worked with other communications providers, they've worked with their legislatures and they have crafted compromises. This bill is not a compromise. This bill, basically, is a piece of legislation that has been drawn up, prepared, and introduced by the wireless industry and it does great harm to investments that are occurring in our urban areas. It does great harm to the control that local governments try to have in maintaining some type of a consistency, continuity with the placement of devices on poles and in right-of-ways and it does great harm in basically taking advantage of our electric utility providers by dictating where these devices can go. I did send out, I distributed around, an idea of what we're talking about when we're talking about small cells. Small cells are not necessarily small, tiny devices that are not noticeable located on poles out of the way. They can be quite large devices and they can be up into the poles in delicate areas where it's dangerous to get to them and it's dangerous for our line workers to work on them. And these large devices can be put anywhere in the right-of-way, even in places that can obstruct the view of drivers pulling up to an intersection. There's no control over this and this is absolutely an

Floor Debate  
April 04, 2018

---

overreach. It's not any way similar to what other states have adopted. It's not a compromise. It has not taken into consideration input from our local governments, our utilities, or other communication providers. And I will continue, as we get a little bit further. Thank you, Mr. President. Thank you, colleagues. [LB389]

SPEAKER SCHEER: Thank you, Senator Smith. Waiting in the queue to speak, Senator Kuehn, Lowe, Clements, Quick, and others. Senator Kuehn, you're recognized. [LB389]

SENATOR KUEHN: Thank you, Mr. President. Thank you, colleagues. I rise in strong opposition to the bracket motion and in support of AM1456 and the underlying bill, LB389. And there's a lot of technicalities. Senator Friesen went through and detailed the base components of the bill, as well as the committee amendment. I hope everyone has an opportunity, if they're not following along with some of the things that are happening there, to speak with Senator Friesen and committee counsel and understand exactly what this bill does as well as some things that this bill does not. I'm just going to start my comments today by looking back at what it means to understand the advancements and adaptation of technology. And I imagine if we were looking at this body about the time that horse and buggies were being replaced by cars, you might hear farriers and hay growers making the same complaints about unfair competitive advantage. The reality in the telecommunications world is that we are moving for a whole host of very important and worthwhile reasons in economic development toward the wireless world. While the foundation of wired telecommunication will still need to be the base and the backbone and the foundation of our telecommunications infrastructure, the wireless infrastructure and the build out of that wireless infrastructure represents the future of Nebraska, both urban and rural. And so how we look at facilitating the build out and development of that infrastructure is an important and relevant policy discussion for us to have here in the Nebraska Legislature. And while the local control issue is trotted out either in support or in opposition and can be used relatively frequently and conveniently wherever it's needed, I do want to remind members of this body that Nebraska is a "Dillon's Rule" state. So to state that city governments own the right-of-way or the municipalities own it, they are given the opportunity and the responsibility to manage it. The public owns the right-of-way. This Legislature created those local governments and they serve at the pleasure of the Legislature. As a result, when we talk about the rights and responsibilities of managing public right-of-way for the purposes of the public good, it is highly appropriate that we would talk in this body about the most effective way to do that and how it is best across this state from Omaha to Scottsbluff to promote the development and the build out of that infrastructure. So while it is certainly true that the development of 5G, the development of small cell technology is going to have its initial greatest impact here in urban areas, that's not to say that it's not of concern for those of us in greater Nebraska. As small cell capability in many of our larger communities is certainly an option to building out expensive standing towers, and it's been well stated by the companies who are responsible for the private investment in building out Nebraska's next generation wireless technology, that small cell uniformity and the ability to



Floor Debate  
April 04, 2018

---

ensure a clear, reliable path forward to installing this technology is essential to the 5G upgrade and that a failure to build out that technology, to have that standard policy from community to community delays Nebraska's deployment of its 5G infrastructure. And that hurts all of us. So should cities be able to make a profit or utilize thousands of dollars per pole for installation of small cell? I think that's a little bit ridiculous to look at development of an infrastructure we are all going to need, we are all going to use for personal, for business, for community use... [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR KUEHN: ...as a revenue stream. This consistency for community and community promote private investment, absolutely. We've seen it in everything from livestock development to policies for building and constructing roads across this state. And finally, I guess I would like to see...I've spent four years here and I got to tell you, it blows my mind how quickly we talk about all of the needs that we have to encourage private investment, to encourage next-generation technology, and the first thing the League of Municipalities always responds to everything is, no. If we are going to continue to have the state that everyone talks about, whether it's work force development or higher education or recruiting business and industry, somewhere along the way we have to start being willing to say, yes. Are there challenges? Yes. Are there issues associated with zoning? They've been addressed in the bill. We zone all kinds of things. [LB389]

SPEAKER SCHEER: Time, Senator. [LB389]

SENATOR KUEHN: Did you say time or one minute? [LB389]

SPEAKER SCHEER: Time, Senator. [LB389]

SENATOR KUEHN: Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Kuehn. Senator Lowe, you're recognized. [LB389]

SENATOR LOWE: Thank you, Mr. President. And thank you, Senator Friesen, for bringing LB389. I made this my priority bill this year. Some people have asked me why I would make this my priority bill, so I want to take a moment today to explain why. I prioritized this bill for the people of my district and for the people of Nebraska. LB389 will bring small cell technology into Nebraska, which is a prerequisite for 5G technology through the state. And trust me, the people of District 37 and the people of Nebraska and especially the high school students and

Floor Debate  
April 04, 2018

---

college students and the young adults that I have talked to about this bill really want 5G technology. Since I have prioritized this bill, I have had the pleasure of talking to students from Kearney High and from the University of Nebraska at Kearney. Each time they have asked me why, given all the possible bills, I made this my priority. When I informed them it would help ensure that Nebraska get 5G technology as soon as it comes online they, to a person, expressed their full support of the bill and emphasized just how important getting 5G technology into Nebraska is to them. But there is, of course, more to it than that. Just more than faster Internet speeds on smartphones and tablets, LB389 will also improve our public safety, our health care costs, and in education. We all want to make sure that these areas are the best they can be but, unfortunately, we have limited state and local budgets with a lot of areas needing that funding. LB389 will allow the private sector to pay for the infrastructure upgrades that will benefit all these areas and more with no cost to the taxpayer. For those of you who are on the conservative side, let me repeat that one more time. This will be no cost to the taxpayer. And, of course, there is the more direct jobs and the GDP growth that LB389 can bring to my district and to the state. From what I have seen, the city of Kearney could see an infrastructure investment of up to \$28 million. The projected economic impact to Kearney is upward of \$51 million and the potential upwards of 313 jobs created. All this in Kearney, my hometown. The job creation potential for the state is over 8,000 people and an economic growth potential of over \$1 billion. If LB389 doesn't pass, we will not see all these new jobs. We will not see the economic growth and the major infrastructure investment, which means we won't see the improvements to our public safety, education, and health care. We will most likely lose our bid to be the Silicone Prairie, and our cities like Omaha and Lincoln will not be considered smart cities for years to come. Those are not only the consequences of passing LB389 this year. Iowa, Kansas, and Colorado have recently passed... [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR LOWE: ...similar versions of this bill. In total, 14 states have passed small cell bills. That's 28 percent of our country. And there are 14 other states that are at this time, besides Nebraska, looking at passing a bill. If they pass this bill, that's over 50 percent of our country will be ahead of us. What do you think will happen when college students, small business owners starting their companies and larger companies looking to expand compare their advantage of living in a state with all the above benefits compared to living in Nebraska without them? Do you think skipping out on 5G technology will have a positive or negative impact on the brain drain of Nebraska? Do you think it will make Nebraska a friendlier place for small and large businesses or one that is less friendly? Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Lowe. Senator Clements, you're recognized. [LB389]

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

Floor Debate  
April 04, 2018

---

SENATOR CLEMENTS: Thank you, Mr. President. I am going to trot out the local control issue that was mentioned. That's a concern of mine. And would Senator Friesen yield to some questions? [LB389]

SPEAKER SCHEER: Senator Friesen, would you please yield? [LB389]

SENATOR FRIESEN: Yes, I would. [LB389]

SENATOR CLEMENTS: Senator Friesen, some of the concerns I have include, how much local control does the city retain? One city is concerned that an 80-foot pole might be put on main street. [LB389]

SENATOR FRIESEN: Well, there are controls on the height. They can be no taller than 10 feet higher than any pole around. So there are height restrictions, but in the end it's still a permit process. You apply. It's a permit application that's just a batch application. So the city still has the ability to pick out specific sites and say no to that one, no to this one. But in the end, the batch would still go forward if they didn't object to those. So they still have local control over where those attachments go. [LB389]

SENATOR CLEMENTS: Thank you. Second question, does any federal law govern this? [LB389]

SENATOR FRIESEN: There are some federal statutes in other...large-tower applications but not in the small cell that I know of. [LB389]

SENATOR CLEMENTS: All right. Another question is, who would pay for engineering costs if it's needed for city infrastructure planning? [LB389]

SENATOR FRIESEN: Well, again, the only thing I can see from the city, when an application comes the company will have their engineering plan of where they would like to locate. Now, the city, I suppose they could have...they're looking at the poles and stuff to make sure that those attachments would not endanger anything on the pole. But when I look at the size and the weight of these attachments, if those are going to be a safety threat to the pole, then I think the pole is already bad and needs replacing, so they do need an inspection and that's where that initial application cost should cover that. [LB389]

SENATOR CLEMENTS: All right. Thank you. And another thing, does the local city have input on the design of the cell canisters or the placement of canisters? [LB389]

Floor Debate  
April 04, 2018

---

SENATOR FRIESEN: If there is a special area in there where they talk about historic districts or they have special lighting, that, yes, they would be required to match the appropriate lighting that they have there and that would be at the cost of the wireless provider. [LB389]

SENATOR CLEMENTS: And is a \$20 annual fee for all locations, and does it have any inflation adjustment? [LB389]

SENATOR FRIESEN: No, not that I know of. There's no inflation adjustment. It would just be a flat...they could charge up to \$20. Numerous locations that now have pole attachment fees in other places, they range anywhere from \$9 to \$13, that I've seen in different areas for different pole attachments. [LB389]

SENATOR CLEMENTS: All right. Thank you, Senator Friesen. While I have a city in my district that's been working on an ordinance, have been working on it for quite a while to accommodate small cell, they're interested in having it, but they're also interested in having more control than this bill gives them. I think...I hope they're local citizens. I urge the local citizens to urge their mayors and the city council to work with cell companies. I believe the cities want this, but I think they also want more input, and I would like to see a little bit more work done on this before I'm able to support it. Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Clements and Senator Friesen. Senator Quick, you're recognized. [LB389]

SENATOR QUICK: Thank you, Mr. President. I do support the bracket motion and oppose LB389 at this time. You know, one of the issues,...and actually, I went to a wireless broadband conference last summer and I do know and understand that 5G technology is coming. We've just got to make sure that we're doing it the right way. And some of the things that we talked about at that conference...and there were senators from other states there and they talked about maybe some of the issues that might come up, and one of the issues was...because there were other rural states there. And they talked about how would they get...they don't even have 3G technology in some of the rural areas and so that was a concern for them. I think they'd probably have to run fiber optics to certain locations because the cell boxes or the receivers and senders have to be located about on an average of 500 feet apart. And so that's one of the issues. Cities like Lincoln and Omaha and probably Grand Island and Kearney, they would probably see 5G first, but it would be a long time before it ever got to the rural areas. And some of the states, kind of like Nebraska, have a lot of rural area to cover. The other issue that came up and that happened to be, if you have two or three different providers in your community, each provider is going to have their own box. So they can't use each other's boxes, they have to use...and so that was one of the things that they asked them, can't you all just get along and use the same box and they said it

Floor Debate  
April 04, 2018

---

doesn't work that way. So they did get a laugh about that one, because we were trying to get them to work together on that. But that is another issue and I think that's an issue that city of Grand Island would face. I know they actually opposed this at the time. I think they understand that eventually they would like to see 5G technology, but we've got to do it the right way. So that they can work together with the providers to bring it in and both have a say-so at the table. And I know the issues that they've talked about is if they have local ordinances. I believe this would probably supersede local ordinances. And then there's right-of-way issues to make sure that each side has a say-so in that, I guess. I also see that the safety issues for workers on the poles. That was one of my concerns, being someone that represented linemen. And the city of Grand Island, they're public power, but they are a city utility so they would have those same issues as power districts do within their own community. And then also they brought up there would be the effect from having more than one provider. If you had two or three providers...we have a lot of street lights on the main streets going up and down town, but on our side streets running through some of our neighborhoods, there's not as many street lights in those locations, so where would all of these boxes go and who gets to decide where they go? And then I know you have, like some neighborhoods have covenants and how would that work out too? So I think it's just one of these issues where we need to make sure that if we're going to do it, let's do it right and go from there. I know I'll have some things to read and talk about. There are several articles and I think some other states are having issues now and regretting maybe that they brought it in... [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR QUICK: ...and didn't do it the right way to start with. And so they're looking at either making changes to those laws or working with the providers to make changes. So, those are some of the issues that we'll face going forward. I would say if we could work with the providers to make sure they're doing it right, make sure that any law we create will work well with any of the communities throughout the state and go from there. Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Quick. Those waiting to speak: Senator Hilgers, Blood, Friesen, Williams, and others. Senator Hilgers, you're recognized. [LB389]

SENATOR HILGERS: Thank you, Mr. President. Good evening, colleagues. I rise in opposition to LB389. I voted against it in committee and I intend to vote against it today. I do want to start off and say some complimentary, positive notes about my colleagues who have been involved in this particular issues. We had the hearing on this last year. I know Senator Friesen has worked extensively on this particular issue and, in fact, more broadly on trying to increase Internet access, both in our major municipalities as well as in greater Nebraska. Senator Lowe, I know, prioritized this. It's a very important bill to him and also a number of the wireless companies and their representation. I've had a number of really what I view productive meetings trying to learn

Floor Debate  
April 04, 2018

---

about this industry, learn about how this particular bill will interact with very thorough laws and will impact our competitive environment here. At the end of the day today, I am opposed to LB389 and I want to focus on one particular reason. I know Senator Smith and others have focused on some of the impact on the municipalities, I want to focus on a different reason in my remarks this afternoon. And that is, I believe that what we ought not to do here to the extent that we can, is to create uneven competitive playing fields within industries. So we ought not to tax one entity that's competing in a particular field but not tax another entity that's competing in that same field. Colleagues, I believe that's precisely what this would help do if it were to pass and I'll tell you why. There are companies in Nebraska, cable companies who are providing TV services to their customers. And under federal law as applied through the states and then the municipalities, those cable companies for the right-of-way, for the ability to access, to put down their pipe and access the right-of-way and access those customers they have to pay up to a 5 percent franchise fee for...over the gross revenues of those services. So it's a 5 percent tax on the gross revenue to deliver, based on the revenues of their cable TV products. Okay? Under 5G-- which I believe is going to be amazing technology and I think it is the future and I do believe it's going to have a tremendous impact in our communities--under 5G one of the products that will be able to be provided, and you're seeing this as more people cut the cord, is TV services...are TV services. And so what you will have is very similar, comparable means of providing those services--cable pipes--but a different taxing regime. And why is that? Well, in the cable TV arena, what you have are cable television...those pipes all have the 5 percent franchise fee, but because of federal law the same pipes that are providing the Internet service over which the TV services are provided, under federal law there can be no tax. So if you envision the pipe to the house and a cable TV scenario...and actually, it goes cable to the home, it provides the TV, that entire line of production as it were, has a 5 percent tax. It looks nearly identical to provide a 5G television service. The only difference is...there's two differences, one is you're doing it the last couple hundred feet through a wireless service, but the rest is through an Internet cable. That Internet cable, colleagues, there's no tax. So you have the same service, comparable services, one has a 5 percent cost, one does not. In my view, that is putting our finger on the scale or having an unequal treatment amongst competitors. So we can talk about encouraging investment in Nebraska, we should talk about encouraging investment in Nebraska, but one of the keys to investment is having clear rules that do not change. And we have had companies who have already invested tens of millions of dollars, if not more, in the state of Nebraska to provide particular services. And what we're telling them is that, well, the rules can change and we could...we might treat you or we'll treat you differently than your new competitors. Sure, those new competitors, they're providing a very cool technology. It is the future. The applications and implications of 5G I think we're only starting to scratch the surface, but what we're saying is, you can provide the same product and service, you are going to get charged less, not because you're better, not because you are smarter business people, because you have a better cost structure, it's because you have a different taxing system applied to you than your competitors. I don't think that's right. It's the primary reason why I oppose LB389. Now, currently, under the current

Floor Debate  
April 04, 2018

---

system there isn't a tax at all for those Internet services and they are beginning to be implemented throughout municipalities. We've heard testimony at the committee hearing I think today and off the mike about Lincoln and Omaha and some municipalities that are starting to have 5G... [LB389]

SPEAKER SCHEER: Time, Senator. [LB389]

SENATOR HILGERS: Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Hilgers. Senator Blood, you're recognized. [LB389]

SENATOR BLOOD: Thank you, Mr. President. Fellow senators, friends all, unfortunately, I do stand in support of Senator Smith's bracket. And I say unfortunately, because Senator Friesen is actually one of my favorite senators. He's always kind and courteous, even when we disagree. But with that said, I am going to take this down a different path because so much has been said that I already agree with. One of them is in reference to my district and Senator Crawford's district, and that is Offutt Air Force Base. And so it's important that I protect the needs of the base over the desires of somebody to live stream a football game or watch a movie in their backyard. It's very complex. I think that we actually need an interim study that pertains to Offutt when it comes to 5G, because in my district LB389 as written right now is in conflict with specific needs of Offutt Air Force Base. FAA, as I'm sure you know, has to be contacted whenever you determine conflicts with aircraft when it comes to sitings. And I don't see that bill addressing this, and maybe we can talk off the mike and you can show me otherwise. But for District 3, and I can't speak on behalf of Senator Crawford, but I'm going to say and possibly District 45, with Offutt Air Force Base right in our backyard, I feel Bellevue would be the carve out in order for me to support this bill. It's unfortunate that in rural Nebraska that our bigger cell phone companies don't make you a priority, because it's about profit. They make Omaha and Lincoln a priority because we have the population. And that does not make it right, but that makes it about business. I see some of the same senators speaking in favor of this bill that couldn't grasp digital ledger technology, when all we had to do was pass the bills and we would have businesses who have already committed to coming to Nebraska just for passing a bill on technology. There was no monies involved whatsoever. But now we're very anxious to pass this bill and I think, quite frankly, it's kind of hypocritical. Do I think that we need to expand technology in western Nebraska? Absolutely. They deserve the same technology that we have in eastern Nebraska. But until we can come up with resolutions in reference to population, I don't think this bill is the answer. I think Senator Friesen and his supporters have very good intentions and I support those intentions. But for my district, this bill is a no. If I have any time left, I'd be happy to yield that to Senator Friesen. [LB389]

Floor Debate  
April 04, 2018

---

SPEAKER SCHEER: Senator Friesen, 2:25. [LB389]

SENATOR FRIESEN: Thank you, Mr. President. I'm starting to get really confused. I thought we'd spent a couple of sessions already talking about regulatory relief, lowering taxes on businesses, trying to encourage economic development. And when we finally get a bill that does that, we want to kill it. What this boils down to is revenue stream. I would be more than happy to join Senator Smith and Senator Hilgers in introducing a statewide franchise fee so we can level the playing field. Let's level the playing field by raising taxes on a business so that we all feel better about it. If that's the way we want to approach it, I'm all in. We could put the money towards property tax relief. Let's level the playing field by a statewide franchise fee. We can level the playing field. We've always picked winners and losers. Everything we do every day we pass a bill here, there's a winner and there's a loser. I don't feel bad about providing regulatory relief and some tax relief to a business that wants to invest a billion dollars in the state and doesn't want to use any of their Advantage Act money. [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR FRIESEN: I fail to see where this goes wrong in that municipalities are looking at some revenue stream. When they want to charge \$2,000, \$3,000, \$4,000, \$5,000 per pole attachment per year, that is very disingenuous when they talk about wanting to bring in new technology. The local control is still there. If they don't meet the conditions that we've set forth as far as safety and all those issues, they can deny the permit. The 5G technology is coming and it's going to come to some states sooner than others. If we want to put ourselves on a cutting edge of technology, why not bring it here sooner? Instead, we want to tax somebody more so that we level the playing field for them. The safety issues that Senator Smith talked about... [LB389]

SPEAKER SCHEER: Time, Senator. [LB389]

SENATOR FRIESEN: Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Friesen and Senator Blood. Senator Friesen, you are next in the queue if you'd like to continue. [LB389]

SENATOR FRIESEN: Thank you, Mr. President. So the safety issue is about visibility and where they put their boxes, those are all addressed in Section 31 starting at line 17, all those issues are addressed. All of the safety issues as far as pole attachments, all of the electric industry out there has current pole attachment agreements with numerous companies hanging all sorts of cables on their poles. Look around Lincoln here, there are pole attachments everywhere.



Floor Debate  
April 04, 2018

---

They don't seem to have a safety issue with those. They've got pole attachment agreements that take that into account and those would pertain to this also. Other states have private power and somehow they've gotten pole attachment agreements to hang those facilities on private industry poles. I wouldn't know why the public power districts here would object to having that on their poles if it brings economic development to the state. As I recall all these cell sites take electricity. It's more business for them. When you talk about private industry in other states where they've adopted this bill, the FCC dictates the pole attachment fees and I think that it limits them to \$11.75. So I think we're being fairly generous in giving them \$20. But what it all boils down to, we have met numerous times with everyone involved and for me to level the playing field between cable and the wireless industry right now just doesn't work in this bill. But, again, I'm all in if we want to level that playing field next year, we can do that. Let's raise taxes. Let's put more regulations on this industry so the playing field is level. Instead of looking at taking off regulations, let's just add more to those that don't have enough. So I'm confused and I'm going to keep listening. I'm trying to address all the issues that have been brought up. The municipalities, as far as I'm concerned, will never agree to this as long as we limit their revenue stream. We've had rumors that Columbus wanted to charge \$3,000 for a pole attachment. It's going to be a race to the top to see how much you can tax these industries as you bring it into the state. Why would somebody invest here? Let's just take...this is more of a Lincoln and Omaha and Grand Island issue. It's not a rural broadband or high speed Internet for me, this is an urban issue. They're the ones that are going to get this technology first and I have no problem with that, but there have been rumors that there are companies that do have fiber running through small towns. They may stick those small cells there. We don't know that. That's up to them. That's free enterprise. And I know out in small towns they would probably pay them to come bring that service to them, because they want it to come there. They won't be charging them \$3,000 for a pole attachment. So when you look at this, I mean, it's just a matter of revenue stream, that's all it boils down to. What is a fair market value of a public owned right-of-way when somebody for a public good wants to use it? So you can charge them all you want and you turn around and charge the citizens and it's just a big money circle. They should recover their costs of the permits; I think we do that. But I don't see that they should make this a revenue stream that they can operate on and it's kind of a hidden tax, it's a hidden fee that they can operate the city with. It doesn't have anything to do with their cost of that permit or application or maintenance costs or anything else. It's a revenue stream. So until I hear more...we do have occupation taxes. I think the state has capped them at 6.25 percent. [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR FRIESEN: So, I take it, Senator Hilgers, if we would put an occupation tax on these companies now your argument would be gone and you would be more in favor of this bill. So we'll look to work with you as best we can and, again, I'm looking for legitimate arguments we can address. The wireless industry has been more than willing to sit down with anybody that's

Floor Debate  
April 04, 2018

---

willing to come to the table, but at times entities have been very reluctant to do that. Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Friesen. Senator Williams, you're recognized. [LB389]

SENATOR WILLIAMS: Thank you, Mr. President, and good evening, everyone. First of all, I'd like to give a shout out to Mayor John Fagot from Lexington, who I am sure is listening tonight and interested in this in depth. And I stand in support of the bracket motion and opposed to the underlying bill. First of all, I certainly agree that technology is a wonderful tool and we need to take it everywhere we can. The technology filled my e-mail box up with this, the fake news technology that I'm sure hit almost all of you also that I was receiving and received over a two-day period over 120 e-mails from what looked like residents of my legislative district, some of which are good friends of mine, so I pick up the phone and call them. They had no idea that those e-mails were directed at me. They had no idea what this legislation was, and yet someone who was in favor of passing this legislation saw to it that those filled my e-mail box. The mayors of the four largest communities in my legislative district, Gothenburg, Cozad, Lexington, and Broken Bow have all had their city officials contact me with their concerns and their desire to see this legislation go away in its present form. It has to do with local control, it has to do with the right-of-way, and I know Senator Friesen has worked hard to attempt to address those issues. They are not yet satisfied with the amendment or LB389 as it currently stands. These communities have worked for years with the cable companies and enjoy a good and long-term relationship with them. Two of these communities also have fiber to the home at the present time, Gothenburg and Cozad. So this competitive disadvantage issue is a real question for the fairness issue that we are looking at here. Also, the issue that is brought up to me by these concerned citizens from the local governments is the fact that they don't see this particular technology helping the rural areas the same way that it would help the high density areas of Lincoln, Omaha, and the surrounding areas like that. And they look at it that they are signing away some opportunities that they would have for a technology that just won't fit them, that this is simply not the answer to rural broad band in that sense. So for those reasons, I will be standing in opposition to the underlining legislation. My communities are all progressive. As you know, it is difficult to ever stand against economic development. That's part of why I am here in this Legislature and what I want to support, but this is just not the right day for that for me. Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Williams. Senator Hilkemann, you are recognized. Waiting in the queue, Senator Schumacher, Kuehn, Erdman, Harr, and others. Senator Hilkemann, you're recognized. [LB389]

Floor Debate  
April 04, 2018

---

SENATOR HILKEMANN: Thank you, Mr. Speaker. I'm wondering if Senator Smith would take a question regarding this? [LB389]

SPEAKER SCHEER: Senator Smith, would you please yield? [LB389]

SENATOR SMITH: Yes, I will. [LB389]

SENATOR HILKEMANN: Senator, a little earlier I showed you a picture of a small cell legislation that's happened across our area and we see that a lot of states have adapted it. Why is it that these states are able to adapt this and we're not able to in Nebraska? [LB389]

SENATOR SMITH: Well, I would say one is that the other states have worked more comprehensively to get all parties to the table and to have an outcome in legislation that is a compromise, if you would. It works for everyone. And one of the major pieces is that Nebraska...the Nebraska legislation provides for complete access beyond just the small cell location. And that creates, as Senator Hilgers was talking about, a market...an advantage in the marketplace for the small cell. And there's just no limit as to what they can do and where they can do it; it's their choice. [LB389]

SENATOR HILKEMANN: Senator, in your opinion, this bill as presented, is there any room for compromise in this bill? [LB389]

SENATOR SMITH: I'm afraid we are well beyond that. If you can take a look, there are multiple amendments to this bill and they probably only go so far in getting it to where it needs to be in a more of a compromised fashion that incorporates the concerns from the industry and from utilities and from cities. I'm afraid that we probably are too far gone on this bill as it is for it to be amended and for it to be to that point to where it does no harm. [LB389]

SENATOR HILKEMANN: Thank you, Senator Smith. Senator Friesen, would you take a question? [LB389]

SPEAKER SCHEER: Senator Friesen, would you please yield? [LB389]

SENATOR FRIESEN: Yes, I would. [LB389]

SENATOR HILKEMANN: Senator, earlier today I shared with you a note that I had gotten from the lobbyists that represent the city of Omaha that are very much against this bill. And you said

Floor Debate  
April 04, 2018

---

that you would be...that there is room for compromise on this bill. Do you still feel that that's the case? [LB389]

SENATOR FRIESEN: We have sat down with every group that's wanted to sit down. The cities just wanted a complete rewrite of the bill and there didn't seem to be room for compromise. And I don't recall them being at the table in the last few months. It boils down to cost of right-of-way and what is fair market value. [LB389]

SENATOR HILKEMANN: So in your opinion, we probably won't be able to reach a compromise on this bill, is that your feelings at this point as well? [LB389]

SENATOR FRIESEN: I don't know that. The wireless industry, from what they've told me, are willing to sit down with anybody and try and work out a compromise. [LB389]

SENATOR HILKEMANN: Because I certainly would...I don't want to have 5G technology not made available to the people in my district or in my city. If we don't reach some type of a compromise, it doesn't sound like this bill is going to move forward, what's going to happen to the 5G services in Omaha? [LB389]

SENATOR FRIESEN: All I can tell you is what the company has told me, they're going to be reluctant to invest their capital in Nebraska. They've got other states that have passed this and it will save them a lot of revenue. They can do a lot more investment...dollarwise they can get a lot more done in those other states, so they'll go there first. [LB389]

SENATOR HILKEMANN: Thank you, Senator Friesen. Thank you, Mr. Speaker. [LB389]

SPEAKER SCHEER: Thank you, Senator Hilkemann, Senator Friesen, and Senator Smith. Senator Schumacher, you're recognized. [LB389]

SENATOR SCHUMACHER: Thank you, Mr. Speaker and members of the body. Every once in a while when there's a hard question I listen to those pictures up there heading across the prairies, laying rail, driving the cattle, unregulated, free, and ambitious that brought to this planet the greatest country ever known. And I ask myself, what would they say? What would they say to this kind of technology and opportunity? Would they say, oh, no, got to level this playing field. You know, that railroad, it could just wreck the wagon train business. Got to level the playing field. Would they say, oh, no, you know, the city is going to lose out some revenue. If this state is going to get out of the mess, out of the stuck mud that it's in, it has got to embrace the future. It can't look for everybody and every lobby and every interest to want to protect its interest to keep

Floor Debate  
April 04, 2018

---

us in the past. Every issue, we favor the past. We find a reason not to do something or say, oh, my goodness, nobody would want to come here, therefore we're going to have to dole a bunch of money out to them in tax credits and special perks. Something is not working right. The cable industry, they got a hand in here too. They made an investment in cable. Some people made an investment in oil wells. Are we going to say you can't run an electric car because we're protecting the investment in oil wells? For once, Pete's sake, let's grasp onto the future and say, let's roll with the program. The market will adjust. Worst comes to worst, we just say the cities can't charge the exorbitant fees they're charging the cable companies if they push back too hard. But \$2,000 to hang something on a light pole a year that can give superior performance, the best performance to the customers of a jurisdiction? That's reasonable? No, that's highway robbery. That's extortion. It would be like saying, you know, we're going to have a scheme if you want to fly your airplane over our cities or our counties, you got to negotiate with each one of them as to how high you've got to fly, how much noise they can make, whether they can do sonic booms. What kind of a mess would that be? It is inappropriate for the cities to charge a tax on communication services. They have enough taxing ability the way it is with sales tax and property tax, not trying to squeeze a nickel out of everything they go, and in the process retarding our advancement. Who knows, we probably will say no to this. We'll probably look and squirrel in the corner and shiver and say, oh, gee, there's so many downsides. Oh, wow. Or we can grasp onto the future. We can for once say, there's an outfit that's willing to come in here or outfits, spend billions of dollars without tax incentives, install a superior technology and the most we can hear bad about it outside of it's a revenue issue is that we're going to have something that looks like a transformer hanging on a light pole. [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR SCHUMACHER: Why are we so afraid of the future? Why are we so protective of the past? Why can't we just go for it sometimes? If it weren't for the spirit of "go for it," we wouldn't be here. The trains would have never rolled, we'd never sailed for the New World, we'd never built a pyramid. Let's go for this once. Let's go for something. Thank you. [LB389]

SPEAKER SCHEER: Thank you, Senator Schumacher. Senator Kuehn, you're recognized. [LB389]

SENATOR KUEHN: Thank you, Mr. President. Senator Schumacher, I think you summed up exactly where I was starting when I was last time on the mike as well, which is let's not fear the future and let's embrace it. We talk all the time about economic development. And here we have companies that are looking to make an investment critical to moving forward and all we're doing is throwing up roadblocks. I would like to know if Senator Hilgers would answer a few questions. I want to pursue his line of logic a little bit. [LB389]

Floor Debate  
April 04, 2018

---

SPEAKER SCHEER: Senator Hilgers, would you please yield? [LB389]

SENATOR KUEHN: And while he's coming to the mike, I want to make sure we distinguish...obviously, when we talk about wireless technology, we're talking about a pipeline of information which individual consumers have the option and choice to decide what types of services they wish to use from that pipeline of data. So, Senator Hilgers, if you would yield to a few questions? [LB389]

SENATOR HILGERS: Of course. [LB389]

SENATOR KUEHN: You were talking about the franchise fee regarding cable providers. So cable providers also provide in many cases Internet access to the home as well. Is that correct? [LB389]

SENATOR HILGERS: That's correct. [LB389]

SENATOR KUEHN: And do they pay a franchise fee on that Internet access? [LB389]

SENATOR HILGERS: My understanding is, no. [LB389]

SENATOR KUEHN: So Internet access provided by wireless companies compared to Internet access on cable companies, there is no disparate treatment. You're talking about television services in your argument, is that correct? [LB389]

SENATOR HILGERS: Correct. [LB389]

SENATOR KUEHN: And does cable pay an occupation tax on the total data that they transfer to a home? [LB389]

SENATOR HILGERS: I do not believe that cable or wireless can have...there can be any local tax on the Internet portion. There may be some portions of their service that have an occupation tax. So, for instance, in the wireless context, your phone, the phone transmission piece may have an occupation tax. But if we're only talking about data, which is what I heard in your question, the data itself cannot have local or state tax. [LB389]

SENATOR KUEHN: Okay. Thank you, Senator Hilgers. My concern is...and I will check on the total data stream, because your data package is inclusive of that occupation tax. And while I

Floor Debate  
April 04, 2018

---

appreciate Senator Hilgers and his argument, it's not comparing apples to apples. He's talking about protecting from disruption the cable industry for the distribution and providing television services. If an individual utilizing, say, 5G technology chooses to utilize a streaming delivery service for digital video, that's a consumer preference and that's a consumer choice, just as the consumer has a choice whether or not to keep the cable connected for their television services to their home. And the Internet services that the cable company is providing, as Senator Hilgers directed, --is not paying the franchise fee to which he is describing. So it's a bit of a red herring and a false equivalency to say that the reason for opposition of this bill is that it treats cable and wireless differently. It should be treated differently under the law, because they're distinctly different services. Again, I go back to this idea of what are our policy objectives with this bill? Our policy objective is to create a standard framework that facilitates the deployment of technology which all of us use, technology that we use if we are at a game down at Memorial Stadium, technology that we use if we're trying to access family and friends when we're at a concert at one of our arenas in this state. This is technology all of us take advantage of regardless of where you live. Putting up roadblocks and impediments to that technology and deployment is simply not good for the state. We're not talking about providing incentives in the form of decreased tax revenue, tax credits, etcetera for the purposes of attracting this investment. All that's being asked for here is a level playing field from community to community that allows a process, a process by which the companies know... [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR KUEHN: ...they have to go through for the deployment of technology which is critical for us moving forward economically and in terms of our telecommunications infrastructure. If there are legitimate issues associated with the deployment of that technology, let's get it on the table, let's talk about it, and look at the list of concessions that are already made within this bill. If there's more that are legitimate, let's talk about them and let's put them on the table. I, to a degree, reject the safety issue on poles. Drive around your local communities and look at what's hanging off of utility poles. Lots of infrastructure which has been mounted and established, some owned by cities, some owned by a variety of utilities, some owned by private companies hanging on our utility infrastructure across the state. Utility infrastructure which by definition is publicly owned. [LB389]

SPEAKER SCHEER: Time, Senator. [LB389]

SENATOR KUEHN: Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Kuehn. Senator Erdman, you're recognized. [LB389]

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

Floor Debate  
April 04, 2018

---

SENATOR ERDMAN: Thank you, Mr. Speaker. Good evening. Before I begin my comments, I want to ask a question that I received by text this afternoon. My county treasurer sent this question. What's the difference between death and taxes? Here's the answer. The Legislature doesn't meet every year to make death worse. I thought that was pretty good. So here we are, we're talking about...and, Senator Friesen you can be confused because I am. The people that stand up here and talked about want to grow the state. Senator Smith wants to grow the state. Senator Quick wants to grow the state. We all want to grow the state, but we don't want to do it at the expense of somebody that's already here or they may have invested in some technology that's no longer viable and somebody else invented something better and we don't want to take a chance to let those people do that because we have to protect our turf. So what this is all about, this not about the safety issue for OPPD or NPPD or linemen. What this is about is protecting the revenue for those people who have lobbyists behind the glass, that's what this is all about. Senator Quick talked about, this may not get out to rural Nebraska quickly. He's right. Eastern Nebraska had electricity a long time before we got it. It takes a while, things move slowly. So we understand that. Senator Friesen understands that. And this bill is to help everyone in the state, eventually it will. If you were listening and I hope you were when the "Professor" was speaking, he had a little anger in his voice, and rightfully so. We talk about growing the state in economic development and all these things that we talk about, it's all window dressing. And I was wondering if Senator Hilgers is here, I'd like to ask him a question if he would respond. [LB389]

SPEAKER SCHEER: Senator Hilgers, would you please yield? [LB389]

SENATOR HILGERS: I would. [LB389]

SENATOR ERDMAN: Senator Hilgers, you're always so straightforward and kind when you talk about people being wrong and I appreciate that. But you commented about it would be an unfair advantage for some of those people who have made an investment now in cable or whatever mechanism they use to distribute information. Are you familiar with tax incremental financing? [LB389]

SENATOR HILGERS: I am. [LB389]

SENATOR ERDMAN: Do you realize that that's exactly what tax incremental financing does, it picks winners and losers? [LB389]

SENATOR HILGERS: Are you comparing that with the cable wireless 5G scenario? [LB389]



Floor Debate  
April 04, 2018

---

SENATOR ERDMAN: I'm comparing that with what we do here. We pick winners and losers and you were commenting, perhaps we shouldn't pick winners and losers, and that's what we're doing by allowing these wireless people an advantage over those people who have an investment. So my point was, there's no difference between TIF financing and what we're trying to do here, because if you're saying that it's not appropriate that we give an unfair advantage to somebody, then we shouldn't do TIF because we're picking winners and losers there because they don't pay property tax. So it doesn't make any sense to me that we're going to try to restrict somebody from coming here with new technology that no one has, that we could have, we could grow the state, we could get out of the mud, as Senator Schumacher said. But we don't want to do that. No, we don't want to do that. We want to stay like we are. But I'll bet if we offered \$2,000 a pole to put those receivers on, I bet we would find compromise, Senator Friesen. I bet we could. I bet it's not too late. Senator Smith says it's too late, but I bet if you said we would pay \$2,000 a pole, a utility pole, there would be people lined up to do this 5G. That's how that works. This is about the money. This isn't about safety for the workers, this isn't about the right-of-way, this is about money. And so I am strongly opposed to the bracket and I am for LB389. Thank you. [LB389]

SENATOR HUGHES PRESIDING

SENATOR HUGHES: Thank you, Senator Erdman and Senator Hilgers. Senator Harr, you're recognized. [LB389]

SENATOR HARR: Thank you, Mr. President. So I've heard this is about the lobbyists outside the glass. Well, I'm going to say it again folks, I think I'm the only real conservative in this body, because I believe in the free market and I don't like when government steps in and says, this is what you can charge and this is what you can't charge. And we're going to determine what you locals can and can't do. You are a political subdivision of us. That's how we get high property taxes, folks, because when we push things down and we say, you can't make money. Yes, there's a market out there and if the free market were allowed to exist you'd make more money, but we're going to deny you that right, that ability. And so what happens? This is what happens. And then I went back and probably did something I'll regret, I read the bill. And you know what I found interesting is reading the bill and then listening to the debate. I hear a lot of 5G, 5G this, 5G that. You know what's not in the bill? A definition of what 5G is. I have no idea what 5G is. I've seen it. We have in Omaha...there are parts of Omaha that already have 5G capabilities, so I've seen the boxes and I've seen where they are. My phone doesn't work for that, so I don't really know what it is, but would Senator Friesen yield to a question? [LB389]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Senator Friesen, would you please yield? [LB389]

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

Floor Debate  
April 04, 2018

---

SENATOR FRIESEN: Yes, I would. [LB389]

SENATOR HARR: What is 5G? [LB389]

SENATOR FRIESEN: Well, 5G technology is being tested in a few markets around the world and it is technology that will replace the 4G technology. So when we're talking small cell, it will be set up with 4G technology, it will just be able to handle larger amounts of data and when the 5G technology does come available, they can just slip in the new software or whatever it takes to convert these sites to 5G. [LB389]

SENATOR HARR: Thank you. I feel so much better. I now know what 5G is, it's what replaces 4G. Problem solved. Thank you, I appreciate that. You know, what frequency is it on? How much data does it carry? I have no idea. Why is it better? Well, because it's not 4G. It's one. It's kind of like my amp, it goes to 11 so it's a lot better, it goes to 11. Yours probably only goes to 10, mine goes to 11. And then I hear, well, we've got to have uniformity. We've got to make sure that everyone pays the same. And that's fair, except what no one ever talks about is, what are the costs? Does it cost more than \$20 a pole to allow the process to go through? Is the city actually losing money? Sure there aren't any tax incentives out there, dot, dot, dot, yet. But, folks, cities could be losing money on each one of these they allow to be put up because the process costs more than \$20. We haven't heard anyone say cities will make money off of this. Now, Senator Schumacher and Senator Erdman are exactly right as well. I'm not sure either side really comes with clean hands and I hate when we in the Legislature set the market and we in the Legislature set the price because I think that creates distortion in the market. And I'm not sure that's our job is to create distortion by government policy. So what I'd rather see is the parties coming together, trying to find out compromise, trying to find out...the League? You need to come to the table and say, this is what it's going to cost. And if it costs more in one city than in another because of processing, tell that to them, tell that to us and we can work on it. Big wireless companies, you need to come to the table and you can't just come in here and bully us and say hey, we want this and 5G is bigger than 4G so therefore it's better than 4G, just like the Apple X is better than the Apple. [LB389]

SPEAKER SCHEER: Time, Senator. Thank you, Senator Harr. Senator Lowe, you're recognized. [LB389]

SENATOR LOWE: Thank you, Mr. President. I just heard from Senator Erdman that if we had a steak dinner tonight to go to we would be voting on this bill right now. Let's follow the money. We hear it's about right-of-ways, but have you looked at your phone bill lately? Here's one, it has state sales tax, city sales tax, federal universal service charge, state universal service charge, regulatory charge, administrative charge, occupation surcharge, 911 surcharge, telecom relay

Floor Debate  
April 04, 2018

---

surcharge. Let's follow the money. On a cable bill, franchise fee, state and local sales tax, regulatory cost recovery fee, PEG capital fee, broadcast TV surcharge. Is it about the right-of-way or is it about hidden fees that the public really doesn't ever see? They pay their cable bill because it's on electronic payment. They don't ever see the taxes. It's another way to circumvent the property tax. It's another way for income into the cities. And what we are doing today is maybe reducing that and that is why they're standing outside the glass. Let's talk about safety. As Senator Kuehn said, there are things hanging off these poles already, not a lot of them are from the power company, but they're from the cable companies, they're from the telephone companies, they're from other companies already there. So safety really isn't it as far as putting things on these poles. And if you have driven on 14th Street just south of O or just to the west of 14th Street, you've seen small cell technology on the light poles already. They're not 200-foot tall towers, they're not the size of a refrigerator. They're more so the size of a size 14 shoebox, so they're not out of the ordinary. As a matter of fact, if you didn't pay any attention you wouldn't see them. They are not a refrigerator box. They are not ugly. If you have trees that are in that area, they get hidden by the trees, like the one on O Street. Let's talk about investments in our communities. We are all begging for more tax revenue. We are short of revenue in our taxes. Why don't we invest in Nebraska? Why don't we bring this new technology to Nebraska? Senator Schumacher, on the 19th of April I believe we're all going to miss you. You bring wisdom to us. You bring common sense to us. You know, our investment in Nebraska, do we want to do it with tax dollars? Do we want to do it with... [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR LOWE: Thank you, Mr. President. Do we want to do it with our tax dollars or do we want to do it with private enterprise coming to Nebraska and willing to invest almost a billion dollars? That's a true investment in Nebraska. That's something we can hang our hat on, is a billion dollar investment in Nebraska. And if we wait, yes, they will come, but they will not come to Omaha, they will not come to Lincoln as quickly as if we do this now. There are 14 other states already ahead of us. And 14 more ready to jump our position. We will be 28 states behind. Let's invest in our communities and in the state now. Now is the key. [LB389]

SPEAKER SCHEER: Time, Senator. Time, Senator. [LB389]

SENATOR LOWE: Let's let private enterprise help us out. Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Lowe. Those waiting to speak: Senator McCollister, Hughes, Quick, Hilgers, and others. Senator McCollister, you're recognized. [LB389]

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

Floor Debate  
April 04, 2018

---

SENATOR McCOLLISTER: Thank you, Mr. President. Good evening or about to be evening, associates and colleagues. There's no question that 5G technology is coming. I don't think that there's anybody in this room that doubts it. And it's a good thing, it will improve cell phone coverage and make for better data transmission, so it's a good thing. I'm happy that it is coming. I'm wondering if Senator Friesen would yield to a few questions. [LB389]

SPEAKER SCHEER: I'm sorry, Senator. Who did you wish to reply? [LB389]

SENATOR McCOLLISTER: Senator Friesen. [LB389]

SPEAKER SCHEER: Senator Friesen, would you please yield? [LB389]

SENATOR FRIESEN: Yes, I would. [LB389]

SENATOR McCOLLISTER: Senator Friesen, is this bill time sensitive? [LB389]

SENATOR FRIESEN: Yes. They want to come and invest in the state. They want to get started. [LB389]

SENATOR McCOLLISTER: Is it true that Lincoln is probably looking at a 10-year build-out? Is that a correct estimate? [LB389]

SENATOR FRIESEN: I think it depends on if we get this passed or not. [LB389]

SENATOR McCOLLISTER: I see. Let me ask you this, there is a receiver I guess on a dorm at UNL. And I've heard that the amount that was charged on that was \$2,000. Is that correct? [LB389]

SENATOR FRIESEN: I couldn't answer that. Right now what we have done is take UNL out of the picture, they've been exempted out. But they've put out an RFP and they're taking I guess offers to see who wants to pay them large sums of money to put the 5G technology on their campus. [LB389]

SENATOR McCOLLISTER: So that's a bidding opportunity for some cell phone wireless company, is that correct? [LB389]

Floor Debate  
April 04, 2018

---

SENATOR FRIESEN: I would assume in this case it is an opportunity to be a sole provider on their campus. [LB389]

SENATOR McCOLLISTER: And I think the proposal, at least in one of the bills that I saw, was for a \$25 rental per pole for an installation. Is that correct? [LB389]

SENATOR FRIESEN: On ours, the cap is \$20 per year to hang something on a pole, a pole attachment. The application...in the application, the first ten poles or something are I think...the first five are \$100 and the rest of the poles are \$50 in the application and then it's \$20 annually. [LB389]

SENATOR McCOLLISTER: Okay. My point is this, if it is indeed \$2,000 to rent a receiver or to put a receiver at UNL and \$20 or \$25 to put a pole in the city of Lincoln, it's a market decision. There is a strike price that the parties can agree to, to install 5G technology in any city, whether it be large or small. I think it is time for the competing parties to come together, negotiate a price themselves and not interject government to decide how the issue is to be resolved. A free market works best. Let the parties decide what the charges should be. I disagree with Senator Harr. I am the true conservative in this body, because I want the free market to determine what that price is and let the parties decide. They can do it. Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator McCollister and Senator Friesen. Senator Hughes, you're recognized. [LB389]

SENATOR HUGHES: Thank you, Mr. President. Good evening, colleagues. As a member of the Transportation Committee the last couple of years, I have heard a lot about this bill last year and this year and have had a lot of conversations with both sides outside the glass; the wireless companies, the cable company, the power companies, the League. There has been a lot of work put into trying to come to compromise on this bill. And I do want to give Senator Friesen a kudos, because he has been--I don't want to say relentless--but he has certainly been tenacious in trying to make sure that we get all the parties together, because I believe this is technology that the state of Nebraska needs. It's not going to be something that's going to affect my area. I may have one city in my district that will benefit from 5G any time soon and that certainly will be later rather than sooner. The problem that I have with not passing this bill is the hidden cost to the consumers of the larger cities that they're trying to extort from the wireless companies of bringing this to the consumer market. If you look at the maps of the other states that have passed this by a wide margin and the other fees that those states have put a cap on for these pods, small cells on the poles. The arguments that they're ugly, that can be overcome. We have exaggerated photos on both sides of that. The handout that Senator Smith brought, I mean, it is showing the absolute worst. I've got handouts from the wireless company that show the absolute best. You

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

Floor Debate  
April 04, 2018

---

know, where is the median? It depends. And as far as safety, nobody is going to knowingly put their workers in danger. Of course, the power companies are very proprietary about their poles and their wires and they should be, because safety is paramount. But also the wireless companies are very concerned and proprietary about their employees. They're not going to put their people in danger. Senator Williams talked about the feedback from the towns in his district. I've gotten feedback too. And in my reply to those city managers, I told them the rest of the story because they had only gotten an e-mail blast from their side and once I explained it to them, they says, oh, well, yeah, maybe it wouldn't be such a bad thing. You need to figure out who's driving the bus here as to why we're stalled and I like Senator Lowe's analogy, follow the money. That will tell you who's driving the bus. You know, \$2,000 a pole per year or \$20 a pole per year, that will tell you all you need to know. This is technology that is coming and there's a tremendous amount of investment that could come to Nebraska sooner rather than later. But by stopping this bill we're saying, no, we're closed for business. We don't think that's a good idea. Follow the money. See who's telling you this is a bad idea. [LB389]

SPEAKER SCHEER: One minute. [LB389]

SENATOR HUGHES: Two thousand dollars a pole or 20 bucks a pole. Who is telling you? Thank you, Mr. President. [LB389]

SPEAKER SCHEER: Thank you, Senator Hughes. Mr. Clerk, for announcements. Do you have any items? [LB389]

ASSISTANT CLERK: Mr. President. A new resolution: LR475 by Senator Hilkemann. That will be laid over. Name add: Senator Brewer would add his name to LB807. (Legislative Journal pages 1397-1398.) [LR475 LB807]

Priority motion. Senator Kuehn would move to recess until 6:30 p.m.

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

RECESS

SPEAKER SCHEER PRESIDING

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

Floor Debate  
April 04, 2018

---

SPEAKER SCHEER: Good evening, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The evening session is about to reconvene. Senators, would you please record your presence, roll call. Please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SPEAKER SCHEER: Thank you, Mr. Clerk. We will resume where we dropped off. Yes. Items, Mr. Clerk.

ASSISTANT CLERK: I do, Mr. President. Motions and amendments to LR1CA from Senator Morfeld; Senator Brasch to LB1103; Senator Smith to LB1103; Senator Morfeld to LR1CA; and Senator Chambers to LR1CA. That's all I have at this time. [LR1CA LB1103]

SPEAKER SCHEER: Thank you, Mr. Clerk. Returning to the agenda where we left off, LB389, a bracket by Senator Smith and going back to the queue: Senator Quick, Hilgers, Blood, Wayne and others. Senator Quick, you're recognized. [LB389]

SENATOR QUICK: Thank you, Mr. President. As I talked before about making sure we're careful about what we do and what can happen, I know in some of the states that voted in some of the...a bill like this or similar to it, I know in Ohio some of these cities are now suing the state because of what's happened, same thing as in Texas. And I'll just read from an article that talks about kind of what happened in the city of Austin or what's going on there. And this was dated August 24, 2017, and the city of Austin sued the state of Texas in federal court over massive new telecommunications law, SB1004, which takes effect September 1. This year lawmakers decided to take away much of the city's power to regulate the installation of cell service and wireless Internet and the city of Austin wants to go to court. In order to bring faster and better quality Internet to cell phones, including preparing for the capability to bring 5G Internet, state lawmakers made it easier for major telecommunications companies to put up small cell towers on public right-of-way. The new law would allow telecom companies to use streetlights, street signs and utility poles with less oversight from cities in Texas. The new law would undercut prior agreements the city of Austin had with several companies, including AT&T which supported the bill. Their agreements charged the companies \$1,500 per small cell node per year. This bill would cap that charge at \$250 to \$270 per year per node. The Texas Municipal League estimated cities would lose out on more than \$700 million a year. In a lawsuit filed in the U.S. Western District Court the city of Austin claims the state violated Federal Telecommunications Act and the Supremacy Clause of the U.S. Constitution by forcing a city to take unreasonable low rates by capping the fees and frustrating the city's ability to safely and efficiently manage public right-of-ways. Andy Tate, senior public information specialist, wrote to KXAN saying the state is effectively forcing the city of Austin to subsidize the private cellular industry by several million

Floor Debate  
April 04, 2018

---

dollars a year. At the same time, the state is interfering with our ability to govern the use of antenna and equipment on public land. The city claims part of the new law also grants telecom companies access to private property, even if the property owner has not given consent. Right now the city comes to an agreement with a landowner while putting a utility pole on their land. This bill would allow a telecom company to put small cell towers on the utility pole without a benefit to the landowner. In March 2017, Austin began a pilot program to get better cell service with Internet downtown by allowing cell providers to put up small cell nodes on the right-of-way. City leaders plan to take the program citywide. SB1004 also caps the application fee for the new node at \$100. In the lawsuit, the city lawyers claim the application process to license, conduct field assessment, monitor, and inspect the small cell installation costs the city \$1,234. The law also bans any moratorium on issuing permits. So Austin worries the public right-of-way will be bombarded and overloaded with small cell nodes that would look terrible and disrupt the city's aesthetics. The city of Brownsville also sued the state over SB1004. [LB389]

SENATOR WILLIAMS PRESIDING

SENATOR WILLIAMS: One minute. [LB389]

SENATOR QUICK: Thank you, Mr. President. The state's lawyer, Attorney General, Ken Paxton, did not have a comment on the lawsuit at this time. Industry leaders came to the Capitol in early 2017 to explain to the lawmakers why this bill was needed for the future of wireless service. It's to give our customers an effortless, wireless customer experience, said Ryan Tidwell from AT&T's engineering department. He told lawmakers in the spring committee hearing, things like 4K video, the Internet, connected cars, smart cities, they all start with 5G. Nearly every lawmaker agreed. SB1004 passed the Texas State House 140-6, it passed the Texas Senate 29-0, and Governor Abbott signed the law in June. The House sponsor, Representative Charlie Geren, Fort Worth, Texas, tells KXAN he never comments on pending litigation. [LB389]

SENATOR WILLIAMS: Time, Senator. [LB389]

SENATOR QUICK: Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Quick. Senator Hilgers, you're recognized. [LB389]

SENATOR HILGERS: Thank you, Mr. President. Good evening, colleagues. I rise again in opposition of LB389. And I wanted to pick up some of the conversation that I had with Senator Kuehn and Senator Erdman to some degree and sort of explain why it is that I believe that this is



Floor Debate  
April 04, 2018

---

unfair competitive...this is providing unfair competitive advantage to those who would operate in the cable TV space. So if you think about...and the reason, by the way, that is because of the federal law that prohibits taxes on Internet. And so if you think about the various services you can get through telecommunications, you have voice, you have data and you have voice and you have data and then you've got--what's the third one that I'm missing--your phone. No, that's...you've got TV, I'm sorry. It was a late dinner. So those are the three services that you have. So voice, there is an occupation tax. Data, there is no tax at all, no matter who provides it. And the last one, TV, there's a franchise tax. And so sitting here today with a 4G phone, it may be true that some people might, might, some people may use their phone as an intermittent substitute at home for some certain types of services that would approximate TV, say a Netflix account or something. But it is not true, especially with some of the hot spot caps and just with the speed limitations on 4G, especially if you're using multiple TV devices, that is a widespread competitive product to cable TV services. Now, 5G is different because what you're doing is providing a cable TV service over a data line. That data line is not taxed. And so what you have is...think about the bill that goes to a customer. On the one hand you have a cable TV bill that goes to a customer and if that's a \$100 bill, they have a 5 percent franchise fee on top of that, so it's \$105. If you have a 5G Internet data service that provides Internet to the home through the 5G--which I hope happens--and that's \$100, but you're getting cable TV on top of that, there's no tax. And so my view, what we would be doing is helping hasten a world in which you have people who invested, companies that have invested tens of millions of dollars with the reasonable expectation that their competitors would at least be operating under the same regulatory and taxing regime, now competing against those in the same marketplace with a different taxing and regulatory regime. Now, that's not our...that's not a problem that was created here in Nebraska. That was a problem that was really created in D.C., but it is a problem that we're trying to deal with now. I think LB389, while it is a solution in some degree to help speed up this process, I think in doing so it creates a situation in which you have some competitors in a marketplace that are not taxed and other competitors providing the same product or a comparable, competitive product who are taxed. So it is for that reason...I know there's been some discussion about over what pipe is the data coming, what service is it, who taxes what, and is there an occupation tax? It's a franchise tax, cable TV, no franchise tax on Internet, no occupation tax on Internet. Voice, there is an occupation tax. Voice is not what we're talking about. We're talking about Internet and cable TV, two separate pipes providing ultimately one service when 5G is implemented with the disparate regulatory and tax treatment. And that I can't support. Thank you, Mr. President.  
[LB389]

SENATOR WILLIAMS: Thank you, Senator Hilgers. Senator Blood, you're recognized.  
[LB389]

SENATOR BLOOD: Thank you, Mr. President. Fellow Senators, friends all, those who are still left in the Chamber, because it looks like many have disappeared, there are several things I want

Floor Debate  
April 04, 2018

---

to address before I speak about the reason why I continue to support the bracket. Senator Lowe was reading what I call a boo-hoo story about what people are paying on their phone bills. And Senator Lowe, that's kind of a buyer beware thing because T-mobile removes all the excess fees, they actually absorb the fees, so some of these same companies that you appear to be protecting are choosing to screw over the consumers. They choose to pass down those fees instead of absorbing the fees, because they want to make more money for the people who are stakeholders in their companies, which of course we can't blame them for. But I just want to clarify that that is something that is optional and consumers need to do their homework. I'm not here to give an advertisement for T-mobile, but I know for a fact that it is truly about the company and not necessarily about how it trickles down, but that the companies choose to have it be a trickle down. And then in reference to "Professor" Schumacher, I don't disagree that the future needs to be embraced, but the future is already being embraced. I did a little research. And I have to be really frank, both sides of the aisle...you have noticed I haven't gone back there today, because both sides have blown smoke up my skirt and I did my own research. There are already 12 to 14 5G companies that are coming into Nebraska. I know for a fact, I believe it is in January 2018, that AT&T has already announced that they were coming in as 5G, not just in Nebraska, but across the United States, because that is what the consumers demand. They are coming in with or without this bill. There are already thousands of requests that are waiting for approval on wireless access points as well here in Nebraska. So again, you can't stop the progress from being embraced or from moving forward. This bill won't make a difference. This is about consumer demand. Consumers want to be able to stream the Nebraska football game on their smartphones. They want to be able to go to the beach and watch a movie. And those things are going to happen, because it's about competition. And, unfortunately, some of these same companies that are passing down these costs to taxpayers are some of the same companies that are pushing for these bills in different states to try and make more money for their stakeholders. Unless I could be guaranteed that that's not the case, that's one of the reasons that I can't support this bill. In reference to Senator Harr's question about what 5G is, I just want to make sure that people understand that 5G refers to 5 gigahertz. It's about the signal. It's a unit of measurement, it's about electronic...electromagnetic wave frequency. Sorry, I was losing my technology brain for a minute. And so it's about range and bandwidth and it's faster data rates at a shorter distance, and that's a positive for people, especially municipalities like Omaha and Lincoln, because they're always on the move and they always need to have service that works for them. So to clarify about what's going on with Offutt, so we have intense radio and satellite communication networks at the base for our landings and take offs, for weather and other missions. And it's conducted at the base and it has to be protected and prioritized. Does Offutt Air Force Base want 5G? Yes, they do. That's not the question or the concern. I have spoken a little bit off the mike with Senator Friesen, I'm still researching because I'm not sure I agree. But in Bellevue's review and approval process, we must contact the FAA to determine conflicts in sitings. As I read LB389--and apparently I had read an older version, so I need to make sure that I'm correct, and

Floor Debate  
April 04, 2018

---

I'm still not seeing it--it doesn't allow for those considerations to be addressed. I think the language is still vague. [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR BLOOD: My concern would still be that Offutt Air Force Base is 100 percent in support, not of 5G, but of the process. Another question I have, I haven't heard which wireless companies everybody keeps referring to. Can somebody come on the mike and tell me which wireless companies are alleging they're going to come into Nebraska only if we do this bill? That would be very helpful to me. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Blood. Senator Wayne, you're recognized. [LB389]

SENATOR WAYNE: Thank you, Mr. President. I just want to say briefly, this notion of picking and choosing or creating a distortion in the market, we do that every day and I get tired of hearing that argument, because I own a small construction company, six to eight employees sometimes, I say sometimes, because we're seasonal. Yeah, I don't get any of the same tax breaks or advantages as a Kiewit, at all. So when I bid on a project, I'm not even close to that. At the end of the day, we have to start viewing technology, Internet, wireless, as an infrastructure, whether it's through Omaha, all the way to Scottsbluff, there are highways and interstates that we have to start beginning looking at Internet and wireless in the same mind-set as a infrastructure for our communities and our state. Those are controlled oftentimes at the state level. That's why I support this bill and that's why I'll stand by it and I'll yield the rest of my time to Senator Friesen. [LB389]

SENATOR WILLIAMS: Thank you, Senator Wayne. Senator Friesen, you're yielded 3:30. [LB389]

SENATOR FRIESEN: Thank you, Mr. President. Earlier there was a question asked, what is 5G? And I will just go through here a little bit here, I'll talk about...it started out with 3G and that was like four megabytes per second. Then we jumped to the 4G LTE, and that was 12 megabytes per second. 5G would be one gigabyte per second. So we're talking about a huge increase in speed and so you'll be able to download movies or just stream movies on your phone or your tablet or whatever. So the speed is phenomenal. And then when it really shines is when you get into high density, high population areas like around the football stadium, you'll be able to handle that heavy traffic. Same thing in Omaha, you know, those high density, high population areas are where this would be the first to be installed. So when we want to talk more about taxes, let's talk about the level playing field. So I got up the Tax Foundation study here that talks about wireless taxes in Nebraska. And so you go through the list of the sales tax and the local sales tax, the city

Floor Debate  
April 04, 2018

---

business and occupation tax, USF tax, the wireless 911 tax, and TRS, which I'm not sure what that is. But the total transaction tax is 18.75 percent. And we're not taxing them enough? Now we need to raise revenue through pole attachment fees of \$2,000 per pole, \$3,000 per pole? When they talk about negotiations, they started at \$6,000 so I guess they've cut them quite a deal. That's a pretty good break. I'm still baffled by the investment that this company wants to make. We've had other companies, we've had a chicken processing plant want to come into the state. We gave them all sorts of work force development tax abatement. These companies, these want to come in here and put in an infrastructure that we all want and we can't just cut them some regulatory relief. And yet they'll be paying property taxes on that. This is a billion dollar investment potential and we're saying, no, we don't want it. We like it the way it is. [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR FRIESEN: One minute, did you say? [LB389]

SENATOR WILLIAMS: Yes, Senator. [LB389]

SENATOR FRIESEN: So, I am still extremely confused when we have companies that want to come in, they see Nebraska as a place to invest in this technology and to bring it in first, and they would love to come here. Lincoln likes to be known as the Silicone Prairie and yet we are going to stick them with fees high enough that they don't want to come. That's not Nebraska open for business, that's just adding more tax on top of an 18 percent revenue tax that we currently do on our wireless phones. No wonder we complain about our cell phone costs. We've got to look at these things, and these costs are going to get passed on to the consumer. Thank you, Mr. President. [LB389]

PRESIDENT WILLIAMS: Thank you, Senator Friesen. Thank you, Senator Wayne. Senator Friesen, you're next in the queue. You're recognized. [LB389]

SENATOR FRIESEN: Thank you, Mr. President. We talked a little bit earlier about the safety issues. And between the power industry and the wireless industry they have reached agreements on those safety issues. They're still working on language and it boils down to fees. They want to say "reasonable fees," which we can't define that. And we say it's going to be \$20 or less. And so, again, it comes down to the money and how much can we squeeze out of a company that wants to come and invest in technology in this state. It baffles me again. To get this technology...and we're not talking...it isn't a rural issue or an urban issue. I'm just talking getting the technology into the state, getting it to be the state of the art. And I know good and well it's going to locate in Lincoln, Omaha, Grand Island, Kearney, North Platte, Columbus, towns like that. This isn't going to be in Henderson, Nebraska. But if we don't make it easier for these

Floor Debate  
April 04, 2018

---

companies to invest in this technology and bring that here, then I don't get that 5G in the cell tower that serves me, so it does trickle down. And the more money they spend in their contracts and having to pay these high, outrageous, I'll call them outlandish fees, it takes them longer to invest in the state. They would rather go to Iowa where they have passed this bill and they pay \$20. So think about a business wanting to locate here. Why would they come if we just can't lift a little bit of regulatory relief, allow them to go from city to city without having to negotiate a separate contract every time, something standardized, something that's efficient. The cities still maintain that local control, they can still point to a site and say, no, that one doesn't work. They can go through the whole list of poles, attachments to buildings, wherever it is, they still have the ultimate control in denying that location. But in the end, they have 90 days to do it, which I think is plenty of time. We just have to make it so that we provide a little regulatory relief like we've been doing for everyone else. We talked about licensing relief, permitting relief, and now we say it's not a level playing field, we want to raise taxes on an industry so that we level the playing field for them. So I look at the issues here. I'm still waiting. The cities, I don't think in the discussions out there have not been able to come up with a number that they're happy with. Evidently they are unwilling to say a number. Maybe they are embarrassed by the number. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Friesen. Senator Morfeld, you're recognized. [LB389]

SENATOR MORFELD: Thank you, Mr. President. Colleagues, I rise in opposition to LB389 and the committee amendment for a few different reasons. First, as a taxpayer I guess I want to be compensated for the infrastructure that I, we paid for and that a private company will be using to profit off of. I don't think that's unreasonable. If they wanted to stick one of these towers on a private building or needed to, they would have to go to the private market and they would have to go to a building or the owner of the building and be able to negotiate with them on terms. I want the cities and the government to be able to be on a level playing field as a private company would be for the use of their infrastructure, the infrastructure that I, as a taxpayer, paid for. And, quite frankly, if we talk about things as infrastructure, compare it to highways and interstates and things like that. Well, those are all owned by the state and the federal government. Sure, we contract out to private individuals to build that infrastructure, but that's public infrastructure. The public owns that infrastructure. This is private infrastructure that is being used to make a profit. So I think there's some key differences there. Now, if we want to take over the telecommunications industry here in the state of Nebraska, then I guess that's another story. We might be better positioned, in my opinion, to make it so that a public telecommunications company wouldn't have to pay some of these fees if it's owned by the public. But this is a private company, private companies that are making profits for private shareholders and wanting to use public infrastructure paid for by the public in order to do so. They should then have to negotiate terms. In terms of making it so that right now it's just completely...they just can't come to the

Floor Debate  
April 04, 2018

---

state, we're sticking them with too high of fees. Well, they've already negotiated contracts in the state. They're clearly willing to come here, there's companies that have already done it, they've done it on UNL's campus, I think they've done it around the city as well in some instances. They're willing to come here, they just want a better deal. Well, don't we all? They're in the private market, they should be able to negotiate terms. They're going to make a profit off this. They always have. They'll continue to. I've looked at these companies. They're doing very well for themselves, they'll continue to do very well for themselves. And all I want to see is that cities are able to negotiate terms with a private company, just as a private company would have to negotiate terms with any infrastructure that was owned by another private company. And the fact that a bunch of other states around us have already done this and taken a bad deal doesn't mean that we should. It's the same rationale that we use for some of these bad incentive programs that, quite frankly, has created a structural deficit that we're now dealing with right now. We looked over and were, well, Iowa is doing it, we'd better do it. Otherwise, who knows, maybe they won't come. Well, in the end Conagra leaves anyway and then we're left with a structural deficit and a bunch of tax incentive programs that are eating away at the revenue. So long story short, colleagues, I'm in opposition for those reasons. I think some other points by Senator Hilgers, I think he's made some good points finally. And...that was a joke. But I think that some good rationales have been made, some good comparisons by several of my colleagues. But the bottom line for me is, is that this is public infrastructure, the taxpayers, the cities, the people that built this infrastructure and pay for it should be compensated and should be able to deal in the private market accordingly. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Morfeld, Senator Vargas, you're recognized.  
[LB389]

SENATOR VARGAS: Thank you very much, Senator. Colleagues, I've been trying to research on this issue as much as I possibly can. I'm going to tell you where I'm at. I see both sides. I see both sides because we should be seeing both sides on all these issues. I understand the argument of local control. I understand it. Obviously, things aren't always black and white. We've been here, we pass things that sometimes are telling, not suggesting, telling local municipalities, counties what to do. We do that. So I do get that argument, I get that this is an additional revenue source, I get that there's the ability to negotiate. So I understand that piece of this. I also understand the other side that there are...there is an argument to be made about normalizing or somehow having a market rate for many different reasons that it is from a business standpoint when a cellular company is deciding on how they are picking infrastructure and where to invest and develop and they're looking at the grander landscape of the country and they're seeing states where it is much easier to, let's say, work within the confines of a more streamlined process, you're going to choose that. I think that is a valid argument. So I don't think it's black and white. However, for me, I think that the benefits of having to potentially streamline this issue, streamline this and make it a little easier for the cellular companies and for saying to not only to

Floor Debate  
April 04, 2018

---

the companies, but for this type of technology, that we are open to this, the arguments for supporting something like this for me outweigh the opponents. I do want to see improvements into making sure maybe...maybe if it's increasing the amount, increasing some of the security protections, some more to say that Senator Friesen is talking about in terms of the oversight or the ability to allow permits and then say no to permits, if there's more that we can do to provide somewhat...so that we could say that there's more control or more say for local municipalities, I am...actually would love to work on that between...if this goes on, between General and Select. But I do think that this is not black and white and that the positives of moving forward outweigh the negatives, which is why I'm supportive of it right now. I don't disagree with my colleague, Senator Morfeld. It's been passed in other states. I don't, however, want to make the claim that that means that it has either somehow people have been taken or it's not a good policy decision. And part of the reason is just by the measure of how much it's passed. If Colorado in both houses it's passed and it's passed nearly unanimously, I don't want to make the assumption that they did it wrong. The reason why I don't want to make that assumption is because the fact is there were people negotiating at the table on this issue. I'm not saying that negotiations aren't capable of happening here or they haven't happened, but they did reach some level of agreement that made it capable for some people to be happy, some people to be unhappy, not everybody was fully happy. I don't know if we're there yet, but I don't think that's a good enough reason to say we shouldn't try to move forward on advancing some changes in this arena to then make it easier for us to move forward with this technology. And just as a reminder, I know some people have said this, but Colorado, Iowa, it's overwhelmingly passing in some of these houses. And from the senators that I've talked to, my colleagues in some of those other houses there, friends that I think are fairly innovative and want to support technology, there was a compromise made. [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR VARGAS: And I'm not saying that's the only pathway forward for every issue, but what we're fundamentally dealing with how can we move forward and work together, I would love to see a compromise. I would be happy to work on that. I don't think it's reasonable just to say, no. So if in your mind this is a black or white local control, if we're being all frank with ourselves, there are many issues where that's not a good enough reason. We absolutely make decisions that tell people what to do and vice versa don't. So I encourage us to then figure out a way and read the policy and see, is this a step forward? Can we even meaningfully make some improvements that would have brought on other partners in other states? And then can we do something? Because I don't think it's a good enough reason to say we shouldn't, because it should be left up to the municipalities because a range of \$25 to \$2,000 is...that's a really large range. It seems a little bit too much of a range. [LB389]

SENATOR WILLIAMS: Time, Senator. [LB389]

Floor Debate  
April 04, 2018

---

SENATOR VARGAS: Thank you very much. [LB389]

SENATOR WILLIAMS: Thank you, Senator Vargas. Senator Hansen, you're recognized.  
[LB389]

SENATOR HANSEN: Thank you, Mr. President. And good evening now, colleagues. I can't get the time of day right all day. I started off good morning, this afternoon and all over the place. I rise...I'm going to talk about an issue related to LB389, but not necessarily directly about LB389. I'm sure, like many of you, I check my e-mail, I listen to my constituents, well, check my e-mail, phone, written mail, although e-mail seems to be trending more and more to be the most popular and most common way of getting ahold of me. And we noticed recently that we had a lot of e-mails going into our spam filter that were all e-mails about LB389, and they were all signed by constituents, and the constituents were all nice enough to make sure to include the full name and e-mail address and address, the whole length. And they all had the subject line "to help ensure Nebraska has a bright wireless future and the best connections possible." And looking at them, they were a form letter and two or three different versions of the same form letter, all basically extolling the virtues of 5G and asking me to support LB389. So I respond and I write back to these constituents, you know, thank you for letting me know, I'm still researching the issue, yadda, yadda, yadda, making sure they know that I received their contact, even if it is a full form letter, I take all forms of contact to me very seriously. And then I got some really unusual responses back. Of these constituents I was contacting who had been contacting me about this bill, a handful never wrote me in the first place and had no idea why I was responding to them. Just kind of reading my responses back to them, like I said, you know, pretty standard, you know, thanking them for their thoughts and telling them I was still learning about the bill. And then I get it back. One gentleman wrote: I did not contact your office. Please tell me how you got this information and my contact information that I did not provide to you. Another person wrote: FYI, I never wrote this e-mail to you and don't have any idea where it came from. One person who seemed very concerned wrote me three e-mails in quick succession before I then responded back to again. I didn't write you on Monday. Where did that come from? Sorry, I didn't write that to you. I have no idea and I never wrote about this and I never wrote you. There's a typo in there, I think. Finally, another woman wrote: Dear Matt, please disregard that e-mail as it was sent through a spam program and not from me, even though it includes my e-mail and my contact information. Colleagues, I just basically rise concerned and wanted to make sure we flag this issue for all of "our's" attention. I know I'm not the only senator that received e-mails. I know some people received e-mails from other constituents they knew. But it's kind of alarming to me that if I can't trust constituent contact because it seems that there's some group, some industry, some person out there spoofing, using real names and real e-mail addresses and real addresses that we went out and verified of people who never contacted me in the first place, don't know what the bill is, don't know what the issue is, how am I as an elected official to know to be able to trust my constituents? I keep track and I'm sure many of you do, all of you do, keep track of



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

Floor Debate  
April 04, 2018

---

what constituents contact me on what bills, how many for or against. And that's one of the things that I look at when I'm weighing decisions on bills. And if I'm finding out that at least a significant number of these never existed, they don't know what it is, how it happened. And I've been trying to research, going back and help them out. You know, do they have anything in common? What's their wireless provider, what's their cell phone provider, is there anything in common. And we can't necessarily find a common trend other than there's a group of people who know they did not write me, yet there's e-mail purporting to. I just wanted to make sure we flag that issue for all of our attention. This is probably something that's going to be bigger than just this bill, bigger than just this issue, but as kind of more and more of our... [LB389]

SENATOR WILLIAMS: Thank you. [LB389]

SENATOR HANSEN: Thank you, Mr. President...more and more of our communication goes online, that we're going to have to be very careful to make sure that we are protecting ourselves as an institution and protecting our constituents' best interest by knowing that the people who are contacting us are actually aware they're contacting us and their use of the information is real. So I just wanted to make sure that was flagged for everybody's attention. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Hansen. Senator Groene, you are recognized. [LB389]

SENATOR GROENE: Thank you, Mr. President. When I first heard of this, I always have my free enterprise hat on saying, by golly, if a company is going to come in and use my property, they're going to pay and I'm going to charge them what they should pay, \$2,000. But then I was sitting here listening the debate and I got to thinking, a municipality is government, it is not a free market entity. Government entities exist at the will of the people. They have a purpose. They exist to facilitate public commerce, roads, streets, public assembly, parks, recreational areas. They don't exist as a free enterprise to charge me a fee to use those. I pay taxes. Cellular companies exist for the same purpose, but a little different. They exist at the will of the people. The people want the services they sell. The people want 5G. That company, just like I do or a small business does, pays property taxes (inaudible) assessment. If the city owns a utility, they will do business with the city's electrical utility and they will do business with whatever who offers the fiber. The public entity has no right to look at that as a profit center to charge. They don't exist. They don't have soul. They don't have a balance sheet or a margin to maintain as a business does. They exist to do exactly this, to facilitate the people's wants in a free market system. There is no free market negotiation going on here, what I heard from a couple of folks. It is a tax. They want to charge a tax. If it was a negotiation, I would come to town, one company and say we will put...we want to negotiate for poles. We're going to go to Kearney and we are

Floor Debate  
April 04, 2018

---

going to go to North Platte and the city would negotiate. The free enterprise would negotiate. That doesn't happen here. I can't go to the city and say, I've got relatives coming to town and we want to rent five camping sites. Will you negotiate for five? No. They set a price and you pay it, you pay the tax. There's no free market negotiation going on here. The people want a service in the free market. The purpose of government is to facilitate that, not stand in the way, but to facilitate it. So I don't understand the argument here. We tell municipalities, counties in a lot of ways what they can charge, what they can tax, because we are state senators and we want to facilitate the growth of commerce in our state. This shouldn't be looked at as another way to make a profit. Cities don't make profits, it isn't on their financials. Counties don't make profits. You don't hold people up, you facilitate. So I stand in complete support of AM1456 and LB389. I have come full circle on this thing, because I had to remind myself the realm of free enterprise is not the realm of government and neither should they cross. Government facilitates, and the people who we elect on the city council... [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR GROENE: ...should make sure that they keep the cost as low as possible to facilitate free commerce and the wants and needs I want as a free individual in a free society. Thank you. [LB389]

SENATOR WILLIAMS: Thank you, Senator Groene. Senator Smith, you're recognized. [LB389]

SENATOR SMITH: Thank you, Mr. President. I'm going to try to just address a few points that have been made and some of the comments, and I'll go with the last first. Senator Groene said, government exists to facilitate. There are costs to facilitating. I guess I'm using Senator Groene's terms. How do you pay to facilitate? That's what they are looking to recover fees. The fees that they're looking to recover are the fees that were proposed by the wireless carrier, and those fees are comparable to fees of other states. So it's not the cities that are charging those fees or proposing those fees, those are fees that had been brought as the proposal. And again, I would say relative to what we're seeing with the other states, they're not excessive, and these are fees that correspond to the fees charged to competitors that are taking up the same right-of-way space. The fees are used for public good. Cities have to charge these fees to cover expenses to operate, to manage the right-of-way. We can argue all day long as to whether cities can operate more efficiently. We can argue all day as to where the state can operate more efficiently, schools can operate more efficiently, and so on. But those fees go towards serving a public good. There is a cost to government, whether we like it or not. Senator Groene said, people want 5G. This bill does not mandate 5Gs, that's not what this bill is about. I do not believe that the cities are looking to be a profit center, they're looking to recover comparable fees to other providers on the right-

Floor Debate  
April 04, 2018

---

of-ways. It's pretty plain and simple. This has been talked about as a statewide approach, yet we've taken a little pin knife out and we've carved out exceptions. We've carved out an exception for DOT, for the university, for the community colleges, for REAs. I think you're still negotiating with the NPPD, so maybe you will carve NPPD out, maybe OPPD, but you leave Lincoln in there. So you've got all these little carve outs. How is this a statewide approach if we're making all these exceptions for all these entities? These are companies that want to come and invest, and they're not going to take Nebraska Advantage money. Well, guess what? They're taking a subsidy of a sort. They're taking a subsidy. Their competitors are paying, and they're being subsidized to come in and reap great profits and we're putting at risk the investments those other companies have made and we're doing it because we're saying it's 5G. It's not 5G. We're doing it because we're saying it's a statewide approach. No, it's not. We're saying that everyone has come to the table, no, they have not. They have not come to the table. They have not participated in this process. I would say that what we're dealing with here is too complex and maybe it's too early to deal with this. And there needs to be adequate time given to studying this and incorporating into the study all participants in this. [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR SMITH: Municipalities, public utilities and such, talk about that this is just more regulation. Senator Friesen, I hate to bring this up and I know there's going to be at least one lobbyist that doesn't want me to say this, but Senator Vargas is very consistent. He brought a Tesla bill. That Tesla bill did not come up in your committee, and that's a market disrupter, maybe a market distortion, just like this is a market distortion. You can't have it one way and then another. Do you believe in free markets and wide open as you're proposing with this? Why not embrace Tesla? Well, we know why. Our very successful dealership network in this state deserves more. And those that have invested in communications networks in this state deserve better than this. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Smith. Senator Lowe, you are recognized and this is your third time. [LB389]

SENATOR LOWE: Thank you, Mr. President. We have heard about the revenue loss and the right-of-ways and the unfairness of the taxes. Let me...I'd like to use a term of one of my bills LB921, this is paltry money. How about the loss of revenue, of new business that will come because of new technology? Those new businesses that we are able to get tax revenue off of, the people that will work in those new businesses that we will be able to get tax revenue off of. We're talking about pennies to dollars, and for municipalities to be so closed-minded of looking at those pennies, instead of the dollars that could come from new technology and advancing our state to the Silicone Prairie and to our cities of being smart cities. LB389, the small cells will be

Floor Debate  
April 04, 2018

---

able to help advance and enhance public safety for real time crime scene assessment, gunshot detection, integrated video surveillance in ultrahigh definition, facial recognition, advanced warning systems for tornadoes and floods, allow more devices to be connected with more data to 911, law enforcement, and first responders. Let's talk about safety. Let's talk about bringing that speed that we need for safety. Currently, without small cells and 5G when large groups of people attempt to call 911 at the same time, their calls do not go through. That's frustrating, and especially if you are on the other end. If you can have a cell phone and take video of the crime that is happening now and be able to show that to a dispatcher on their other end, the officer knows exactly what is happening. That is what this bill is going to bring to us sooner now than later. How many lives do we want to have lost because we do not have the technology? It's been brought up that Lincoln and Omaha are going to get this anyway. It's being developed now. It's being developed now in the areas that are highly congested. It's not being developed on the outskirts. It's being developed in and around the university system, in and around Pinnacle, it will be developed in and around the important areas of Omaha. It's not going to be developed in the outskirts where crime may be committed. We need to be able to bring this technology to all parts of Omaha, all parts of Lincoln, all parts of Nebraska. We don't want to look at these 250-foot tall towers in your backyard where our technology is now. There's an article where one is to be decorated as a Christmas tree or a tree. Have you ever seen something that looks like something like that that's five years old? It no longer looks like a tree, it looks like somebody threw their dirty laundry out there. Senator Blood, you brought up that T-Mobile absorbs those costs. Let me tell you, they do not absorb that cost. [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR LOWE: You still pay for it, you just don't see it. That's what happens with our taxes when they are hidden. No company absorbs that much money. So let's do this for safety. Let's do this for the EMS. Let's do this for the fire. Let's do this for the police department and the State Patrol. There are areas in Nebraska that their radios do not work and they have to resort back to cell phone. And then there are some areas that cell phones don't even work. But let's make the technology work for us, the people who keep us safe in Nebraska. Let's do it for safety. Let's do it to protect our kids. Let's do it to protect our families. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator. Senator Kuehn, you're recognized and this is your third time. [LB389]

SENATOR KUEHN: Thank you, Mr. President. Thank you, colleagues. A couple of things I want to correct just in terms of some factual information which was misstated. First of all, UNL has done this, the university has done this. That's actually not a true fact. The UNL deployment was a macro cell, it was not a small cell. So when trying to use that as an example or a point of

Floor Debate  
April 04, 2018

---

fact to make an argument, it's a false piece of evidence. That particular situation would not apply to that in which we are discussing, which is important again if we are going to make policy decisions that we understand exactly what a small cell is, which is also one of the problems of some of the additional red herrings and mud that is being thrown out to disingenuously combat LB389. The small cell deployment is absolutely critical to the upscaling of the 5G network. It's estimated that there's going to need to be 10 to 100 times as many small infrastructure, small cell deployments necessary in our larger urban areas to handle the traffic needed for the full rollout of 5G. And along with that innovation comes additional innovation from vendors which has also been left out of this discussion. We're given pictures of some of the early small cells and told that that's what it looks like. But what's not being demonstrated is the ingenuity and the innovation that's taking place within the industry in which we now have smart utility poles which are manufactured to interiorly house small cell technology, so it's not even visible to the outside. So many of these arguments are looking back to the early technology and trying to use that as a means to disparage the deployment of the bill itself. I'm also...like Senator Williams referenced, he had a discussion with a mayor in one of his communities. I've had some rather interesting conversations with mayors in my community and the communities I represent and the irony is, small cells will never be in Minden, they will never be in Holdrege, they will never be in Sutton or Red Cloud or Blue Hill. There is no need. Current existing towers cover about a 10-mile radius. Small cell deployment is to handle increased traffic in areas of high density like Memorial Stadium, the arenas, places where large amounts of traffic are present which shrinks the existing cell tower covered from say ten miles to only two. So, unfortunately, people who are supposed to be looking out for the interests of our municipalities, something like promoting the advancement and deployment of 5G technology and investment statewide are being used and abused. And it's disingenuous and, quite frankly, it chaps my hide. To ask small town mayors who will never have small cells deployed in their communities to call and reiterate and regurgitate talking points that they don't even understand for the purposes of combating an issue they will never face is irresponsible and it's disingenuous. And that's what's happened on this bill. Our small communities are being used to throw mud on a bill to protect a revenue stream for some of the largest cities in this state. And let's look at exactly what that revenue stream is. It's not about cost of doing business. It doesn't cost the city of Lincoln any more to maintain a utility pole with or without a small cell. It certainly doesn't cost them \$2,000 a year in annual expenses to maintain that pole. Four hundred small cells in the city of Lincoln at \$2,000 a pole, that's an \$800,000 revenue stream. Show me, Senator Smith, if you are talking about markets, how there is \$800,000 of increased cost to the city of Lincoln to maintain those 400 small cells. There's not. It's disingenuous. There is a rate for a pole attachment, NPPD has one. [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR KUEHN: Want to know what it is? It's a little over 11 bucks. Eleven bucks is the market rate for a monopoly. You cannot have a market system in a monopoly. The market rate is

Floor Debate  
April 04, 2018

---

\$11, folks. You want to talk about thousands of dollars to meet the cost of the infrastructure? We're smarter than that, we're better than that, and we should expect better than that from the people who are representing our communities and our local governments. So let's get to the facts, let's address what we're trying to do here, and let's move Nebraska into the next generation. Let's facilitate the services our consumers want. Let's ensure we're basing policy on facts and reality and not let people be used and abused for the purposes of a political power play, because that's what's happening here. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Kuehn. Senator Baker, you are recognized. [LB389]

SENATOR BAKER: Thank you, Mr. President, members of the body. I rise in opposition to LB389 and I'm going to say that I think it's disingenuous for people to say that communities who don't want small cell towers are backward looking, last generation, last century, against progress. The first community that contacted me was Hickman. And Hickman is anything but a backward looking community. In fact, it's the most rapid growing community in Nebraska on a percentage basis. It was the mayor and the city manager who said that they don't want it. I checked with Beatrice city manager, where does city of Beatrice stand on that? They're very much against it. Lincoln, as it's already been stated, they are not in favor of it. I find it difficult to believe anybody can describe Lincoln as a backward looking city. They're probably one of the most forward looking cities in the country. We were talking about cell phones and Internet connections via those small cell towers. Well, there's other things too. Many communities invested heavily in fiber optics. In the community, the neighborhood where I live just outside of the city limits. Right across the street, 70th Street, from what is within the city of Lincoln, Allo is laying fiber throughout that neighborhood. They've been gradually working south and they're about to reach my neighborhood. That won't provide a 1,000 meg connection. You talk in terms of people running a business and even their home use, it's not going to be all about cell phones. It's going to be about Internet connectivity, and I think that is more important. Back in the '90s, I was living in Iowa in the first part of that decade and Iowa did something different than Nebraska did. The first thing they did was laid in a fiber optic backbone. Meanwhile, Nebraska, they went through the local telephone companies and went over copper. So when I arrived on the job at Norris they were in the process of installing a distance learning room. And I got to talking to people there, it was analog system. I thought, what in the world are we doing putting in an analog system? Things are going to be digital, they're digital now. So within five years, they were in there tearing that equipment out and replacing it with digital equipment. I will yield the rest of my time to Senator McCollister. Thank you. [LB389]

SENATOR WILLIAMS: Thank you, Senator Baker. Senator McCollister, you're yielded 1:54. [LB389]

Floor Debate  
April 04, 2018

---

SENATOR McCOLLISTER: Thank you, Senator Baker, very much for the courtesy. I rise against LB389 and wish to make a few more comments about the...some of the comments that have been made here on the floor. Wireless companies are promoting 5G, not to make it a public service or a betterment, they're doing it to make money. They want to make a profit on what they've invested in these services. The city therefore--it is a monopoly, no question about it--but they have property that has value to a wireless company so they have something to sell as well. A city has a responsibility to its taxpayers to make a return wherever they can. The money is fungible. So money that you could make selling access to a phone pole... [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR McCOLLISTER: ...by golly, that can be used to offset property taxes. So that's a good thing and the city has a responsibility to its taxpayers to get all they can from that access. With that, I yield the balance of my time. [LB389]

SENATOR WILLIAMS: Thank you, Senator McCollister and Senator Baker. Senator Halloran, you are recognized. [LB389]

SENATOR HALLORAN: Thank you, Mr. President. I would like to yield my time to Senator Kuehn, if he wishes. [LB389]

SENATOR WILLIAMS: Senator Kuehn, you're yielded 4:50. [LB389]

SENATOR KUEHN: Sure. Thank you, Mr. President. Again, we're confusing issues here. And with great respect to Senator Baker and the individuals he talked to, he's talking to communities who are conflating and not understanding what a small cell is. Beatrice doesn't have the population density unless very specific events like maybe during the eclipse earlier this year...last year, sorry, last summer, in which they would have the population density where a small cell would even be required and in that case isn't financially feasible. That's not what we are talking about here. We're not talking about creating and installing towers. We're talking about installing devices that expand the coverage and fill in holes in our infrastructure. And so I don't disagree that maybe some of these communities want to have a greater say or want to have the opportunity to say we don't want this particular piece of infrastructure at this location, and in this bill they have it. But the reality to say that they don't want these devices is irrelevant, because it's not what...the deployment what the industry wants. It's not what the industry is going to do in terms of meeting consumer and customer demand. And, again, it has created a misconception within the body, which is taking people who are well intentioned and wanting to be informed from adequately supporting a bill that otherwise is sound in many, many ways. We're not creating a competitive advantage, we're streamlining a regulatory process, which I thought is

Floor Debate  
April 04, 2018

---

what all of us wanted to do to promote business. Senator Chambers and Senator Groene and I didn't walk back the regulations on horse massage for the purposes because we believed that it's okay to set up roadblocks. We could have said, you know what? By golly the state of Nebraska could fund additional priorities if we increased the licensing fees. Why, shoot, we could fund our court system and our justice system just by adding and increasing fees. I mean, running the courts, that's a publicly owned system, right? Shouldn't they be able to recover their costs? All of us would recoil at the fundamental injustice at that kind of a claim. So why are we doing it now? This is infrastructure that exists. These are poles that exist. These poles that have lots of stuff hanging off of them. And, frankly, the safety argument, I've got to tell you I know a lot of skilled linemen. I know some linemen who've won the lineman's rodeo at the State Fair, for goodness sakes. And to assume that they are not able and to even make the claim that they are not trained to safely navigate up a utility pole with something hanging off of it because small cell is different than all the other stuff--at \$11 a pop--that are already hanging off of our poles is equally disingenuous. It's just more mud thrown on a bill to create a protectionistic class for some of our largest cities to maintain a revenue stream. And I get it. It's a valuable revenue stream; \$800,000, a million dollars a year, it's a big deal. But what does that say about the regulatory environment in Nebraska? What does that say about our ability and desire to attract companies who aren't asking for a tax break or a tax credit, they're simply asking for a path forward to know what the rules are within the communities to have a standardized process for applying and receiving permits so that they can invest in our state. [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR KUEHN: That is investment that we have looked and held interim study after interim study and hearing after hearing to do. And here we have it before us and for reasons that absolutely boggle my mind we are finding every excuse to say no. If there's a broader issue with safety, for placement and right-of-way, let's sit down and let's talk about it. I've looked at some time lines of meetings, and I don't think that the League has come to the table in a spirit of wanting to understand and a spirit of wanting to negotiate. So let's do it and let's send the message to those groups, to the people outside the glass today, that that's what we expect them to do. That we want to see this technology rolled out, we want to reduce barriers to investment in this state, and we want to show that Nebraska is open for business in its technology infrastructure. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Kuehn and Senator Halloran. Senator Quick, you're recognized and this is your third time. [LB389]

SENATOR QUICK: Thank you, Mr. President. One thing I'd like to address before I get into what I was going to talk about, and I've been to the Lineworkers Rodeo at the State Fair probably



Floor Debate  
April 04, 2018

---

about six times and they never climbed around anything attached to the pole. So I just want to say I believe in my heart it is a safety issue. And really for the city of Grand Island with their utility poles, I can't say I've ever seen anything attached there. I'm not even sure they let people attach anything to their poles, and I think that's one of the issues for some of the communities. I think it's more about the ordinances, right-of-ways, maybe the attachments, where they're going to be placed. It's more about that than it is about the money for quite a few of the communities. I think the city of Grand Island would be one community that would be able to have 5G technology because of the State Fair and the number of people that come there. I think we'd like to see it. It needs to come to the state, but we need to do it the right way. As I talked before, there's a lot of cities in other states that have passed laws similar to this that have got lawsuits going on from the cities. They're finding out that they can't do...that it's not working exactly like they thought it was supposed to. So let's just make sure we do it the right way and make sure it's safe. The other thing I did want to bring up is, when you have an outage...electrical outage from a storm or some other issue, you want your electricity on right away. And one of the issues that came up when I spoke with people out in the lobby was one of my concerns was that you can't actually...the way it was worded, you couldn't work on that pole until they took their stuff off. And maybe that's a misunderstanding and that could be corrected, but I know they had things worked out with the power districts. But the city-owned utilities, I'm not sure they had spoken with them about that. So with that, I would yield the remainder of my time to Senator Hilgers. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Quick. Senator Hilgers, you're yielded 2:50. [LB389]

SENATOR HILGERS: Thank you, Mr. President. Thank you, Senator Quick. I rise briefly to make two points. One is, I think it's the wrong framing to say...to compare this to removing regulations that we've done before, like for instance, with the horse massage bill that we were talking about before. I think the right framing is to say that what we're doing is we're going to allow...we're going to have the old regime of licensure for those who have been doing horse massage for a number of years, but anyone who's coming in new who's going to compete with them, we're actually going to allow you to have a different, lighter regulatory and tax regime. The point is not in removing regulation or taxes, which of course I'm highly in favor of, the point is having a disparate treatment between people who are offering...entities that are offering the same service. Now my argument has hinged on one basic fact and there's been some dispute over this fact. And that fact is, whether or not data as provided through a wireless system in a 5G environment would be taxed. Now, when I had this discussion initially when the 5 percent franchise fee came to light and I had that conversation, I went to the wireless folks and said, okay, I understand there's a 5 percent fee to provide for cable TV and there's not a franchise fee for Internet tax. And they said, well, look, we've got an occupation tax of 6.5 percent. And I said, okay, that's a fair point. If you have 6.5 percent for those services, they have 5 percent, that

Floor Debate  
April 04, 2018

---

seems like a wash. In fact, it might tilt a little bit against you. Now upon further research and seeing the federal law that was passed in the '90s and extended in a permanent status here just a few years ago under the Obama administration that prohibits, affirmatively prohibits states and localities from taxing Internet access. Okay? That's the legal environment in which we are operating. Now, if you're telling me that occupation tax states or localities are applying an occupation tax for Internet access and ultimately in a 5G environment through some sort of home router like you would have... [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR HILGERS: Thank you, Mr. President...through a cable environment, I think that's contrary to law. I will listen to you if you have additional information that I'm not aware of, because this is a very complex legal environment--I'll be first to admit that--and I have had shifting conclusions throughout as I've gotten more information. Where I sit today I feel is a very stable legal conclusion, but I've invited those outside the glass, inside the body to provide additional information they have and I will look at it and I'll rethink some of my conclusions if indeed that occupation tax does apply to Internet. I do not believe that it does. And I believe that if we help clear the ground for this what we will end up with is not eliminating regulation and allowing for some free competitive paradise, what we will be doing is saying, hey, you all who have been operating for some period of time, you are going to operate under an old taxing regime but you all who are coming in as new entrants, you will not. I think that is fundamentally uncompetitive and unfair and that is the basis of my disagreement with LB389. Thank you, Mr. President. Thank you, Senator Quick. [LB389]

SENATOR WILLIAMS: Thank you, Senator Hilgers, and thank you, Senator Quick. Senator Friesen, you're recognized and this your third time. [LB389]

SENATOR FRIESEN: Thank you, Mr. President. I will read from Robert McDowell. He was a former FCC commissioner from 2006 to 2013. He talks about local laws that imperil 5G innovation. There was an example of a Georgia municipality is considering an annual fee of \$6,000; that's an annual fee. They're talking about \$2,600 to \$8,000 for each cell attached to a city-owned pole. Newport Beach, California, \$10,800 to attach to a pole. The problem we're seeing in the industry, and I think Senator Hilgers recognizes this, we have three competing industries that were at one time sole suppliers of something, whether it was TV or phone or now data. But now we have these companies supplying...each one supplies all three of the above. They are intermingled, they have bundled packages and so they're all operating under different rules and regulations; some of this will probably have to be fixed at the federal level. But when you have technology that comes on...let's take, for example--I'll be a little bit like Senator Schumacher and I'm thinking of the future--so what happens if we get a satellite that can provide

Floor Debate  
April 04, 2018

---

wireless from space and suddenly everyone has access to it in a community. Are they going to tax that too? There will be no right-of-way access. Do we deny that to a city because it would be uncompetitive with the tremendous investment they have in cable? And yet, suddenly, now we can receive it wirelessly and we can't reach out and touch them. And so it's a huge competitive disadvantage, so we'd say, no, we don't want that technology. We can't have that. We have infrastructure here that we have to pay for. It's antique, it's outdated, it's not fast enough, it requires lots of maintenance, we have to look out for it. But now to do it wirelessly through a satellite, we can't have that. We're just ruining a company's investment here and, in fact, we're just cutting our revenue stream is what we're cutting because we tax cable and we tax phones. And like I said, 18 percent of your cell phone bill is taxes. So think about the future and what may come with technology. Can we stand here and deny 5G technology because we're harming a technology that is outdated, it's going by the wayside? No one wants to be hooked to a line anymore. They want wireless access. And so the only way you can give them that is by withholding the wireless access and making the cable hookup look good. So if we take the idea of a fair market value of the right-of-way, so let's let them charge \$10,000 per pole. And if that company can put that right back on your bill, that means the citizens using that service now would just be cycling that money through the city as a tax, and then back to them for fair market value of the right-of-way. When you're a monopoly, there is no negotiation. Who are you going to go to for a right-of-way? There's not another person that can issue you a right-of-way, there's only one. It's a monopoly and they control it. It's not based on cost, it's not based on anything else, it's how much revenue they can squeeze out of you. And so it looks very disingenuous when you look at the budgets and we talk about fees and revenues that cities have access to. So we have an article here that was written... [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR FRIESEN: ..."FCC Ruling May Hurt Cities". They talk about San Jose, California, and Lincoln, Nebraska, and we are singled out for our high cost to deploy 5G. And in there, the city of Lincoln, their right-of-way manager brags about negotiating their fee. I think they started at \$6,000 a pole and ended up at \$1,995. A good negotiator shouldn't have to cut more than half, I wouldn't think. So that's where we look at it. We look at fees like this and they're exorbitant and they are passed on to you, the customer. What is fair market value of something you own? You're going to pay that tax. That company is passing it on. There is no way they can absorb these kinds of costs and they will not. Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Friesen. Senator Vargas, you're recognized. [LB389]

Floor Debate  
April 04, 2018

---

SENATOR VARGAS: Thank you very much. There's been a lot already shared. I don't want to talk too much about what's already been talked about, but I do want to make an observation again, because I said I don't think it's black and white, I don't think this is either right or wrong. I do see the pros outweighing the cons, but one thing that I'm most interested in--and I had a conversation with Senator McCollister about this--because I'm trying to get a better understanding about what market rate really is. I personally don't know. That's part of the reason why I'm most interested in, what is fair? One thing I do know is that the notion of fair can be determined a couple different ways. It could be determined by how much something actually is going to cost, the cost to upkeep, the cost to actually manage, and then there's also the question of the cost of how this is looking across the country. That's the part that's the most interesting because it's changing. As these laws are put into place the market rate is changing, because there are new deals or statutes that are being put into place that are changing the dynamics. It reminds me about how we do things in OPS when we would look at a raise and we would be negotiating on salaries. I'm not saying this is the same, but it reminded me that when salaries in different areas would change, it would also change the conditions of what was negotiated. I hope and encourage that wherever this does go now or later, that we try to figure out and determine what a fair market rate is and guide this decision somewhat in policy in data and also in what might seem fair. And if we're not doing that, then maybe we need to continue to negotiate. But like I said, I still think the pros outweigh the cons. And because I really want to hear Senator Kuehn talk a little bit more about this--I'm intrigued--I'm going to yield the remainder of my time to Senator Kuehn. [LB389]

SENATOR WILLIAMS: Thank you, Senator Vargas. Senator Kuehn, you're yielded 3:00. [LB389]

SENATOR KUEHN: Thank you, Mr. President. And Senator Baker has told me I cannot use the word disingenuous again, which means I'm going to use it in every other sentence because he's primed me psychologically. With that said, for my final couple of minutes here this evening in this discussion, I want to make two points, one micro level and one macro level. On the micro level, very specific to this bill, I beg and I implore you, before you make a decision on how to vote, please understand what a small cell is. If you don't understand, if you haven't gotten that clear picture from our debate tonight, go ask someone. Do a little bit of independent research. Verify that the facts on which you are making your decision are accurate and your comprehensive understanding of how the technology works, where it will be deployed, what it looks like, what its limitations are as well as its benefits are known. We're making decisions and there's a lot of arguments tonight that have been made that don't reflect an understanding of small cell technology and what is at the base of this bill. And that's because forces who are trying to maintain the ability of this as a revenue stream have been misrepresenting the facts. And we, as lawmakers, have a responsibility to think independently, to verify our information, and make those decisions based on the facts. Macro level, big picture: One of the things that we hear

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

Floor Debate  
April 04, 2018

---

defended a lot tonight are traditional telecom industries. I've heard a lot of comments tonight about parody between cable and Internet and wireless. And the reality is, is that the modern wireless network provided through our handheld devices represents a massive technological and economic disruption. [LB389]

SENATOR WILLIAMS: One minute. [LB389]

SENATOR KUEHN: And that disruption is uncomfortable, but it's also a good thing. I want to end quickly with a story. In 2008, I took a group of students and climbed Mount Kilimanjaro. I made a call on an international cell phone from base camp at the summit of Kilimanjaro in 2008, not through a satellite phone, but through a cell phone with a SIM card that I purchased in Arusha, Tanzania. They had better wireless technology in Tanzania than we had in Heartwell, Nebraska, when I left. And when you investigate wireless deployment globally, it's because they're not carrying around all of the wired infrastructure that was so costly and when wireless technology came forward they were able to jump light-years ahead. Folks, we have a chance to jump light-years ahead. Let's not be weighed down by technology. [LB389]

SENATOR WILLIAMS: Time, Senator. [LB389]

SENATOR KUEHN: Thank you, Mr. President. [LB389]

SENATOR WILLIAMS: Thank you, Senator Kuehn and Senator Vargas. Speaker Scheer, you're recognized. [LB389]

SPEAKER SCHEER: Thank you, Mr. President. We have met the allocated time for this bill, so we will pass over to the next item on the agenda. Please provide that. Thank you. [LB389]

PRESIDENT WILLIAMS: Thank you, Speaker Scheer. Mr. Clerk, for items. [LB389]

ASSISTANT CLERK: Thank you, Mr. President. Amendments to be printed to LB389 from Senator Friesen; LB989 from Senator Larson; LB1103 from Senator Briese. That's all that I have at this time. (Legislative Journal pages 1400-1404.) [LB389 LB989 LB1103]

SENATOR WILLIAMS: Thank you, Mr. Clerk. Mr. Clerk, we'll proceed to committee priority bills, LB953. [LB953]

Floor Debate  
April 04, 2018

---

ASSISTANT CLERK: LB953 was introduced by Senator Albrecht. (Read title.) The bill was introduced on January 10 of this year, referred to the Business and Labor Committee, placed on General File with committee amendments. (AM1779, Legislative Journal page 713.) [LB953]

SENATOR WILLIAMS: Thank you, Mr. Clerk. Senator Albrecht, you're recognized to open on LB953. [LB953]

SENATOR ALBRECHT: Thank you very much, Speaker. Colleagues, I have tonight LB953 which makes three primary changes to the Nebraska Workers Compensation law. The first change, the first of these, is to allow parties to move for a hearing on the application for workers' compensation lump-sum settlements. Currently the parties cannot require the Workers' Compensation Court to hold a hearing on the settlement or parts of the settlement even if both parties agree on an issue. The intent of this change is to streamline the settlement process. The second primary change in LB953 allows parties some flexibility regarding settlements when medical bills are unpaid or the employee is a Medicare beneficiary. Nebraska law currently provides that lump-sum settlements in Workers' Compensation Court must be approved by the court in these circumstances. Number one, the employee is not represented by counsel or the employee...not "or," but...or the next one is the employee is eligible for Medicare and is a Medicare beneficiary or reasonably expects to become eligible for Medicare within 30 months after the settlement is executed, Medical, surgical, and hospital expenses incurred for treatment of the injury have been paid by the Medicaid and Medicaid will not be reimbursed under the settlement and the medical, surgical, and hospital expenses incurred for treatment of the injury will not be fully paid as part of the settlement, or the settlement seeks to commute amounts...compute amounts of compensation due to dependents of the employee. If the court finds that the lump-sum settlement is in conformity with the compensation schedule and for the best interest of the employee or his or her dependents under all circumstances, the Compensation Court must approve the settlement. The current practice of the court is not to approve a settlement where the employee still has unpaid medical expenses or the employee is or expects to be a Medicare beneficiary. This is not a formal rule and this is not in statute, but it merely is a practice that the court has adopted over the years. LB953 allows an attorney for an injured worker to affirm that the settlement regarding medical expenses conforms to the compensation schedule and is in the best interest of the employee. If these affirmations are made by the plaintiff's attorney, the court must approve this portion of the settlement. There is a committee amendment which clarifies that this is the portion being approved by the court, which I will speak to again when I open for the amendment. The third primary change is to address an issue regarding the enforcement of late payment penalties in worker compensation cases. Nebraska law currently permits 50 percent penalty for payments that are made later than 30 days after the release is filed with the Workers' Compensation Court. The Workers' Compensation Court decided in Dragon v. The Cheesecake Factory that this penalty was not enforceable because the employee had waived all right to enforcement. LB953 adds language to permit the employee to

Floor Debate  
April 04, 2018

---

enforce this by stating that the defendant is not discharged from the liability until an order of dismissal is entered by the court. LB953 had an overwhelming amount of support at the committee hearing. People who are typically opposed to one or another, policywise, all testified in support of this bill. The reason for this is that the bill makes Nebraska workers' compensation law better and more efficient. It allows attorneys to keep...to help move the process along when they decide it is in the best interest of the employee to do so. It also fixes Nebraska law to make penalties for late payments possible for injured employees. The committee voted this out 7-0 and I would ask for your support on this bill. Thank you. [LB953]

SENATOR PANSING BROOKS PRESIDING

SENATOR PANSING BROOKS: Thank you, Senator Albrecht. And as the Clerk stated, there are amendments from the Labor and Banking (sic--Business) Committee. Senator Albrecht, as Chair of the committee, you are recognized to open on the amendments. [LB953]

SENATOR ALBRECHT: Thank you, Chair. AM1779 from the Business and Labor clarifies that the only portion of the settlement which the court is required to approve is that portion regarding medical expenses and Medicare's interest. Under the amendment, the Workers' Compensation Court would still need to review and would not have to approve other portions of the lump-sum settlement if the affirmations regarding the medical expenses were made. The amendment also would make a slight change to the language regarding the affirmation. They will...it will be "elect to" has been added before the word "affirm" to make clear that the attorneys do not have to affirm this, it is a voluntary action. This amendment was adopted, again, by the committee 7-0 and we'd ask for your support. [LB953]

SENATOR PANSING BROOKS: Thank you, Senator Albrecht. And, Mr. Clerk, there is an amendment to the committee amendment. [LB953]

ASSISTANT CLERK: Thank you, Madam President. Senator Albrecht would move to amend the committee amendments with AM2742. (Legislative Journal page 1316.) [LB953]

SENATOR PANSING BROOKS: Senator Albrecht, if you would open. [LB953]

SENATOR ALBRECHT: Thank you. Again, I'll make this short. But again, we had a lot of parties coming together so that's why we have these amendments. This particular amendment to the committee amendment clarifies certain provisions and, to my understanding, eliminates any remaining opposition to stakeholders to this bill. We have addressed the concerns of the Hospital Association, Medical Association, and individual hospitals. This amendment requires an

Floor Debate  
April 04, 2018

---

application for an order approving a lump-sum settlement to also include a description of the medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid as a part of the settlement which are disputed and for which compensation has been denied by the employer. This amendment also changes some language to more accurately describe what is being conclusively presumed to be in conformity with the compensation schedule and for the best interest of the employee or his or her dependents. The amendment cleans up the bill by removing some unneeded language. AM2742 provides that the order approving the settlement where the employee is represented by counsel and contains a description of medical, surgical, or hospital expenses that will remain unpaid because they are disputed shall provide that the employer is not liable for such expenses. With an order containing express provisions that the unpaid medical, surgical, or hospital expenses are not covered by workers' compensation, the medical provider should be in a better position to seek reimbursement from the insurer providing healthcare coverage for the injured employee. Finally, the amendment adds in a provision that if any injuries will remain unpaid as part of the settlement and the employer is not liable to pay, that an insurance policy provision which would not typically pay for such injury because it is covered by workers' comp is void. Thank you, and those are my final amendments. [LB953]

SENATOR PANSING BROOKS: Thank you, Senator Albrecht. Debate is now open. Senator Schumacher's, you're recognized. [LB953]

SENATOR SCHUMACHER: Thank you, Madam President, members of the body. I haven't perused the bill to get down to the details. But if Senator Albrecht would yield to some questions? [LB953]

SENATOR PANSING BROOKS: Senator Albrecht, will you yield, please? [LB953]

SENATOR ALBRECHT: Yes. [LB953]

SENATOR SCHUMACHER: Senator Albrecht, thank you. On...from listening to your presentation, we are forcing the court to approve a settlement for medical cost. Is that what we're doing here? [LB953]

SENATOR ALBRECHT: Yes, sir. [LB953]

SENATOR SCHUMACHER: And once...let's say the person is indigent except for the settlement that they're getting. Who picks up the bill after that if something crops back up from this injury? [LB953]



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

Floor Debate  
April 04, 2018

---

SENATOR ALBRECHT: Well, I believe when the attorneys go to court and the judge would determine at that time what the settlement would be. [LB953]

SENATOR SCHUMACHER: Right. And who pay...I mean... [LB953]

SENATOR ALBRECHT: If they're... [LB953]

SENATOR SCHUMACHER: ...so you've got somebody hurt on the job, and I think under our workmen's comp law the workmen's comp policy is liable for all the medical expenses plus some type of disability rating after that. Now if we're saying to the court, you've got to approve the settlement as far...or a portion of the settlement to let the insurance company and the employer off the hook for the medical bills, then who is going to pay the medical bills if something crops up? [LB953]

SENATOR ALBRECHT: Well, the judge could order the employer to pay. [LB953]

SENATOR SCHUMACHER: Not after he proves a settlement though. [LB953]

SENATOR ALBRECHT: Well, they can prove a settlement but there are a lot of settlements that continue on, you know, for...until somebody goes on Medicare or Medicaid. [LB953]

SENATOR SCHUMACHER: Okay, now who is Medicare or Medicaid? [LB953]

SENATOR ALBRECHT: We are. [LB953]

SENATOR SCHUMACHER: Okay. And was the state department...DHHS involved in these negotiations about this and left themselves exposed to having to pick up this tab? [LB953]

SENATOR ALBRECHT: No. [LB953]

SENATOR SCHUMACHER: They were not? [LB953]

SENATOR ALBRECHT: No. [LB953]

SENATOR SCHUMACHER: Well, why would we be letting the insurance companies off the hook for future medical costs... [LB953]

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

Floor Debate  
April 04, 2018

---

SENATOR ALBRECHT: But we're... [LB953]

SENATOR SCHUMACHER: ...and then stand in line to pick up the tab? [LB953]

SENATOR ALBRECHT: Well, I wouldn't say that we are necessarily letting anyone off the hook. That's between the plaintiff and the employer and the judge to decide who pays for how long. [LB953]

SENATOR SCHUMACHER: They don't care. Why would they care? I mean... [LB953]

SENATOR ALBRECHT: They might have a large settlement. Every case is different. [LB953]

SENATOR SCHUMACHER: Right. But nobody is looking out for the state interest. And as I understand what you're saying is that, well, that's okay because the state's got deep pockets, we're loaded with money, so we'll let the attorney get his fee and we'll let the businessman off the hook and we'll let the insurance company off the hook and we're going to tell the judge, despite your good, common sense and your desire that's been built up over the years to hold the medical thing open, we're going to tell you, you have to approve it because we'll pick up the tab in the end. Why would we do that? [LB953]

SENATOR ALBRECHT: Well, again, what I understand is that some settlements are quite large. And whether we end up paying those medical bills and the judge orders that, I can't tell you for sure what he's going to order. I'm sure he has a general idea of what the person has coming over a period of time or who should be taking care of them, so... [LB953]

SENATOR SCHUMACHER: But from what I understand that you were...you just described is that after it's all settled down and we've ordered the judge to approve the medical portion, regardless of his good judgment, that there is a possibility because the insurance company is no longer liable and the attorney has got his fee and everybody is happy except for the taxpayers of the state. Why would we want to let them off the hook? [LB953]

SENATOR ALBRECHT: Well, I can't say that we would be making the state responsible. [LB953]

SENATOR PANSING BROOKS: One minute. [LB953]

Floor Debate  
April 04, 2018

---

SENATOR ALBRECHT: I can't answer that for you and I certainly...of the mike I could probably ask questions but... [LB953]

SENATOR SCHUMACHER: Okay. Thank you, Senator Albrecht. [LB953]

SENATOR ALBRECHT: Thanks. [LB953]

SENATOR SCHUMACHER: I don't know, folks. Unless we're just...have money burning a hole in our pocket, we've got an insurance company that's liable, we've got a court that doesn't really want to approve the settlement except that we're ordering them to. And we, if something crops up for this individual for medical bills, we're saying, oh, well, put him on Medicare or put him on Medicaid. Why? I'm going to be listening really closely, but it looks like a real critical party wasn't around in these discussions and that's our DHHS. And I'm going to listen but I'm inclined to oppose right now just until I learn more. Thank you. [LB953]

SENATOR PANSING BROOKS: Thank you, Senator Schumacher and Senator Albrecht. Senator Albrecht, you are next in the queue. [LB953]

SENATOR ALBRECHT: Wonderful. Well, my counsel just came to me and said, if a person does not have an attorney representing them, obviously they go before the judge and they make a claim and it's over, but then their insurance would take over after that. If there is a settlement made and it's all fine and dandy, then that's all there is, so that's all I have to say. I yield the rest of my time. [LB953]

SENATOR PANSING BROOKS: Thank you, Senator Albrecht. Senator Schumacher, you are recognized. [LB953]

SENATOR SCHUMACHER: Thank you, Madam President. Why would the attorney care? He or she is getting their third. They want this thing closed as fast as possible. The insurance company that was party to these discussions, apparently, they won't care. They want to get off the hook. The employer surely would love to get this case out of his hair and settled. And so if one of these injuries, and they do crop up again, if they...particularly, if the person is gnawing at the bit in order to get his check and his settlement, well, if Santa Claus is in the room, why not take the gift? I just think that this is...this leaves a whole lot more for discussion as to why we're requiring a judge to do what courts...we hire judges in order to make good judgments, in order to use their discretion. And now, 49 on high are going to say, Judge, no, we don't care, you go approve it, we're going to override what years of court decisions have said was the right thing to do, put your judgment away, we're too smart for you. And besides that, we're so smart we've got

Floor Debate  
April 04, 2018

---

a pocketful of money that we're going to use to pay this bill. I haven't heard an explanation as to why we need this bill and what was wrong with the system before it was. But I'm still listening. [LB953]

SENATOR PANSING BROOKS: Thank you, Senator Schumacher. There's no one left in the queue. Senator Albrecht, you are welcome to close. [LB953]

SENATOR ALBRECHT: Well, one thing I will say. In committee it was interesting to me to hear the different people that came before us. And I just thought it was somewhat humorous, but this gentleman really kind of laid it out for the committee. He said...his name is--I don't think he'd mind--Rolf Shasteen, practicing workers' compensation law and representing employees for 36 years. He said you won't see many times when you have a plaintiff's counsel, insurance defense counsel, and a self-insured defense counsel all coming to you, holding hands, and singing kumbaya. He said the bill solves fundamental fairness problems. The legal department at the Workers' Compensation Court will deny lump-sum settlements because it's not in the best interest of individual workers. And why they do that, I don't know, he said, but all I can tell you is that a settlement that is going to save this plaintiff's house or his car or his boat or his credit is not going to happen because someone at the court said no. Workers' compensation plaintiffs are not under any legal disability just because they have filed a comp claim, which doesn't make you incompetent. You're allowed to decide, evaluate while talking with your attorney what's in your best interest. And I don't feel sorry for Crete Carrier or giant insurance corporations, but they ought to be treated fairly too. You should have to pay a bill...you shouldn't have to pay a bill if you don't owe it and you shouldn't have to pay more than you reasonably owe. But to get things done, you are forced to pay bills that you don't owe. So it was evident to me that several parties came to the table. When I see that, you know, the Nebraska Workers' Comp Equity and Fairness group came to me with this, the attorneys, employers, employees, the Medical Association, Hospital Association, and independent hospitals convinced me that this was the right bill to carry. So just looking for your support on AM2742. Thank you. [LB953]

SENATOR PANSING BROOKS: Thank you, Senator Albrecht. The question is, shall the amendment to the committee amendment to LB953 be adopted? All those in favor vote aye; all opposed vote nay. Have all voted who wish? Please record. [LB953]

ASSISTANT CLERK: 25 ayes, 2 nays on the adoption of the amendment to the committee amendments. [LB953]

SENATOR PANSING BROOKS: The amendment is adopted. Mr. Clerk, there is an amendment to the committee amendment. [LB953]

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

Floor Debate  
April 04, 2018

---

ASSISTANT CLERK: Madam President, Senator Vargas would move to amend the committee amendments with AM2762. (Legislative Journal pages 1405-1406.) [LB953]

SENATOR PANSING BROOKS: Senator Vargas, you are recognized to open on your amendment to the committee amendment. [LB953]

SENATOR VARGAS: Thank you very much. Good evening, colleagues. First off, I want to thank Senator...or Chairwoman Albrecht for this friendly amendment. AM2762 is LB784, which I introduced this year in this exact same committee. AM2762 strengthens the Employee Classification Act, a current law that imposes penalties on employers who misclassify employees as contractors. For those of you that don't know about this, this is a practice where some employers use to avoid employment and other taxes on workers and from covering them on workers' compensation and unemployment insurance. This misclassification reduces labor cost for the employer. Workers who are misclassified as independent contractors work without legal protections typically afforded to employees, such as wage and hour laws, workers' compensation, and unemployment benefits. Aside from the protection issues, employee misclassification also has negative consequences for our state government because employees aren't paying taxes and we are shorted in tax revenue. AM2762 strengthens existing laws by preventing employers of businesses with pending fines from misclassifying workers, from contracting on projects with a political subdivision. It's important for us to take a step in enforcing the Employee Classification Act. Especially when these divisions evaluate bids on projects, it's important to know that there is fair bidding, that workers are being paid transparently and classified correctly. Before I was in the Legislature, I was on the Omaha Public School Board. I actually worked on many of these committees where we reviewed and evaluated project bids. Too often, local businesses who play by the rules, pay their employees fairly and classify them correctly were at a disadvantage. AM2762 will be another step towards better supporting our local small businesses and Nebraska workers. LB784 had no opposition testimony at the hearing and was advanced unanimously to General File. With that, be happy to answer any questions. Thank you. [LB953 LB784]

SENATOR PANSING BROOKS: Thank you, Senator Vargas. Senator Vargas, there is no one in the queue, so you are recognized to close on your amendment. Senator Vargas waives closing. The question is, shall the amendment to the committee amendment to LB953 be adopted? All those in favor vote aye; all those opposed, nay. Have you all voted? Record, Mr. Clerk. [LB953]

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of Senator Vargas' amendment to the committee amendments. [LB953]

SENATOR PANSING BROOKS: The amendment is adopted. There is no one in the queue now, so, Senator Albrecht, you may close. Senator Albrecht waives closing, so the question is, shall

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

Floor Debate  
April 04, 2018

---

the committee amendment to LB953 be adopted? All those in favor say aye; all opposed, nay. Have you all voted? Record, Mr. Clerk. [LB953]

ASSISTANT CLERK: 29 ayes, 0 nays on the adoption of committee amendments. [LB953]

SENATOR PANSING BROOKS: The amendment is adopted. There is no one in the queue, so, Senator Albrecht, you are recognized to close on LB953. Senator Albrecht waives closing. The question is, shall LB953 pass? All those in favor vote aye; those opposed vote nay. Have you all voted? Please record, Mr. Clerk. [LB953]

ASSISTANT CLERK: 29 ayes, 1 nay on the advancement of the bill. [LB953]

SENATOR PANSING BROOKS: LB953 advances. Mr. Clerk, back to the agenda. Items, please, Mr. Clerk. [LB953]

ASSISTANT CLERK: Thank you, Madam President, one item. Senator Bolz has an amendment to LB793 to be printed. That's all I have at this time. (Legislative Journal pages 1406-1412.) [LB793]

Moving on to the next bill, LB989. LB989 was introduced by Senator Wishart. (Read title.) The bill was introduced on January 11 of this year. It was referred to the Transportation and Telecommunications Committee. They placed the bill on General File with committee amendments attached. [LB989]

SENATOR PANSING BROOKS: Senator Wishart, you are recognized to open on LB989. [LB989]

SENATOR WISHART: Thank you, Madam President. Good evening, colleagues. I am here today to introduce my priority bill, LB989, a bill that would authorize autonomous vehicle technology on public roadways in Nebraska. I am excited to propose this enabling legislation that embraces groundbreaking and leading-edge technology in both transportation and telecommunications. This past summer I was briefed by the city of Lincoln on an autonomous shuttle that they are interested in piloting next year. I have included a packet for you that details this shuttle project and I would like to point out when you see this packet how cute the shuttle is. Lincoln was recently selected as 1 of 35 "Champion Cities" by Bloomberg Philanthropies in the 2018 Mayors Challenge and received an initial \$100,000 from the Bloomberg foundation to further develop the project and fund the cost of testing one driverless shuttle this summer. This initial test will serve as a support for the second round of grant applications due in August 2018

Floor Debate  
April 04, 2018

---

where Lincoln will be in the running for a grand prize of up to \$5 million. Projects like this are why I introduced LB989. Vehicles with this technology are already being produced by Cadillac, GM, and Tesla, to name a few. This is our opportunity to stay competitive with this technology while ensuring the safety of Nebraskans by putting in place proper oversight. The legislation before you and the amendments following outline the rules and regulations the state will adopt to allow driverless technology and ensure public safety. Autonomous vehicle technology is full of promise in the area of safety, mobility, efficiency, agriculture, commerce, and economic development, and I'm going to briefly outline the promise in these areas. In terms of safety, safety remains my top priority in the deployment of this technology. In a time where vehicular and fatal crashes due to human error are on the rise, autonomous vehicle technology shows great potential in preventing injury, saving lives, and reducing the cost of traffic crashes. An estimated 94 percent of traffic accidents are caused by human error. Additionally, autonomous vehicles have the potential to improve our emergency response systems for local fire and police, as well as for natural disasters. The U.S. Department of Transportation has been studying how car-to-car communications, a critical piece of the anticipated self-driving future, might improve evacuation procedures during natural disasters. In terms of mobility, for people who cannot drive or afford a car, the blind and visually impaired, people who are disabled, and senior citizens, autonomous vehicles can offer independent mobility with practical assistance that is specialized for each user's needs. This increased mobility will improve access to good jobs, quality healthcare, and education, as well as making local public transportation systems even more flexible for patrons. In terms of fuel efficiency in the environment, which is very near and dear to my heart, automation and connectivity could also reduce fuel reliance and consumption, traffic congestion, and greenhouse gas emissions through their efficient operation. In 2016, Americans consumed 143 billion gallons of gasoline, even though the averaged owned vehicle sits idle 95 percent of the time. The Smithsonian Institution, for instance, reduced the fuel...reduced their fuel consumption on its fleet of 1,500 vehicles by 53 percent by using GPS tracking and wireless communication to better manage its vehicles. And then in terms of agriculture and the economy, agriculture is expected to be revolutionized by autonomous technology, technology that we are seeing already on our farms. We can anticipate an emergence in self-driving tractors, self-propelled implements like sprayers in row crops, and advanced automation technology for major farm activities like fertilizer application, planting, and irrigation. LB989 advanced from the Transportation Committee unanimously. I would like to thank our Chairman Friesen in the Transportation Committee, along with the cosponsors of this bill, Senators Geist and Hansen. Transportation and communication technology is evolving at a rapid rate, and many cities, states, and institutions are already pursuing driverless technology to stay competitive with this growing innovation that is accelerating every day. Twenty-two states have already enacted autonomous vehicle legislation and ten states have acted via executive order. This legislation that I bring before you today, with the following amendments, will make Nebraska one of the most competitive states in the field of driverless technology. Thank you so much and I look forward to the discussion. [LB989]

Floor Debate  
April 04, 2018

---

SENATOR PANSING BROOKS: Thank you, Senator Wishart. And as the Clerk stated, there are amendments from the Transportation and Telecommunications Committee. Senator Friesen, as Chair of the committee, you are recognized to open on the amendments. [LB989]

SENATOR FRIESEN: Thank you, Madam President. Members of the Legislature, the committee amendment to LB989 substitutes for the original bill. In our amendment we attempted to bring a statewide perspective to the issue of automated vehicle operation in Nebraska and to provide for limited testing of automated vehicles. Our belief is that the technology is not ready for full-scale operation of automated vehicles on our state and local streets and highways at this time. This amendment would not allow automated vehicles to be operated in the state without a testing permit issued by the Department of Motor Vehicles upon the recommendation of a committee composed of the director of the DMV, the director of the Department of Transportation, the director of Insurance, and the head of the Nebraska State Patrol. The automated driving system applies to Levels 3, 4, and 5 automation. Level 3 automation is when there is a fallback driver who is ready to take over if the automation fails. Levels 4 and 5 automation would not require fallback driver intervention. An auto manufacturer, another entity, state agency, or political subdivision could get a permit for testing. The application criteria is set out in Section 9 of the amendment. Section 10 provides the insurance requirement: a \$5 million policy limit per occurrence with a \$2.5 million policy limit per person. DMV would have 15 days to approve or deny the testing application. It could suspend or revoke a permit for material changes from the application, threats to public safety, or if continued testing would violate the act. DMV's decisions would be...could be appealed. Titling and registration of the vehicle, which would have to be marked as an automated test vehicle, would have to be in compliance with state law. Operation and driving would have to comply with Nebraska rules of the road. There is a special provision relating to reporting of accidents and unintentional disengagements to the DMV. This act would sunset January 1, 2023. The committee anticipates additional legislation will be needed in future years for Nebraska to fully prepare for autonomous vehicle driving on our roads and highways. Some will say this amendment doesn't go far enough. I believe it allows the testing of autonomous vehicles on our streets and highways, is as far as we should go right now, and I would urge you to adopt the committee amendment. Thank you, Madam Chairman. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Friesen. Mr. Clerk, there is an amendment to the committee amendment? [LB989]

ASSISTANT CLERK: Madam President, Senator Larson would offer AM2787 to the committee amendments. (Legislative Journal pages 1400-1403.) [LB989]



Floor Debate  
April 04, 2018

---

SENATOR PANSING BROOKS: Senator Larson, you are recognized to open on your amendment to the committee amendments. [LB989]

SENATOR LARSON: Thank you, Madam President. AM2787 is a collaborative effort brought forth by the leaders in the transportation industry, including the Alliance of Automobile Manufacturers, the Self-Driving Coalition, and Tesla to encourage the growth, development, and expansion of autonomous vehicles in the state of Nebraska. AM2787 proposes to replace the language in the committee amendment, AM2612, thereby providing a more expansive approach with less restrictive guidelines for autonomous vehicle operation. AM2787 provides definitions as it pertains to the operation of automated vehicles on Nebraska roads. The amendment further specifies the requirement for proof of financial responsibility, the authorization to operate, and the on-demand, driverless-capable vehicle network and the requirement relating to collisions and other Nebraska rules of the road. In our world of ever-changing technology and constant distractions, the revolutionary development, that has potential to bring a lacking element of safety to the transportation equation. According to the NCSL brief, 95 percent of more than 35,000 fatalities in the U.S. roadways in 2015 were caused at least in part to driver error. Autonomous vehicles were created with the main goal of getting that number as close to zero as possible. Automated vehicles will be able to monitor the roadway 24/7 and better than any human could imagine. While you might be checking in your mirror, changing the radio channel, or looking in your rear view, the vehicle is always looking where you aren't. Autonomous vehicles will cut down the crashes due to human error, distracted driving, and impaired driving, only to name a few. Automobile manufacturers are coming to the market with Level 3 vehicles as soon as next year. If Nebraska doesn't allow for automated vehicles or even testing of AVs, then it essentially puts a box around the state. That's not meant to sound like threat, but it's reality. Nebraska's neighbors will be the beneficiaries of pilot projects, technology opportunities, product availability, and their citizens will be experiencing technology that is the future of the industry. It would also mean that the Level 3 vehicles on the roads in other states would not be allowed to visit or drive through the state. Nebraska would once again lose on tourism and commerce. It is safe to say that autonomous vehicles are no longer a vision of the future. They are here and the time is now. This amendment will lay the foundation that is the uniform among common autonomous vehicle laws while allowing flexibility for the state to address areas such as licensing, registration, and law enforcement. I appreciate the dedication and tenacity of Senator Wishart in moving this important legislation forward and I would strongly encourage your support of AM2787. With that, I'd yield the rest of my time to Senator Wishart. [LB989]

SENATOR PANSING BROOKS: Senator Wishart, will you yield, please? [LB989]

SENATOR WISHART: Yes, I will. Thank you, Senator Larson. I rise in support of Senator Larson's amendment. I think it's about time that Nebraska be really competitive on an innovation. I think his is a great amendment and it will give us the ability to be a leader in this

Floor Debate  
April 04, 2018

---

area. To me, I'm really excited that we are talking about an innovation. A lot of times we come to work and we're rehashing issues and we're dealing with present problems and it's exciting today to be here talking about an innovation in front of us and the fact that Nebraska potentially could be a leader in it. So with that, I strongly support Senator Larson's amendment. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Wishart and Senator Larson. Debate is now open on AM2787. Senator Lowe, you are recognized. [LB989]

SENATOR LOWE: Thank you, Madam President--sounds strange to say. Senator Wishart, do you realize that autonomous vehicles can run on 4G network? [LB989]

SENATOR WISHART: So, Senator Lowe, what I do know about current autonomous vehicles is that there are currently pilot projects going on in this country where there is not 5G. [LB989]

SENATOR LOWE: 5G has not been put out yet, so right now the autonomous vehicles are running on 4G network. Thank you, Senator Wishart. Right now the cars are running on 4G network. And they're having accidents. Autonomous vehicles need speed. They need the speed of 5G network to run properly. I am completely for this bill and the amendments, but they need the 5G network to run on. In California, Uber was running tests to run autonomous vehicles. And since the accident in Phoenix, Arizona, where a lady, a woman was killed, a pedestrian, because the car was running on 4G network and could not communicate fast enough, Uber has pulled their permit in California and they will not do that until 5G is deployed. That is what the last bill, the second to the last bill has to do with Nebraska. If we want autonomous vehicles, if we want technology to come to our state, we need small-cell technology to be deployed as soon as possible. Thank you, Madam President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Lowe and Senator Wishart. Mr. Clerk, for a motion. [LB989]

ASSISTANT CLERK: Madam President, I have a priority motion. Senator Friesen would move to bracket the bill until April 18. [LB989]

SENATOR PANSING BROOKS: Senator Friesen, could you please open on your motion. [LB989]

SENATOR FRIESEN: Thank you, Madam President. In our discussions in committee, we as a body did a lot of talking about the safety aspects of autonomous vehicles. I think all of us embrace the technology. I was looking forward to seeing Lincoln being a test facility here and I

Floor Debate  
April 04, 2018

---

thought they did an excellent job of bringing a bill forward. And now it's been what I call hijacked and it's been opened up until we can have vehicles now operating, fully autonomous, and yet we have not addressed many of the issues that come with autonomous vehicles. We have an insurance industry that is not prepared for this. We've all heard about the accident that happened. There have been other accidents too. But when we have no way of establishing fault when something does go wrong, we are not prepared for this. We need to look at this issue fully and in depth and so that our insurance industry, our motor vehicle division is ready in how you title vehicles, if they're operating on a commercial license or not. These are all issues that are not addressed in these bills. It's basically saying we're just opening up the market and we're gonna let fully autonomous vehicles operate anywhere in the state. That is not where I think we need to go at this time. There is too many issues yet of untested technology. Senator Lowe mentioned that permits have been pulled in other states for their testing even. If we do not maintain some sort of control of this process until their technology is more proven, I think it's a huge mistake to allow this to just be opened up. I fully embrace the technology coming forward. I think it's going to be great. It's going to allow people to stay mobile into their upper years. I think it's going to be fantastic. But it's going to disrupt our whole industry as far as automobiles. It will go clear down to parking issues, motor vehicle repair issues. If there's no accidents, the auto body industry will be impacted. We've got our whole insurance industry that's impacted by this. Whose fault is it when you have a Level 3 vehicle and it's driving autonomously? As in the video showed, the lady was, or whoever the driver was, was looking at something other than the road and ran over a person on a bicycle. Who is to blame? Do you blame the software? Does somebody from the software company...motor vehicle homicide, vehicular homicide? Who is at fault? Is it the driver? We have all of these issues that we have not been able to address because it's not come up yet. By operating in a small test pilot program, hopefully we can maintain some control. They can do the testing to see how it works out. I know at the federal level they will eventually be passing legislation that probably would supersede everything we do because you can't have each state passing its own autonomous vehicle rules of the road. It's going to be a bigger federal issue that will be addressed at some time. But I think the reason it isn't being addressed is because they're not ready. They have not shown that they are ready. So for that reason, if we want to open this up, I will be opposed to this bill and we will take it the three hours if we need to. I'm open to suggestions on making it better if we can make it better. But to open it up to fully autonomous vehicles, I cannot go there. Thank you, Madam President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Friesen. Discussion is now open on the bracket motion. Senator Chambers, you are recognized. [LB989]

SENATOR CHAMBERS: Thank you, Madam President. Members of the Legislature, Senator Friesen beat me to the punch. I wouldn't support this bill under any circumstances. Lincoln is hungry for money. They are willing to risk the safety of children, old people, animals, any living

Floor Debate  
April 04, 2018

---

thing to get \$100,000. These things are in the experimental stage. Tesla, I think...I'd like to ask Senator Wishart a question. [LB989]

SENATOR PANSING BROOKS: Senator Wishart, will you yield, please? [LB989]

SENATOR WISHART: Yes. [LB989]

SENATOR CHAMBERS: Senator, who is this Elon Musk? What company is he connected with? [LB989]

SENATOR WISHART: Tesla. [LB989]

SENATOR CHAMBERS: Is he the one who sent a car into space with a mannequin? [LB989]

SENATOR WISHART: I believe so. [LB989]

SENATOR CHAMBERS: Thank you. Into space, but they cannot run on the ground. He's willing to try anything and they pick a hick state like Nebraska where they're hungry for any money they can get. One of these cars mistook a white...a paint...there was a semi. The trailer was painted white. When the sun shined on it, the car mistook it for the sky and crashed right into the side of the trailer. They talk about human error. These cars are programmed to function according to the laws and the rules of the road, but not everybody follows the rules of the road. If you're driving and somebody suddenly cuts in front of you, or you can see that that's what they're about to do, you can adapt, you can slow down. These cars don't do that. They mentioned a city-- it might have been Pittsburgh--where if two cars are approaching an intersection and one of them is going to make a left turn, the car that would be going straight and has the right of way will stop, stop at the green light, and let the left-turning car turn in front. That car is not trained to deal with a situation like that. The two accidents that happened very recently were mentioned, one in California, one in Arizona. And with all this talk that I hear always about what is happening in other states, when two people are killed in an experimental set of circumstances, that should be enough to give people pause. I will fight this bill whether it has Senator Larson's amendment or not. I don't think these cars should be on the road. If Musk has the millions and millions of dollars that he can spend to send a motor vehicle--it was his favorite car, a red car with a mannequin in it, and the mannequin could wave and he had a camera focused on the mannequin so when it got out in space and the mannequin was waving, the camera took the picture of the mannequin waving in Musk's car and you could see space falling away behind the car--let him take some of that money and build a test track. He can afford it. But he likes to do things with a splash, even if the splash is caused by the blood of hapless citizens who don't

Floor Debate  
April 04, 2018

---

realize they're part of an experiment. They wouldn't let a drug company experiment in this fashion when the drug has already killed people. And Lincoln, of all cities, likes to pretend it's progressive. They need some money... [LB989]

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR CHAMBERS: ...and they will do anything for money. I don't need people to tell me about safety anymore. This is the nuttiest thing that I've seen and I didn't think it would happen in Nebraska. But Nebraska is so silly, so foolish, even Senator Lowe will vote for it when he's already told you that the number of Gs you need to make it operate correctly, one G short. And you know what that G stands for? Golly. And here you are, all you intelligent people, risking literally the lives of people. Suppose somebody is pushing a stroller and it gets away and goes out in the street and the car runs over the stroller, whereas somebody driving might see what's about to happen and put on the brakes. You all don't care about that, so don't tell me you do. I am outraged but I'm trying to restrain my...(recorder malfunction). [LB989]

SENATOR PANSING BROOKS: Time, Senator. [LB989]

SENATOR CHAMBERS: Yes, ma'am. [LB989]

SENATOR PANSING BROOKS: Senator Friesen, you are next in line. [LB989]

SENATOR FRIESEN: Thank you, Madam President. Again, I think a number of issues have been outlined here and it is a safety issue. When you're running a pilot program, you set out a route, you have it laid out, people will know what kind of obstacles are there. In Lincoln here, you have a lot of bike lanes, you have a lot of bicyclists using those bike lanes, you cross pedestrian pathways, it crosses "O" Street, which gets into the stadium area. And so you're going to have a lot of people on game day wandering the streets. And without running what I would call a pilot program first to see how these vehicles work, I think it's foolish and it's a huge risk and liability of running over a stroller with a baby in it, whatever, people on bicycles. It's been...it's happened. We don't need it to happen here. Let's do it in a nice, orderly fashion. Let's make sure that the technology is up to it and let's figure out in the summer how the insurance industry is going to handle this. So if you have a fully autonomous vehicle and it does...there's no driver in the vehicle...and that's what we're allowing here. We're allowing a...let's say an Uber ride. You can summon a car to come pick you up. It doesn't have a driver in it and it runs over a pedestrian. Who is at fault? Is Uber at fault? Do you sue the car? Do you sue the manufacturer? Whose insurance should pick up the tab? Those are issues we have not addressed leading up to this. The industry is not ready. And until we get further into the testing and to see once what kind of obstacles we might run into, I just think it's a huge mistake to subject a municipality or anyone

Floor Debate  
April 04, 2018

---

else to this liability. If private companies want to come here and test, let them apply for a permit, let them go through the process. The committee can look at the route that they've chosen. They can look at the obstacles there, whether they're crossing railroad tracks, whether they're crossing bike lanes, and they can address those issues in that pilot program. Let's run it for a year. Let's see how things work. I'm more than willing to come back next year and open it up if we can prove that we're successful at doing it. But to just totally open up this industry when it is still in its infancy, I think is a huge mistake. There's too many issues at play here that we don't know how they're going to play out and it's not worth the risk that we take to put these vehicles on the road. So when you talk about the technology that's there, obviously they've had failures. It couldn't recognize a semi. It also couldn't happen to see a bicycle at night. There's issues there. There's issues with sensors. There's issues with the software, possibly, they don't know. But until these things are proven out in an orderly fashion in a test facility or a test program like Senator Wishart proposed--which I fully supported but it was highly regulated, it was a dedicated route--we could do that for a year. If it's totally accident free and we're ready to expand it, I'd be all in favor of it. But at this point, again, I will not support this bill when it opens it up to totally autonomous vehicles running 75 miles an hour down the interstate. There's too much risk to too many innocent people for this technology... [LB989]

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR FRIESEN: ...to be unleashed. It has to be done in a more orderly fashion and so I am very adamant that we need to be careful when we proceed with this and it has to be done in a more confined atmosphere until we know that the technology is proven. Thank you, Madam President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Friesen. Senator Clements, you're recognized. [LB989]

SENATOR CLEMENTS: Thank you, Madam President. I had...would like to know if Senator Friesen would yield to some questions. [LB989]

SENATOR PANSING BROOKS: Senator Friesen, would you yield, please? [LB989]

SENATOR FRIESEN: Yes, I would. [LB989]

SENATOR CLEMENTS: Thank you, Senator Friesen. I noticed in the committee statement that the Department of Motor Vehicles was in opposition. Could you explain why, what their issues were? [LB989]

Floor Debate  
April 04, 2018

---

SENATOR FRIESEN: Well, there is a lot of issues with titling a vehicle and those were the main ones I remember. They came in neutral on one of the amendments, I believe. And they were opposed...there were two bills at first. And I think it had more to do with titling and how we register these vehicles. And so anytime you get into our rules of the road, the bill gets to be hundreds of pages because it touches so many facets of that legislation. [LB989]

SENATOR CLEMENTS: All right. Thank you. But they are willing to issue these permits? [LB989]

SENATOR FRIESEN: Yes. We have worked very closely with Director Lahm. That's why the committee idea was formed. It brings together the State Patrol, the DMV, and insurance industry. So that was the reason for that. They would look at those numerous issues that were involved and they would be the...issue the permit. The committee would make a recommendation. [LB989]

SENATOR CLEMENTS: And was the committee amendment restricted to city of Lincoln testing area? [LB989]

SENATOR FRIESEN: The original bill was restricted to the city of Lincoln. The committee amendment then opens it up to more of a statewide opportunity for other cities to participate if they wish to. [LB989]

SENATOR CLEMENTS: And is that different from the Larson amendment? [LB989]

SENATOR FRIESEN: Yes. The Larson amendment totally opens it up to fully autonomous vehicles to operate on any road or street without a person in the vehicle. [LB989]

SENATOR CLEMENTS: And is that just for testing? [LB989]

SENATOR FRIESEN: No, it would not be for testing. The way I read the bill, it would be for commercial operation. [LB989]

SENATOR CLEMENTS: Okay. Well, thank you. Thank you, Senator Friesen. Being an insurance agent, I was also thinking about the accident, consequences of an accident and who would pay. And the different people who could be involved would be the owner of the vehicle...would it be them or the manufacturer of the vehicle if they had a flaw, the software company, which could be a separate company from the manufacturer? How about if the cell phone service has an outage suddenly and the car doesn't stop? I'm not sure who you would go to, but you would have a victim there possibly with damages and a lawsuit and possibly years of

Floor Debate  
April 04, 2018

---

waiting while that's worked out as to who is going to pay for what, and that I think is definitely a problem. And with that, I would like to yield my time to Senator Chambers. [LB989]

SENATOR PANSING BROOKS: Senator Chambers, 1:38. [LB989]

SENATOR CHAMBERS: Thank you, Madam President, and thank you, Senator Clements. I drive in Lincoln. And when I first became aware of the fact that they have bicycle trails in the middle of the street, it caught me by surprise. In Omaha, they're not in the middle of the street. They're on...they're next to the curb. So this car is going to drive all right in Lincoln and they somehow teach it that there is a bicycle trail in the middle of the street. And it's not like that in every street in Lincoln. And they're marked. I guess they teach the car to read arrows and they know what the arrows mean. [LB989]

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR CHAMBERS: So it drives and guides down the street and it avoids the middle of the street, then it goes into Omaha and is driving curbside and it runs over somebody in the bicycle trail because it's not in the middle of the street. And I've even seen articles and letters to the editor in Lincoln about being in a dedicated turn lane and there is no green arrow that lets you turn so that the oncoming traffic won't hit you. The light is green for the traffic going your way, in the straight-on traffic, but that coming from the other way doesn't stop. You don't have a green turn signal, the blinking orange, so you have to be aware of the fact that you must turn while it's blinking orange if you can beat the car that's coming on. They're going to teach the car all of these idiosyncrasies in every city? And those are idiosyncrasies in one city. [LB989]

SENATOR PANSING BROOKS: Time, Senator. [LB989]

SENATOR CHAMBERS: Thank you, Madam President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senators Chambers, Clements, and Friesen. Senator Larson, you're now recognized. [LB989]

SENATOR LARSON: Thank you, Madam President. Colleagues, you continue to hear a lot of fearmongering from Senator Friesen and Senator Chambers, but that's what it is: fearmongering. Their examples just aren't true. And frankly, they bring up one pedestrian death. That's true. That happened. Will Senator Friesen yield to a question? [LB989]

SENATOR PANSING BROOKS: Senator Friesen, will you yield, please? [LB989]



Floor Debate  
April 04, 2018

---

SENATOR FRIESEN: Yes, I would. [LB989]

SENATOR LARSON: Do you know in 2016 how many pedestrian deaths there were by human drivers hitting other humans? [LB989]

SENATOR FRIESEN: Oh, lots of them. [LB989]

SENATOR LARSON: Just...do you know? [LB989]

SENATOR FRIESEN: Statewide or nationwide? [LB989]

SENATOR LARSON: Nationwide. [LB989]

SENATOR FRIESEN: Let's go with 2,500. [LB989]

SENATOR LARSON: Oh, 6,000...5,987. That's humans hitting other humans, colleagues. And the fact that we have one, we can't say that automated vehicles are perfect or will ever be perfect, but I guarantee you that there will probably be more humans made in automated vehicles than they will kill (laugh). On the simple fact that they are that much safer than human drivers, there will be more life created than they will take. The fearmongering that I hear is just that. There were 5,987 pedestrian deaths in 2016; there were 840 bicycle deaths. There has been one pedestrian death in all of the years of testing in automated vehicles. Can we strive for perfection? Yes. Will there be perfection? Hopefully, someday, but to demand perfection before they can go on the road is unrealistic. We are on the cusp of leading this nation when it comes to this type of legislation and this type of technology, and Senator Wishart's bill, LB989, with my amendment will do that. We will be leaders. And I understand that that is scary for some people, but that is what we should do, that is what we should strive to be, and that is what, if we want to continue to grow as a state, we need to do. We can talk about every example under the sun. Well, can they do this? Can they do that? Let me give you a quick example. I was at a conference this summer and they were talking about the California Department of Transportation's...their head guy and that he's in a meeting with some of the automated vehicle companies and he's been worrying about being able to make sure all...enough of the lines were painted for these automated vehicles that were continuing to test in California. And he said, you know, we've been researching where our lines are a little down or not bright enough for the automated vehicles. And the automated vehicle company looks at him and says, oh, we've already mapped out the entire state, we know where your lines are deficient. The vehicles already have that figured out. They are ahead of where... [LB989]

Floor Debate  
April 04, 2018

---

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR LARSON: ...government agencies are in terms of our own infrastructure. They know. This is a good bill. This is...and my amendment essentially ensures that we will continue to be leaders or will be a leader in this industry. Thank you, Mr. President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Larson and Senator Friesen. Senator Wishart, you are recognized. [LB989]

SENATOR WISHART: Thank you, Madam President. Colleagues, I want to point out that last year during a bill hearing on LB627, and we've pulled up the transcript, Julie Maaske was quoted as saying: I believe that right now our state statute in Nebraska is silent in regards to autonomous vehicles. So right now everything that we're proposing in Senator Larson's amendment could be happening without any rules and regulations associated with it. So I wanted to point that out. I also wanted to be clear, echoing what Senator Larson has said, that 94 percent of accidents in our country occur by human error. Ninety-four percent of accidents occur by human error. And from the research I've done from multiple upon multiple sites, we anticipate that 90 percent of accidents can be stopped through driverless technology. I also want to talk a little more about the Lincoln project and maybe demystify what a driverless vehicle actually is. So again, if you turn to the packet I turned out to you, this gives you an example of what the shuttle will look like. In fact, these are shuttles that are running in Europe, but we would have the chance in Lincoln to be one of the first cities in the country to have this shuttle. And I wanted to just walk you through what some of the guidelines would be with this shuttle. So it would have...we would have potentially four autonomous shuttles that will travel along a predetermined route from the State House to UNL's downtown campus and into the Haymarket District. And StarTran ambassadors will be on board to answer questions and take operational control of the shuttle as needed. Riders will summon the shuttle using smart phones or kiosks along the route loop, and stops will be made at designated locations at the rider's request. Shuttles can carry between 8-16 passengers and they will travel at speeds from 15-20 miles per hour, from 15-20 miles per hour. In fact, the first shuttle for the first pilot project will go no more than 12 miles an hour. The pilot project will last for two years, beginning in the spring of 2019, and again, this will be the largest single deployment of mixed-traffic AV microshuttles in the country. Lincoln has the potential to have this technology and be a leader in the country, and that's very exciting to me as somebody who is a millennial who moved back to this state because I wanted to create a home for myself and has fallen even more in love with Lincoln, the city I was born in, because we really strive to be a leader. We're striving to be a smart city and we're striving to have all the things that will attract more young people to this city. You know, I wanted to say, as well, that for those of you who have claimed that this will hurt old people, can hurt children, driverless shuttles have the potential to create a level of freedom for people with disabilities, for senior citizens, for people who have visual impairment. In fact, when I was at a Nebraska Council of State Governments

Floor Debate  
April 04, 2018

---

conference several years ago, I sat in an autonomous vehicle session and heard from the head of the blind and visually impaired association as they spoke in strong support of this technological innovation and the freedom it will bring to people who otherwise have not had the same level of mobility that I do when I get up in the morning and drive my car, and that is really important to me. [LB989 LB627]

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR WISHART: So for that, colleagues, I hope you will be open. You know, what is frustrating to me is that immediately we bring this legislation and people close their minds without even hearing some of the arguments that we want to articulate to you as to why this technology is important. And I will point out that just an interesting factoid that when an elevator, when one of the first elevators that could drive on its own went into effect, it took 20 years before people felt comfortable with somebody not being in that elevator, pushing the buttons, when somebody could stand in there and push it and go on their own. So again, colleagues, I think it's time that Nebraska becomes a leader in innovation. Thank you. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Wishart. Senator Chambers, you're recognized. [LB989]

SENATOR CHAMBERS: Members of the Legislature, Madam President, is Senator Larson anywhere near? Is Senator Larson in the building or is he taking orders out in the balcony, out in the lobby? [LB989]

SENATOR PANSING BROOKS: Senator Larson, will you yield, please? [LB989]

SENATOR LARSON: Yes. [LB989]

SENATOR CHAMBERS: Senator Larson, you are very smart with numbers so I want you to improve my education. You asked Senator Friesen how many pedestrian deaths there were and he guessed about 500 and then you asked... [LB989]

SENATOR LARSON: 2,500. [LB989]

SENATOR CHAMBERS: Okay. He asked you, was it nationwide or how, where, and what did you say? [LB989]

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

Floor Debate  
April 04, 2018

---

SENATOR LARSON: He asked if it was in the state of Nebraska or nationwide and I said nationwide. [LB989]

SENATOR CHAMBERS: And what is that number? [LB989]

SENATOR LARSON: Pedestrian deaths in 2016 were 5,987. [LB989]

SENATOR CHAMBERS: Now, Mr. "Genius," how many millions of cars are there on all the highways nationwide? How many are there? [LB989]

SENATOR LARSON: I can't give you that exact number. I'd say there's probably more than one every...more than one human in the United States so probably close to 400-500 million. I'm unsure. [LB989]

SENATOR CHAMBERS: But you don't have any idea in reality, do you? [LB989]

SENATOR LARSON: I can find that number for you, Senator Chambers. [LB989]

SENATOR CHAMBERS: But you don't have it right now, do you? [LB989]

SENATOR LARSON: No. [LB989]

SENATOR CHAMBERS: You came prepared with the other number of pedestrian deaths, didn't you? [LB989]

SENATOR LARSON: I did. [LB989]

SENATOR CHAMBERS: Well, let's say 5 million. How many million did you say, 500 million or 5 million? [LB989]

SENATOR LARSON: Probably closer to 500 million. [LB989]

SENATOR CHAMBERS: Okay. What percentage of 500 million is 15,000 or however many... [LB989]

SENATOR LARSON: Six...5,967? [LB989]

Floor Debate  
April 04, 2018

---

SENATOR CHAMBERS: Yeah. What percentage of however many millions you mentioned, what is it? You can't even calculate that. [LB989]

SENATOR LARSON: It would be 0.000011. [LB989]

SENATOR CHAMBERS: No, you missed it by six zeroes. If I asked you the question, I'm going to know the answer like you knew the answer. Here's what I'm getting at. They... [LB989]

SENATOR LARSON: No, I think I'm right. [LB989]

SENATOR CHAMBERS: Thank you, Senator. He's probably got somebody trying to calculate it for him because he often works his gadget. Here's what I'm trying to get at. They--when I say "they," people who are trying to sell you pie in the sky or some fish oil--will give you a number that you're not supposed to think anything about except that number in isolation. But when you look at the reality and put it in context, the number of pedestrian deaths is infinitesimally small to the vanishing point. There is not anywhere near that many of these driverless cars. You could probably get a number, not too difficult would it be, of how many driverless cars there are on the roads now. So what he is talking about is something that is not a part of the real world, and I'm interested in the real world. I wasn't born yesterday. I was born many, many yesterdays and months and years ago, and I've seen every kind of snake oil that there is. And when somebody has a product they're trying to foist on the public, they don't give facts, they get propaganda, they give slick advertisements, they get people who call themselves millennials or some other slogan. And when they say this is what it is, this is what it's supposed to be. I don't accept that. I do not buy it. And what that...what Tesla said when that accident occurred, ran into the barrier, we...the problem is probably in the steering and we never had a problem like that before. Well, you never have a problem like something until the first time, so they were not able to anticipate... [LB989]

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR CHAMBERS: ...that kind of problem with all the brilliant engineers they had and, as a result, a person was killed. These cars themselves are still experimental. You all are flippant and quick to say put it out there, and then you cross your fingers and then if somebody is killed, then all of the alibis, all the "I'm sorry, you're in my thoughts and my prayers." Let it be tested somewhere else, or let Musk and all and Uber and the rest of them build a test obstacle course. Let them do it that way. But I would fight to stop him from coming to Omaha. I'd like to ask Senator Larson a quick question. [LB989]

SENATOR PANSING BROOKS: Senator Larson...well, time, Senator Chambers. [LB989]

Floor Debate  
April 04, 2018

---

SENATOR CHAMBERS: Thank you, Madam President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Chambers. Senator Bostelman, you are recognized. [LB989]

SENATOR BOSTELMAN: Thank you, Madam President. A couple things: I support the bracket motion, Senator Friesen, that Senator Friesen has up there. I've talked with Senator Wishart. I'm willing to listen to debate and discussion on LB989 but on AM2787 I am against. So a couple things I want to talk about here. Senator Clements asked a question a little bit ago about what was Director Lahm's opposition when she testified at our hearing and I actually have her testimony here in front of me. So let me read a couple things out of this so that we understand what her opposition was, and I think what Senator Friesen was saying and what Senator Wishart, what they've worked on with coming together with a group of people to oversee the test project. That's something that I think is addressed here just a little bit. She says here, I want to quote from what her testimony was: Autonomous vehicle technology will have a significant impact on the safe operation of motor vehicles in Nebraska, and will be an integral part of achieving a Road to Zero goal or zero fatalities by the year of 2050. Therefore, the department encourages the use of technology in that regard. The goal of the department has been, and continues to be, to establish comprehensive policy regarding the operation of autonomous vehicles statewide. For several years the policy recommendations resembled more of a moving target. With input from a broader array of stakeholders representing the federal government, state government, law enforcement, motor vehicle industry, highway safety advocates, and public and private entities, the recommended standards and guidelines are now becoming more static. I would like to update the committee on the conversation surrounding autonomous vehicles at the national level and locally. Last year we shared with the committee the American Association of Motor Vehicle Administrators was working in conjunction with other stakeholders to produce a best practice document. In lieu of that document, the work of the AAMVA and other stakeholders in conjunction with the National Highway Traffic Safety Administration resulted in their publication titled "Automated Driving Systems 2.0: A Vision for Safety." This document provides a broader spectrum of guidance. The contents make suggestions as to what would be the appropriate role at the federal level as well as the responsibility of the states. The document further addressed safety elements of the vehicles, best practices for highway safety officials, and general policy areas to be addressed by the states; for example, licensing, registration, enforcement of traffic laws, safety inspections, vehicle insurance, and requirements for testing. Based on the information contained in the publication by the NHTSA, the American Association of Motor Vehicle Administrators is continuing to develop more specific guidelines for the states. These guidelines include uniform definitions, specific recommendations for titling and registering autonomous vehicles, driver skill testing and endorsements for autonomous vehicles, requirements for testing/piloting, and enforcement of traffic laws. It is scheduled for publication late spring or early summer of this year. At the state level, discussions with internal government

Floor Debate  
April 04, 2018

---

stakeholders are underway and lay a foundation for policy which will be cascaded to stakeholders within the industry and the public and private sector for input. This process will result in recommendations for a comprehensive statewide policy on autonomous vehicles consistent with that of other jurisdictions. And at this time Director Lahm was opposed. This was to LB989, Senator Wishart's bill. This was her testimony during that time. I believe what we've heard from Senator Friesen is there's been discussion along these lines and there's been a committee or a stakeholders group that would review any potential testing that's being done. I would agree in the sense that we go statewide with something, open... [LB989]

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR BOSTELMAN: ...we open it up, it's not appropriate. And I'm going to talk to my mechanic tomorrow, but I was talking to him recently. He was in Kansas City at a workshop talking about autonomous vehicles and he had the impression that it was not a good idea to go open over the road with autonomous vehicles technology. It isn't quite there yet. We need more testing. We need more development, and that's part of what I think Senator Wishart's bill will do. And again, I would support Senator Friesen's bracket motion. I am against AM2787. I would be, if the AM2612 remains, I would be willing to listen to that discussion as a possibility for the state of Nebraska. At this point in time, I do believe opening this up statewide is not the best safe opportunity for the state of Nebraska, for its citizens, and for the drivers on the road. Thank you, Madam President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Bostelman. Senator Kuehn, you are recognized. [LB989]

SENATOR KUEHN: Thank you, Madam President. I had actually Googled autonomous car jokes but after Senator Larson's fell so flat, I'm scared to try for fear of repeating a second bomb. So with that, I yield the remainder of my time to Senator Chambers if he would like it. [LB989]

SENATOR PANSING BROOKS: Senator Chambers, 4:40. [LB989]

SENATOR CHAMBERS: Thank you, Senator Kuehn. I would like to ask Senator Wishart a question if she would answer. And it's not just because she was going up there. I had this question burning in my mind. [LB989]

SENATOR PANSING BROOKS: Senator Wishart, will you yield, please? [LB989]

SENATOR WISHART: Yes. [LB989]

Floor Debate  
April 04, 2018

---

SENATOR CHAMBERS: Senator Wishart, are these cars taught through an algorithm, or whatever they would use, to actually read English words? Can they read road signs? [LB989]

SENATOR WISHART: I believe so, yes. [LB989]

SENATOR CHAMBERS: If a sign says no right turn on red, would it be able to read that? [LB989]

SENATOR WISHART: I will get back to you on that. [LB989]

SENATOR CHAMBERS: Okay, and it's not a trick question because in driving the Lincoln streets, to me, it doesn't seem that there's a logic in terms of which streets you can turn on red and which you cannot. But I've found most of them, but sometimes if I'm inattentive, it comes to me just when I get to that intersection and I see cars in the lane I'm in and they're not turning even though there would be enough space to turn, so I know that it's not a turn-on-red lane. When I drive these roads, at night I'll be on the roads, early in the morning when it's dark, when it's raining, when it's snowing, when it's icy, and I gear my driving to the road conditions. There is what they call glare ice, there is what they call patchy ice, and the car reacts differently when these conditions are encountered. Some people don't even know what hydroplaning is. That's when you're going at such a rate, and your tires allow it, you actually ride on top of the water and you're not making good contact with the road, so you don't have complete control of your vehicle even using the steering wheel and having some knowledge and awareness that you now are in an area where you're hydroplaning. So you try to adapt to it, adjust to it, know how to slow down without slamming on your brakes, various things that you learn how to do. If you're not attentive, knowing that is not going to help you because you become aware of it too late. I don't believe these cars are geared to do all of those things. What about the differences in traffic laws--they're called ordinances--in cities? The law allows cities to set traffic, set speeds. In some neighborhoods, you might can go 25. In a neighborhood similar to that in another part of the city, you might can go 30. In some areas, maybe it's 20 and maybe the car can read all these different changes in the speeds on the signs. And I'll take Senator Wishart's word for it that she will find some of these things out. But I believe all of this is far too experimental. And if it's not experimental, let every driverless car that's in existence be sold and allowed to operate on the road just like any other motor vehicle. [LB989]

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR CHAMBERS: But there are people who are not that foolish, despite the propaganda of the manufacturers and others. Tesla can't even build the number of cars that they said they were going to build and they should at least know the capacity of their factories, but they even



Floor Debate  
April 04, 2018

---

got that wrong in calculating. So there are the types of questions I would want to ask that will have to wait for another day. And I hope at that time this bill will have met its demise. Thank you, Madam President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Chambers, Senator Wishart, and Senator Kuehn. Senator Morfeld, you're recognized. [LB989]

SENATOR MORFELD: Thank you, Madam President. Colleagues, I know it's late at night. It sounds like I'm the last person that's going to speak before we adjourn, but I want you to listen to this one point if you listen to any point at all. I looked into this issue a year ago for a constituent who is also an attorney and when we looked into this issue our conclusion was under the statute there is no regulation of this so we can do whatever we want right now. I think that that's the thing that's most concerning to me is we have absolutely no statutory framework or guidelines. So if my constituent who has the wealth and the means and the resources to go out and get an autonomous vehicle wants to use that autonomous vehicle at this point, they can do it because our statute provides no guidelines and no prohibition. This is a reasonable statutory framework that, number one, allows us to test and have the right state officials be able to approve those tests but also provides public safety measures in doing so in a limited means. So if you're afraid about the consequences of driverless vehicles, then you should be in support of this bill because this provides a limited framework to, number one, test the vehicles, but then, number two, to regulate it to a certain extent. And this isn't just my opinion. There were several other attorneys that this constituent had look at this issue and we all came to the same conclusion. So if you're really concerned about autonomous vehicles and the potential danger that they may pose, this is a bill that I think you should support and that would also allow us to be able to, yes, innovate, which is not a bad thing. That's something that retains and recruits young Nebraskans, old Nebraskans alike. I can tell you what, I hope my grandpa is not listening right now, but I think he's much safer in an autonomous vehicle than he is not right now. And he actually, I think he's looking at getting that Cadillac that is actually already a stage 3 autonomous vehicle and already on the road. So, colleagues, I just want everybody to take a step back tonight, to really think about this and to look at the fact that right now the statute is silent. In my opinion and many other people's opinions that are much smarter than me, right now, we could have autonomous vehicles without any regulation. With that, I would like to yield the remainder of my time to Senator Wishart. Thank you, Madam President. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Morfeld; 2:25, Senator Wishart. [LB989]

SENATOR WISHART: Thank you, Madam President. Just going off of what Senator Morfeld has said--and thank you, Senator Morfeld, for those words--a lot of times we talk about this technology as if it's far out in the future. Currently, right now, for sale are Level 3 autonomous

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

Floor Debate  
April 04, 2018

---

vehicles. What Senator Morfeld talked about, a Cadillac. Tesla is coming out with a Level 3. You can buy it now. In 2020, we anticipate that a number of our large car manufacturers will have for sale fully autonomous vehicles, Level 5 vehicles. So, colleagues, right now our statutes are silent on this issue and we're looking at two years, two to four years down the line having fully autonomous vehicles for sale and able to be driven on our roads. So with that, I would encourage you as we go home tonight to really look into this issue, to research it. I think you'll realize the more you look into it, the more exciting the potential is with this technology. And I wanted to walk you through if I have a little more time. Again, I originally introduced LB989, so anybody that's viewing this, just to kind of organize it, LB989, which was very specific to a pilot project in the city of Lincoln. [LB989]

SENATOR PANSING BROOKS: One minute. [LB989]

SENATOR WISHART: It was then expanded out and some definitions added in AM2612. One of the concerns I have with that amendment is it also regulates Level 3 autonomous vehicles which are currently for sale and you can purchase and drive with. So it would require then a Nebraskans who purchases his vehicle to sign up for a pilot project, which doesn't make sense to me, so that is the concern I have with AM2612. And then if you look at AM2787, that takes a broad approach, a statewide approach to put in safe rules and regulations around autonomous vehicles and again it gives us the ability to be one of the most innovative states in the country. So, thank you. [LB989]

SENATOR PANSING BROOKS: Thank you, Senator Wishart. Mr. Clerk, items? [LB989]

ASSISTANT CLERK: One item, Madam President: new resolution, LR476 by Senator McCollister. That will be laid over. (Legislative Journal page 1412-1413.) [LR476]

And a priority motion, Senator Riepe would move to adjourn until Thursday, April 5, 2018, at 9:00 a.m.

SENATOR PANSING BROOKS: You heard the motion. All in favor of adjourning say aye. Those opposed, nay. The ayes have it. We're adjourned. Thank you.