

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

Floor Debate
April 25, 2019

[]

FOLEY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixty-fifth day of the One Hundred Sixth Legislature, First Session. Our chaplain for today is Pastor Michael Wolfe of the Plattsmouth Bible Church, Plattsmouth, Nebraska, Senator Clements' district. Please rise.

PASTOR WOLFE: (Prayer offered.)

FOLEY: Thank you, Pastor Wolfe. I call to order the sixty-fifth day of the One Hundred Sixth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There's a quorum present, Mr. President.

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

ASSISTANT CLERK: No corrections this morning.

FOLEY: Thank you, sir. Are there any messages, reports, or announcements?

ASSISTANT CLERK: Just one, Mr. President. Attorney General's Opinion addressed to Senator Chambers. (re LB512.) That's all I have at this time.

FOLEY: Thank you, Mr. Clerk. Members, we'll now proceed to the agenda. General File, 2019 Senator priority bills, LB44. Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB44 introduced by Senator Chambers. (Read title.) It was read for the first time on January 10th of this year and referred to the Judiciary Committee. That committee placed the bill on General File with no committee amendments.

FOLEY: Thank you, Mr. Clerk. Senator Chambers, you're recognized to open on LB44.

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

Floor Debate
April 25, 2019

CHAMBERS: Thank you. Mr. President, members of the Legislature, I want to lay some groundwork. I know that there are people who will be against this bill no matter what. There are people who will be in favor of it no matter what. Nothing I say is going to change anybody's mind, but I have to do everything I can as long as I'm in the Legislature to try to stop the state from killing its residents. And I had written a letter to the editor about the matters surrounding Carey Dean Moore's execution, and there's a paragraph I want to read into the record speaking of the death penalty. For me, this situation boils down to a matter of personal conviction based on unshakable belief in the intrinsic human dignity of every person regardless of how far he or she may have fallen, which embraces a condemned prisoner like Carey Dean Moore, so dispirited and dehumanized after decades of incarceration that he no longer believes in his own human dignity and worth as a human being and he will submit meekly to being complicit in the state's macabre ritual of death. He couldn't withstand the torture that has been acknowledged by psychologists of companies being on death row and waiting for the state to kill you, and finally he just gave up. Had Carey Dean Moore not given up, there were motions that could have been filed in his behalf. The execution would not have been carried out in the hasty manner that the Nebraska Supreme Court allowed to take place. The drugs that the department had obtained under very suspect circumstances would have expired. Mr. Frakes, the director, acknowledged to the federal court that they could get no more of these drugs, not now, not in the future. So what the senators here are considering now is what had happened before. The drugs that would be necessary to carry out an execution are not available. Under the other situation before this one, there was a drug, sodium thiopental, which was one of the three in the cocktail that would be used by Nebraska. The FDA had ruled that this drug had no appropriate use in America, that it could not be imported, and there was a Swiss manufacturer who did not want the drugs used in executions. When the state had used a very dishonorable individual in Europe to purchase these drugs and the drug company found out, they wrote to the Governor and said they wanted these drugs returned, or to the Attorney General, whichever official. The state would not do that. When it appeared that the death penalty would be abolished because we had the votes, we broke a filibuster, we overrode a veto, but before that happened, this Governor was trying to do everything he could to pull votes away from that bill. So he made a deal with this drug dealer to try to get these illegal drugs into Nebraska. He expended \$54,000 of taxpayer money, went outside of all of the contract-making requirements under the law, gave this money over to the drug dealer before the drugs were delivered. They never were obtained. The \$54,000 flew away,

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

Floor Debate
April 25, 2019

and that was what this corrupting penalty had done to the Governor, the Attorney General, and the Director of Corrections. Because the Governor and the Attorney General would not relent in their efforts to obtain these illegal drugs, the then U.S. Attorney who was stationed in Omaha told them that if these drugs are in fact obtained, it's a direct violation of federal law and there would be appropriate consequences. At that point, and only at that point, the Governor, the Attorney General stopped trying to get those illegal drugs. Some people are saying that I should not be attempting to do this because the public had circulated-- members of the public, a petition to have a referendum to undo what the Legislature had done in enacting a repeal bill. It was successful only after the Governor and his father, both Catholics, Bible-believing Christians, had combined to spend almost half a million dollars to get that on the ballot. They paid petition circulars. There were questions raised about the entire process, which I'm not going to go into, but that was how they purchased the overturning of the repeal by the Legislature. There are some things I'm going to read, excerpts from a U.S. Supreme Court decision handed down in 1973, caption, *Furman versus Georgia*. The Supreme Court struck down every existing death penalty law in the country and vacated every death sentence. Nobody was on death row. A few years later, death penalty statutes were allowed to pass muster. The death penalty was reinstated. One of the points that the court made, I will read. I can't get it all said on this opening, but this matter and these are excerpts from that *Furman against Georgia*, not to be submitted to vote. It depends on the outcome of no elections. The very purpose is to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. Five judges wrote individual concurring opinions in that case, and they all arrived at the same conclusion, the death penalty not only is a degrading punishment, its very existence went against what this country supposedly stands for in view of the trumpeting of its concern about life. They also pointed out that the death penalty was losing support among the public, that it had taken on the aura of a lottery. There was no way to predict who would receive the death penalty, but one thing that was clear, and this is what the courts said, it was not the worst criminals, nor was it the worst kind of murder because those kinds of occurrences did not always result in a death penalty, and those cases where the death penalty was imposed were not nearly as heinous or brutal or have any of the characteristics of those cases where it was not. So I will read a few of those excerpts, but I wanted to kind of lay the groundwork. I do not expect 49 people to be here. I am a pragmatist. I am a realist. Miracles do not happen. I don't believe they ever happen, but a near miracle occurred when we did, as a

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

Floor Debate
April 25, 2019

Legislature, vote to put Nebraska on the correct or the right side of history. And when Nebraska took that vote, the Colosseum in Italy was lighted up, and there was a huge banner congratulating Nebraska for getting rid of the death penalty.

FOLEY: One minute.

CHAMBERS: That picture was carried all over the world. There can be no admission into the European Union by any country that has a death penalty. Turkey even suspended or got rid of its death penalty in order that it could join the European Union. No so-called advanced country, developed country, has the death penalty, but Saudi Arabia, Iran, Iraq, other countries, China, that America condemns ordinarily, are leading the way. I have somebody on my side I didn't have before. That is the Catholic Church, which has formally stated that the death penalty is inappropriate under any and all circumstances. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Debate is now open on LB44. A long list of senators in the queue. Senator Slama, you're first in the queue.

SLAMA: Thank you, Mr. President, and good morning, colleagues. I rise today opposed to LB44. The death penalty is an issue that divides this Legislature on a very fundamental level. Those that believe death is an appropriate punishment for the worst crimes committed in our society, and those that do not. Colleagues, I'm not asking you to shift your moral compass in determining your support of this bill. Such efforts would be futile and two very well-informed people can come to very different conclusions on this issue. And I respect that. Instead, colleagues, I'm asking you to consider the precedent this sets in our state. We have a special form of government in Nebraska with only one house in our legislative branch and as such, we depend heavily on our unofficial second house, the voice of the people of Nebraska. In November, 2016, the voters of Nebraska had the opportunity to decide the future of the death penalty in our state. And they spoke decisively at the polls, 814,870 Nebraskans, or over two-thirds of our state's registered voters voted on Referendum 426 to decide the future of the death penalty in the state. Nearly 500,000 Nebraskans, 494,151 Nebraskans, to be exact, voted in support of the repeal of the repeal. In other words, to keep the death penalty. By a vote of 61 percent to 39 percent, which is a margin of 22 points or 173,432 votes, Nebraskans voted to keep the death penalty. Ninety-

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

Floor Debate
April 25, 2019

two of Nebraska's 93 counties voted to keep the death penalty. Make no mistake, the critical aspect of today's debate is not the merits of the death penalty which has been upheld by the Supreme Court as constitutional and discussed thoroughly in this body in years past. It's about us as a legislative body overriding the voice of Nebraskans, a mere two years after they spoke loud and clear. Think of the repercussions if LB44 passed that this could have on future ballot initiatives. Today, we could flush out the pros and cons of the death penalty, go into graphic detail about what each person on death row has done, but doing so misses the overwhelmingly larger point at hand, that we, as a legislative body, are discussing a bill that flagrantly override the voters of Nebraska. As a legislative body we've held sacred that ballot initiatives approved by voters are the law of the land. This is true for valid initiatives that we as a body may have differing opinions on, and yes, that covers everything from term limits to Medicaid expansion to even the retention of the death penalty. Nebraskans have had their say on this issue less than three years ago, and 173,432 more voters, a total of nearly 500,000 Nebraskans voted to keep the death penalty. Even if you are fundamentally against the death penalty, or have voted in favor of repeal in the past, I implore you to consider that the second house has spoken on this issue. Voting in favor of this bill sets a precedent of flagrant disregard for the voice of the people and as such I encourage a red vote on LB44 and hope that we can have a brief discussion today, take a vote--

FOLEY: One minute.

SLAMA: --and move on to other issues that our voters haven't decided in the last two years. Thank you, Mr. President.

FOLEY: Thank you, Senator Slama. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President, and good morning, colleagues. I appreciate Senator Slama and her perspective especially when she opened discussing, kind of, the understanding, moral framework that all of us use to debate on this issue. I think my perspective on this is very clear having debated this several times-- debated this several times during my first year in the Legislature. But if we're going to frame the debate today in terms of the role of our government, the role of the second house, the role of the people, I do want to say if we are going to have a

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

Floor Debate
April 25, 2019

death penalty, and if we are going to follow the will of the voters, and we are going to remain having a death penalty, that does not eliminate our obligation as a second branch of government to make sure the death penalty is implemented fairly, accurately, and transparently, and that's something that I think we have really struggled with as a state. I think that's something that we could see in the news that we continue to struggle with as a state, and that is something that regardless of whether or not we-- how this bill turns out today is going to remain an obligation of our body to oversee how this process works in the state and oversee how it is implemented by the judicial and executive branch and make sure our constituents, whether they support or oppose it, are able to find the full information on how it works. And with that, I would yield the rest of my time to Senator Chambers.

FOLEY: Thank you, Senator Hansen. Senator Chambers, 3:30.

CHAMBERS: Thank you, Mr. President. Thank you, Senator. Members of the Legislature, this is a moral issue. Now Senator Slama's morality may be determined by how many people are on one side of the issue or the other, but a moral issue is not determined by the outcome of any elections, and that's what the U.S. Supreme Court had said when it struck down all existing death penalty laws. They pointed out that various polls, various memorandas of intent by various Attorneys General, by these kind of votes that are put on the ballot, the referenda, that is not what should determine whether or not there's a death penalty. They pointed out how death is different from any other punishment imposed. Because of the existence of a death penalty, the Eighth Amendment to the U.S. Constitution did not ban killing, but it said there could not be cruel and unusual methods by which it is done. The U.S. Supreme Court said that when you have a law that is designed for general application, but such a tiny percentage of those who are eligible to receive it actually do receive it, there is an almost impossible way to show that anything but arbitrariness and discrimination are at work. The court mentioned the thousands of homicides that occur in the states that authorize the death penalty. And yet, few death sentences were handed down and even fewer executions were ever carried out. The past year there were 25 executions in the whole country. On that score the U. S. Supreme Court said, when a country of over 200 million, now it's 328 million, people inflicts an unusually severe punishment no more than 50 times a year, 50 times. It was 25 times last year in this country.

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

Floor Debate
April 25, 2019

FOLEY: One minute.

CHAMBERS: Oh, you said time?

FOLEY: One minute.

CHAMBERS: Oh. The inference is strong that the punishment is not being regularly and fairly applied. To dispel it would indeed require a clear showing of nonarbitrary infliction, and because I have such a short time I won't try to finish that comment, but I will before it's over. This is a matter, and it is dealt with on a moral basis as was pointed out by the U.S. Supreme Court. Again, Senator Slama is entitled to her opinion. It's good that these matters are placed on the record, but it also gives a clear indication of how some people's moral decisions are arrived at. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Hunt.

HUNT: Thank you, Mr. Lieutenant Governor. This morning when I was up in my office and I heard the chaplain they said, they prayed, use the members of the Unicameral today for your purposes. Is your God's purpose to kill, all of you? I think that when lawmakers support the death penalty they are just as complicit as the executioner in a death penalty case because we are the people who are the gatekeepers of allowing this to happen. The death penalty is not based on the worst of the worst homicides. It's up to prosecutors to decide whether or not to seek the death penalty, and they frequently agree not to in exchange for plea deals to avoid litigation or for other reasons that have nothing do with the severity of the crime or the heinousness of the murder. The few death sentences in Nebraska are controlled not by the severity of the crime, but by the county in which they occur along with other factors like the race of the victim, the race of the defendant, the public or the political interest in the case. Nebraska's history with the death penalty has been long on politics, public debate, concurrent litigation, and it's been very short on results for deterrence. Nebraska's experience with the death penalty has been costly. In March of 2019 the U.S. Supreme Court refused to hear Gage County's appeal from the \$28 million jury verdict for the Beatrice Six case. Five of the Beatrice Six defendants pled guilty to charges to avoid the death penalty despite their factual innocence which was proven by DNA evidence. As

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

Floor Debate
April 25, 2019

Senator Dorn would tell you, in this case it's the people of Gage County who are left to pay the cost of that judgment and that's the cost of the death penalty in Nebraska. And there's nothing special about Gage County that made this happen there. It could happen to any of you in any of your counties. There's no evidence to support the claim that the death penalty deters criminal behavior. One argument that maybe we'll hear today one new argument you hear a lot in support of the death penalty is that somehow capital punishment deters criminal behavior in the state's prison. But the problem with our prison culture isn't a lack of penalties or people being, you know, soft on incarcerated people in our prisons, it's over-crowding and all of the problems that go along with that. Colleagues, we shouldn't even be talking about this bill in 2019. The only reason this is on the schedule, the only reason we're talking about this this year, and we're going to continue to talk about it every biennium as long as I'm here, is because of Governor Ricketts. Because of the corrupt and faithless way he went over the Legislature to personally finance a ballot initiative to reinstate the death penalty in Nebraska. We all know the back story about that, and we all know what personal, petty, dislike the Governor has for Senator Chambers who has spent over 40 years working to overturn this barbaric practice in Nebraska. I believe we wouldn't be debating this bill today if the Governor didn't have such a personal problem with Senator Chambers, and as the entire state of Nebraska watches this debate over and over, it's the entire state of Nebraska that's paying for the Governor's pettiness. Death row costs Nebraska \$14.6 million a year. Additional trial expenses, years of legal appeals and the cost of housing inmates on death row are all well and above the cost for which the maximum sentence is life in prison without parole. Between 1973 and 2014 there were 1,842 homicides in Nebraska, but only 33 of the murders resulted in death sentences, and there have been only four executions in the state. The last one was Carey Dean Moore last year, and the one before that was 22 years ago. We've wasted \$14.6 million a year on the death penalty in Nebraska for decades--

FOLEY: One minute.

HUNT: --and we've gotten nothing from it. The death penalty is a failed government program that we are funding, and it doesn't work. And it's a government program that our Governor is so obsessed with keeping around that he and his father spent \$300,000 of their own money to reinstate it. After the Legislature overturned his veto to abolish the death penalty, Governor Ricketts and his parents provided 80 percent of the initial funding for their ballot campaign to

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

Floor Debate
April 25, 2019

bring it back. By November 2016, they have provided 30 percent of the campaign financing for the whole-- the whole funding for the whole thing. Governor Ricketts formed Nebraskans for the Death Penalty as the corporation to gather signatures, attract voters, and otherwise pull off his referendum. He pedaled his influence as Governor to the state of Nebraska to entice supporters, recruit staff, attract donations, and buy advertisements. I believe in a separation of powers in Nebraska. I believe in the power we have in this house to make a moral decision to prevent the death penalty in the future.

FOLEY: That's time, Senator.

HUNT: Thank you.

FOLEY: Thank you, Senator Hunt. Senator Pansing Brooks.

PANSING BROOKS: Thank you, Mr. Lieutenant Governor. I rise in support of Senator Chambers' bill, LB44. It is quite clear that the voters spoke. I understand that, but also I represent a district that voted to retain the repeal. And so, and when I look inside my heart and inside who I am, I'm going to continue to say that the death penalty should not be supported in our state, and I appreciate Senator Slama's efforts to say that this is too soon. We had discussions in Judiciary Committee. What is too soon? I don't know, but I will tell you one thing that leaving the issue of life and death up to a vote of the people, leaving an issue of transparency and the Eighth Amendment, cruel and unusual punishment, when the voters voted they didn't say we believe in the death penalty, but be sure to put up a curtain for 14 minutes to hide what happens during the most critical part of the death penalty. They didn't say, go ahead and reinstate the death penalty, but make sure that the witnesses there do not have access to what's going on and aren't able to witness the entire process from beginning to end. So I understand that we are a state that believes in punishment and exacting punishment for crime committed, and I believe in exacting punishment. I believe in making sure that people are put away, bad people are put away. I'm with you on that, but then many of you here weren't privileged enough to go through the intense, the intense efforts that were made to repeal that death penalty, the work, the bipartisan work. This body didn't just on a whim, decide to repeal the death penalty. Yes, Senator Chambers has led this effort for, I don't know, over 40 years, but it was a bipartisan effort. Conservative Senator

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

Floor Debate
April 25, 2019

Colby Coash was at the lead of a lot of this. And what happened is-- and clearly we couldn't have gotten to that point and gotten to the override of the Governor without 33 votes. So just for you all to remember, I'm sure you read about the summary in the news, but you weren't here for the intensive amount of testimony we heard, the discussions about the economics of the issue, let alone the morality of the issue. And so I stand again saying, I believe that in this instance the voters did not get it right. And I'm sure, I've just heard that there's conservatives that are waiting for us to get our words on the mike and that they'll be able to use it against us when we run for reelection and you'll be able to show people how we're tone death to whatever is going on. But I'll tell you what, in this instance I'm listening to my heart and I know that my faith says it is not appropriate to be killing people. We have other ways of handling it. We have ways of putting people away so that they're no longer--

FOLEY: One minute.

PANSING BROOKS: --a danger to our community, and I will fight to continue to live at a higher standard in our state, and to live on a higher moral plane, and that is making sure that we punish people appropriately, we keep our communities safe, we keep the people that are most fearsome to us away in prison permanently, but we don't take on the task of killing someone. And, again, I'm going to talk about the transparency issue in this because that is related to a bill that I brought, and I think it is very troublesome that we are unwilling as a state to be transparent how we carry out the most sobering task we do-- we execute. Thank you.

FOLEY: Thank you, Senator Pansing Brooks. (Doctor of the day introduced.) Continuing discussion on LB44. Senator Chambers.

CHAMBERS: Thank you. Mr. President and members of the Legislature, this is old hat to me. I've heard comments like those of Senator Slama, but when you examine the way those people vote on other issues, it doesn't pan out. The Governor when he appoints people picks those who are going to be from the cookie-cutter pattern, and it holds true. You all know it. I know it. This is a matter literally of life or death, and when people jump in to it, then they need to know what they're getting into. And I'll tell you all something else. I don't do what I do because a certain number of people tell me I should. I let people know when I ran, unlike some of the people in

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

Floor Debate
April 25, 2019

here, I'm not an echo. I'm not going to reflect ignorance. I will inform myself on the issues and I will vote in accord with my informed judgment, and if you all don't like it, don't vote for me. That's the way I operate. Others don't operate that way, but I'm going to see how they operate the rest of the session. It's one thing to deal with an issue on its merits. It's another thing to fly a false flag and bring out one of those things that you use to confuse what is being discussed here. The Legislature's job is not to determine how many votes people gave on a moral issue and therefore the Legislature should be bound by that. Suppose a majority of the people said that there should be abortions. Would the Catholics stop bringing bills to outlaw abortion? They're doing it right now against what the U.S. Supreme Court said. The Supreme Court determines the law. There is one state where they want to make it a capital offense for a woman to get an abortion. So when it comes to killing in the womb, they're against that because it doesn't cost anything. That's only on the pregnant woman and they love to control other peoples lives, but when a person is existing and that same church in its catechism taught that it is the official policy of the church to be against the death penalty in any and all circumstances, and people should give their time to trying to abolish the death penalty, which is the role and the direction the church will go according to what Pope Francis said, a moral issue such as that is not going to be resolved by a vote of the people. You might can dictate to certain legislators what they ought to do, but the moral issue remains. Over that Easter period the Pope went to a prison. In Europe they don't have a death penalty, and he washed the feet of, I think, ten prisoners. All ten of them could have been murderers. No death penalty. No life sentences that really mean life, and yet they have a much lower homicide rate per capita than the United States. Of course they don't have as many guns either, so there are factors that play into it. I handed you all two cases described in the newspaper. Now, if Senator Slama can stand there and say that a man who shot his wife in the back from ambush with a high-powered rifle, then wait for the lawyer who handled his divorce in a way he didn't think the lawyer should have--

FOLEY: One minute.

CHAMBERS: --waylay, and shoot him in the back with a high-powered rifle, if that is not among the worst of the worst, whoever would say that, is blind or is insane. This penalty is not for the worst of the worst. And the county attorney who came down here and spoke for the death penalty, for the prosecutors, was the county attorney who in exchange for a plea, took the death

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

Floor Debate
April 25, 2019

penalty off the table and was subsequently appointed to a judgeship by Governor Ricketts. How much hypocrisy do you need? They can play politics with it, I won't. But since politics is being played on this bill, buckle up your chin straps and get ready for the rest of the session. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Cavanaugh.

CAVANAUGH: Thank you, Mr. President. I rise today in support of LB44 and Senator Chambers' 40-plus years in this effort to make Nebraska a better state for everyone. We did have a vote of the people, and I don't think that it is accurate to say that it was a mandate. It was a confusing vote. Probably people here in the Chamber accidentally voted in opposite to what they intended to because it was so confusing. To repeal the repeal to retain the repeal, the language on the ballot was confusing, even the Secretary of State's Office had confusion in counting the votes. So to say that we had a mandate from the people is not accurate. And Senator Hunt mentioned the amount of money that our Governor spent to overthrow the vote of this Chamber, to overthrow-- the veto override of this Chamber. This is not how government should function. If the people wanted to override what we as a body do, they vote us out of office. That's what they do. The Governor spending his money is not what should happen. It shouldn't be allowed to happen. Senator Chambers said that this is a moral responsibility, and I'm in agreement with that. I was raised in a Catholic home. My parents are pro-life, and I didn't understand that there was a difference between being pro-life and antiabortion. I thought that people who said that they were pro-life meant that they were pro-life and that meant to me and my family in my growing up that you were against the death penalty, just as much as you were antiabortion. It wasn't until I grew up a little bit that I came to realize that people were saying they were pro-life when, in fact, they're antiabortion. I don't have respect for people like that. I don't have respect for people in this body that say that they're pro-life and support the death penalty. I do not respect that at all. That is just a lie, and it is a misuse of terminology to confuse people. If you want to identify yourself as pro-life, then I sure hope that you are really truly pro-life because every life is precious. Every life matters. Everyone is a child of God. You don't have to believe in God. I believe in God for you and everyone is a child of God. And I didn't look at the data. I don't know what my district did. I know that my district voted for me. I know that my district knows who I am. I know that our Governor spent a lot of time telling my district who I am, and my district

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

Floor Debate
April 25, 2019

knows that I will always do what I feel is the morally responsible thing to do. And I am going to enthusiastically, emphatically vote for this bill because the opportunity to show my children that we don't ever have to give up. That we can still change the course of history, is something that I am so grateful to Senator Chambers for giving me today, because no matter what happens for me in the next four years, or in the future, I know that I am representing the people of District 6 as fully as I possibly can. And I know that I can go home tonight and kiss my children and I know that they some day will understand what I did today and they will be proud of me because I'm never going to back down from what is morally right. And I hope that the body will join me--

FOLEY: One minute.

CAVANAUGH: Thank you. --will join me in voting yes for LB44 because it is the moral thing to do, and we have an opportunity to fix a wrong here. Thank you, Mr. President. Thank you to this body, to my colleagues, and thank you, Senator Chambers so much for continuing to push us in this direction.

FOLEY: Thank you, Senator Cavanaugh. Senator Geist.

GEIST: Yes, thank you, Mr. President. And I just want to speak to this issue just for a bit because I think that it's-- it's possible and even probable that those on both sides, or all sides, because I don't think there are both sides of a political issue, I think there are many sides of a political issue. I think it's possible that we can all take a moral standing and actually that can differ, and I'm not trying to be relativistic in morality. I try to be careful about disparaging each others moral standing. I think that we can come to a position of where we have a moral responsibility to do something, or feel a certain way, or hold on to a core value, and my core value, morality, might, in some way, have a conflict with yours. And I think in a political arena that's to be expected, and I actually think that's okay. This is an issue that I have to say I understand both sides. I understand, and Senator Chambers, I respect your moral obligation that you feel to not have the state execute people, and I respect that. And actually, I have had a great personal struggle to come to an agreement with this myself. In my-- I am pro-life, I am pro-innocent life, but I have also come to an understanding, for me, that it's, in some cases, and I would say the cases of the gentlemen that represent our death row in this state, have done such egregious things

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

Floor Debate
April 25, 2019

to innocent human beings who have value, who have left families in shambles and in no way to repair the entire rest of a family's life who have lost victims to the men who are on death row. And I believe that there is a tipping point that you can commit such an egregious act against another human being that it requires your life. I don't take that lightly. I don't take any joy in that. I don't think we use the penalty of death lightly or tritely in this state. I don't have to answer for other states. My responsibility is to answer for my state, my district, and my own personal moral thinking. So I would say I am pro-life, and I am pro-innocent life. I think the victims of these heinous crimes deserve justice, and sadly, and I say sadly in this case, justice could require these individuals lives. So in that sense, I would vote against this because--

FOLEY: One minute.

GEIST: --that's my moral standing. But with all due respect to my colleague who is disagree that's where I have had to come in my journey of faith, in my journey of morality, and I would yield the rest of my few seconds to Senator Slama.

FOLEY: Thank you, Senator Geist. Senator Slama, half-minute.

SLAMA: Thank you, Mr. President. Would Senator Cavanaugh yield to just a couple quick questions?

FOLEY: Senator Cavanaugh, would you yield, please?

CAVANAUGH: Sure.

SLAMA: Wonderful. Okay, so just to go back to some of the statements you just said on the mike. Do you think 173 Nebraskans, which was the margin of victory, were confused when they voted?

CAVANAUGH: Possibly.

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

Floor Debate
April 25, 2019

SLAMA: Do you think that 500,000 Nebraskans who voted in favor of this initiative were confused when they voted?

CAVANAUGH: Possibly.

SLAMA: Do you think of the 800,000 Nebraskans those who vote in favor of the death penalty were somehow more susceptible to confusion than those who voted against?

CAVANAUGH: I think that it was very confusing.

FOLEY: That's time, Senators.

SLAMA: Thank you.

FOLEY: Thank you, Senator Slama and Senator Cavanaugh. Senator Lathrop.

LATHROP: Thank you, Mr. President, and colleagues, good morning. This is actually the tenth time I've done this. I served for eight years, and we had the death penalty on the floor nine times. And I have listened to every argument anyone could possibly make about this bill. I have heard from those senators who have had heinous crimes committed in their district. I have heard from senators across the state who feel strongly about this, and I've heard the arguments in favor of repeal. I can tell you that I've spent my life as a trial lawyer. I've tried cases, lots of them, lots of them in front of juries, and I'm going to tell you that I've tried cases and I've gone back to the office and waited for a verdict. And invariably the bailiff calls you or the judge calls you and tells you what the jury just decided. I didn't really try criminal cases to a jury, but I tried civil cases to a jury, and there were plenty of times when I got done, I'd hang up the phone and, I'm like, that was better than I thought it would turn out. And there were times where I'd hang up the phone and go, I can't believe I just lost that case. My point is this. We have, in this country, the best system known to man, but it's not a perfect system. It's not a perfect system for sorting out facts, for deciding truth and guilt, and innocence. And I have, in ten times doing this, heard arguments-- the arguments about the money. The cost to us, if this were any other program of state government and we looked at how well it does, we would get rid of it in a second. We are

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

Floor Debate
April 25, 2019

putting people on death row where they spend 25 years-- on average 25 years waiting for the executioner. We've had two of them die waiting. The last guy, Carey Dean Moore asked to be put to death. He asked to stop the appeals and kill him. So when we talk about repeal or having a death penalty or not having a death penalty, it's really whether the state does it affirmatively with a needle, or whether we do it through time. Sometimes this is called death by incarceration. The alternative that's in this bill is death by incarceration. I have to tell you, the appeals, people lose faith in the system. I know when they voted what they wanted. I know what they wanted. They wanted people to walk out of the courtroom convicted of a heinous murder and then marched right into a chair and killed. And I understand that sentiment. I understand that, but do we promote-- do we promote confidence in the system when they wait 25 years? And by the way, they're in the paper. Every time they have a hearing, they see them walking-- the victims have to live through them walking through the courthouse in handcuffs and still on the news. The temptation-- the temptation to say, I want a death penalty is very easy to understand. The practical side of it-- the practical side of it is it is littered with inconsistencies. There are a whole host of people who have committed heinous crimes who never got the death penalty. It was taken off the table. So it is applied inconsistently.

FOLEY: One minute.

LATHROP: It leads me to this place. Senator Slama's point is well made. I appreciate that the people who voted on this issue, I really do. When it comes to an issue of morality, I got to tell you, my morals are shaken by my faith. They are shaken by my experience as a lawyer, my experience in watching what happens at the Department of Corrections and in capital murder cases, and I have to tell you, I have to support the bill. I respect a vote of the people but I have to support the bill because to me the moral compass points me in the direction of repeal. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Moser.

MOSER: Thank you, Mr. President. Well, this discussion is painful, there's just no two ways about it. When I campaigned for this office, I said multiple times that the capital punishment penalty should be allowed as a possible punishment for the most heinous crimes. And my district

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

Floor Debate
April 25, 2019

overwhelmingly supported the reinstatement of the death penalty. And I think we all feel the weight of this decision. When I took the Catholic Conference survey and Right to Life survey, I told those surveyors that I supported the death penalty. So they knew in advance, and my constituents in my district knew in advance, where I stood on the death penalty. And the Governor who supports the death penalty, supported my opponent, contributed substantially to his campaign, and I still won two to one. So I'm not here to speak as a representative for the Governor who I think sometimes interjects himself into the business of the Legislature a little more than he should, but I'm not here to speak for him. I'm here to speak for myself. And I think as full disclosure I should say that I am a Catholic and I've gone through this process of learning the fundamentals of salvation over the 68 years that I've lived and, you know, I don't think that the theory of that life and death should not be up to a vote of the people, I don't think it's a vote of the people, I think it's the will of the people. And I don't think they were unduly influenced by the Governor suggesting that the death penalty should be reinstated. I think that the citizens made these decisions freely and on their own and I believe that they should be respected. And for us to say we know better, to say that we're elected and we can make our own decisions, I think is wrong. We're elected by people who believe in us to do what we said we were gonna do and we get here, we should do it. To say that being pro-life means you have to oppose abortion and you have to-- well, let me rephrase that. To be pro-life saying that you oppose abortion, but yet support the death penalty are not compatible. Unborn babies are innocent. They've done nothing to deserve to be killed. Heinous killers are not innocent and in some cases, those crimes are so heinous and situations are such that the capital punishment should still be on the table. I think it should remain as a possible punishment for the most heinous of crimes. I don't think it should be the case in every capital case. I don't think it should be the punishment for every capital case. That's up to the judges and the juries to decide. But I think we ran for office based on principles and then when we get here, we should follow those principles. We shouldn't bend to the political will of the other members of the body or outside religious influences. We have to go with our conscience. Thank you.

FOLEY: Thank you, Senator Moser. Senator Wishart.

WISHART: Thank you, Mr. President. I rise in support of LB44. I'm one of the senators similar to Senator Pansing Brooks where my district overwhelmingly voted to retain the repeal and that

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

Floor Debate
April 25, 2019

makes sense. Senator Colby Coash was my predecessor who was an integral part to the advancement of the repeal in the first place. My main concerns with the death penalty is that we've been wrong and if you look at the list of people throughout the history of the United States who were found innocent after they were sentenced to death row, to me then, there is no way around voting for this bill. I believe in limited government. I think when you have a death penalty it's-- and you've been wrong. Again, I don't see any way you couldn't be voting for this bill. With that, I yield the rest of my time to Senator Chambers.

FOLEY: Thank you, Senator Wishart. Senator Chambers, 3:45.

CHAMBERS: Thank you, Mr. President. Thank you, Senator Wishart. Members of the Legislature, you all talk about your morality. I listened very carefully to my colleague, Senator Geist. I wonder if it makes her any difference that 164 men were on death row waiting to be executed, but DNA showed they were innocent. Her faith doesn't have a problem with that-- 164 people waiting to be executed. Now do you think that there have not been innocent people actually executed? The judges say there have been. Nebraska, when Bob Kerrey was the Governor, got the Pardons Board to posthumously pardon a man who had been executed in Nebraska for killing a person who was not even killed. Some people found clothing in a stream and evidence that something bad happened. They didn't find the man whose clothing it was, so they hanged the guy. Then the man who was supposed to have been murdered showed up in Kansas. So all those decades later, Nebraska said, oops. And I listen to these hypocrites on the floor. That's what you are. You can say you're pro-life and then be in favor of the state killing people. Well, if you all believe in killing people, I'm going to go into some killing the rest of this session on bills. I want some of you all to ask me, why are you doing this? Because of the district that I come from, we don't like sales taxes. You got a sales tax in a bill, look out. We don't like discrimination. You got a bill to support businesses that discriminate against black people, Latinx, LGBTQ people, look out. Now, there are 48 of you all who can try to stop me. You are going to see what sprouts from the seeds you all are planting this morning. It would be best for you to just sit down and shut up and stop talking because what you say is going to give me direction on what to do with the rest of this session. You think I cannot do something for the few days we have left in this session when in the past I've been on what people call a tear for 60 days in a short session, 90 days in a long session. And we only have a few weeks left. Watch.

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

Floor Debate
April 25, 2019

FOLEY: One minute.

CHAMBERS: And I will be like your death penalty. I will strike like lightning. If you're lucky, you'll get struck by lightning. The judges have said, those who face a death sentence are like people being struck by lightning. No logic or reason to it. And the court said, this the Supreme Court, there is no way to distinguish the case of those who are sentenced to die from the cases of those who were not. And when you have such a minuscule percentage of those who are eligible to face death, to actually be sentenced, and even a smaller percentage to be actually killed, something is totally wrong with that. The U.S. Supreme Court said, this issue has been fought on moral grounds. And as time has passed, the death penalty has been in a steady decline.

FOLEY: Time, Senator.

CHAMBERS: Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Halloran.

HALLORAN: Thank you, Mr. President, and colleagues. A sobering topic. Another sobering topic I think is the fact that many times, and I've heard it on the floor countless times, where we have praised the Unicameral system, right? One house system, because it's backed up by the second house, the public. It's been mentioned before on the floor. We gave that opportunity to the second house to vote on this issue. And I think Senator Moser had it right. It wasn't a vote. It was an expression of their will on this issue. Senator Chambers has said we shouldn't allow-- we should not allow the public to determine morals. And then Senator Hunt said we should vote on this morality of this issue in this body. Can't have it both ways. I think everyone does vote on this issue based upon their own personal moral values, or moral sense, and a lot of people have this moral equivalency between abortion and the death penalty. I see Senator Cavanaugh-- is Senator Cavanaugh here? I'd like to ask her to yield to a question.

FOLEY: Is Senator Cavanaugh on the floor, please? Senator Cavanaugh, would you yield to a question, please?

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

Floor Debate
April 25, 2019

CAVANAUGH: Yes.

HALLORAN: Senator Cavanaugh, and I don't want to misphrase what you said earlier, but you suggested that you thought it was contradictory, hypocritical for people who say they're pro-life, that they're against abortion, to be for the death penalty. Quick question. First a comment. The last figures I have in 2017, 1,958 abortions were conducted in this state. What were those babies, unborn babies guilty of?

CAVANAUGH: I don't have an answer for you.

HALLORAN: Because there is no answer. They were guilty of nothing. They were innocent lives and we don't hear a whole lot of debate on this floor about the atrocity and the methodology of aborting those babies. Partial birth abortion, where the doctor forces a breach of the baby, leaving the head in uterus. Pokes a knife in the back of a head, scissors in the back of the head, sucks out the brain. And Senator Pansing Brooks, there are no witnesses to that. We don't require that there be witnesses to the death of an unborn child. Thank you, Senator Cavanaugh. There is no moral equivalents between abortion and the death penalty. The difference between taking an innocent life and the life of someone who has gone through the court system, Senator Lathrop is right. It's not a perfect system, but it's the best system in the world, gone through the court system and found guilty of a heinous crime. There are no children in the balcony. One of those crimes was conducted by one that's on death row now where he killed a four-year-old boy. Cut that boy up in pieces. Decapitated him, fried part of his body, fed it to his dog, put the balance of it in the freezer to use as leverage against his girlfriend, the mother of the baby. There are some crimes, my friends, that are worthy of someone's life--

FOLEY: One minute.

HALLORAN: --in the balance, in payment for what they've done. One minute, I yield that to Senator Slama if she wants it.

FOLEY: Thank you, Senator Halloran. Senator Slama, :49.

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

Floor Debate
April 25, 2019

SLAMA: Thank you, Mr. President. Would Senator Hunt yield to a couple questions just real quick again?

FOLEY: Senator Hunt, would you yield, please?

SLAMA: I'm sorry, I'm pressed for time here.

HUNT: Sure.

SLAMA: Great. So just to clarify some statements on the mike earlier, do you view the Governor's involvement in the ballot initiative as inappropriate because elected officials involved in the legislative process on the state level--

HUNT: I have to say I didn't hear the beginning of your question. I know we're short on time.

SLAMA: Okay. Do you think that the Governor's involvement in the ballot initiative is inappropriate because elected officials involved in this process on the state level should not be attempting to influence ballot initiatives?

HUNT: No. I think that he-- I think that it's fair for elected officials to try to influence ballot initiatives.

SLAMA: So then where is your problem with this being a corrupt ballot initiative?

FOLEY: That's time, Senators. Thank you, Senator Slama and Senator Hunt. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. Lieutenant Governor. I said before that I have-- that I'm going to support LB44. Senator Wishart mentioned that our districts were supportive of the repeal of the death penalty and so not only do I feel it is correct in my heart and soul, but I also believe it is correct according to my constituency. So we've had senators talk about the shambles of people's lives. We aren't arguing that there are very sick people, there are very damaged

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

Floor Debate
April 25, 2019

people, there are very dangerous people who need to be punished. That's not what we're talking about. But remember, we also have in this case some people whose lives have been thrown in shambles and that was the Beatrice Six. So let's bring that one back on to the floor too. Senator Geist talked thoughtfully that we can all have a broad range of opinions on this. She talked about pro-innocent life. Well, look at the Beatrice Six. That case was where those people were threatened with the death penalty and but for the fact that one of them had not had his DNA tested, they would still all be in jail right now. It was simply because one of the six had not had his DNA tested. Thanks to Senator Chambers, that law came into being and so we can credit Senator Chambers and his efforts to protect innocent life. They have been found innocent. So when you talk about egregious acts, these were egregious acts by the state. We now have LB472, Senator Dorn's bill, with the 6-cent sales tax increase. That's only going to pay 6 million of the 33-plus necessary. It was 28 million to the Beatrice Six survivors and an estate and then the rest of the interest in attorneys fees. So if you think that this is something valuable and really is something that we need to do, think of that cost. I'll bet you the people of Gage County are going to tell their county attorney, be careful about asking for the death penalty. Be careful using it as a threat. We used it as a threat and look what happened. And you can talk about all the most egregious cases, yes, there are terrible murders. Let's put them away without an ability to parole and I don't have to think about them again. At our hearing, one of the victim's family members brought a notebook-- actually four notebooks that were bigger than I could carry and said, do you know what this is? This is the number of times this case has been in the news. All we're doing is giving those who are guilty of this crime access to the courts, continuous appeals, and bringing it back up in front of my family and making me come to these court hearings, and now to these legislative hearings to argue about why we need to put them away and forget about them. As Senator Lathrop said, death by incarceration. So again, we do not have a perfect judicial system.

FOLEY: One minute.

PANSING BROOKS: That's why we allow appeals. That's why we have to now pay five people and the estate of another for the egregious acts of some people in law enforcement. Egregious acts that destroyed the lives. Julian Taylor, 20 years in prison, lost contact with her son. Talk about egregious acts by the state. So again, and I'm going to talk again about transparency and

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

Floor Debate
April 25, 2019

the fact that we have not had transparency in our most recent killing. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Pansing Brooks. Senator Hunt.

HUNT: Thank you, Mr. Lieutenant Governor. As I listen, I wonder if everyone in the room here supports the death penalty would be willing to carry it out themselves. I bet some of you would. I bet some of you would be willing to do it, but if you wouldn't do it yourself, you shouldn't support it and all of your Bibles say, thou shall not kill. It doesn't say thou shall not kill innocent life. That's just something you're all telling yourselves so you can sleep at night and feel better about your hypocrisy. So we waste \$14.6 million a year, as I said, on death row. But I want to talk another-- talk about another number to talk about the incompetence and corruption with which the death penalty is carried out here in Nebraska. \$54,000 of taxpayer money down the drain from our fiscally conservative Governor who thought he had a blank check to order illegal, unlawful to import, death penalty drugs from who knows where, all over the world, wherever he could find it, which was never even delivered. Was never even delivered to Nebraska. We couldn't even use it. So what I'm saying is if he can find \$300,000 of his own money to fund a ballot initiative, to overturn the will of the Legislature, maybe he can find \$54,000 to refund the taxpayers for the money he wasted on those death penalty drugs. An article by Paul Hammel said in 2019, in 2010, federal authorities destroyed a batch of drugs delivered by a broker from India after determining that the Nebraska Corrections Department lacked the proper importer's license. A second shipment expired amid claims by the drugs' Swiss manufacturer, that the broker obtained the drugs under false pretenses. That's Chris Harris. In 2015, the state paid \$54,000 to the same broker, Chris Harris, but never received any drugs. In that case the FDA blocked the importation of one of the drugs, sodium thiopental, because it was no longer manufactured or approved for general use in the U.S. So since 2015, Nebraska has wasted tens of thousands of dollars in taxpayer funds on drugs that will never be used in an execution. Governor Pete Ricketts used his office to influence the death penalty ballot question before Nebraska voters in 2016. In addition, the Department of Corrections, the Governor, and some state senators have all been working to keep information about lethal injection and about the execution of Carey Dean Moore a secret. When I watched Governor Ricketts stand in front of that giant Choose Life license plate that said Choose Life, he said as Governor, I have worked to support initiatives that

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

Floor Debate
April 25, 2019

protect and strengthen the culture of life that Nebraskans embody. To me, that was grotesque. It was embarrassing to see. I was embarrassed to look at that because you are just not pro-life if you support the death penalty. You're just not. When I lost my last shred of respect for the Governor was when the Attorney General under the Governor scheduled the execution of Carey Dean Moore. The day he chose for the first execution, after Senator Chambers spent over 40 years fighting for justice from the death penalty in Nebraska, the day they chose to execute that man was July 10. That day is Senator Chambers' birthday. To me, that is just foul. It's grotesque. Is an accident that would be so ridiculously improbable to me that that was an accident, it's just a joke and it shows me how tone deaf this administration is about the seriousness and the somberness and the heaviness of carrying out the most somber, egregious, serious offense against human life that a person can do, sanctioned by the state. Well, it will never be sanctioned by me. As long as I walk the earth, I will stand against this offense against human life and Governor Ricketts offends me by fighting for this and all of you offend me by standing in hypocrisy fighting for the right to kill people.

FOLEY: One minute.

HUNT: The death penalty is the clearest proof we have that we are still living in the United States with the inheritances of slavery. As Senator Chambers said, you can't even be in the European Union if you have a death penalty. They have evolved past that. Lynching in the United States, lynching only began to decline with the rise of the use of the death penalty, which marks the rise of legal state violence, legal state sanctioned murder when racism insinuated itself into the systems of punishments in our justice system. You cannot reform slavery with a better version of slavery. That's what the death penalty is. That's what death row is. The death penalty has got to go in Nebraska. In Nebraska we also don't guarantee that witnesses can view the prisoner during an execution. We do not guarantee that witnesses can hear what's happening in the execution chamber. We don't guarantee that witnesses can know what drug was administered. By preventing witnesses from observing and listening to the entire execution process--

FOLEY: That's time, Senator.

HUNT: --state's eliminating oversight of execution. Thank you.

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

Floor Debate
April 25, 2019

FOLEY: Thank you, Senator Hunt. Senator Morfeld.

MORFELD: Thank you, Mr. President, and colleagues, I rise in support of LB44. This issue was debated and it was "overridden" over the Governor's objections my first year in the Legislature and into a year that I probably will never forget, and a moment that I'll never forget. I have steadfastly stood in opposition to the death penalty on several different principles. One, it's immoral and unjust. The state should lead by example. If murder is our most heinous crime, then the state should not be a party or an actor in it. Second, it's ineffective. It's ineffective because it's not been shown in states that don't have the death penalty and do have the death penalty to reduce the rate of violent crime any less. And third, it's inefficient in the sense that we are wasting millions of dollars each year that are required in order to have an appeals system. And everybody says, let's speed up the appeals system. Let's get rid of some appeals. We don't say that about any other due process, any other right. And in this process, you speed up the appeals, the appeals process doesn't work when you're dead. And if you don't think that people are wrongfully convicted, then just go and look at the bill that we almost passed unanimously and was signed into law by the Governor yesterday. It's the jail house snitch bill. Jail house snitches lead the nation in terms of causing wrongful convictions. We have a justice system that is far from perfect. Is it better than a lot of other justice systems? You bet. But it's not perfect and as long as it's not perfect, we shouldn't enact the final punishment of killing and murdering somebody, particularly when it doesn't deterring of the crime, and it's been shown that way in other states. And particularly when it's inefficient and ineffective and it takes away someone's ability to appeal and have due process. There has been a lot of arguments brought up about the will of the people this morning and I can only smile hearing Senator Slama who is now gone, maybe she's in the senator's lounge, talking about the will of the people. I find it ironic. Find it ironic because we just passed a Medicaid expansion ballot initiative and I haven't heard any of those senators get up and talk about how the Governor has subverted the will of the people by denying people Medicaid expansion. A right that was passed by the will of the people that the Governor is currently subverting and doing it with a smile, using his department to conflate an 1115 waiver to take off 25,000 caregivers that are currently on Medicaid that will lose their benefits. I don't hear any senators in favor of the death penalty this morning getting up and talking about that. And you know what? You won't hear it. It will be crickets because it's hypocrisy. It's hypocrisy in its finest. You want to talk about saving lives and being pro-life?

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

Floor Debate
April 25, 2019

Make sure that Medicaid expansion is implemented by the will of the people. You want to talk about innocent lives? There's a bunch of innocent lives in caregivers that will lose their care, that aren't currently getting care right now because the Governor opposes it for political reasons and many of you have followed him and are complicit. We'll be going through the facts about what Medicaid expansion does, but there are plenty of studies that show that it saves lives. But nobody in this body is going to hold the Department of Health and Human Services and the Governor to account. The people that have spoken about the death penalty anyway, and in favor of it. Here's one study, a study from the New England Journal of Medicine. The study found that from every 176 Medicaid covered lives, one death could be prevented. This means about 550 deaths could have been prevented each year--

SCHEER: One minute.

MORFELD: --in Nebraska through Medicaid expansion. There's a ton of other studies that show that Medicaid expansion actually reduces infant mortality rates. But you won't see Senator Halloran or Senator Slama holding the Department of Health and Human Services or the Governor to account making sure that we have Medicaid expansion passed into law by the will of the people that they hold so precious. Colleagues, we're going to start having a lot more discussions. I've held back on Medicaid expansion because I thought that the department and other people on the Health and Human Services Committee would have held the department to account. The department will not be held to account. I do not believe, despite Senator Howard's best efforts, that the Health and Human Services Committee will be able to do that either. So I've got a whole list of bills that are your priorities. We'll make them my priority now for the rest of the session. Thank you, Mr. President.

SCHEER: Thank you, Senator Morfeld. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President; good morning, colleagues. In 2013, much to the chagrin of my wife, I decided to run for the Legislature. So I signed the papers, and in 2014 I started knocking on 11,000 doors against a very formidable opponent, very formidable, a guy who signed up at the last minute, but he was a good opponent. Eleven thousand doors, how many folks talked to me about the death penalty? Zip. Nada. Zero. Nobody talked to me about the

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

Floor Debate
April 25, 2019

death penalty as I went around to those 11,000 doors. And then in 2015, we had the debate on the death penalty. And I didn't come to the Legislature with a preordained idea about the death penalty. So I listened to the debate, and with many of my Republican colleagues, we decided to repeal the death penalty. The arguments were compelling. Why? Why were they compelling? Well, first off the death penalty is more expensive, more expensive than simply holding somebody in jail. The countless court appeals and everything else costs the state more money. Secondly, it's not a deterrent. All the studies show that the death penalty is not a deterrent. People do it, you know, crimes of passion, so it's not a deterrent. It's indiscriminate. Those people that have good attorneys, probably white, they get off far more regularly than people of color that don't have good legal representation. So it's indiscriminate. Finally, small percentage of those people are innocent. And in this body, we know that is true because of Gage County. So this is a situation that we should not-- we should vote for LB44, as I did in 2015. Do I find the statistics of those people voting to repeal the-- to reaffirm the death penalty? I don't. What are the statistics for Douglas County? For "retain" it was 107,946; "repeal," 121,788. That's a 47 versus 53 percent. That is not compelling. And I would say that the e-mails that I received during 2015 were about that percentage. So what's a politician to do when it really isn't clear what the vote of the-- what the feelings of people are? And for that I refer to the quote on my cup, and anybody that wants one of these cups is free to have one, and it goes like this: Your representative owes you not his industry only, but his judgment and he betrays you instead of serving you if he sacrifices it to your opinion. So ultimately, these votes come down to you and you have to decide and you can't really let a vote of the people determine how you're going to vote on some of these very critical bills. And I would say that in this country, there is a reawakening of these kinds of issues. While I was at Platte, I served on-- we initiated a new program called Right on Crime. The idea there is to not force people always into jail. There is probably better ways to deal with criminal justice issues. If someone isn't a violent person, maybe there are better places to put that person instead of in prison.

SCHEER: One minute.

McCOLLISTER: And I see that same thing occurring with the death penalty. Even conservative Republicans are starting to reach those conclusions. So I don't feel out of place advocating for repeal and supporting LB44. Thank you, Mr. President.

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

Floor Debate
April 25, 2019

SCHEER: Thank you, Senator McCollister. Senator Chambers, you're recognized, and this is your third other than your close, Senator.

CHAMBERS: Thank you. Mr. President, members of the Legislature, this is much ado about something that's very important. But I know what the outcome is. I wish Senator Halloran hadn't left, but I'll say this for those people who talk about innocent life when they talk about abortion. You know what I'm concerned about? I'm concerned about the woman. Now I watch people stand on this floor and yack and yack about innocent life. They don't care about a baby. They are against prenatal care for poor women who need that to have a successful pregnancy and give birth to a healthy child. No, the woman's for; the so and so shouldn't have gotten pregnant if she can't take care of it. That's what I hear. That man, and I'm pointing at Senator Halloran's desk, doesn't understand that a man like me is concerned about the woman. I'm concerned about the right of that woman to determine whether she's going to carry a pregnancy to term. Not like somebody like Senator Halloran or Senator Geist or Senator Lowe or Moser or Arch or any of the rest of you, you ought to stay in your own house and take care of your own business. The woman has the right to do that when it comes to a decision. And Senator Halloran is back now. He votes against a modest minimum wage increase for people who serve as waitresses primarily. He doesn't care about women. I look at your other votes, all of you. We're going to see what happens the rest of the session. And I want Senator Halloran and Senator Lowe and their ilk to handle me. Do what you can to me, and talking about innocent life. He like the parrot was really quite dense; he remembered the words, but he didn't get the sense. And we're going to have some good times the rest of this session. I know how you all will do on a bill like this. I know what Senator Slama is going to say before she says it. I know why the Governor appointed her. And she ought to hear what the people in the Republican hierarchy are saying. They're saying things that I won't repeat on this floor. But you all have this gadget, don't you? Then you've read some of it. Y'all want to play rough? Play rough with somebody who is here in your midst who will take you on and deal with you on any terms you want to bring it. You cannot intimidate me. Your numbers mean nothing. If Ali Baba can handle 40 thieves, certainly I can handle 48 white people; and I don't have to handle all 48 of them. Some of them are quite decent. But decency does not prevail in this society or on this floor. And you're going to have your even change and we're going to see how you like that. We're going to have all of this time and the Speaker is going to allow us to go until 11:59 at night. We got some bills on here today that are coming up

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

Floor Debate
April 25, 2019

and they need to go at least three hours. LB616, Senator Hilgers. Oh, LB693, Senator Halloran. That swatting at mosquitoes bill. I hope he's got 33 votes. Watch me. You think I'm just talking? You're going to have a chance to see what the action is going to be. When I come down here, I'm prepared to stay from the time we open until 11:59 at night. And some of these nights we're going to have to do it, otherwise the Speaker's--

SCHEER: One minute.

CHAMBERS: --agenda is never going to be completed. And if I take certain bills and force three hours on that bill, how many bills could we get done in a day? Do the math. And you'll have a chance to see if this 82-year-old man is able to deliver or if he's full of hot air like the rest of you. You know why I'm not giving statistics on this bill? Because it won't matter. I gave you examples of heinous crimes. Senator Slama saw that. She didn't think that's so bad that this guy shot two people in the back and then was allowed to accept a plea, the worst of the worst got off; and she stood up there and mouthed the parrot's words, this is for the worst of the worst unless you've got a county attorney who does not want that expensive capital punishment litigation in his county.

SCHEER: Time, Senator.

CHAMBERS: So he gave the plea deal. Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Those waiting to speak: Senator Cavanaugh, Slama, Moser, Wishart and others. Senator Cavanaugh, you're recognized.

CAVANAUGH: Thank you, Mr. Speaker. I wanted to provide some clarification on questions that were asked of me. According to the Associated Press, on Tuesday, October 25, 2016: Radio ads explaining death penalty ballot language to begin airing. A public service message to reduce possible confusion about Nebraska's death penalty ballot measure is set to air on radio stations throughout the state. Nebraska Secretary of State, John Gale, said Monday that the ads will explain the language that used for Referendum 426. So to Senator Slama's question, obviously the Secretary of State thought that it was confusing, not just myself. And whether or not the voters were confused, we won't know. I just personally was confused. For those that were upset

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

Floor Debate
April 25, 2019

or offended by my feelings about the terminology for pro-life versus anti-abortion, I don't-- I can't apologize because it's how I feel, but I shouldn't have spoken so openly about my personal feelings on this issue. I have a tendency to be overly transparent, and sometimes I guess maybe I shouldn't be. I value everyone's right to feel the way that they feel and I understand and appreciate that people are against-- are for the death penalty and also against abortion and identify as pro-life. I disagree with using that terminology. I believe that it is misleading, but I understand and it is your prerogative to do so. We talk a lot on the floor about being a pro-life state. And I've been very disappointed in this body. We can't move forward SNAP benefits, we vote down childcare subsidies, we won't protect innocent people through prenatal care, we won't protect vulnerable populations, children in housing that is substandard. I don't understand your morality and it hurts my heart. So you can ask me pithy questions on the mike to try and get me on the record, I don't care. I care about representing the people of Nebraska. I care about representing life in Nebraska. And if you think that you're going to hurt me or my political future by asking me questions, then have at it, spend your days that way. That seems like a waste of time. You should care about representing the people better than that. I yield my time to Senator Chambers.

SCHEER: Senator Chambers, 1:35.

CHAMBERS: Thank you, Mr. President. Thank you, Senator Cavanaugh. You have every right to express yourself. You don't hear them asking me a lot of questions, do you? These bold men and all these others think they are smart. Let Senator Slama, who not too long ago got out of high school, as she pointed out on the floor, put me in my place and embarrassed me with questions. And I don't need to get my direction from anybody else. You don't see me flouncing up and down the aisle, do you? Do you? Calling attention to myself, do you? We may as well get real around here. You all need to advise some of your colleagues how to comport themselves when they're in this Chamber. You think you can embarrass Senator Cavanaugh for expressing her view? Well, you ought to give some advice to some of your colleagues here. And if you want to play rough, that's what we can do. You all have gotten away with too much for too long. I'm glad that Senator Morfeld pointed out what your Governor is doing with the Medicaid matter. You all who are able to afford certain things or have people give you things are so unfeeling, so

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

Floor Debate
April 25, 2019

unconcerned. Senator Halloran wouldn't even be where he is if a woman hadn't started an organization and called him into it because he's her little brother. He didn't start that operation.

SCHEER: Time, Senators. Thank you, Senator Cavanaugh and Senator Chambers. Senator Slama, you're recognized.

SLAMA: Thank you, Mr. President. Just real quickly, I'd like to see if Senator Chambers would yield to a question?

SCHEER: Senator Chambers, would you please yield?

SLAMA: Thank you.

CHAMBERS: Yes.

SLAMA: What's your comment about flouncing directed towards me?

CHAMBERS: About what?

SLAMA: Flouncing on the floor of the Legislature.

CHAMBERS: About who?

SLAMA: Flouncing.

CHAMBERS: Swanson?

SLAMA: Flouncing. F-l-o-u-n-c-i-n-g. You just said.

CHAMBERS: Slouncing? (PHONETIC)

SLAMA: Floun-- thank you.

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

Floor Debate
April 25, 2019

CHAMBERS: Flouncing, you mean?

SLAMA: Yes.

CHAMBERS: Get it right. Look in the dictionary.

SLAMA: I said flouncing. I even spelled it correctly. But was that comment directed towards me?

CHAMBERS: I make hats. If your number comes on, I put it on. I give the descriptions. If you apply it to yourself, that's on you.

SLAMA: Okay. So that's a non-answer. So, like I said earlier, I hope we'd be able to keep this discussion brief, take a vote, and move on. Just to address what Senator Morfeld spoke of earlier, am I in favor of the unfunded mandate that the successful Medicaid expansion ballot initiative creates? No. Does Senator Morfeld favor the retention of the death penalty? He made it clear on the floor that he does not. But that's the beauty of our system. If the voters of Nebraska can have their say when the Legislature either fails to act on a measure, they want to repeal or take action on something that we're not doing or repeal something that we do do that they don't like. I respect the positions taken on the floor of the Legislature this morning with regards to the death penalty. We know where all of you stand. It's a quick discussion and there is no need to get up and beat a dead horse. So for once, I do agree with Senator Chambers about not talking this bill to death for three hours. If you have spoken your peace, let's hop out of the queue. Let's be accountable to Nebraskans in whatever position you may have on this bill, let's be accountable to your constituents, take your stand, get on the record, and vote on this bill. If you have the courage to do so, let's hop out of the queue, let's take a vote. Thank you, Mr. President.

SCHEER: Thank you, Senator Slama and Senator Chambers. Senator Moser, you're recognized.

MOSER: Thank you, Mr. President. We all say that this should be decided on basis of the logic and the moral appeal of the state doing the right thing when it comes to punishing people who commit heinous crimes. But that doesn't mean that senators on either side necessarily follow that

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

Floor Debate
April 25, 2019

rule when they discuss what we're talking about here today. One of the things mentioned that I just wanted to briefly talk about is quoting Catholic teaching as a reason to support the repeal of the death penalty. Do I think this was brought because they all believe the teachings of the Catholic Church? I think it was offered to try to manipulate senators by guilting them into supporting repeal of the death penalty. For decades the teaching of the Catholic Church was that in some cases the death penalty could be used. And I've got the Catholic Catechism here in case anybody wants to look it up. I've got the page bookmarked. That was the opinions-- those were the opinions of Pope John Paul and Pope Benedict. They both supported the state's right to apply the death penalty in certain situations. Current Pope Francis has offered a different view. But I don't think this is a reason to make this decision. I think in some cases the death penalty may be appropriate. And I don't think that it's us doing the execution. They have juries. They have judges. They have attorneys, prosecutors, and defending attorneys, and they have appeals. So there is a system to it. Is the system perfect? No. But if we just unilaterally remove the death penalty as a possible sentence for some of the heinous things we do, I think that's wrong. I think it needs to be on the table. Should it be applied in every case? No. Thank you very much.

SCHEER: Thank you, Senator Moser. Those waiting to speak: Senator Wishart, Halloran, Senator Matt Hansen, Senator Pansing Brooks, and others. Senator Wishart, you're recognized.

WISHART: Thank you, Mr. President. I was a staff member when this issue came up, and it was one of the most incredible experiences of my life, one of the most incredible days of my time working in the Legislature. Regardless of what side of the issue people were on, I remember the room was filled with hundreds of-- it felt like hundreds of people in the balcony, on the sides, all the staff members and state employees and public here. And the discussion was deep, it was rich. And so I hope we can bring back that element that we had years ago to this discussion. And I do think this bill warrants time spent talking about the issue. With that, I yield my time to Senator Morfeld.

SCHEER: Senator Morfeld, 4:05.

MORFELD: Thank you, Senator Wishart. Thank you, Mr. President. Colleagues, I want to go through a few other points. And I'm going to be talking a lot about pro-life state and pro-life

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

Floor Debate
April 25, 2019

stances this session, since this is apparently going to be the issue that people talk about and hold other people accountable to, so we can hold people accountable. A few different things. First, Senator Slama stated that Medicaid expansion was an unfunded mandate. It's not. We've been paying into it as Nebraskans for the last seven to nine years, but not receiving any benefit from it; not saving the lives that so many people say they care about in this body by providing affordable and accessible healthcare. Statements that will be made in this body and then quickly forgotten when certain amendments come up to ensure that we actually expand Medicaid expansion. Senator Cavanaugh brought up a few different things that she saw just in her short time here this session that's disappointing. I'll tell you a few things that I've seen that have been led by pro-life legislators to defeat. This is just the list I can remember: SNAP benefits; childcare subsidies; making birth control, which has been proven to prevent abortions, making birth control less accessible for low income people; essentially gutting and making it so that DHHS is completely inefficient only to be able to advance and further the arguments that government programs don't work. Yeah, they don't work when you don't fund them. They don't work when you can't keep people at a reasonable wage to actually do the job in the department; a self-fulfilling prophecy. Colleagues, if we want to get up and talk about the will of the people and how we need to respect it, then I want to see some action and not just words from Senator Halloran and Senator Slama. I want to see them take action on that and holding the department and the Governor accountable for Medicaid expansion. I want to see people start taking action on making it so that all Nebraskans have affordable healthcare, have access to it, instead of getting up and talking about how bad Medicaid expansion is and how bad some of these services are but providing no solutions whatsoever, no leadership whatsoever. Walking around on this floor after they defeat something like Medicaid expansion and telling people who sponsored those bills, hey, I'm going to help you next year on that, we're going to find a solution, and then doing nothing. If you don't believe me, I saw it. I sat there and listened to it and then I saw them vote against it the next year and provide no leadership whatsoever. So everybody can walk around here and pretend like they care about preserving life.

SCHEER: One minute.

MORFELD: But only when the political issue is convenient for them, only when it benefits whatever ideology or individuals that they hold dear or that they have supported them in their

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

Floor Debate
April 25, 2019

last election. I'm going to start paying attention to a lot of other people's priorities around here, because we have our priorities out of order. If you go and look about the issues that Nebraskans care about the most, it's about good paying jobs, it's about affordable healthcare, it's about child care. Those are the issues that Nebraskans care about the most. Those are the issues that are going to keep Nebraskans here and prosperous and grow our state, because it seems to me like we have our priorities out of order. And it seems to me like there is a lot of hypocrisy talking about how much we care about life, preserving it, and then silence when actual legislation that would do that--

SCHEER: Time, Senator.

MORFELD: --comes to-- thank you, Mr. President.

SCHEER: Thank you, Senator Wishart and Morfeld. Senator Halloran, you're recognized.

HALLORAN: Thank you, Mr. Speaker. Colleagues, I believe we owe Senator Chambers the courtesy of a vote on this. So I'm not going to speak more than just a few seconds. So if you're interested in a vote on this, I don't want to take it to three hours. I don't want it to be required for 33 votes. And that's all the time I'm consuming, but I would encourage everyone to take their names off the queue so we can vote on this. Thank you.

SCHEER: Thank you, Senator Halloran. Senator Matt Hansen, you're recognized.

M. HANSEN: Thank you, Mr. President; and good morning again colleagues. I wanted to rise again and kind of address one of the issues that has always bothered me during the debate on the death penalty. And let me begin by-- I fundamentally get why people support the death penalty. I understand that, and for me, it's always been a matter of how it impacts our court system, not necessarily what powers we want the state to have. And I think time and time again, most recently the Beatrice Six, we see the issues that having a death penalty on the books can cause our criminal justice system in terms of coming to "injust" results. But I wanted to talk about the issue of, during the debate, on death penalty. We always talk about the most heinous crimes, the worst crimes, some other description of that. And I want to talk about a crime that happened

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

Floor Debate
April 25, 2019

during our last death penalty debate and kind of follow that through to see what happened. So I've got two "Omaha World-Herald" articles here. One is entitled: Unspeakable acts, four-year-old was alive when he was thrown into the river, law official says. And this is dated May 11, 2015. If you look back at the Journal from when we debated the death penalty repeal in 2015, this is four days before we debated it on Select File when this article was written, and this case was mentioned on the floor at least twice that I saw when I was going back in the transcripts. I won't read the whole articles and I won't say any names of the victims or the perpetrator. But from that article there was a quote said: For those unspeakable acts, Douglas County Attorney Don Kleine said Monday that he will seek the death penalty against the perpetrator. And then later in the article he was quoted as: these kinds of cases never leave you, Kleine said; we don't adequately describe the sadness and gravity and senselessness when something like this happens to a child. A little less than a year later on February 11, 2016, there's a "World-Herald" article entitled man sentenced to life for stabbing mother, throwing brother in the Elkhorn River. The article says, in return for the perpetrator's pleas, Douglas County Attorney Don Kleine dropped his pursuit of the death penalty. Douglas County District Judge Marlon Polk imposed the mandatory life sentence that goes with first-degree murder. This case was held up as the reason we need the death penalty. This case was held up as an example on the floor of this Legislature during the death penalty repeal as something that was heinous and so senseless that we needed the death penalty for it. And our court system, our elected prosecutors did not seek the death penalty all the way through. This was held up as a crime that is, as I said, unspeakable and never leaves you and all sorts of other things about the heinousness of it. And shortly thereafter, less than a year later, we accepted a plea and did not pursue the death penalty. What is the death penalty for? What is the death penalty for? If we're going to hold up a case like this as the example of what we need a death penalty for, as we did on the floor during the last debate, and then we don't even bother with that case seeking the death penalty to its logical conclusion in a case where I would have to venture it was likely, what's the point? What are we using it for in Nebraska? We're using it in selective cases; we're picking and choosing for some reasons, and I'm not a prosecutor, I don't get to know, but for some reason that some cases are worth going to the end and some cases are not. With that, Mr. President, I yield the balance of my time to Senator Chambers.

SCHEER: Senator Chambers, 1:15.

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

Floor Debate
April 25, 2019

CHAMBERS: Is there a question put to me?

SCHEER: You have now 1:05 yielded to you.

CHAMBERS: Oh, I will forgo it at this point. Thank you. Thank you, Senator.

SCHEER: Thank you, Senator Matt Hansen and Senator Chambers. (Visitors introduced.)
Returning to floor discussion, those waiting to speak: Senator Pansing Brooks, DeBoer, Lowe, and Hunt. Senator Pansing Brooks, you're recognized and this is your third time at the mike.

PANSING BROOKS: Thank you, Mr. Speaker. So we have been talking about the imperfections a little bit in the legal system. And we mentioned-- I mentioned the Beatrice Six and the fact that they were threatened with the death penalty and that was why they plead guilty and that's why Gage County has this giant payment to make of \$33 million and why we're now trying to help out Gage County by passing LB472. But, again, I also want to talk about the imperfections in the system of execution that we have. As you remember, in August of this year-- or of 2018, the state executed Carey D. Moore. And before I say another word, I want to say something that we've all forgotten and that is-- this was something that came up during the discussions last year too, and that is, we need to acknowledge the pain and suffering of the victims and their families. There is no question that there was-- is significant pain by the families who endure a death at the hands of another person. And I do want to acknowledge and state that these discussions are regarding the state's power over another person. But don't-- we hope that you understand our compassion and our sorrow for your grief and your pain and the loss that you have endured as the families of a person who has been killed. But now I want to go on and talk about the fact that when the state executed Carey D. Moore, we went through a couple of battles that indicated our state's lack of transparency. One had to do with the drugs, how they were attained, what we were going-- how we went through a public records law asking the Department of Corrections to identify the source of the execution drugs. And there was a district court judge ordering the Department of Corrections to reveal that source. And still those drugs were withheld from us. You may also remember that when the Legislature requested Director Frakes to appear before a hearing regarding the execution protocol, he refused to and refused to come to our committee and answer questions. Ultimately, the Attorney General retaliated with a lawsuit against the Legislature and

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

Floor Debate
April 25, 2019

its members. And by the way, the Attorney General's Office is also supposed to represent us. So I really don't understand the legal machinations of all of that; representing the Director of Corrections against another group whom the Attorney General is supposed to represent. So finally when Carey D. Moore was executed, the witnesses, the ability of witnesses to observe the process was blocked by a curtain dropping for 14 minutes. Those witnesses were unable to observe the most critical parts of the execution. I'm going to read the time line presented by the media: 10:24 a.m. curtains opened, Moore is strapped to the table, white sheet pulled to his chest, two IV lines set, sound proof glass cuts off all sound from the death chamber. 10:25 a.m.: Moore nods and mouths, quote, I love you, unquote, to the two relatives and two friends who attend. He then positions his head on the pillow looking up at the ceiling. 10:26 a.m.: Moore turns his head toward witnesses and appears to try to speak. Moments later, his eyes shut and his expression relaxes. Over the next couple of minutes, his chest rises and falls steadily; his fingers twitch a few times before they fall still. 10:29: acting warden brushes Moore's eye lids, checks pupil with pen light--

SCHEER: One minute.

PANSING BROOKS: --and leans in close speaking to the inmate; does not react. It goes on to 10:31, 10:32, his movements-- chest movements subside his mouth gaps open. Finally at 10:39, the curtains close after his eye lids have cracked open at 10:53 after 14 minutes the curtains open again; sheet moved up to the neck, Moore not breathing. When the state says trust us, we're the government; that's when we have to start to worry. I'm giving the rest of my time to Senator Morfeld.

SCHEER: Senator Morfeld, :30.

Morfeld: Thank you, Mr. President. I think it's ironic that some people want to go to a vote right now, because that's the same thing that they wanted when the Governor used that vote to then go after Republicans who voted their conscience, who were actually pro-life, and then were used to defeat them and put less principled people in their seat, in my opinion. Thank you, Mr. President.

SCHEER: Thank you, Senator Pansing Brooks and Senator Morfeld. Mr. Clerk.

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

Floor Debate
April 25, 2019

ASSISTANT CLERK: Mr. President, Senator Morfeld would move to amend LB44 with AM1495.

SCHEER: Senator Morfeld, you are welcome to open on AM1495.

MORFELD: Thank you, Mr. President. And colleagues, I hope that you read this amendment because it's going to be attached to a bunch of your bills later in session. This is going to make it so that any 1115 waiver that is requested by the Department of Health and Human Services must be approved by the Legislature. And while this amendment may very well not be germane to this bill or any bill that I attach it to in the future, it's going to be one that we have long discussions on and that I bring to a cloture vote. We're going to start talking about what it means to be pro-life in this body and I'm going to start holding you to account. I think I can make the argument actually that it is germane, because we're talking about life and death here. We're talking about hundreds of Nebraskans that will die, who otherwise would receive care. Hundreds of innocent Nebraskans that you supposedly care about. Hundreds of innocent Nebraskans that die every year needlessly and suffer in pain needlessly without care. Without care because this body decided to turn a blind eye for the last seven years on Medicaid expansion and will continue to turn a blind eye moving forward on ensuring that the department and the Governor follow the rule of law, the rule of law that was brought into law by your precious ballot initiative. So get used to this amendment for the rest of the session, colleagues, because this amendment is going to come time and time again. And if you don't have 33, you might want to come and talk to me about supporting my 1115 amendment either this session or next session. I've waited long enough for this body to take action and to speak out against the Governor on his efforts to subvert Medicaid expansion and to subvert the will of the people. I have lost complete confidence in many of the members on the Health and Human Services Committee to do anything substantive about it. In fact, some of them are applauding them. Senator Ben Hansen yesterday about lost it-- I turned on my light a few times on Senator Walz's bill and then turned it off, got up and talked about, oh, he thinks it's so great that the department is finally trying to make sure that we have supports for people. Supports for people? The things that they are providing in the 1115 waiver have already been done in other states like Indiana. One court currently struck down some of those in there already, and that same court found that these restrictions not only were unlawful but also prevented completely otherwise eligible people from

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

Floor Debate
April 25, 2019

being able to get the care that they are supposed to receive under Medicaid expansion and federal law. This isn't providing more supports for people. It's making it so that it's harder to get care. And that's the whole purpose. Meanwhile, the department comes around and completely conflates their 1115 waiver with Medicaid expansion, as if it's required in order to do this Medicaid expansion, and oh golly gee, we're just trying so hard to help people. Oh, in the meantime, we're also requiring an increase of about \$17 million in administration costs, which I have not seen what that is going to be used for yet. Normally when we talk about \$17 million in administration costs that are completely unnecessary, completely voluntary on the Governor's part, people would be losing their mind on this floor. I've seen people lose their mind on \$50,000 on this floor. But when the Governor comes in with a completely unnecessary, complicated regiment for Medicaid expansion that costs 17 million more dollars that nobody can explain, everybody is like, oh, golly gee, I'm just so glad they're trying to provide those supports and make sure those people are okay. The same people you didn't care about a year ago or the seven years before. So, colleagues, we're going to have a lot of discussion about Medicaid expansion for the rest of the session. We're going to be talking about this 1115 amendment a lot for the rest of the session. When you get up and you start talking about how much you care about life and how much you care about making sure that innocent people get services and the justice that they need, we're going to have a conversation about it. Thank you, Mr. President.

SCHEER: Thank you, Senator Morfeld. Waiting in the queue: Senator DeBoer, Lowe, Hunt and Morfeld. Senator DeBoer, you are recognized.

DeBOER: Thank you, Mr. President. I'm a little bit ashamed of myself today because I didn't have my light on to speak first this morning because I was a little reluctant to speak out loud what was on my heart on this bill. I was reluctant because of the 2016 vote, but if you listened to KFAB before this election, you probably heard my voice saying-- you probably heard it quite a lot, my voice saying that I would carefully and prayerfully consider each decision I made in this body. You heard me say that quite a lot and I promised it and so I will tell you I have. I have carefully and prayerfully considered this decision. And I should have been first in the queue this morning to tell you that I must vote for this bill. I will vote for this bill. And we should all vote for this bill. Respecting the 2016 vote, it's very important. But my faith and what is right is more important to me than anything else. And the death penalty just isn't right. I'd like to reflect on

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

Floor Debate
April 25, 2019

this question for a minute. In the beginning, there was no death penalty. Well, that is to say that at some point, before recorded history, there were no formal governments to carry out the death penalty. But then over time, governments formalized. This is a very instructive period for this conversation. I think it's helpful very often to look at the history of things in order to understand them better. One of the most ancient texts of law that we have extant today is the Old Testament or Hebrew Bible. In the book of Exodus, Chapter 21, we are giving the ancient Israelite law regarding violence. And there are listed there several circumstances where the death penalty is prescribed for certain offenses: murder, but only if premeditated; whoever strikes their own mother or father; kidnapping; anyone who curses their mother or father, that's verse 17. But not in the case of someone who in a fight strikes someone with a stone or a fist, confines them to a bed, but the victim recovers to the point of being able to walk outside with the help of a staff. That perpetrator is free of liability except to pay for lost time and probably what we would call today medical expenses. Clearly this is a different calculus than we employ today for determining punishments. What was a death penalty offense in the ancient world, cursing your mother or father, today might get you grounded by your parents, maybe, but certainly the government wouldn't be involved. The most famous verses from this chapter are verses 24-25. You might have heard it quoted: Eye for an eye, tooth for a tooth, hand for a hand, foot for a foot, burn for burn, wound for wound, stripe for stripe. But what we don't often hear is the verse leading up to that. Verse 22 which says: if while fighting a person makes a pregnant woman miscarry, then you have to pay her husband the money amount that he demands, whatever amount he demands, but limited to what a judge determines if you kind of go overboard. But then the verse 23 says: If any harm follows, then you shall give life for life, eye for eye, and we get the rest of that. That's a very--

SCHEER: One minute. One minute, Senator.

DeBOER: That's a very curious verse because it describes a monetary payment must be given to the husband of a woman made to miscarry through the harm. But afterwards it says if any harm follows. This is a reference to the way we know the ancient Near Eastern world worked. And I will get back on this mike and I will finish this conversation because I would like to continue the history here. But it will be a limited, not very nuanced version of it because we're limited by time, but I will get back and I will talk to you about that as soon as I have a second again.

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

Floor Debate
April 25, 2019

SCHEER: Thank you, Senator DeBoer. Senator Lowe, you are recognized.

LOWE: Thank you, Mr. President. I campaigned that I would be strong on the death penalty. I campaigned I would be strong on the death penalty and I was for it. So this is not something new. This is not something that has come down from a higher power. It was my campaign, and my constituents like that. When the death penalty came before us, Buffalo County voted 64 percent in favor of reinstating the death penalty, 35 percent were not in favor. So overwhelmingly Buffalo County is in favor of the death penalty. We follow suit. And I think we need to-- it has been brought up here today that our religious beliefs, if you are pro-life, you are pro-life all the way through. I think that's very important. Because in the Torah, we'll just go to the Torah for now: You shall not murder or you shall not kill. There's a moral imperative included as one of the Ten Commandments in the Torah. The imperative is not kill. Is to not kill is in the context of unlawful killing, in blood guilt, that is unlawful. The word "law" is in there because it was meant to be put in there that government was meant to do what it had to do to people that could not be controlled. That was in the Torah. In the King James version of the Bible: Thou shall not kill. You shall not murder, in Exodus 20:13. Most of the other modern versions of the Bible render Exodus 20:13 like the "New King James Bible" according to the Bible, not all killing is murder. Murder is unlawful taking of a human life. The "unlawful," the word "law" once again is a subroot of "unlawful." So if it is by the law, the taking of a life can be done. The commandment, not also murder does not apply to animals. God gave animals to mankind for his use, but it does not mean we need to mistreat the animals for those, or the environment. We need to think about and separate the two: murder and killing. God commanded the killing of thousands of people at times. He picked David to kill Goliath in a lawful killing. We are talking about people. And I see before me, Senator Halloran, has set out the 10 people on death row. I have before me, which I will not read, what has happened to those people, that those 10 people took the lives of.

SCHEER: One minute.

LOWE: Thank you, Mr. President. And with that, I'd like to yield-- because I want to see a vote today, I'd like to yield the rest of my time to Senator Chambers and he can do with it as he please.

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

Floor Debate
April 25, 2019

SCHEER: Senator Chambers, 0:40.

CHAMBERS: Thank you, Mr. President; thank you, Senator Lowe. I won't take much time. You said the vote in Buffalo County for the death penalty was what? 60 to something?

SCHEER: Senator Lowe, would you please yield?

LOWE: Yes, I will. Sixty-four percent to 35 percent.

CHAMBERS: Are you aware that this man, Petersen, and I gave you all the articles, you probably don't read what I hand around, he shot his wife in the back in Buffalo County. He was allowed to take a plea to take the death penalty off the table. So you can talk about you and Senator Slama and the rest about this voting all you want to, but the ones who make the decision, like the county attorney--

SCHEER: Time, Senators.

CHAMBERS: --who did not go for the death penalty in exchange for a plea in Buffalo County.

SCHEER: Time, Senators.

CHAMBERS: Thank you, Mr. President.

SCHEER: Thank you, Senator Lowe and Senator Chambers. Senator Hunt, you are recognized.

HUNT: Thank you, Mr. Speaker. I rise in support of AM1495 until the end of time. I am excited to keep seeing it up on the board there. I don't call myself pro-life. It's not a word that I use to describe myself because to me that term is meaningless because of what a lot of people, like the folks in this body, have done to the word over time to the phrase "by people like you." I don't know what protecting life looks like to someone who supports the death penalty. A state with a death penalty has a culture of death. It's not a pro-life state. For anyone to call Nebraska a pro-life state is a joke to me, it's grotesque. There are people in power in this state, many of whom

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

Floor Debate
April 25, 2019

are in this room, who care more about killing people than they do about their supposed pro-life values, or supposed fiscally conservative values, because if you don't want to accept a moral argument about the need to repeal the death penalty, maybe you should accept a fiscal one, because that's there too. And Senator Lathrop, Senator Pansing Brooks, many people have done a good job on this floor and throughout time making that argument. And you all know that argument, and you already know how you're going to vote, and you can live with your hypocrisy with that, as I'm sure you have no trouble doing. The level of courage and moral consistency that I expect from this body on this issue is low, it's near zero. And despite his claim that he's pro-life, despite his claim that he is Catholic, we know the Governor doesn't like this bill, we know the Governor has a problem with the bill introducer. Maybe if one of you conservatives had brought this bill to begin with, it would already be the law of the land. And I have not seen any evidence in this body of willingness to stand up to the Governor who funded many of your campaigns. Some of you wouldn't even vote for food stamps because you're so afraid of the Governor. But I'm not afraid of the Governor. This is our house. You're all my family in this house. And I stand with a group of legislators who are willing to make the moral decision to end the practice of the death penalty in Nebraska and stand up for the independence of the legislative branch. And I'd like to yield the rest of my time to Senator DeBoer.

SCHEER: Senator DeBoer, 3:00.

DeBOER: Thank you. Thank you, Senator Hunt. OK, so I was talking about Chapter 21 of Exodus, the famous "eye for an eye;" we're talking about how that that follows a discussion where if someone pays for a harm with money, if there's any further harm after that, then it's eye for eye, life for life. This is a reference to the way we know that the ancient world worked. Roughly speaking, there was an honor system in place in the ancient Near Eastern world that we really don't have a direct analog for in Nebraska today. So that's why if someone strikes or curses a parent, it becomes a much more serious offense than it would be today because honor was breached. In the ancient world, if you poked out my eye, and this is important, if you poked out my eye, then I or my relatives were honor bound to go poke out your eye. But also while we're there, cut off your hands. And then their family would come and cut off my foot and hand and maybe my cousin's thumb. Then my family would retaliate a bit bigger, and it would escalate into a blood feud of more and more violence. We also know this in part from Hammurabi who,

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

Floor Debate
April 25, 2019

in an attempt to stop these blood feuds, developed a code of law to substitute the government in for the retaliation of the family. It's sort of an ingenuous way to disrupt the escalating blood feud if instead of my family responding to your poking out my eye, the government provides the response in a public ritualized way. Then the honor is avenged and the other family doesn't have a specific target to respond to because the government is too amorphous an entity to respond to.

SCHEER: One minute.

DeBOER: The blood feud is averted and now whatever kingdom Hammurabi or the ancient Israelites are making laws for is much more peaceful, predictable, and governable. That's how we got it. And by the way, the eye-for-an-eye business was a mercy, a limitation, a drawing back. It requires that there is a retaliation in an Exodus 21:23 situation, but that that retaliation be limited in the ancient text in Exodus, the ancient Israelite recognized a need to limit the violence. And of course we don't live in that world anymore. We don't even recognize or understand the reasons that those precautions had to be taken into law. The conditions for the government to step in have changed. Now, Senator Lowe mentioned the law in the Torah, which is an interesting turn in the Torah. And in fact, and in fact--

SCHEER: Time, Senator. Thank you, Senator Hunt and Senator DeBoer. Senator Morfeld, you're recognized.

MORFELD: Thank you, Mr. President. I wanted to continue a little bit about my discussion on Medicaid expansion, my amendment, and some of the impacts, I have some studies here, that Medicaid expansion has, particularly on infant mortality rates. A study in the "American Journal of Public Health" found that states expanding Medicaid saw a greater declines in their infant mortality rates between 2010 and 2016. While infant mortality rates declined in both Medicaid expansion and non-Medicaid expansion states alike, achieving the healthy people 2020 objective, a 10 percent decrease in the national rate. Medicaid expansion rates reduced infant mortality rates more than 50 percent greater than non-Medicaid expansion states. So, if we really truly care about the unborn, if we truly care about the innocent, and I don't think we can think about really anybody being more innocent than an infant or a child, then we would actually take action on making sure that Medicaid expansion is implemented the way that it was voted in to by the will

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

Floor Debate
April 25, 2019

of the people. And this notion that somehow what the department is doing with the 1115 waiver, which is basically making it a two-tiered system that has a bunch of different requirements, whether they be work or community service or otherwise, is somehow benefiting that population is completely absurd based on what's happened in other states with very similar systems that were attempted to be put in place or currently are put in place in the states that a federal court has not already struck it down. These put unnecessary barriers to people who would otherwise receive healthcare. And to say that we're going to make this a seamless process for those that are already enrolled or currently enrolling is a bunch of nonsense. The Department of Health and Human Services can't even put together a computer system right with millions of dollars. How do you expect that they're going to seamlessly enroll all these folks and then track all of these work and community service requirements. They can barely keep the employees that they have now because they don't pay them enough. Why? Because we've been squeezing the Department of Health and Human Services dry for years so that the Governor can cut revenue and cut taxes and then go run on it the next year. The 1115 waiver is nothing but an attempt to keep thousands of otherwise eligible Nebraskans off the healthcare rolls. It's nothing but an attempt to delay a law that they've always opposed and always have subverted from the beginning. So for the Department of Health and Human Services leadership to come in here in one of the most awkward hearings I've ever seen in my entire life, and it wasn't even a hearing, it had to be a briefing; whatever the difference that is. But for them to come in here and talk about how they're just so saddened that people would think that, oh my gosh, they're trying to delay and they've been working so hard the last few months. Working so hard? Working so hard to put together a system that has been proven to keep thousands of eligible Nebraskans off the rolls, as if I should be thanking them for that or anybody in the Legislature. We're going to start talking about this and we're going to keep talking about it. And for all those folks that go out there and go, oh well, I mean, these folks, geez, I don't know if they're working or not; and, man, I don't know if they're working hard enough or not. We're going to start bringing them down to the Capital.

SCHEER: One minute.

MORFELD: I'm going to show up at your office with them at your door and you can tell them that they're not working hard enough, while they're taking care of their dying loved one. I'm going to have you look at them and tell them that, oh, this is for your benefit to put you in this

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

Floor Debate
April 25, 2019

two-tiered system that barely works as it is and completely kicks off otherwise eligible people on services that already exist. You can tell that to their face instead of standing up on the floor here and now pining about how much the department cares about Nebraskans by putting these unnecessary barriers in place that lead to their untimely death, lead to their suffering, lead their bankruptcy. And then go around and talk about how your pro-life and you care about the innocent being protected. Thank you, Mr. President.

SCHEER: Thank you, Senator Morfeld. Those waiting to speak: Senator Bolz, Cavanaugh, Kolowski, and others. Senator Bolz, you're recognized.

BOLZ: Thank you, Mr. President. Colleagues, LB44 is literally a life and death issue. And I'm not sure that we're even listening to each other. In previous debates on this issue, the depth of analysis, the solemn attitude, and the way in which this body conducted itself was different. This debate deserves passion, it deserves moral questioning, it deserves serious debate. And I am not suggesting that anyone on this floor is not doing their due diligence by their constituency, but I am rising to add my voice in my way to have a serious solemn debate about LB44 which is an issue where when we push our buttons, it literally means life and death. In 1994, I was 15. I was 15 and the state of Nebraska moved forward with execution of William Otey. And I was too young to have a educated opinion based on the facts and the research about that decision. But my family happened to be headed to a volleyball game that night and we drove past the State Penitentiary on Highway 2. And our community had to be divided by a snow fence because of the way in which the community responded with, frankly, ugliness. So colleagues, the only thing I can do on the floor this morning is to try to bring a solemn analysis based on what I know and what I've learned this debate this morning. And one of the things that I have learned is that both sides of this debate have valuable points that deserve to be heard. It tears at everyone's heart when we hear the impact on victims. Discussion of the severity of crimes matters. And one important point that has been made by people who support the death penalty has been how we keep our correctional officers safe once individuals who are dangerous are incarcerated. But, colleagues, in my mind, in my position, and in the position of my constituents, those concerns are counterbalanced by a number of facts that deserve discussion. One of the things that I think is relevant to this conversation is that analysis done specifically about the death penalty in Nebraska shows the geographic disparity. And this research is a little older, but geographic

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

Floor Debate
April 25, 2019

disparities and the rates that cases advance to death penalty trials are not explained in Nebraska by differing levels of defendant culpability. Death eligible cases in major urban counties are nearly twice as likely to advance in a death penalty trial with the state seeking a death sentence as comparable cases in greater Nebraska. Furthermore, we don't always get it right. In fact, in Nebraska the overall error rate in death penalty cases is 68 percent meaning that courts have found serious reversible error in nearly 7 out of 10 death penalty cases. If anyone would like to see the citation from my source, it's here.

SCHEER: One minute.

BOLZ: I would like to share it with you. These are literally life and death decisions. There are research reports, data reports, statistics, analysis that deserve debate on this floor. I don't support the death penalty because I don't think we are delivering justice through the death penalty. I know that there are socioeconomic disparities, I know there are racial disparities, I know there are urban and rural disparities, I don't think the court system always gets it right, and I don't believe from the moral upbringing that I was raised, nor the moral position that I took when I ran for this office support the death penalty. So what I have to say this morning is on a life and death issue on LB44, I choose life.

SCHEER: Time, Senator. Thank you, Senator Bolz. Senator Cavanaugh, you're recognized.

CAVANAUGH: Thank you, Mr. Speaker. So a couple weeks ago, we had conversation, mostly it was Senator Chambers and Senator Wayne, about the issues of systemic racism in some of our legislation, in the body, in the state, in our justice system, in our public services. The death penalty is, in my mind, the ultimate indicator of systemic racism. You're far more likely to be put on death row if you're black. That is a fact. That is a fact that we all should acknowledge. You are far more likely to be put on death row if you are black. We have an opportunity to address systemic racism. And I think that we should. I think that we should vote for this bill and tell Nebraska that we as a body are going to face systemic racism, we're going to face it down, and we are going to dismantle the system. It's time to disrupt systems. It's time to disrupt systemic racism, it's time to disrupt systemic sexism, something that also is pervasive in this body, in this Chamber. I'm sure that there are those that would love to criticize me crying on the floor because

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

Floor Debate
April 25, 2019

I'm a woman and that's what I do. I view it as a strength. Vulnerability is a strength. It's one of my greatest strengths. I will always share who I am with all of you. That is my gift to you as your colleague and out of respect for all of you I will always share who I am with you, I will be honest, I will be forthright, I won't play games. I take my duties here very seriously. I didn't run one way or the other on the death penalty because it wasn't what people in my district wanted to talk about. I talked about what they wanted to talk about which was Medicaid expansion, 90,000 Nebraskans without healthcare, a state refusing to draw down federal funds for five years, a state that is in a financial crisis refusing to draw down federal funds for five years out of what? Spite? Because a black man was President and wanted to give us the money? We should look at ourselves and ask why we do the things that we do. Look at our hearts and ask why we do the things that we do. There's no reason for us not to give healthcare to 90,000 working Nebraskans. These are people who are working. They make too much money to qualify for Medicaid because they are working. And we aren't giving them healthcare. And that is costing our state. So I stand in support of Senator Morfeld's amendment. I stand in support of Senator Chamber's bill. I hope that everyone in this body will join Senator Morfeld and Senator Chambers and myself in addressing systemic racism and systemic sexism. It's time that we as a body start disrupting the system and start dismantling these horrific things that we have put into place over decades and centuries. We have marginalized black people, we have marginalized Hispanic people, we have marginalized women, and we need to start facing that down and doing everything that we can to do better. I will yield the remainder of my time to Senator Morfeld if he would like it.

SCHEER: Senator Morfeld, 0:50.

MORFELD: Thank you for the time, Senator Cavanaugh. And, you know, I just had a good, off the mike, discussion with a senator about, oh, why aren't you on the Health and Human Services Committee and you can start working toward change in some of these areas? And, you know, it's a good question. There's a lot of committees that I would like to be on and start making some changes. I tried to be on Appropriations my first year, but somebody had seniority and I respect that and I ended up on Education and Judiciary. We only have eight years down here if we're lucky, four at least, to be able to make a change and learn the subject matter jurisdiction of our committees. But I realized very quickly on the Judiciary and Education Committee that if people don't have the basic supports in life, people don't have healthcare, a roof over their head,--

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

Floor Debate
April 25, 2019

SCHEER: Time, Senator.

MORFELD: --decent paying job-- thank you, Mr. President.

SCHEER: Thank you, Senator Cavanaugh and Senator Morfeld. Senator Kolowski, you are recognized.

KOLOWSKI: Thank you, Mr. Chairman. I yield my time to Senator Morfeld.

SCHEER: Senator Morfeld, 4:50.

MORFELD: Thank you, Mr. President; thank you, Senator Kolowski. I realized very quickly on the Education and Judiciary Committee that if people don't have the basic necessities in their life, whether it be a living-wage job, whether it be healthcare, in particular; and a whole host of other supports that come out of the Health and Human Services subject matter jurisdiction, then we're likely going to be dealing them and seeing them in the Judiciary Committee. We're likely going to be setting them up for failure before they're in our K-12 education system. And if people asked me why I'm so passionate about Medicaid expansion, why am I so passionate about making sure that we have affordable healthcare for all Nebraskans. Yes, it's because in my district there are thousands of Nebraskans that would benefit from it. And yes, it's because when I was going door to door and talking to people and they're inviting me into their homes and talking about their lives, they would eventually get down to that common denominator, which was generally their house was going into foreclosure or they were making tough decisions because of unexpected medical benefits. And you know what, most of those people had healthcare. Most of those people had healthcare with \$5,000, \$10,000 deductibles, and, quite frankly, it was pretty much useless because most people in my district, and I bet a lot of your districts, don't have any more than \$500 or \$1,000 in savings. So, yes, it was because of the people in my district, because of the experiences going door to door, but most importantly, it is personal. It is personal because my father and my mother will never retire ever because they had healthcare that wouldn't cover his heart attack. They had to wipe out their 401k, they had to wipe out their retirement savings, they will never retire. They will work until the day they are dead. And you know what, they're the fortunate ones. They're the fortunate ones because they are still

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

Floor Debate
April 25, 2019

able to keep their house, still able to keep a little bit of dignity, still able to keep their job and work. Because I see a lot of Nebraskans both in my district and across the state that are much worse off. I talked to too many people at the door that were literally dying in their homes and they didn't have any healthcare. They couldn't afford it. And the only recourse they had was going to the emergency room. You want to talk about the death penalty? You want to talk about a death sentence? We are doing it every single day to Nebraskans. To the innocent Nebraskans that you all talk about and say you care about on this floor but yet do nothing, nothing when it comes to affordable healthcare, to ensuring they have a high quality of life, to ensuring that they at least get a decent living wage regardless of their work, whether they're a waitress, waiter, or somebody working down at a factory. That's why I'm passionate about this is because I've seen it firsthand in my own family, who is much more fortunate than a lot of the families that I have met going door to door and a lot of the families that have e-mailed me constantly over the last two or three years that I have worked on Medicaid expansion. You know what,--

SCHEER: One minute.

MORFELD: --that senator that I just got done talking to, he came from a good place in talking to me about it. He also stated, listen, we could put another billion dollars into this and it wouldn't solve all the problems. And you're right, it wouldn't solve all the problems. But it would solve some problems. It would help some people. It would ensure that some other Nebraskans would be able to retire and enjoy their grandchildren, enjoy their lives without having the fear of not being able to work and being destitute. That's why not only what we do on the death penalty, but what we do on other bills and say when it comes to preserving life, to protecting the innocent matters because it's about real people. I just ask that we stand on our principles and that we apply them not just to the death penalty but to healthcare policy, to childcare policy, and to living wages. Thank you.

SCHEER: Thank you, Senator Morfeld. Mr. Clerk.

ASSISTANT CLERK: Thank you, Mr. President. LR93 introduced by Senator Howard and others, that will be read and laid over. Amendments to be printed: Senator Friesen to LB149.

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

Floor Debate
April 25, 2019

Additional: your Committee on Enrollment and Review reports LB6, LB356, LB405, and LB524 as correctly engrossed and placed on Final Reading.

Finally, Mr. President, a priority motion: Senator Williams would move to recess the body until 1:30 p.m.

SCHEER: Colleagues, you've heard the motion. All those in favor please say aye. All opposed. We are in recess.

RECESS

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

ASSISTANT CLERK: There's a quorum present, Mr. President.

SCHEER: Thank you. And are there any items for the record?

ASSISTANT CLERK: No items at this time.

SCHEER: Mr. Clerk, we'll return to the first item on the afternoon agenda.

ASSISTANT CLERK: Mr. President, LB44, introduced by Senator Chambers. (Read title.) The bill was read for the first time on January 10 of this year, referred to the Judiciary Committee. That committee placed the bill on General File with no committee amendments. When we left off, Senator Morfeld had a pending amendment.

SCHEER: Thank you, Mr. Clerk. Senator Chambers, would you like to refresh us on LB44?

CHAMBERS: Thank you, Mr. President. Members of the Legislature, this is the bill that I traditionally bring seeking the abolition of the death penalty. It will substitute a life

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

Floor Debate
April 25, 2019

imprisonment. There are other provisions that don't bear directly on the abolition, so I won't go into that. But the discussion this morning covered a lot of points. There was argumentation with reference to the expense, whether or not the statement by the Pope and the church that the death penalty is inappropriate in all circumstances. That doesn't need to be followed by Catholics, I found out, but each person will make that determination. This may be the last chance I will have to speak on this bill, so if there's any way that a vote could be taken I would like to see that done. If that does occur, I would ask for a call of the house and take a roll call vote, and if there are those who don't want to see the vote then it will be easy to prevent that from happening, because after I speak there may be about 25 minutes left. And I don't intend to renew all of the arguments today at this point. But just to refresh us as the Chair told me I would have the opportunity to do, I think I've done that necessarily. So that's all I will say. And thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. I do not see Senator Morfeld to discuss his amendment. And with that, we will go to the-- Mr. Clerk for a motion.

ASSISTANT CLERK: Thank you, Mr. President. Senator Slama would move to bracket the bill until June 6 of this year.

SCHEER: Senator Slama, you're welcome to open.

SLAMA: Thank you, Mr. President. And good afternoon, colleagues. I brought this bracket motion because, looking at the long line of people left to speak at last check, there would be no other way for me to adequately state my piece on what's happened here today. Rise still opposed to LB44. The members of this body know exactly what's happening in debate here, but to the casual viewer of the Legislature it may not be entirely clear. So I wanted to take some time, since it's obvious at this point that we won't get to a vote on this issue of exactly what's going on. Those in favor of LB44 have stacked the speaking order to share their support of the death penalty's repeal, but in doing so they are ensuring they will not have to take a vote on the record on this issue. They support the repeal of the death penalty but not enough to get on the record with a vote. It's a true novelty for me to see a bill get filibustered to death by its supporters who have gotten up to the mike to share how they disagree with the ballot initiative, how the death penalty has been applied in Nebraska and the rest of the United States, or even their religious

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

Floor Debate
April 25, 2019

beliefs that are so ardent that they must vote in favor of the death penalty's repeal. I respect that different people can come to very different and well-informed conclusions on this issue. However, those same senators who claim to so strongly support the death penalty's repeal are the ones who keep-- keep speaking so that they don't have to take a position on this issue through a vote. That's because their courage to take a stand doesn't extend to overriding the voice of Nebraskans. The senators who have spoken on this bill today speak of the seriousness of the issue and how pressing it is that we, as a state, repeal the death penalty but are unwilling to back their support with a vote. That's because the people have spoken and this is a lose-lose situation for many of the supporters of this bill. If LB44 fails, they're on the record as going against the will of the people and the death penalty continues in Nebraska. If they are victorious, they're still on the record as going against the will of the people but they've achieved their goal of repealing the death penalty. However, they then set the precedent that we, as a Legislature, can flagrantly disregard the will of the people in successful ballot initiatives which could trickle down to impact other ballot initiatives, past and future, that they hold very dear. So we're not going to take vote on this today, at last check, because even though these senators are courageous enough to stand up and talk the talk about repeal, they're too concerned with the potential consequences to back that with a vote. To review a point we veered away from today, in November 2016 the voters of Nebraska had the opportunity to decide the future of the death penalty in our state and they spoke decisively at the polls. Over two-thirds of our state's registered voters voted on Referendum 426 to figure out the future of the death penalty in our state; 494,151 Nebraskans voted in support of the repeal of the repeal, in other words, to keep the death penalty. By a 22-point margin and a 173,432-vote margin, we decided to keep the death penalty. Furthermore, 92 of 93 counties voted to keep the death penalty. Nebraskans have spoken on this issue and their response was decisive. This morning the voice of Nebraskans was undermined on this floor through allegations that the referendum was unfairly influenced by a state elected official writing a check in support of the death penalty's retention. That point ignored the fact that the losing side, Retain a Just Nebraska, spent \$2.3 million on their campaign while Nebraskans for the Death Penalty spent \$538,000. Since I've got ten minutes here and we've pretty well fleshed out the funding sources of Nebraskans for the Death Penalty, let's take a gander where the \$2.3 million for Retain a Justice Nebraska, who, if they'd like to argue that voters were ill educated or confused on their votes, totally mismanaged that \$2.3 million came from particularly the out-of-state sources. These numbers come straight from this group's Schedule B on the Nebraska

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

Floor Debate
April 25, 2019

Accountability and Disclosure Commission, and can be looked up by anyone watching this at home. First up, we've got Equal Justice U.S.A., which has donations to Retain a Just Nebraska of \$23,700 and-- \$23,748.18; \$17,436.67; \$24,278.99; \$21,940.95; \$19,209.90; \$15,911.47; \$11,937.17; \$10,345.67; \$15,398.83; and \$611.69. Equal Justice U.S.A. is based out of Brooklyn, New York, has a total of \$119,000-- \$119,634.57. Next we turn to the Open Society Policy Center based out of Washington, D.C., with contributions of \$125,000, \$125,000, and \$250,000, a total of \$500,000. Next up is the Proteus Action League based out of Amherst, Massachusetts. We've got contributions of \$400,000, \$100,000, \$250,000, for a grand total of \$750,000. And the Civic Participation Action League, last but not least, had contributions of \$250,000 and \$250,000, for a total of 500,000. That is a grand total, just from those sources of \$1,869,634.57 from out-of-state sources. Let's just note here that the opposition-- so the movement to keep the death penalty in Nebraska-- spent just \$538,000 on their campaign. In spite of all of the money spent on this campaign, so Retain a Just Nebraska outspent the movement to repeal the death penalty by a margin of nearly five to one. In spite of all that, 92 of 93 Nebraska counties voted to keep the death penalty. Two-thirds of our registered voters took to the polls to have their say and the results were decisively in favor of keeping the death penalty. I'm opposed to LB44, but I agree with Senator Chambers. Show me I'm wrong in what I've just discussed on this turn at the mike. Have the courage to turn off your lights and be accountable to your constituents by taking a position, whatever it may be, with a vote. Thank you, Mr. President.

SCHEER: Thank you, Senator Slama. Returning to the queue, those wishing to speak: Senator Moser, DeBoer, Lathrop, Pansing Brooks, and others. Senator Moser, you're recognized.

MOSER: Good afternoon. I'll be brief. Earlier in the discussion it was said that the Legislature doesn't care about families in need and that people need services they're not getting and children are-- are at risk of dying. We currently have higher per capita tax rates than our surrounding states. The budget is around \$5 billion, and 35 percent of it goes to HHS in one way or another. So \$1.75 billion is already being spent in HHS in its various programs. What number would solve the deficiencies in care for these needy families? We could double that \$1.75 billion and not solve everybody's problems. We need to have a balance between what we spend and the

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

Floor Debate
April 25, 2019

outcomes we expect, and I think rather than worrying about-- or rather than trying to solve the problem by spending more money, I think we need to worry about how we spend it. Thank you.

SCHEER: Thank you, Senator Moser. Senator DeBoer, you're recognized.

DeBOER: So I would like to kind of continue what I've been talking about with the development and history of, I don't know, penalty systems, that sort of thing. We know that the-- the Hebrew Bible Old Testament conditions no longer exist for keeping the death penalty, but then we turn to the New Testament. We can see a further development of the law on violence. In the New Testament in Matthew, for example, 5:38, Jesus says: You have heard that it was said an eye for an eye. This is touching back to the other piece. You have heard that it is said and eye for an eye, a tooth for a tooth, but I-- I say to you do not resist an evildoer. But if anyone strikes you on the right cheek, turn the other also. No distinction between lawful or unlawful; always turn the other cheek. Now that was a radical development to deal with violence in the community, to have no retaliatory response whatsoever. There are many functions of a correctional system, specific or general. Deterrence, which means preventing an individual from recommitting a crime and discouraging others from doing it. There's rehabilitation. We try to do that when we reform folks and keep them from recidivation. But retribution, vengeance, that's the one we're talking about here. Paul is very, very specific about that. In Romans he writes: Beloved, beloved, never avenge yourselves but leave room for the wrath of God for it is written, vengeance is mine. That's from Deuteronomy. I say all of this to show that historically speaking, as we can trace, the law was getting further and further away from retaliatory or attributive functions of the law, but also, as an aside, to just briefly show that there isn't really a way to argue, so far as I can see, for a Christian basis for the death penalty or any other retaliatory function of punishment within the law. In fact, I would argue perhaps there's an argument that we should be arguing against it. In an age when we have reliable incarceration of dangerous individuals, it doesn't make sense to me that we should using the same tool of retaliation as a government, which was initially in place to prevent escalating violence based on a particular world view that we don't even recognize anymore. There may be other arguments, but from a historical perspective the foundational reasoning has changed. It just doesn't exist anymore. And I would be remiss if I didn't point out that we just commemorated, those of us who celebrate Easter, commemorated on Friday the wrongful death of Jesus. The one that I call the anointed one, the messiah, the Christ, that very

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

Floor Debate
April 25, 2019

Jesus, we just commemorated his being put to death by the government, not so very different from our own, wrongfully, for political reasons. Colleagues, for me, if that one was wrongly put to death by a government, I wonder how many more people have been wrongly put to death. Thank you, Mr. President.

SCHEER: Thank you, Senator DeBoer. Senator Wishart, you're recognized.

WISHART: Thank you, Mr. President. I-- I wanted to get back to the discussion around the-- the actual merits of this policy. I was looking up some statistics about our death penalty since we reinstated it in the United States. For every ten people who have been executed since the death penalty was reinstated, one person has been set free. For every ten people who have been executed since we have reinstated the dealt penalty, one person has been set free. So if you look at those statistics, the amount of people who have been exonerated from death row because new evidence found them innocent, that means that any honest proponent of this bill, excuse me, any honest propo-- opponent of this bill and any proponent of capital punish must face the harsh realities that innocent people will and have been executed under our system. It cannot be a perfect system. With that, I'll yield the rest of my time to Senator Morfeld.

SCHEER: Senator Morfeld, 3:40.

MORFELD: Thank you, Mr. President. Thank you, Senator Wishart. I think Senator Chambers is probably up next. And you know, there's a lot of mixed feelings about this debate. I've already said enough on the floor about how I feel about the people who are proponents of the death penalty talk about innocent life, claim to be pro-life, and then oppose basic healthcare, basic rights for other individuals. And I think it's pretty shameful that people that often hide behind other votes and other filibusters so they don't have to be on the vote card or a record vote are coming up and talking about other colleagues who, quite frankly, who, quite frankly, are concerned about what the true purpose of some of the motives are in this body among some colleagues who want votes sometimes and don't want votes other times and take advantage of the certain rules that have been created and norms in order to do so. We'll be talking a lot more about this and Medicaid expansion in the future. But with that, I yield the rest of my time to Senator-- to the Speaker.

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

Floor Debate
April 25, 2019

SCHEER: Thank you, Senator Morfeld and Senator Wishart. Seeing no one in the queue, Senator Slama, you're welcome to close.

SLAMA: I wish to withdraw my motion.

SCHEER: Without objection, so ordered. Seeing no one in the queue, Senator Morfeld, you're welcome to close on AM1495.

MORFELD: Thank you, Mr. Speaker. I think I've said everything I was going to say. I've been an ardent proponent of ending the death penalty. I will remain that way. And I respect that Senator Chambers wants the last word on his bill.

SCHEER: Senator Morfeld, were you withdrawing your motion or are you wanting [INAUDIBLE]?

MORFELD: I withdraw the motion.

SCHEER: OK. So ordered. Seeing no-- Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Can you tell me how much time is left on this debate, please?

SCHEER: Nine minutes.

PANSING BROOKS: Oh, good. OK. So I just wanted to stand and say something about what's happening here on the floor. I don't appreciate the fact that-- and I will not stand for the fact that the conservatives I know want a vote on this and we are not agreeing to a vote on this because of what the conservatives have done here today and the machinations that have gone on today or those that are in favor of the death penalty have done today. I want to make clear that what is about to happen is in honor of and at the request of Senator Chambers, and I am not going to agree to the fact that this vote is going forward and I don't want anyone to walk out of this Chamber because you think that you've somehow beat us at this game. This game is coming to this end because of one person and one person only, and that is Senator Chambers, who has

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

Floor Debate
April 25, 2019

fought this fight for 42 years, I believe. This may be his last chance to bring this bill to the floor because he has this year and next year. And I appreciate and we all have agreed to stand down, Senator Morfeld, Senator Wishart, Senator Vargas, all sorts of people, Senator DeBoer, Senator Hunt have all agreed to stand down. We could have taken it to the three hours without the vote. We are not scared of this vote, if you think that's happening. And, yes, there were three moderate Republicans who kicked out of this body because of the vote. And if you feel proud of that, you shouldn't. Senator Seiler, Chair of the Judiciary Committee, a fine, upstanding person that was kicked out and money was spent against him because of that vote. Senator Jerry Johnson, who was not really very moderate, but because of what he learned and heard for hours of debate, because we went the nine hours or whatever it was, we went the full time, he was-- money was spent against him. So-- and we lost one other that my mind is going-- who? Oh, yeah, and Senator Al Davis, again, another conservative that also had money spent against him. So I know how you're all going to vote and I know, gosh, we're going to have these people vote and then we can have more money spent against the people sitting in this body. We understand what you're trying to do and it would not happen except for one person here. So with that, I-- I stand down, and I am not happy about it because of the way many will attempt to couch what is happening here today, but I wanted to stand up and make it clear that this is not happening because of any efforts that are going on except for the efforts of Senator Chambers. And with that and with all due respect, I'm turning off all future lights. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Pansing Brooks. Seeing no one left in the queue, Senator Chambers, you're welcome to close on LB44.

CHAMBERS: Mr. President, members of the Legislature, Senator Slama and the others, you think that you've won today. There were not the votes here to move this bill and we all knew it and I knew it. There are people whose feelings are hurt for one reason or another. I don't have to kowtow to anybody and I won't. John Kennedy's fathers told him don't get mad, get even. I told you all what I saw happening this morning and that the rest of the session you're going to deal with me. My feelings don't get hurt, but I get indignant. And mine doesn't blow over in 24 hours. If there are some of you who feel like these so-called conservatives, so-called "Repelicans," so-called Catholics, so-called Christians have won, it's up to you to let them win but the session can belong to us, I'm going to change that. The rest of the session can belong to me. You're going to

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

Floor Debate
April 25, 2019

find out what I'm made of. And all this little attempt, espec-- Senator Slama, somebody told me she was smoking a cigar with Lautenbaugh and some people. I'm saying it on the mike because that's what I was told by somebody who ought to know. See, when you send children into an adult environment, they behave like children because that's what they are. And it's up to adults to show them that this is not playtime. This is not the sandbox. You all will express your indignation, your outrage or whatever it is, and that's the end of it. This afternoon we'll see who's smirking, Senator Slama, and as the session goes forward. There are going to be some bills that will go the full three hours. They may have 33 votes. Then when you get to your so-called property tax bill, I don't think that has 33 votes no matter how you slice that. There's some from the rural areas who say you want property tax relief. You may not get it. Now what you can pray for is that I'll get sick and I won't be able to come here. But we're going start this afternoon working our way through the rest of the session. And Senator Pansing Brooks was correct. You "Repelicans" could not have compelled anybody to do anything. I wanted a vote. So if you think you've got that power, Senator Slama, stop me as I begin to do what I do. And since the Governor sent you here, I guess as a ringleader, tell him to stop me. He can pull that with some of these other children, Senator Lowe, but it won't work with me. And I hope Senator Dorn is not going to let them intimidate him. Senator Dorn, you'll have at least 1 person, out of that 40 or whatever it was who voted for your bill the first time around, more determined to vote for it now. Did you say time?

SCHEER: No, Senator, 1:20.

CHAMBERS: Thank you. The Legislature at some point has to stand up and insist on being respected. The Governor has no respect for you all in any regard. He doesn't respect Senator Linehan, doesn't respect Senator Bostelman, sure doesn't expect Senator-- respect Senator Lowe or Senator B. Hansen, Senator Brandt, none of you.

SCHEER: One minute.

CHAMBERS: When he casts aspersion on the Legislature, he's talking about all of you all, and all of you all are expected to knuckle under and I expect for you to knuckle under too. I know that my work is going to be hard the rest of the session. This particular vote, this particular bill

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

Floor Debate
April 25, 2019

will bring into practice what old man Kennedy said, don't get mad, get even. And I'm going to show you that I know how to get even, and I'm going to see how you all stand up to that. Mr. President, I will ask for a call of the house and roll call vote.

SCHEER: Thank you, Senator Chambers. There's been a request to place the house under the call. The question is, shall the house go under call? All those in favor please vote aye; all those opposed vote nay. Please record.

ASSISTANT CLERK: 31 ayes, 3 nays to place the house under call.

SCHEER: The house is under call. Senators, please record your presence. Those on unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Groene, would you check in, please? Senator Hilkemann, would you check in, please? Senator Hilkemann, would you check in, please? All members are present. Mr. Clerk, a roll call vote. In regular order, Senator Chambers? Senator Chambers, regular order? OK, roll call in regular order, please, Mr. Clerk.

ASSISTANT CLERK: (Roll call vote taken.) The vote is 17 ayes, 25 nays on advancement of the bill.

SCHEER: LB44 is not advanced. Next item, Mr. Clerk. Raise the call.

CLERK: Mr. President, with respect to LB177, the bill is on Select, has been considered. When the Legislature left the issue, Senator Erdman had pending FA50.

SCHEER: Senator Lindstrom, could you refresh us on LB177? And then I will go to Senator Erdman on his motion.

LINDSTROM: Yes. Thank you, Mr. Speaker. LB177, which we discussed on Tuesday, extends the bonding authority for the Papio NRD, the 1 NRD out of the 23 that has the bonding authority. This simply-- originally LB177 would extend it ten years. We have-- there's an

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

Floor Debate
April 25, 2019

amendment in the committee to take it from ten years to five years. Again, this doesn't give any more taxing authority, which is the 45 cents per \$100 of evaluation; simply extends the bonding authority for another five years. So I think we'll be on this for quite some time and be happy to-- to answer any questions and go into a little bit more detail as we move through this bill. Thank you, Mr. President.

SCHEER: Thank you, Senator Lindstrom. Senator Erdman, you're welcome to refresh us on your floor amendment.

ERDMAN: Thank you, Mr. Speaker. And good afternoon. Let me bring you up to speed what FA50 is. FA50 is to sunset the bonding authority by the Papio NRD. As I had shared before, as we discussed this bill, their current mill levy is 3.7-- 3-- 3.7594 cents, and if they were to go to the maximum 4.5 cents, that would be an additional almost \$5 million. Their beginning balance is \$25 million. Their investments is \$50,000. The treasurer has a balance of \$475,000. As I said earlier, if they raise their mill levy to 4.5 cents, it would be another \$5 million. They have a increase annually of about a 4 percent valuation increase, which is another million. And they have recreational trails of \$911,000. The bonding authority that they collect for is \$4.4 million. The state General Funds is \$2,805,000, and the Watershed Cash Fund is \$1,534,000, for a total avail-- available to them of almost \$40 million. They have a carryover in the fund that they're going to build the levees with of over \$9 million that they have for Offutt Air Force Base levees. They have not received yet the \$13.7 million from the state, but they will. And when they make the last contribution from those involved in the levee, it will be nearly \$25 million to fix the levee. So you will hear from many that this is an issue with Offutt Air Force Base, which it is not. And so, consequently, FA50 is just sunseting the bonding authority by the Papio NRD, which is the only one that has bonding authority as was intended ten years ago when it was put in place. Thank you.

SCHEER: Thank you, Senator Erdman. Returning to floor discussion, those waiting in the queue: Senator Wayne, Hughes, McCallister [SIC], McDonnell, and others. Senator Wayne, you're recognized. Senator Wayne, you're recognized.

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

Floor Debate
April 25, 2019

WAYNE: Thank you, Mr. President. Colleagues, I wasn't here this morning. I had court. And when I walked in I just-- and I support LB177. I guess what I'm trying to say is we-- we got elected to do a job. And far too many times people outside of this body continue to influence what goes on in this body. And I guess part of my frustration just the last ten minutes, as many of you know, I've never got the opportunity to hide from a vote; that my freshman year Senator Hilgers' bill I was the 33rd vote. I had postcards and a baby doll sent via mailbox and on my porch step of-- of kids being blown up from gun violence and more to me like bombs, to a point that our four-year-old daughter couldn't go out and get the mail anymore. And do you think that stopped me from voting? And I understand the politics. I understand the mailers. But we as a body have to figure out what we're going to do to lead the state. We are at a crossroads. We are at a crossroads in the sense that it took over 100 years to usher-- for this state of Nebraska to reach a million people. No other state has really moved that slow. And we are actually having a net loss, if you subtract out immigration. We are losing people in our state. And at some point somebody has to lead. At some point, we have to look inside this body and build a coalition that maybe not everybody is going to be happy with. Maybe not everybody is going to be happy with the property tax relief that comes out of Revenue. Not everybody is going to be happy with my hemp bill, Senator Lowe. Not everybody is going to be happy with small cells. But at some point we have to put politics aside and say, let's vote. And I will tell you that that last vote I gained a lot more respect for some individuals in here who stood up and vote because of what I went through my first year. And not too long ago, just this year, I was 33 again on the right to farm bill. I will take hard votes, and it could be used against me, because I was elected to get something done. And I just want to put that bug in our ear as everybody is now done with that vote and people are coming back in and thinking about things that if we continue to allow people outside of this Chamber to influence what goes on in this Chamber, then, one, we won't get anything done; and more importantly, our state is going to get left behind. So just think about that as we move through the rest of this session and the rest of this day. If I lose my reelection because of a vote I took, I can stand by that. I'm not political in that sense. But at some point we all have to stand up and figure out, what are we going to do? We have some tough issues coming up, including medical marijuana, that we are going to have some hard debates and we're going to have some hard fights. But it should come from within us, not outside. And I hope we really get to that point where we are working with each other and not worrying about what people outside

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

Floor Debate
April 25, 2019

the glass door are saying to us. I'm not just talking about the lobby. I'm talking about the political machines and I'm talking about everywhere else.

SCHEER: One minute.

WAYNE: With that I yield the rest of my time back to the President.

SCHEER: Thank you, Senator Wayne. Senator Hughes, you're recognized.

HUGHES: Thank you, Mr. President. Good afternoon, colleagues. I want to thank my legislative counsel, Laurie Lage, for the Natural Resource Committee. This LB177 came through our committee and it did-- it did pass out. We need-- I wanted to make some things clear about exactly what this statute that allows the Papio NRD to have bonding authority. There are significant restrictions in statute on how this NRD can use bonding authority. The purpose of the bonding authority can only be used for design, rights-of-way acquisition, and construction of multipurpose projects and practices for storm water management, including flood control and water quality. The statutory limitations to use bonding include: two-thirds of the board of directors of the NRD must approve; bond debt service must fit in with the NRD's statutory property tax mill levy of 4.5 percent-- 4.5 cents per \$100 of valuation. The NRD can never exceed its 4.5 percent mill levy. So they have to stay-- if they get one penny for bonding, it has to be within their levy limit. Projects with more than 400 surface acres of permanent pool are not allowed. Projects with more than 20 surface acres in permanent pool must provide public access. Affected county boards can pass a resolution stating disapproval of a project greater than 20 surface acres within-- within its exclusive zoning jurisdiction before bonds are issued or funds expended. If the resolution passes, no bond proceeds may be used for the reservoir or water quality basin projects greater than 20 surface acres. Bond proceeds are not to be issued for combined sewer separation projects. Bonds may only be issued for projects where cities and counties have adopted zoning regulations that comply with state and federal flood plain management rules and regulations. Bonds may not be used to fund projects in a city or county located within the watershed containing a metropolitan-class city which is party to an Interlocal Cooperative [SIC] Act agreement unless such city or county has adopted a storm water management plan. These are the restrictions that are put on the Papio if they want to bond a

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

Floor Debate
April 25, 2019

project for flood control or water quality within their jurisdiction. There's been a lot of misinformation against-- put out by those who are opposed to this bill. And I want to make it very clear that the one penny that they can bond has to be within their levy limit. They have the authority to go to a second penny for bonding with two conditions. It has to be under their levy limit and they have to go to a vote of the people for that second penny. That's very, very important. A lot has been made that, well, there's no flooding happened in the Papio Creek in the last disaster that happened this spring so therefore they don't need to do any more. Is what we saw this spring the worst flooding that will ever happen in Nebraska? I sure hope so.

SCHEER: Excuse me, Senator. (Gavel)

HUGHES: Thank you, Mr. President. But I don't believe, nor should any of us believe, that's the worst disaster that we'll see. We need to be prepared. They have shown that they know what they're doing, and they have gotten better with it over time. When they came before my committee and talked about this, we had directors who were there and testified in favor of that. We did cut them back from ten years to five years. The manager assured me that they can get done whatever they need to do within the next five years to complete their task. But we have given the NRDs of this state certain things to do. Let's let them do it. Let's quit trying to micromanage. This is like the federal government coming to Nebraska and saying, you know, you fix this highway over here, you don't get to fix that one. We don't like that. We don't like top down. Let's not do it in this state. Thank you, Mr. President.

SCHEER: Thank you, Senator Hughes. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. Speaker. Good afternoon, colleagues. I'm probably one of the few people in this body that had experience with flooding on the Papio. In 1965, we had a rainstorm similar to what we experienced here in Nebraska earlier this spring-- a big, big rain. I think it was eight or nine inches of rain. And I have to tell you that all of Westgate, which is around 84th and I-80, was flooded, that whole area. And part of my legislative district, number of the homes were flooded as well. Also there was a couple other areas that were flooded. And thanks to the NRD and the work they've done with channel control and the lakes that they've installed, we aren't having that problem now, even with all the rain that we had this spring. I will

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

Floor Debate
April 25, 2019

tell you, given my 30 years' experience on the MUD Board that the Papio NRD are responsible stewards of state money and the board-- and the money that they-- they get from the levy-- good bunch of representatives, technically competent, and it's a responsible board. You know, they-- they're good stewards of the money. And I think it's important for us to give them the latitude and let them do their job. With that, I would yield the balance of my time to Senator Lindstrom.

SCHEER: Senator Lindstrom, 3:20.

LINDSTROM: Thank you, Senator McCollister. I didn't get a chance to talk a lot on Tuesday about some of the issues, concerns that have come up. Of course, one of the pictures that had been sent out was dealing with the Bennington Lake which I don't disagree with-- was probably not utilized in the correct manner. But I would like to address what has taken place to correct that. In 2009, we did change the law and so the Papio NRD is not currently building any reservoir in conjunction with development. The entire reservoir area around is dedicated to our public property. Bennington Lake was constructed by the NRD in conjunction with the developer. This type of arrangement will not, I repeat will not be replicated in the future. And that was due to a bill that was passed again in 2009 that provides 100 percent public access for all districts prior to any reservoir projects. Now that can be found in Section 2-3266.11, and I won't read the statute. But I do know that that had been a concern that had come up and a picture sent out. So I just want to let everybody know that that cannot be replicated under law. I did pass out a few handouts. And as time permits, we can kind of go through each one. The first one I handed out dealt-- deals with the Papio NRD response to the e-mail on April 22, 2019, from the Papio Valley Preservation Association. Number two is a 2019 adopted budget from the Papio-Missouri River NRD and deals with the unassigned fund balance. And I will get into an explanation here as I go through the rest of the list. Number three, there's a legal opinion on the NR-- Papio NRD authority to increase levy taxes. There's a four-- number four is a letter from Mayor David Black. Of course, the Papio NRD does affect Sarpy County as well. And with Sarpy County being the fastest growing county in the state, it is important that we are planning ahead and protecting those areas for flooding just due to the fact of the population growth and business growth in those areas. If we don't take care of that, the repercussions could be very, very costly not only for people but also monetarily with homes, businesses,--

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

Floor Debate
April 25, 2019

SCHEER: One minute.

LINDSTROM: --and the economy as a whole. Then five is the time line of the 2019 flood, and you can go through and see the actions that were taken. I understand that this is-- this is a little bit of a hot button issue, but I think most people realize that what the Papio NRD has done over the last number of years did help to insulate Omaha and the surrounding areas from significant flooding that did occur in other places. And we need to be proactive and through this process allows the Papio NRD to remain proactive as that area expands further to the south into Sarpy County. So I'll have a little bit more time on the mike to go into the budget and talk about why it is that-- how it's structured and to talk but the misnomer that the \$26 million is just sitting out there and there's a big cash reserve just sitting out there.

SCHEER: Time, Senator.

LINDSTROM: Thank you.

SCHEER: Thank you, Senator McCollister and Senator Lindstrom. Mr. Clerk.

CLERK: Mr. President, very quickly, thank you. Enrollment and Review reports LB130 and LB130A to Select-- to Final Reading, excuse me. And Mr. President, Senator Dorn would move that LB472 become law notwithstanding the objections of the Governor. That motion will be laid over at this time. That's all that I-- I'm sorry, one final thing, Mr. President. Judiciary will have an Executive Session at 2:30; Judiciary Committee at 2:30 in Room 2022.

SCHEER: Thank you, Mr. Clerk. Returning to the floor discussion-- those waiting in the queue: Senator McDonnell, Crawford, Lindstrom, Kolowski, and others. Senator McDonnell, you're recognized.

McDONNELL: Thank you, Mr. President. Thank you, Mr. President. We're talking about flood protection. We're talking about the NRD. Six weeks ago we all know how much this state, the people that we represent, suffered because of flooding. We're talking about a five-year extension

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

Floor Debate
April 25, 2019

on the bonding authority. I've heard \$26 million. They've got \$26 million sitting over there. Why aren't they spending it? Senator Lindstrom, would you yield to a question?

SCHEER: Senator Lindstrom, will you please yield?

LINDSTROM: Yes, I will.

McDONNELL: Can you explain to me how this \$26 million in general cash is sitting over in the NRD?

LINDSTROM: Well, the-- I can go through what the cash reserve if you don't mind me using--

McDONNELL: Yeah, that's fine. That's what I'm asking you to do.

LINDSTROM: OK. And that was something that I was going to get into in number two but the statements that have been made by senators about the Papio NRD of unassigned fund balance is cash available for expenditure, and that it holds \$20-plus million in cash reserve. And the NRD does not hold \$20 million-plus in its general cash reserve. The NRD audited financial statements-- and you can see the financials that I sent out-- are not prepared on a budgetary or cash basis.

McDONNELL: Thank you.

LINDSTROM: Total fund balance shows on a modified actuarial, and we down here talk about actuarial numbers all the time, particularly in Retirement, not the budget that we typically deal with in our houses-- households. The balance sheet is basically what remains after the liabilities are subtracted from the assets. The assets in this context include both cash on hand, prepaid expenses, and the amounts receivable for property taxes and grant revenues. When the Papio NRD carried over \$11,000,677 in change from fiscal year 2018-2019, it was-- that was not restricted, committed, or assigned to a project as the statement date of June 30, 2018. The board adopted the fiscal year 2019 budget in September 2018 and that's the disconnect a little bit on this is that there is some budget-- there's budgets that happen in June of the fiscal year with a lot

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

Floor Debate
April 25, 2019

of the assessed values happening and the board voting on it in September. So some of that-- times that money is rolled over. Long story short, the money that is in there could be deemed in there as far as cash reserve is already dedicated to projects. There is-- the only thing that is in there is operating expenses for-- which is about \$700,000 to be used as monthly normal expenditures. And I can get into a little bit more on that when I have a little bit more-- my time.

McDONNELL: Thank you, Senator Lindstrom. So we had the flood six weeks ago. It's been mentioned about Offutt Air Force Base, \$30 million levee project, wasn't completed; \$350 million of repair. A third of the base was damaged. These are important projects. The work the NRD does is important. It's important today and it's going to definitely be important tomorrow to all of us. I don't think we can lose focus on the idea of this is extending the bonding authority by five years. This is important work they're doing. They're responsible. They're elected. Let them do their job. Thank you, Mr. President.

SCHEER: Thank you, Senator McDonnell, and Senator Lindstrom. Senator Crawford, you're welcome-- you're recognized.

CRAWFORD: Thank you, Mr. Speaker. Good afternoon, colleagues. I rise in support of LB177 and I want to talk about really two features of my district. My district does include Offutt Air Force Base. And as we know, that is a key economic driver in the state as well; so it's not important just to my district but to all districts in the state. And we know that more work needs to be done. We've already in this body committed money to the work of rebuild-- of increasing the levees around Offutt Air Force Base. But the extension of the bonding authority is still needed to timely complete those levee improvements around Offutt Air Force Base. Unfortunately due to the extensive March flooding, the Corps of Engineers has now given a preliminary estimate of an additional \$5 million to \$10 million of extra work that needs to be done to the levee system. The flooding was extensive. It submerged part of the airstrip and inundated dozens of the buildings in one of the nation's most important Air Force bases. And reports say that the flooding submerged as much as a third of the base, closing down the runway and halting flight operations. It will be months at least before the base recovers fully and returns to normal operations. So NRD representatives involved in the project know that the flooding likely will cost many times more to repair than it would have cost to prevent, as several people

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

Floor Debate
April 25, 2019

have made the point on the floor already. Sarpy County is also rapidly growing and rapidly developing. And so one of the key reasons why the bonding authority is needed now is that development is occurring so quickly. And in order to manage flood control, it's critical that the NRD can purchase properties before they get developed. And I just have an excerpt from a letter from Mayor Black, mayor of Papillion, also from Sarpy County that indicates that if the bonding authority is not extended and the Papio NRD cannot continue the work at the pace they have, then the natural result will either be development outpaces the NRD or for self-protection we begin to slow down and say no to development. We cannot allow development to outpace the NRD. So the logical choice that we would be creating is the protection of existing residents, infrastructure and investment is to slow down economic development which is not good for the state. So both for the needs of making sure that we're protecting Offutt Air Force Base and so that we're protecting and allowing and encouraging development in one of our fastest growing counties in the state, I urge your support of LB177 and I would yield any of my remaining time to Senator Lindstrom.

SCHEER: Senator Lindstrom, 2:10.

LINDSTROM: Thank you, Senator Crawford. One of the handouts that I passed out deals with the legal Opinion that we received and I'll just-- I'll read this. Nebraska statute 2-3226.10 states that such special bonding levy is includable in the computation of other limitations upon the district's tax levy and shall not exceed 1 cent of each \$100 of taxable valuation [INAUDIBLE] and all taxable property within its district. The language of the statute makes clear that the levy must be included within the limitations of the district's tax levy and does not provide additional authority above the tax mill levy, which again I just want to remind everybody is 45-- 4.5 cents per \$100 of valuation, which currently is at three and three-quarters cent currently. And I do want to point out that at this stage and at this point there are no plans or any other projects that have been in the works or where this is going to be utilized. This, again, is just giving them the extra time and tool in the case they need to do it.

SCHEER: One minute.

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

Floor Debate
April 25, 2019

LINDSTROM: And there are a lot of different projects that could come up because of the expansion throughout the geographical region of the Papio NRD. The statutory limitations currently applies to the Papio-Missouri Natural Resource District and would not be increased by the enactment of LB177. So I just want to make that clear again. We're not increasing taxes. And with the levy authority that they're utilizing right now, don't have any plans to increase that levy. This simply expands the bonding authority for another five years with the sunset date this year. And I just want to again reiterate I am opposed to FA50 and would appreciate your red vote on that amendment.

SCHEER: Thank you, Senator Crawford and Senator Lindstrom. Senator Lindstrom, you are recognized.

LINDSTROM: Thank you, Mr. President. A lot of-- a lot of questions did come up again that I will address. There was-- the Papio NRD had a response to an e-mail that was sent out April 22, 2019, from the Papio Valley Preservation Association, who is the main group opposed to this particular bill. I do want to point out one of the main things because folks that live in Bellevue and Sarpy County, you know, people talk but the urgency of this bill and why-- why do we need to extend this bonding authority. And so the argument would come up, well, why-- what's the hurry for the advancement of the bill? The Corps of Engineers is doing a study that will be ready this time next year and likely approved in 2021 dealing with the Missouri River and the bonding authority and dealing with the levee on the river. And I would just argue that time is of the essence as demonstrated by the historic and catastrophic floods that did occur this year. The longer you wait, the more risk and exposure you have to life and property. Perfect example is the Missouri River levees had been built just a few years earlier. A \$30 million project would have saved the U.S. Air Force and taxpayers over \$350 million due to damages alone. For every three years that a project is delayed, the cost and loss benefits double. Essentially what we're talking about there is in construction costs. Anytime you wait on projects, whether you're building a house or doing these types of updates to the levees or protecting the folks, cost of doing business, cost of those goods continually goes up with inflation. So the sooner we can have those dollars allocated to the projects that are most necessary is a better way to go. With regards to the Papio NRD and being the only NRD with bonding authority, couple this with their power of eminent domain and opponents are left helpless. I would like to point out that the NRD in the past,

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

Floor Debate
April 25, 2019

present, and future will continue to use eminent domain as a last resort and extremely sparingly. It is not anticipated to be utilized at all in the acquisition and construction of District 6 priority reservoir sites. And in fact, the district has over \$12 million in voluntary land owner purchase agreements that it cannot execute because of lack of funding. And so going back to the budget, when opponents point out that the NRD either has \$11 million or whatever might be in the future, oftentimes those projects are more expensive than what they have. And so oftentimes they will carry that reservoir or reserve, excuse me, reserve over to help fund a project by building up a little bit of cash reserve to facilitate that project. And so they're always planning ahead. There are projects that are 5, 10, 20 years out and trying to look at projecting what needs Nebraska will have to look at as far as geographical location, population growth, and protecting those areas. And so again, I think that the Papio NRD has done a fantastic job over the last couple of years of doing the necessary planning and being fiscally responsible in the way that they have conducted and brought about safety when it comes to the flood plains and flood control in their area. There is another argument that says LB177 will continue to increase property taxes as evidenced by past performance.

SCHEER: One minute.

LINDSTROM: The Papio NRD has reduced or kept its mill levy at the same for 13 out of 14 years. The NRD has increased its actual property tax taking by an average of 3.1 percent a year alone for over the last ten years. Papio NRD would place its fiscal record against any other public or government entity and-- in the state of Nebraska. I think with the hearing last night that was pretty evident in comparison to what they've done. They've been fiscally responsible in staying under, significantly under the levy that they're authorized to utilize. I know my time is wrapping up, but we'll have plenty more time to discuss this issue as we move through the time. So thank you, Mr. Speaker.

SCHEER: Thank you, Senator Lindstrom. Mr. Clerk for motion.

ASSISTANT CLERK: Mr. President, Senator Erdman would move to bracket the bill until June 6, 2019.

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

Floor Debate
April 25, 2019

SCHEER: Senator Erdman, you're welcome to open on your bracket motion.

ERDMAN: Thank you, Mr. Speaker. Senator Lindstrom, I listened to your comments and I will give you this. The NRD has done a good job in protecting from flooding and there was no flooding in that NRD except for the levees, which wasn't their fault. It was because the Corps didn't get it done in time. One thing that we haven't talked but that needs to be mentioned. This is giving the bonding authority to the NRD for another five years. What hasn't been said is how long-- how long do those bonds run? Those bonds run for 30 years. So just because we're going to sunset this bill, this opportunity for bonding authority, doesn't mean that the bonding obligation is going to go away from the property tax. That's not the case. So if you give them another five years, they will include bonds that could run for 35 years from today. Because if they put a bond in place five years from now, it will run for another 30 years. This is a property tax increase. I don't know what planet somebody is-- rock somebody is living under to think that you can have bonding authority in place and it doesn't increase property tax. This is foreign to me. I don't understand that. So we talked about the levees at Offutt, and I have their financial information here. And their operation reserve for the levees currently stands at \$9,168,000. And Bellevue, Omaha, and Sarpy County make a contribution annually to that fund. And when that fund is complete, and it's going to be complete soon because it was-- this is three of the four years, plus the \$13.7 million from the state, that's going to be \$26 million. So Offutt Air Force Base is going to be taken care of. And Senator Lindstrom also mentioned that they've seen the errors of their ways and they used to develop dams for economic development. And now they've understood that maybe they shouldn't have done that, and so now they're going to say going forward we're going to do it right. And so I know it's a problem for people when you try to use facts and when you try to explain exactly what they're doing. One of the things that I think is peculiar is we talked about the Papio NRD pretty extensively for probably two hours, hour and a half the other day. And I'm not real good of a Google search so I'm good enough to understand there's not been one article written by any news agency, any reporter that sits in this Chamber, has not alluded to it in any of their comments. And one has to consider why is that? Well, it's because the people that are associated with the Papio NRD are pretty influential. And we surely wouldn't want to say something against somebody who is doing economic development, building houses, building trails, and doing those things that we like. So it's kind of unusual that we don't see something written about the conversation about LB177 but we haven't and we probably

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

Floor Debate
April 25, 2019

won't. And so those of you who are watching that live and pay taxes in the Papio NRD, you need to take note. You need to mark down when their next board meeting and you need to start attending those board meetings. Someone needs to ask the Auditor to do an audit of this NRD to see what they've done in the past and what they are currently doing with your tax dollars. This NRD collects one third, one third of all property tax collected by the NRDs in the state are collected by the Papio NRD, one third. I didn't do the exact math but I would say probably 50 percent of the state's population lives in this NRD. Many senators that sit in this room today live and have constituents who live in the NRD, this NRD. This is a property tax increase. So we're talking about sunsetting a bonding authority for an organization, an entity, that doesn't need it because they have plenty of room in their mill levy to raise enough to cover what they want to do. And we can't find it with intestinal fortitude, don't have enough, to make a decision on a one-cent bonding authority sunset. And we later on could be asked to vote on property tax relief of a significant number, far greater than one cent. So if you're watching today and you think that this body is going to somehow pull themselves up by their bootstraps and be able to vote for property tax relief when they can't even vote to sunset a one-cent bonding authority by this NRD, I got some bad news for you. It is not going happen. Sunsets were put in place for a purpose, to sunset. That's exactly why they did that. Everything that this NRD needed to do with this bonding authority has been accomplished. All right. No flooding happened in this last round of floods that we had in March. So they've accomplished what they need to accomplish. That mill levy-- that levee over there at Offutt is another issue. That's beyond their control. The Corps of Engineers is involved in that and the federal government. It's a difficult situation. There was a letter that was passed out from two board members from the Papio NRD, and I'm sure you have it on your desk. But if you don't, let me allude-- let me share some of the things that these two gentlemen shared. They said the Papio NRD has substantial budget as compared to any other NRD. Our property tax receipts are over 2.5 times higher than the next largest NRD plus we have already added another \$71 million in debt through previous bonding, \$71 million. That's all. Not bad, Senator Dorn, 71. Additional bonding authority will only potentially increase the indebtedness. Now I may be talking to myself and maybe those people watching on camera may be listening and maybe they live in the Papio NRD. Nebraska is a very high tax state. Adding bonding authority is not an effective way to combat this reputation. The Papio River NRD in conjunction with the U.S. Army Corps of Engineers has combined-- has commissioned a \$3 million study scheduled to complete next year to analyze the flood risk in Omaha and the metro

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

Floor Debate
April 25, 2019

area. Let's delay the action of LB177 depending the outcome of the study-- two board members from the NRD. These people get it. So you people that are in the NRD, the Papio NRD, when you go to vote, vote for these people. These are the people that are respecting and trying to protect your interests as a taxpayer. The management and the way they're spending money now is not. And Senator Lindstrom alluded to some of the dams that they've built for economic development, and the Newport Landing in Bennington is one of those, as Senator Albrecht has alluded to that. They pump water into this reservoir to keep the flood-- the water the same. There's 23 housing lots at this dam, and the lots sold from \$90,000 to \$600,000. Sounds like that's flood control. Looks like if you shut the pump off, the flood stops. Doesn't make a lot of sense. One other thing-- they started an SID for this area, and that area filed bankruptcy. Seems like it's well managed.

SCHEER: One minute.

ERDMAN: This NRD is out of control. They have not proven to me, nor should they have proven to any of you, that they need this authority going forward because they already have the authority in their mill levy. If you vote to approve and extend this bonding authority, you have voted to raise property tax. Senator Blood's against property tax, but Senator Blood is for LB177. So Senator Blood has a dilemma. Do I raise property tax by voting for LB177 or do I not vote for it? Senator McDonnell lives in the Papio NRD. He's going to vote to raise property tax on himself. I understand that. But the voters in this NRD need to understand when these senators vote to extend the bonding authority for this NRD you're voting for a property tax increase, plain and simple. No other way to cut it. Thank you.

SCHEER: Thank you, Senator Erdman. Returning to the queue, those waiting to speak: Senator Kolowski, Blood, Albrecht, Groene, and others. Senator Kolowski, you're recognized.

KOLOWSKI: Thank you, Mr. Chairman. It's an opportunity now that I have to share a history lesson, and I'm very happy to share this lesson with all who are here today. That lesson is very simple because if we had a map of Omaha, and if we look at the development that took place when it was just about only downtown in the growth 100 years ago, and the continuous growth that has happened over the years, it fits in very nicely with the development and funding and

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

Floor Debate
April 25, 2019

founding of NRDs in our state. We're the only state that has natural resource districts. We have 23 of them across the state. I was a member of the Papio NRD from 2004, reelected in 2008, and came here in 2012. I was chair of this body as well for three of those years. So I know the history. I know how this came about, and I know the plans that were fulfilled during my time in that office as well as the plans of the future that are being looked at. If you don't look at a string of streets, starting-- let's go-- let's go back to 72nd Street. Number of years ago when the city only had a boundary out to 72nd and there were farms, and there were cattle, there were different animals, everything was rural from 72nd west. You go there today and you know it's not just 72nd. It's 80th, 90th, 120th, 135, 136, 140th, and I live at 156th and Q Streets in the Millard area, surrounded by homes, surrounded by all the neighbors that have added to the Millard district over the last 25 years. Omaha was built in a series of rings. In those rings parks were developed, lakes were developed, and that happened in continuous circles from downtown, north, west and south, throughout Omaha, that was tied together by major arteries, major streets, major thoroughfares all the way out to 72nd Street during the early days. With the additional growth and Omaha now stretches all the way to the Elkhorn River, we have a great deal of additions that have been added over time. And with the birth of the NRDs in our state, they took over and fulfilled and continue to fulfill the development of the lakes that have been added and the thoroughfares and the jogging paths and the bike paths and everything else in the metropolitan area. We have 11 members on the NRD board. Senator Erdman mentioned the letter that was sent by two of the members. They are two of the minority members of that board. The majority voted for continuation of the things that we're asking for today. Articles--

SCHEER: One minute.

KOLOWSKI: --would have been written, but they wouldn't have been true. The thing you have to look at is the growth in the-- the continuation of the history lesson that has taken place in the Omaha area. There's a great deal to be accomplished. And from 2008 to 2018, we were fortunate in the NRD that there was a slowdown in housing growth so the NRD could catch up with the lake development and the corridors of connectivity that continue to march to the west to the north and to the south from downtown Omaha. That has given us a great deal of continued growth and control. During all the last rains, the one thing we had in common was that we were dry. We were dry--

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

Floor Debate
April 25, 2019

SCHEER: Time, Senator.

KOLOWSKI: --because of the work that went into that. Thank you.

SCHEER: Thank you, Senator Kolowski. Senator Blood, you're recognized.

BLOOD: Thank you, Mr. Speaker. Fellow senators, friends all, those that are left on the floor, I continue to stand in support of Senator Lindstrom's bills, against both the bracket bill and the amendment brought forward by Senator Erdman. And since Senator Erdman saw fit to put my name in his mouth again in reference to this bill, I'd actually like to respond to that before I speak on what I'd like to speak about. This NRD represents 715,000 citizens. And Senator Erdman does not live in the area that is served by this NRD; and I did make sure I verified that, although I already knew that in advance. And the problem is that when we talk about this bill on the mike, I get only positive e-mails from people in my district who are-- have been touched by the flooding, who understand the importance of letting NRD do its job and making sure they have the tools to be successful. I've not had anybody say do not support this bill, nobody. And I think that that's very telling because usually when we talk about bills, I get the good, the bad, the ugly. And so I'm not going to talk on the fact the NRD's annual budget is the same size as our cash reserve because that was already covered because there's been a lot of misinformation that's come out on this mike. What I am going to do is I'm going to read a letter that we received from one of the mayors, and I don't usually do this, but I think it's very telling about how we feel about what the NRD does in our area and why it's so important. And I've already read you the financial numbers of how we're investing in Offutt Air Force's Base future when we allow NRD to do its job. So in the spring-- and this is from the mayor of Papillion-- in the spring's flooding disaster, Papillion did not have any issues with the portion of our jurisdiction that falls in the Papio NRD system. That is a direct credit to the storm water practices we partner with the NRD on, including the very important levee system as well as the dam structures that have been built. With that said, there have been a few times the water was close to the top of the levee. Thankfully, the systems worked. However, my concern is with the continued pace of development in the entire Papio watershed that if we stop with improvements now it will be a different story for the downstream communities of Bellevue and Papillion and, by the way, Plattsmouth as well, Senator Clements. Remember how large the Papio watershed is and where

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

Floor Debate
April 25, 2019

Papillion sits. A large majority of the system drains into the Papio, which ultimately is through the core of Papillion. The Papio NRD having the ability to continue with their work throughout the watershed is a direct benefit to the residents of Papillion. If the bonding authority is not extended and the Papio NRD cannot continue the work at the pace they have, then the natural result would be either development outpaces the NRD or for self-protection we begin to slow down and say no to development. We cannot allow development to outpace the NRD, so the logical choice that would be created is protection of existing residents, infrastructure, and investment. So slow down economic development, which is not good for the state, or support LB177. We only have to look at the spring to know the disastrous results of not allowing the NRD to keep pace with development, and that would be the Offutt Air Force Base flooding and the two neighborhoods they just condemned in Bellevue because of the flooding. I have the highest respect for the Papio NRD and how responsible they are with their limited funds. Papillion would not be where it is without their partnership. I thank you for your support of LB177. And that was Mayor Black, a very conservative mayor in Sarpy County, as all of our mayors, Senator Erdman-- who is not listening-- are in Sarpy County. I also want to make sure that you understand when people said the Papio didn't flood that they mean the Papio wedding-- watershed because the Papio did flood. It's a block from my house. And now because the Papio flooded, Bellevue is paying for road repairs on both 36th and 25th street right now. There's a lot of damage done as there has been across Nebraska, but there is damage that could have been--

SCHEER: One minute.

BLOOD: Thank you, sir. There is damage that could have been prevented had the federal government not drug their feet and gave us the funding we needed to raise the levees outside of Offutt Air Force Base. We can't continue to make the same mistakes. These fears of raising your taxes from people that don't even live in our area and don't even understand what is going on in our area I think are just warnings that the sky is falling and that they need to be ignored. And that if you support development in the fastest growing county in Nebraska and the fastest growing part of the state, you need to support LB177. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Blood. Returning to the queue, senators waiting to speak: Senator Albrecht, Groene, Erdman, Williams, and others. Senator Albrecht, you're recognized.

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

Floor Debate
April 25, 2019

ALBRECHT: Thank you, Speaker Scheer. I rise again probably for my last time since they figured out that they needed to load the queue up to listen to the other side of the views here today. So, again I rise in opposition of LB177. I'm going to ask some questions and I want Senator Lindstrom, I want you to kind of listen up on my questions because once I get through them we'll see how much time we have so you can answer some of them. Can you tell us about the projects that are currently in the lineup with the Papio NRD? Can you tell us if those go to the back of the list and everything for the flood comes to the forefront?

SCHEER: Senator Albrecht, are you asking Senator Lindstrom to yield?

ALBRECHT: No, I just want him to listen to my questions and then when I'm finished, then we'll decide which one we're going to talk about.

SCHEER: All right. Thank you.

ALBRECHT: Then he can explain to us the involvement that the NRDs are currently having with the floods with Offutt. Are you aware that there was a ballot initiative that went out in-- not an initiative but a vote taken in 2016 and the people spoke and they said they did not want them to do this? Are you currently serving on the Revenue Committee, Senator Lindstrom? Are you currently trying to lower taxes? Will we be lowering taxes if we allow this to go through today? Can you explain more about the \$3 million study that the Papio NRD has entered into with the Corps of Engineers? I'd like to learn a little bit more about this. I'm glad that you came today with your army of folks with their information so that we can understand the other side of the story, but I want to remind the people again the track record of this particular NRD. While they have done some amazing work for the Papio NRD area, they have come to our body, our committees in 2006, in 2007, attempting to advance their bonding authority, and it was IPPed. That means it was indefinitely postponed. It was a solid no. It didn't even get to come out of committee to this floor. In 2009, they gained their bonding authority, one cent by the board and one cent by the vote of the people to sunset in 2019. In 2014 and '15, they came back again to authorize us to obligate them for some more bonding authority. And we, again, IPPed it in committee. So that's four times they came before us, and then in 2016, they took it to the vote of the people because they couldn't get it from us. So they took it to the vote of the people, and it

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

Floor Debate
April 25, 2019

was defeated again. When the people speak, we are to listen, not to give in. So, Senator Lindstrom, would you yield to a few of these questions?

WAYNE: Senator Lindstrom, will you yield to a question?

LINDSTROM: Yes, I will.

ALBRECHT: Are you currently serving on the Revenue Committee?

LINDSTROM: Yes, I am.

ALBRECHT: Are you currently trying to lower taxes?

LINDSTROM: Yes, I am.

ALBRECHT: Do you believe we're lowering taxes with this bill?

LINDSTROM: I believe we are not raising taxes with this bill.

ALBRECHT: You don't believe we're raising taxes?

LINDSTROM: No.

ALBRECHT: Okay. Do you-- I mean, why would you think that the NRD felt a need to take it to the vote of the people in 2016?

LINDSTROM: Because that's part of it. Because that's, under law that's part of the process because they were going to raise it the two cents under the four and a half cent levy lid, and if you do it two cents, it goes to the vote of the people, one cent does not. So it's just part of the process.

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

Floor Debate
April 25, 2019

ALBRECHT: It is part of the process. Tell me a little bit more about this \$3 million study and when is it going to be finished, and what is the role of the Papio NRD in this bill--

WAYNE: One minute.

ALBRECHT: --in this bond-- or, I'm sorry in the Corps of Engineers and the Papio, the study that they're doing for \$3 million? What's that all about?

LINDSTROM: Well, the study is to look at the Offutt. But the one question you had asked me and I think it's important is the priority with respect to the different obligations and what they're trying to do. The number one is Offutt Air Force levee. That is the number one.

ALBRECHT: So Offutt was number one before the floods ever came. Offutt was their number one priority. Is that right?

LINDSTROM: It was, yes, yes.

ALBRECHT: Okay. Go on.

LINDSTROM: And then the three-- the three next are in Sarpy County and the watershed in Sarpy County, and then the remainder are when they're able to just complete those projects, but again, number one is Offutt levee.

ALBRECHT: Well, again, I do believe that a vote for LB177 is a vote to raise taxes on the people in the Papio-Missouri water--

WAYNE: Time, Senator.

ALBRECHT: Thank you.

WAYNE: Thank you, Senator Lindstrom. Thank you, Senator Albrecht. Senator Groene, you're recognized.

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

Floor Debate
April 25, 2019

GROENE: Thank you. Thank you, Mr. President. Senator Blood, and no criticism to her, said every single caller calls her and tells her they want to support the Papio NRD. I got the vote results from one, two, three-- six counties on the bond election in 2016. Sarpy County would like to build, 51 percent of the people were against it, 49 were for it. The majority of Sarpy County, where this development is, were against it giving them more bonding authority. Washington County was 70 percent against, Burke 70, Thurston County 67, Dakota County 67. The only place where they got a majority was in Douglas County 49 percent. No, the majority of people in the Papio NRD do not want their NRD going in further debt. I got a budget document here called the Papio-Missouri River NRD. I've heard on the floor here-- but first let me clarify. When this thing was introduced it was all about six or seven lakes with houses around it. That's why they were doing it. No mention of Offutt. No mention of Offutt. Then all of a sudden we're back here today, it's all about Offutt. Well, I've got their budget statement here, and it says here on page 13 out of 44, the funds, the Missouri River levy certification. They've got nine billion-- \$9,168,000 of their tax dollars set aside for their portion of the Offutt levy. The original agreement was that the state gave 13.7 million, Omaha 3 million, Papillion 3 million, Sarpy County 3 million, and Papio NRD 5 million. They've got \$9,168,000 stuck away, folks, for their portion of it. So excuse me, about this levy, this bonding authority that they need more money, that's good management. They knew the project was coming into the future, and they had the money set aside. This is not about Offutt and it's dishonest to even bring up the word Offutt in this debate. This is about development. This is about deals between developers and the NRD to create lakefront homes. The majority of the people in local control have said, no. This last flood, they did a good job, Papio didn't flood. The Missouri River flooded. The Missouri River flooded. And they have the money in place to fix those levies. They got extra money, another 4 million. And this is a tax increase, folks, it is a tax increase. They have \$72 million of debt that they are already levying, about 6.8 pennies, not 6.8 cents but 68 parts of a penny. They have 32 parts yet under their one penny limit. That first money is already dedicated. If they take more debt, they're going to have to raise their levy. If they take on more debt-- let me repeat that --they will raise their levy. This is a tax increase. This is a tax increase. So, please, argue the facts. They're building recreational lakes for a few individuals who own lakefront lots. That's what they're doing here. They've done a good job looking to the future of Offutt, \$9.2 million is already stuck aside for their share when they only need 5 million. I heard that the estimates have gone up.

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

Floor Debate
April 25, 2019

WAYNE: One minute.

GROENE: They've already got an extra 4 million in place. They got another 1.4 million or so budgeted to add to that fund. This is a tax increase. It's hypocritical to go door-to-door and tell your people, yes, we have a property tax problem, and then come down here and the first chance you get is to raise property taxes on citizens of the state of Nebraska. Last night I went to a hearing that was disgusting. People were begging for property tax relief, but government-- government entities wanted more money. Most of the people testifying in front of us were bureaucrats, not the common person who is home trying to make a living and struggle paying their taxes. Bureaucrats, that's who wants this, is government bureaucrats. I haven't got a call or heard from one citizen who wants more levies around Omaha-- not more levies, I mean dams around, because they can't afford those homes that are going to be around the lakes. Vote no on LB177. This is a charade--

WAYNE: Time, Senator.

GROENE: --if I ever did see one.

WAYNE: Thank you, Senator Groene. Senator Erdman, you're recognized.

ERDMAN: Thank you, Mr. President. Looking good up there, too, so I just want to mention that. So I listen to the discussion and Senator Kolowski gave us a history lesson or whatever he called it, and so a thought that came to mind, and I'm not sure that this overlapped there, but Senator Kolowski may have been involved in some of this economic development decisions the NRD made. I'll have to ask him that off the mike. But I made a comment earlier about the NRD and the SID that was formed there for the Newport Landing dam and that NRD or that SID filed bankruptcy, and the Youngman Lake in 2010, at 192nd and Dodge, the 175-acre, 60-acre lake it provides flood control on 2.5 percent of the land. In 2004 there was a Public-Private Partnership agreement between the NRD and Dial Realty Development Corporation and enabled Dial to construct the reservoir. Dial was the contractor, general contractor, and Papio reimbursed Dial for the costs and this is how it was done. The project cost-- if the project cost exceeded 1.39 million, Dial was reimbursed 100 percent for everything over the basic cost. If the project cost was less

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

Floor Debate
April 25, 2019

than 3.90 million, Dial would be reimbursed for all the costs, plus a 20 percent difference. Pretty good, huh? The agreement said that Dial and the SID that was to be formed later, would each be responsible to reimburse the Papio NRD \$1 million on or before December 15, 2005. I think this is a similar time when Senator Kolowski was chairman. If not, they had an interest payment of 9.25 percent was due. Well, the SID was not formed, and the obligation to the NRD reverted back to Dial. One million dollars was paid to Dial in December, 2005. No dollars was paid in 2005 or ever. Eleven months later, a new interlocal agreement was enacted and a newly formed SID, SID 521. SID 521 paid the principal to the NRD of a million dollars. They also paid interest to the NRD of 35,000, but the total NRD received a \$1,035,000, but the interest owed was \$85,000 so the NRD was shorted \$50,000 in interest. So a new agreement-- in a new agreement Dial purchased four acres of lakefront property from the NRD for 604,000. The deal was 24,000 payable at closing, 580,000 due in five years from closing at 7.5 percent interest on a \$120,000 note. No interest on the \$460,000 that wasn't paid. Dial defaulted on the note. Do you notice a pattern here? And this is a time when Senator Kolowski was chairman of the NRD. Papio NRD accepted a deed for nine lots in exchange for paying the 580,000 they owed, the unpaid interest of 39,000, special assessment of 259,000. Total NRD paid for nine lots was \$878,145. The NRD then sold the lots for 460,000. So the total loss to the taxpayers was only \$418,415. Anybody have a problem with that? The NRD sold these lots for half of what they paid for them. That's not a problem, though, right, because it's tax dollars. There's a problem here. And this is a time, I think Senator Kolowski said he was chairman from 2004 to 2008, or whatever he said, but this is 2005. So I believe Senator Kolowski was involved with the NRD when they did this. So we continually see what's happening--

WAYNE: One minute.

ERDMAN: Thank you, sir. We continue to see what's happening with this NRD but it doesn't seem to make any difference. It doesn't seem to use the facts, don't make any difference. Maybe what I should have said, this is for the children or the veterans, maybe that would help, but we don't seem to be getting through with the facts. The facts are, this NRD has plenty of money. This NRD has plenty of taxing authority to continue to tax you, and if they put a bond in place five years from now that bond is going to be paid until 2054. Think about that. You're going to put a tax in place on those people that live in that NRD until 2054. That's crazy. Nobody in their

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

Floor Debate
April 25, 2019

right mind would want to pay taxes for 30 years-- 35 years from now. This thing needs a sunset. This thing needs to go away. And if I made any sense at all, vote not to advance LB177 so people can have some property tax relief.

WAYNE: Time, Senator.

ERDMAN: Thank you.

WAYNE: Thank you, Senator Erdman. Senator Williams, you're recognized.

WILLIAMS: Thank you, Mr. President, and good afternoon, colleagues, and I stand in full support of LB177. I'd like to just talk briefly about something that's the absolute envy of every other state in the union, and that's our water policy, and our NRD system in Nebraska. One of the things that I have been passionate about, been a member of Nebraska water users and a financier of that back from-- clear back in the days of the '80s and establishment of water policy in our state and if you ever happen to go to Big Mac and go through the system out there, you will see my grandfather's picture hanging on the wall as one of the people that started the canal system and all of that in our state. What we are discussing here is extremely important, but it has larger ramifications than just the Papio NRD. We have a system of water management in our state that works, that guarantees water to be in the right places at the right time and for those of us in agriculture, if you think that's not important, there's something you're missing. We take areas of our state and make them highly productive because of our proper water use. This legislation, five years, leaving the levy rate at the same amount simply makes sense. The other thing I would like to say before I yield the balance of my time to Senator Lindstrom is that everything that we accomplish well in this body is based on relationships and relationships can't happen without trust. Through the debate that we witnessed this morning, we saw accusations made about other people on the floor of this body. That is wrong. I would ask each one of us to consider how we treat our fellow senators and the comments that we make about them, the questions that we ask them, and the inferences that we make about those people. So I stand in full support of LB177 and I yield the balance of my time to Senator Lindstrom.

WAYNE: Senator Lindstrom, you're recognized.

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

Floor Debate
April 25, 2019

LINDSTROM: How much time do I have left?

WAYNE: 2:32.

LINDSTROM: Okay. Thank you. Thank you, Senator Williams. Two quick things-- actually three quick things. One was brought up with the bonding over 30 years, that's standard, typical. Whether it's OPPD or the university, those bonds have a maturity date of 30 years due to amortization. But it was brought up that that was somehow a bad thing. The one thing-- would Senator Blood yield to a question or two, actually two questions?

WAYNE: Senator Blood, would you yield to a question?

BLOOD: For Senator Lindstrom, I certainly would.

LINDSTROM: Thank you, Senator. My first question, maybe the shortest one, it was stated that the Papio didn't flood. I know you represent that area. Can you just talk about what you saw and what your folks dealt with?

BLOOD: Well, one of the things that I know you and I talked about off the mike was, they keep referring to the Army Corps of Engineers study, the three-year study. And I think there's some confusion about that because the Corps has actually asked to restudy the state for a specific purpose, and that was for federal dollars. So it's not part of their strategic plan right now. It's not part of their forward division. It's actually a tool that they can use to, quite frankly, get federal funds, and I think that that's really important to point out. Secondly, I think we have to make sure that we keep hearing the Papio didn't flood. Well, the watershed, you're right, didn't flood, but it's also not a 100-year flood. The Papillion Creek did flood, one block from my house.

WAYNE: One minute.

BLOOD: You want me to go on?

LINDSTROM: Continue if you would like to.

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

Floor Debate
April 25, 2019

BLOOD: All right. I'd be happy to continue. So the watershed didn't flood because it wasn't a 100-year event. But look how full that it really got. That's pretty darn scary when you live in my area. And the Corps was asked to restudy to open up the state for additional federal dollars and are those tax dollars? Yes, I understand those are tax dollars, but there are tax dollars are to be used for this purpose. So the biggest lesson in the world that we got with Offutt Air Force Base is what happens when we wait. When we wait for federal agencies to drag their feet when the local, county, and state agencies all get together and say, we need to raise these levies, we need to protect Offutt Air Force Base, and as a result, we are going to get the runway fixed. And guess what happened? The federal government did not step in soon enough and take care of us and the flood happened and you cannot say, let's take Offutt Air Force Base out of this--

WAYNE: Time.

BLOOD: Did you say time, sir?

WAYNE: Time.

BLOOD: Thank you.

WAYNE: Thank you, Senator Williams, Senator Lindstrom, and Senator Blood. Senator Stinner, you're recognized.

STINNER: Thank you, Mr. President. Members of the Legislature, I want to stand in support of LB177. I'm an advocate for the NRDs. I think they do great work. I think they are a unique system throughout the United States. If you go around, we are unique, their job of controlling flooding of making sure that streamflows are in parity-- or is an important work, so I want to speak in favor of this bill. And the fact of the matter is general obligation authority is not-- it's a financing tool. It's not a property tax issue. The idea that they issue bonds, they have to stay within a four and a half percent lid, so the debt service has to be within that four and a half percent lid. Actually, this NRD has issued \$71.5 million in bonds over the last ten years. These bonds are a 20-year term, and will be fully paid by the year 2033. So I wanted to put that on the record. They are utilizing .0062 of the one cent that they're given, so they do have a little bit of

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

Floor Debate
April 25, 2019

extra, and it takes two-thirds of the votes of the board in order to issue bonds as long as they stay within that, otherwise-- within that limit --otherwise they have to go to a majority vote of the people to grant additional authority over that one cent, but they do have a cap of two cents. But this NRD also has a mill levy of .037594 compared to four and a half. So they do have room within that mill levy. Thirteen out of 14 years the district has either lowered or kept the mill levy the same. Now the average valuation did go up since 2009 by 3.1 percent, so they were given a little bit more revenue based on just holding that, but the idea that we are going to issue bonds and it's a property tax increase, I'm sorry. That correlation-- I'll tell you what. I'll bring a bill next time around. I'm going to bring a bill, and I'm freezing everybody's mill levy right where it's at so they can't ever raise their mill levy regardless of what project they have. Even though they would have a cap and room within the cap, we want to limit Papio because we don't want that mill levy to go up from .037 to 4 so that they can do some flood control, so they could handle some bigger projects. I'm sorry, I just don't agree with that. With that, I would like to yield the rest of my time to Senator Lindstrom.

WAYNE: Senator Lindstrom, you are yielded 2:10.

LINDSTROM: Thank you, Senator Stinner. There was two comments made by opponents, one was there was never an article in the paper. I have the article right here. In Omaha World-Herald talking about the NRD bonding extension would strengthen flood protection in Omaha area, specifically discussing LB177, and the need for it. So that does exist. The other was nobody was in favor of this, any constituent. I have a letter, and I'll not use his name on the mike, but I'll read it briefly if time permits. I have lived in Papillion Creek watershed for nearly my entire life of 73 years and I think that I have some unique perspectives on that area. I grew up in Millard area on a farm on the west side of 168th Street on the south edge of Zorinsky Lake, and a few acres of that farm that my family owned was taken for the Zorinsky Lake. At the same time my family rented some farm land west of 168th Street and north of F Street that was on both sides of Boxelder Creek which is now the bottom of Zorinsky Lake. That land was flooded in both 1964 and 1965 and I helped clean up flood debris from that land. In addition, I clearly remember watching numerous trailer houses--

WAYNE: One minute.

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

Floor Debate
April 25, 2019

LINDSTROM: --floating down the west Papillion Creek through Millard in 1964. Development of the Papio watershed at that time was very small percentage of development of the body, but the damage at that time was widespread. I'll skip ahead because I know I'm running out of time. Basically he finishes it, says the cost is always the key factor and it needs to be considered. The current tax on my \$200,000 house is \$4,760. That includes Papio NRD taxes of \$72. Even for someone like me that complains loudly about taxes, \$72 appears to be a bargain when considering what is being provided. So there is a letter that is in support that somebody who has seen a lot of the flooding that has occurred in the western part of now Omaha, Zorinsky Lake. And so I think it just puts in perspective what has occurred and what actually has transpired the last couple years to protect those surrounding areas in-- around the Omaha metro area. Thank you.

WAYNE: Thank you, Senator Lindstrom. Thank you, Senator Stinner. Senator Hansen, Ben Hansen, you're recognized.

B. HANSEN: Thank you, Mr. Chair. I just want to reaffirm my opinion that I think it would be prudent in our best interest to wait until the reevaluation study is done. I mentioned this already a couple of times. I'm just going to mention it one more time briefly. The reevaluation study done by the Army Corps of Engineers of the Papillion Creek and the tributary lakes, and it is a comprehensive plan to reduce flood risks for the Papillion Creek basin. And again the purpose of this three-year study is to address the flood risk issues in order to reduce flood and life safety risks in the Papillion Creek basin that have increased due to rapid land development. And there is a time line. The three-year study provides local and federal officials the opportunity to provide a comprehensive reexamination of all potential solutions to flood risks in the greater Omaha area. And the Corps does anticipate that a draft study be completed this fall with approval of the final recommended plan slated for April of 2021. So again, I think it would be prudent for us to just make sure that we got all of our ducks in a row, make sure the best plan available that is being done and going to be done. And I also want to read one other thing that I believe Senator Erdman touched on, a letter that was sent out by a friend of mine who is on the board, and someone I trust very much, his opinion, and his intellect. I'm just going to read the letter that he wrote. We the undersigned currently serve on the board of the Papio-Missouri River NRD and we have concerns regarding LB177 and are not comfortable with the bill as written. The letter written to

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

Floor Debate
April 25, 2019

you is our opinion and does not necessarily reflect the attitude of the entire board of directors. The Papio-Missouri River NRD has a substantial budget as compared to any other NRD. And this is some of the stuff that senators were already kind of touching on. It's important for us to note, important for us to listen to from someone who is on the board as opposed to some of our opinions. Our property tax receipts are over two and a half times as high as the next, largest NRD, plus we have already added over \$71 million in debt through previous bonding. Additional bonding authority will only potentially increase the indebtedness. Nebraska is recognized as a high tax state, adding bonding authority is not an effective way to combat this reputation. And finally, the Papio-Missouri NRD in conjunction with U.S. Army Corps of Engineers has commissioned a \$3 million study scheduled to be completed next year to analyze the flood risk in the Omaha metro area. That's a delay action on LB177 pending the outcome. So-- and this is from two board members of the NRD. And so I think we should also listen to their opinion on what their thoughts are and we should wait for the study to get done. With that, I will yield the rest of my time to Senator Groene. Thank you.

WAYNE: Senator Groene, you're yielded 2:04.

GROENE: Thank you. I would like to remind the body that 2016, they had a bond override or bond levy override authority, the Papio did, and it was voted down. Now here was the master plan back then. They weren't satisfied with one cent to service the bonds. They wanted another cent. They wanted two full cents of taxes. That's a lot. And then they came here hoping to get the override-- I mean the extension of the sunset, and they weren't going to stop at three-tenths of a penny to go up to a penny, they were going to go big time. They were going to borrow a lot of money and they were going to put a lot of housing developments in with lakefront property. That was their plan. Offutt has nothing to do with this.

WAYNE: One minute.

GROENE: Offutt, they already-- good management. I like NRDs. Good management they do have, and they've stuck away 9.2 million already for their 5 million portion of the original agreement. And it says here, district annual contribution to it is 1.3 million. So they're being good stewards of the project and they're adding another 1,320,000 to that 9,200,000 every year,

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

Floor Debate
April 25, 2019

and it's growing. Offutt is taken care of. Now, did the federal government and a few others drop the ball on it? Yeah, that they could have been building. I also got information that they have in their resolution said they will use eminent domain around the levee system to expand the levees around Offutt. That's fine. It's major public-private situation where public rules and we need to protect Offutt Air Force Base.

WAYNE: Time, Senator Groene. Thank you, Senator Hansen and Senator Groene. Senator Quick, you are recognized.

QUICK: Thank you, Mr. President. I do support LB177, and one of the things I want to talk about is I've served on Natural Resources Committee. This is my third year I've served on that committee and over that time I've had the opportunity to learn a lot about our NRDs and the great things they do for our state. I know I've been able to go on some tours of our NRDs. One of the tours I went on was actually not an NRD tour but it was called a four-state tour, and we had individuals from other states that come to see what kind of water projects we have here. And during that time we were here, we actually had a large rainfall event. It was a 9-inch rain in our area, and we went and looked at projects along the Loup River. And we saw-- the water was raging through some of those areas, and the dams worked the way they were supposed to, they all have canals along those areas for irrigation. We got to go up to the hydro plant up near Columbus. We saw a lot of great projects. The other thing I've been able to go up to a soil conservation day that they had at one of the NRDs up at Ainsworth. I've also been up in northeast Nebraska. I've been able to see the projects around Grand Island and how that's-- the central plat NRD has really helped keep Grand Island out of the flood this last time. They had Wood River diversion project which took the Wood River, diverted it around Grand Island, stayed to the south side of Grand Island. The north side of-- northwest end of Grand Island was saved because of a project. I would call it a large detention cell west of Grand Island. And there were three creeks that run into that project and they saved the city and many of the residents there from being flooded. I'm going to read a little bit of a description and outline of what NRDs are and maybe a little about the Papio. But Nebraska NRD system, they are the envy of other states because of its 23 district structure that works to address a unique natural resources needs of different areas of the state. Natural resources districts are based on river basin boundaries, enabling them to approach natural resources management on watershed basis. While NRDs share

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

Floor Debate
April 25, 2019

a common set of responsibilities, each district is governed by a locally elected board that sets its own priorities and develops its own plans to best serve local needs. Nebraska's NRDs are involved in a wide variety of projects and programs to conserve and protect the state's natural resources. NRDs are charged under the state law with twelve areas of responsibility. Erosion prevention and control, prevention of damages from flood water and sediment, flood prevention and control, soil conservation, water supply for any beneficial uses, development, management utilization and conservation of groundwater and surface water, pollution control, solid waste disposal and drainage, drainage improvement and channel rectification, development and management of fish and wildlife habitat, development and management of recreational and park facilities, and forestry and range management. That's a large variety of projects that NRDs have control over, and I think it's important--

WAYNE: One minute.

QUICK: Thank you, Mr. President. --and each one has different issues that they would face. The Papio NRD contains over 40 percent of the state's population, more than 715,000 citizens, and is home to the state's only metropolitan class city, Omaha. In addition, the Papio NRD is home to the fastest growing counties in the state with a projected population of over one million inhabitants in the next five years. The Papio NRD is one of the most unique NRDs in the state and has unique needs and challenges not experienced anywhere else in the state of Nebraska. During this debate on this bill some concern has been expressed about the rural areas of Papio NRD. The Papio-Missouri NRD spends nearly four dollars in rural areas and on rural programs to every one dollar it receives from rural property taxes. Over 90 percent of the Papio NRD's property taxes are generated--

WAYNE: Time, Senator.

QUICK: Thank you, Mr. President.

WAYNE: Thank you, Senator Quick. Mr. Clerk, do you have a motion on the desk?

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

Floor Debate
April 25, 2019

CLERK: I do, Mr. President. Senator Lindstrom would move to invoke closure pursuant to Rule 7, Section 10.

WAYNE: Senator Lindstrom, for what purpose do you rise?

LINDSTROM: I would like a call of the house and a roll call vote in reverse order, please.

WAYNE: It is the ruling of the Chair that there has been a full and fair debate afforded to LB177. 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.

CLERK: 24 ayes, 5 nays to place the house under call.

WAYNE: The house is under call. Senators, please record your presence. Those unexcused Senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Hilgers, will you check in? Senator Hunt, Senator Morfeld, Senator Wishart, Senator Matt Hansen, please return to the Chamber. The house is under call. Senator Hunt, Senator Morfeld, Senator Wishart, Senator Matt Hansen, the house is under call. Please return to the Chamber. All unexcused members are present. Members, the first vote is a motion to invoke cloture. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please call the roll.

CLERK: And Senator, you did request reverse? Thank you. (Roll call vote taken.) 36 ayes, 8 nays to invoke cloture, Mr. President-- 9 nays to invoke cloture.

WAYNE: The motion to invoke cloture is adopted. Members, the next vote is the adoption of the bracket motion by Senator Erdman. All those in favor vote aye; all those opposed vote nay. All those voted who wish to vote? Mr. Clerk, record.

CLERK: 7 ayes, 33 nays, Mr. President, on the motion to bracket the bill.

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

Floor Debate
April 25, 2019

WAYNE: The motion to bracket is not successful. Members, the next vote is the adoption of FA50, Senator Erdman's, to LB177. All those in favor vote aye; all those opposed vote nay. All those who wish to vote, vote? Record, Mr. Clerk.

CLERK: 8 ayes, 33 nays on the motion to adopt the amendment.

WAYNE: Motion to adopt-- motion to adopt the FA50 has failed. Members, the next vote is the adoption of-- is the advancement of LB177. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk.

CLERK: 34 ayes, 9 nays, Mr. President, on the advancement of LB177.

WAYNE: LB177 advances. Mr. Clerk for items. I raise the call.

CLERK: Thank you, Mr. President. Committee on Health reports LB205, LB329, LB607 to General File with committee amendments attached. That's all that I have, Mr. President.

WAYNE: Senator Bostelman, for what purpose do you rise?

BOSTELMAN: Point of personal privilege.

WAYNE: Senator, please state your point.

BOSTELMAN: Twenty-seven years ago yesterday there was a major snowstorm in Omaha, Nebraska, a lot of snow, real heavy snow. Came down at an unexpected time. And, you know, really it's hard to take pictures outside when you want to when there's a lot of snow covering the flowers and all the leaves, all those type of things are out there, especially when it's your wedding day. So 27 years ago today Jan and I got married. So happy anniversary, Jan. Thanks.

WAYNE: (Visitors introduced.) Mr. Clerk.

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

Floor Debate
April 25, 2019

CLERK: Mr. President, next bill, Select File LB227. Senator Slama, I have Enrollment and Review amendments, first of all.

WAYNE: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB227 be adopted.

WAYNE: You heard the motion. All those in favor say aye. All those opposed say nay. They are adopted.

CLERK: Mr. President, Senator Lathrop, I had AM1330, AM1331, and AM1332. I have notes you wish to withdraw those.

LATHROP: That's true.

CLERK: Thank you. Mr. President, Senator Lathrop would move to amend the bill with AM1485.

WAYNE: Senator Lathrop, you're recognized to open.

LATHROP: Hello. Thank you, Mr. President. Got a mike problem today. You will recall that this is Senator Hughes' bill, LB227. This went three hours the first time it was up, six hours actually, and ultimately advanced to Select File. Senator Hughes and I promised to work on this. In the meantime we have and I think we have reached an agreement reflected in AM1495. Pardon me, AM1485. I can't see that sign well enough. Not a good start to this. This is the Right to Farm Act. You will recall that I had a considerable amount of difficulty with the idea that we would immunize farming operations from nuisance suits and that's effectively what LB227 did. What we've done is agreed on an amendment which is AM1485, and I'd like to walk you through that, if I can. The amendment preserves existing provisions of the Right to Farm Act. That's the first thing that you will notice about it. So the idea that you can move into or next door to a nuisance and then file a claim, that's existing law. You can't do that. So you still can move in next door. What the amendment does is adds to the Right to Farm Act a time limit for an aggrieved party to

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

Floor Debate
April 25, 2019

bring a cause of action against a farm operation or one of these co-ops. To give this some context, the Supreme Court has indicated that rural residents must expect to bear with farm and livestock conditions normally found in the area where they reside. I tell you that because those aren't nuisances, and we're not talking about those. It's something much more-- much more problematic for the neighbor than simply the normal things that go on out in a rural community. To reach that level of offense or to support a claim for nuisance, some of the language from the reported opinions, I think that's also important because when I tell you what the amendment does, you're going to want to know how bad has it got to be before we reach the level of a nuisance. In one case the court commented, where once business operation as conducted materially and injuriously effects the comfort, enjoyment, and property rights of those in the vicinity, it becomes a nuisance and may be enjoined. In another portion of the opinion, to justify the abatement of a claimed nuisance, the annoyance must be such as to cause actual physical discomfort to one of normal or ordinary sensibilities. So when we talk about a nuisance, we're talking about a higher standard and a much more obnoxious type of a invasion of someone's property rights than simply the usual things that happen out in a rural community. So what's the amendment do? The amendment says-- and this is responsive to the concerns I expressed, and I think Senator Hilgers shared that concern --which is, we have set a two-year time limit to bring a cause of action for nuisance. In the original bill we tried-- or they attempted to put into the original bill different time periods. If you change your operation, if you sell your property, that didn't help because you can't bring one of these causes of action until you have a nuisance to try to enjoin. So what the bill or the amendment says very simply is, once the nuisance gets bad enough to support a claim for nuisance in a court action, you start a two-year clock. So the aggrieved party, who is living with a nuisance, has two years to bring the cause of action or nuisance, and if they don't, they will be barred from bringing a cause of action based on nuisance. There is also a second part to the amendment and, colleagues, when nuisance suits are brought, they're generally brought as equity actions to enjoin or stop somebody from doing something. Oftentimes in nuisance cases the court will hear the evidence and say, I believe there's a nuisance, I'm going to give you, Mr. farm operation person, an opportunity to abate the nuisance. The second paragraph just says, if you've had a court action over this nuisance, and the court has given you an opportunity to try to abate it, or given you an order and you need to go back to court and have the judge take another look at the operation, and whether it continues to be a nuisance notwithstanding the previous order of the court, that that is still available. So the

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

Floor Debate
April 25, 2019

door doesn't shut on somebody because the nuisance started more than two years ago. It's a pretty simple, straightforward amendment. Maybe if I walked you through a hypothetical, if I can, so somebody-- if someone were to buy property and build a confinement of some sort, when they buy property it does not trigger anything. When they build a confinement to put hogs or any other kind of animals in it, that does not trigger the two years. When they stock that barn with animals, if it's not a nuisance, it doesn't trigger the two years. When there's some odor or a certain amount of things that are sort of normal out in the rural community, that's not enough to get you to a nuisance, so it doesn't trigger the two years. But it's when the problems with that operation reach the level of offense or cause the odor, flies, or whatever is the substance of your complaint, or your nuisance claim, when it gets to that point it starts a two-year clock. And you, the aggrieved party, have two years to bring that lawsuit. If you don't bring that lawsuit, the doors close for you. That's the nature of the amendment. That's what it does. I appreciate Senator Hughes working with me on this amendment and I'm happy to answer questions, and if he would like the balance of my time, I'm happy to yield that.

WAYNE: Thank you, Senator Lathrop. Senator Hughes, you are recognized.

HUGHES: Thank you, Mr. Speaker or Mr. President. I do want to echo my appreciation for Senator Lathrop and his willingness to sit down and negotiate to get us to this point. If you recall, the first six hours we had a very good debate on this bill. There was a lot of back and forth, and I appreciate everyone that helped me get it through the first round so Senator Lathrop and I could have the opportunity to sit down across the table and make sure that we get this right. I also do want to thank the Ag Committee for giving this bill a priority designation to move it to the front of the line to get us to where we are today. As with all legislation, it takes a lot of work. There's no slam dunk. I have had a lot of help on this issue, and I appreciate all of that help. Just to reiterate, this bill did come to me from the Nebraska Cattleman and the Farm Bureau. This is not about big ag. This is about ag, period. The amendment that-- and I am fully supportive of AM1485. Senator Lathrop and I have worked-- he did most of the work. I just kind of said okay. But we had-- I made sure that I ran this by the ag groups. I do have a couple questions for Senator Lathrop that I want to make sure we get on the record before I'm finished. But the amendment preserves and maintains the current Nebraska Right to Farm, first in time, first in right protection from public or private nuisance claims for agricultural producers. I want to make

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

Floor Debate
April 25, 2019

that very clear. The amendment also offers enhanced protections for livestock and farm producers who expand their current agricultural operations. Those things are very key. This is very complicated, and with Senator Lathrop's help, I think we've made it a lot more simple to understand. But if Senator Lathrop would yield to a couple questions, I want to make sure we get it correct on the record.

WAYNE: Senator Lathrop, will you yield to a question?

LATHROP: Yes.

HUGHES: Thank you, Senator. I appreciate all your help on this. So just as a hypothetical, what happens in the situation when a farmer who has been farming the same way for over a period of years, say ten years, and nothing has changed, however the neighbor decides to bring a nuisance lawsuit in year eight claiming that the farm has now become a nuisance, walk me through again how that works, how that would be handled by the courts, in your opinion.

LATHROP: Okay. So if the neighbor just moved there, then they would be foreclosed from making a claim or they couldn't establish it's a nuisance under existing law. If that person has been there for a long period of time, they would not be able to bring a lawsuit because they would have slept on their rights or allowed that two years to pass, and been unable to bring a lawsuit based upon the fact that the conditions have been in existence for eight years, they have been a nuisance for him for eight years, and he didn't bring his lawsuit within two years of the date at which the problem got bad enough to support a claim for nuisance.

HUGHES: Okay. Thank you. That was the explanation I was hoping for. Then my last question. What happens if that home that is close by changes hands and a new owner moves in? How does that change the scenario?

LATHROP: In that scenario, I think they would be protected by existing law because you can't move next door to a nuisance. The new owner would be moving next door to an existing condition and even--

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

Floor Debate
April 25, 2019

WAYNE: One minute.

LATHROP: --under existing law, the Right to Farm Act, the first paragraph of that provision, would preclude their ability to prove a nuisance case.

HUGHES: Okay.

LATHROP: In other words, it's not a nuisance and you can't make a nuisance claim under existing law if you're moving in next door to the condition.

HUGHES: Okay. Thank, Senator Lathrop. I certainly appreciate and hope you all understand there is some nuance there that I wanted to get on the record and I appreciate Senator Lathrop's ability to express that much better than I could. With that, I am fully supportive of AM1485 that will amend LB227, and I would appreciate your green votes. Thank you.

WAYNE: Thank you, Senator Hughes and Senator Lathrop. Senator Hilgers, you are recognized.

HILGERS: Thank you, Mr. President. Good afternoon, colleagues. I rise in strong support of AM1485. I'll be brief. I do want to comment and say I appreciate the work of Senator Lathrop on this and Senator Hughes. I was involved to some degree on the debate before and I do want to just comment on what the amendment does and why I think it's a good idea. Part of the original bill what was important about it, it would extend the nuisance protections from nuisance suit to operators that want to expand or change their operations. I think that's a really important thing as we reflect and acknowledge changing agricultural economy. At the same time the concerns that were raised and I think were very valued concerns were, well, what happens if you've got a homeowner who was there first in time but now you have an operation that's changing and they're now subject to a nuisance suit, they get trapped. I think that was some of the conversation that Senator Lathrop had on the floor during the debate before and I think this really kind of neatly addresses that, because what the language in subsection 2 of AM1485 does now give that homeowner or that property owner, the neighbor, the opportunity now to seek an injunction. At the same time what it does do, it still gives some certainty to that operator who might be investing millions of dollars in order to expand their operation, so now they've got a two-year

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

Floor Debate
April 25, 2019

window, it's not eight years, it's not ten years, it's two years. It does give the homeowner some opportunity to seek relief if there is a nuisance, but at the same time it does give some certainty. So I think it strikes a nice balance and I think it actually in some ways is an improvement of the previous amendment that we had on LB227. I do think there's a couple other things that are nice improvements. One is Section 3 that Senator Lathrop referenced. I do think that's important to allow someone who does have an order on abatement to be able to not have this undermine it. I also think that there is by tying this to when a nuisance develops rather than maybe some other period of time, it might-- it removes maybe an artificial construct that would maybe-- would not give someone the right to be able to really defend themselves when there is a nuisance. In other words, if you have a starting time when the building starts construction, that's not necessarily when the nuisance starts, and so I think that eliminates that issue. The time frame starts when the nuisance starts. And I think that's pretty straightforward and clear. The other thing is, the previous language had some references to things that might not be a substantial change as a substantial change idea throughout the amendment, which I think was valuable, but at the same time it had references to using technology or grant programs, and I think by removing that language, I think this makes it much cleaner. So I appreciate the work Senator Lathrop has done, Senator Hughes has done. I think this is an important bill. I think this amendment solved a lot of the concerns. I'm in strong support of it, and I'd encourage you to vote green on AM1485 and the underlying bill. Thank you, Mr. President.

WAYNE: Thank you, Senator Hilgers. Senator Arch, you're recognized.

ARCH: I have a question for Senator Lathrop, if he would yield.

WAYNE: Senator Lathrop, will you yield to a question?

LATHROP: Yes.

ARCH: This is just a quick question. In the previous debate we spent quite a bit of time also talking about zoning. Relationship to zoning regulations and relationship now to this bill, is there any-- how does that work?

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

Floor Debate
April 25, 2019

LATHROP: It's not tied to zoning at all. An immunity has always been sort of a backstop. You have zoning as the first protection from one neighbor to the next, and when that doesn't work, then you have nuisance. So zoning is not effective whatsoever, nor is it any kind of an immunity or a get out of jail free card when it comes to a nuisance suit.

ARCH: Okay. Thank you. Thank you, Mr. President.

WAYNE: Thank you, Senator Lathrop and Senator Arch. Seeing no one else in the queue, Senator Lathrop, you are recognized to close. I have nothing to do with that just for the record.
[LAUGHTER]

LATHROP: I know. I'm going to come up there and talk to him in just a second.

WAYNE: Actually it's my fault, I apologize.

LATHROP: All right. This amendment takes us from an immunity which we found in the original version of LB227 and takes us to more of a statute of limitations for the aggrieved party and a nuisance claim against this particular subset of operators in the state. And with that, I would encourage your support of AM1485.

WAYNE: Thank you, Senator Lathrop. The question is, shall the amendment to LB227 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's amendment.

WAYNE: The amendment is adopted.

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

WAYNE: Senator Slama for a motion. Senator Kolterman, sorry. Senator Kolterman, you are recognized.

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

Floor Debate
April 25, 2019

KOLTERMAN: Thank you very much, Mr. President. Colleagues, I rise to make a couple of observations. What we're witnessing right now in this Legislature is a spirit of congeniality and cooperation that was brought in a nonpartisan Legislature the way it should have been brought. We had Senator Lathrop and Senator Hughes, who are on opposite ends of the political spectrum, come together to make this legislation pass. They worked out their differences behind the scenes and they got things done. I'd just like to say that we can learn from that today. We should all go home and take a lesson from this. I think that's why we all came down here. So I would encourage you to support LB227 as amended and thank you for-- thank Senator Lathrop and Senator Hughes for making this work.

WAYNE: Thank you, Senator Kolterman. Senator Slama for a motion.

SLAMA: Mr. President, I move that LB227 be advanced to E&R for engrossing.

WAYNE: You have heard the motion. All those in favor say aye. All those opposed say nay. LB227 is advanced. Mr. Clerk.

CLERK: Mr. President, LB616 on Select File, the Enrollment and Review amendments have been adopted. At this time, I have no amendments pending to the bill, Mr. President.

WAYNE: Senator Williams, you are recognized.

WILLIAMS: Thank you, Mr. President; and good afternoon. And, members, you will remember that a few days ago we started on this debate a little bit and Senator Hilgers was unavailable at that time, but he's back and he and I have had pretty extensive conversations about this. But there are a few items that we just wanted to discuss so that they are on the record. And clearly, I want everybody to understand I am very supportive of this underlying project. I actually drive Highway 2 every day coming to work and recognize the issues with that. Also, I am not questioning the financial feasibility of this in any way, shape, or form. It's just simply there are some things about-- when I read the initial bill, LB616, the green copy, and things were called to "build-finance" a method; being a banker, when you throw the name-- or the word "finance" in there, it all of a sudden sounds like debt. And I had a discussion at some length with Senator

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

Floor Debate
April 25, 2019

Hilgers and he provided me with the Attorney General's Opinion, and I have studied that at length. The Opinion starts out by saying and using the term-- you are asking for an opinion on an innovative approach to finance construction of the Lincoln South Beltway. Again, using that term "innovative approach to finance," which sounds like debt. So ultimately my question is, is this innovative approach to financing, is it debt? Because if it is debt, it is a violation of our Nebraska Constitution regardless of how good the project is underneath it. So that is the discussion that we have been having. And first of all, you notice that it was introduced, the green copy, as this build-finance. Following the AG's Opinion, that was-- there was an amendment filed which then eventually became the committee amendment which removed all of that type of language and simply inserted a very short section into the bill which, again, talks about the section shall not apply to contracts which provide for payment pursuant to a set schedule over a period of time that extends beyond the completion of the contract-- or the construction, excuse me. Again, that sounds like debt. Would Senator Hilgers yield to a question?

WAYNE: Senator Hilgers, would you yield to a question?

HILGERS: Be happy to.

WILLIAMS: Thank you. The first question, and you and I have talked about this, but I think for establishing this on the record, can you describe why this is not debt?

HILGERS: Absolutely. May I say thank you, Senator Williams, for the question and for your dialogue before today on this particular issue. So I think if you think of debt, there's probably two places we could look. One is there is some sort of bonding instrument of some kind. And there's no bonding instrument here, so that's one reason. And the second is, I think you look at the contract. Is there any sort of financing mechanism, debt obligation in the contract between DOT and the contractor? And so long as, and this is the language in the Attorney General's Opinion, so long as that contract is-- requires that the state has to continue to appropriate. It doesn't require the state, but that it's subject to continue appropriation. In other words, the state doesn't have to appropriate in future years, then there's no legal obligation for the state to appropriate, and I think that's why it's not debt.

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

Floor Debate
April 25, 2019

WILLIAMS: So we're talking about the establishment or the nonestablishment of a binding legal obligation to pay.

HILGERS: I think that's a fair characterization.

WILLIAMS: That's where we are at at the end of the day. OK, with that,--

WAYNE: One minute.

WILLIAMS: Thank you, Mr. President. With that, there are some things that I would like to dialogue about just briefly. If we pass this legislation, and if a contractor enters into a contract with the Department of Transportation and that contract does include a nonappropriation clause, all those things said, if there is a court challenge to the constitutionality of that contract, it wouldn't be to the legislation we are passing, because there's nothing unconstitutional in the legislation, it would be to that agreement, that contract. I'm assuming all of the parties would be at some risk to the result of that contract, and they would have to live with that risk. Is that--

HILGERS: If there's a challenge, I agree with you, it wouldn't be to the statute. If there's a challenge to the contract, yes, the party to the contract would have to deal with that risk.

WAYNE: Time, Senators.

WILLIAMS: Thank you, Mr. President.

WAYNE: Senator Williams, you are next in the queue.

WILLIAMS: Thank you, Mr. President. So continuing on, what would be our guarantee that the Nebraska Department of Transportation would include this language in their contract with a contractor?

WAYNE: Senator Hilgers, will you yield to a question?

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

Floor Debate
April 25, 2019

HILGERS: Yes, I would be happy to. Well, I think the guarantee is that if they don't, they run the risk that it would turn into potentially into debt, if there is that long-running obligation.

WILLIAMS: So it's clear in your mind that the agreement then would create a fairly substantial amount of risk on the contractor with that kind of agreement because we would basically have an agreement that would say we are going to-- we, meaning the state, we're going to pay you, but each year when that future payment comes up beyond when the construction ended is subject to an annual appropriation. So as long as that clause is in there, we are saying that is not a legally binding obligation.

HILGERS: I would agree that there is some risk, but I don't know if I would characterize it as substantial. Certainly a lot of money is at stake. There is risk in the sense there's not a contractual right that they could enforce against the state. The same time, the state is building the road, and so I think that there's-- you know, the state wants to get the project finished and make sure that they're a good citizen. And I think they have a lot of incentives that might not be legal in nature to ensure that those contracts-- that those payments are made over time.

WILLIAMS: I agree with that. I do not believe for one minute the state would enter into an agreement with any kind of idea that they wouldn't make that future payment. But it would be subject to that annual appropriation.

HILGERS: That's right.

WILLIAMS: And that leads me to the next question that this Legislature and the contractor then would have to understand that that is not a legally binding obligation; and at that point in time, we will have a different governor, because we are talking enough years down the line. Many of us will not be in this body, so those Senators that are sitting in this seat and that governor that is sitting in the corner office would again not be bound by a legally binding obligation.

HILGERS: I think that's right, Senator Williams, which is, again, why I'm glad we are having this conversation now.

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

Floor Debate
April 25, 2019

WILLIAMS: That's why I want to put that there, so that people, if they look back and want to determine this, they can see that. The other thing that I have been confronted with, some people have suggested that this is-- is the-- if we don't do this, we can't do projects like this. And I want to make people here aware there is a way under our constitution to currently finance this kind of a project without doing this and having that risk out there, and that's based on our constitution where with a three-fifths vote of this body we can actually issue bonds to do this kind of construction. Senator Hilgers, do you have any idea why we wouldn't use that approach versus the approach that's being used here?

HILGERS: That's a good question, Senator Williams. Certainly, and I appreciate you refreshing my memory, the Nebraska Constitution raised that. When I brought the bill, that provision in the constitution wasn't on my mind. I would be speculating as to why one would make one decision versus the other, maybe it's a faster-- quicker decision to use the bonding. I know some have philosophical objections to using a bonding mechanism, but certainly it is an option.

WILLIAMS: OK. Thank you, Senator Hilgers. And members, I am certainly going to support LB616 at this point in time. I think that we need to move forward with this project. I just want everyone to be certain here that there are risks involved with this.

WAYNE: One minute.

WILLIAMS: Thank you, Mr. President. We're moving the needle differently than we have financed projects like this before. I think it's important that we recognize, as a body, what we are doing here. Thank you, Mr. President.

WAYNE: Thank you, Senator Williams and Senator Hilgers. Senator Moser, you are recognized.

MOSER: Thank you, Mr. President. Would Senator Hilgers respond to a question?

WAYNE: Senator Hilgers, would you yield to a question?

HILGERS: Absolutely.

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

Floor Debate
April 25, 2019

MOSER: OK. I just need a little bit of explanation how this works, see that I understand it. But typically when we let a contract for a highway project, we can't obligate ourselves beyond the one season, one construction season?

HILGERS: I'm sorry, I [INAUDIBLE] follow the question, Senator Moser. Currently or under this?

MOSER: Currently.

HILGERS: Well, you can only appropriate-- that's a good question, might be a little out of my depth on how DOT would normally do it. But I think you would-- our understanding is you would contract-- you could contract for a project, and that project, you would have-- the state would have a legally binding obligation to pay for whatever that dollar amount would be. And I think they can-- I'm not sure if they can-- I don't think that they can, you know, bind future Legislatures down the road. It would still be subject to a continuing appropriation from the body in order to pay.

MOSER: So this bill is a way to identify what those future costs could be should the Department of Transportation want to continue with the project?

HILGERS: This bill is-- I'm not sure I would characterize it that way. I mean, I think the ultimately intent is to have this-- this is for the south-- this will-- could apply to potentially other projects. It's not a closed class, but most-- this is meant-- the focus of this type of approach is the South Beltway. And so the idea here is you have a project that would take 8 or 9 years to build and it's not useful at all until year 9 and it's complete. But you could, if you had the money up front, complete it in 3 years. So let's pay it out over 8 years, but let's complete it in 3 years. Now paying it out over 8 years would require, currently or in the future, a continuing appropriation from the state. And so I don't know if that helps answer your question. But that's sort of how the structure is meant to work.

MOSER: Well, I was just trying to understand why we would use this process. And I think I understand what you're saying. I'm not sure that I was able to completely explain the question.

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

Floor Debate
April 25, 2019

But if we are not obligated to future years, they are not going to do work that they are not going to get paid for, right?

HILGERS: Well, I think in general that's the right concept, I would say, and this is what Senator Williams and I were discussing. There's no legal obligation. I do think there's a whole bunch of reasons that aren't legal or debt in nature that would suggest to a contractor that the Department of Transportation, the state is going to-- they're going to ultimately pay for what they get and that those dollars will be appropriated in the future. I think Senator Williams' point is that, hey, if there's not a debt instrument or some other contract, some legal obligation, there is some theoretical risk, to be sure. I think the point is is that the state, you know, if the state is going to build the road, it's going to pay for it over the time period that it should pay it.

MOSER: Well, the positive effect of this bill is that it identifies the contractor that could complete the project. It gives some idea what the costs are going to be, and so it gives-- there are some savings involved?

HILGERS: Significant savings, potentially \$30 million or more. The South Beltway, again, might not just apply to the South Beltway. South Beltway is a \$300 million or so project if you do it over 8 years, when you are talking about a 7, or 8, 9 percent construction inflation year in-- year over year. If you could do that in three years, now you've locked in only three years of inflation cost and you're not paying for those out years, so you could save 10 percent on \$300 million, significant savings.

MOSER: So you don't have to have separate contracts or separate bidding on every stage of the project?

WAYNE: One minute.

HILGERS: I believe that would be right, yes.

MOSER: Yeah, OK, I think I understand. I appreciate your help and willingness to answer those questions.

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

Floor Debate
April 25, 2019

WAYNE: Thank you, Senator Moser and Senator Hilgers. Senator Williams, you are recognized, and this is your third opportunity to speak.

WILLIAMS: Thank you, Mr. President. I just wanted to address the concept that Senator Moser and Senator Hilgers were talking about, because I want people to understand that this concept of-- and I'll use the term "financing a road" is not in the legislation itself. Our problem right now is the legislation-- excuse me, our laws right now require that if a contractor is not paid timely and that goes past due, our current statutes require there to be interest paid on the delay in making that payment. What LB616, as amended by AM442, does is it removes that interest payment if there is a contract, which DOT contracts for, that is over-- with a schedule over a period of time that lasts beyond the construction date. That's all that the amendment does. What the AG's Opinion found was that the Department of Transportation has broad authority right now to contract in this form. So they can already contract in this form. The ultimate question here, this makes great economic sense on this project. My last question or comment would simply be, what's next? This one makes sense. Are we now going to-- this is a construction period of 3 years and a payment period of 7 to 10 years. Would we also consider using this as a way to finance a project that's going to take 20 or 25 years and call that not debt and have that be subject to annual appropriations? Is this an ingenious way that we could at some point finance a new prison for the state, if that would be necessary? I think we need to think about that and have that in the back of your minds. Thank you, Mr. President.

WAYNE: Thank you, Senator Williams. Seeing no one else in the queue, Senator Slama for a motion.

SLAMA: Mr. President, I move that LB616 be advanced to E&R for engrossing.

WAYNE: You have heard the motion. All those in favor say aye. All those opposed say nay. LB616 is advanced. Mr. Clerk.

CLERK: Mr. President, Senator Slama, LB138 I have Enrollment and Review amendments, first of all.

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

Floor Debate
April 25, 2019

WAYNE: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB138 be adopted.

WAYNE: The question is the adoption of the E&R amendments to LB138. All those in favor say aye. All those opposed say nay. The amendments are adopted. Mr. Clerk.

CLERK: Senator Pansing Brooks would move to amend with AM1469.

WAYNE: Senator Pansing Brooks, you may open.

PANSING BROOKS: Thank you, Mr. President. Members of the body, this is just a quick amendment. AM1469 clarifies that the veterans Web site that the Nebraska Department of Veterans Affairs shall develop under LB138 shall be developed only when enough funds have accumulated in the Veterans Employment Program Cash Fund to pay for the Web site or by June 30, 2024. The Department of Veterans Affairs needed this clarification to avoid any upfront costs. So we worked with the Fiscal Office to add this language and avoid any General Fund impact. The Fiscal Office has confirmed that this amendment will provide the appropriate and sufficient clarification. I once again want to thank Senator Blood for allowing me to amend LB626 on to LB138 and I want to thank Senators Brewer, Lowe, Matt Hansen, Crawford, Gragert, and Linehan for cosponsoring this bill. Thank you very much.

WAYNE: Thank you, Senator Pansing Brooks. Seeing no one else in the queue, Senator Pansing Brooks, you are recognized to close on your amendment. Senator Pansing Brooks waives closing. The question is, shall the amendment to LB138 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Pansing Brooks's amendment.

WAYNE: The amendment is adopted.

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

Floor Debate
April 25, 2019

CLERK: I have nothing further on the bill.

WAYNE: Senator Slama.

SLAMA: Mr. President, I move that LB138 be advanced to E&R for engrossing.

WAYNE: You have heard the motion. All those in favor say aye. All those opposed say nay.
LB138 is advanced. Mr. Clerk.

CLERK: Mr. President, Senator Slama, LB693, I have no amendments to the bill.

WAYNE: Senator Slama.

SLAMA: Mr. President, I move that LB693 be advanced to E&R for engrossing.

WAYNE: You have all heard the motion. All those in favor say aye. All those opposed say nay.
LB693 is advanced. Mr. Clerk.

CLERK: LB237, Senator, I have E&R amendments, first of all.

WAYNE: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB237 be adopted.

WAYNE: The question is the adoption of the E&R amendments to LB237. All those in favor say aye. All those opposed say nay. The amendments are adopted.

CLERK: Senator Crawford would move to amend, AM1476.

WAYNE: Senator Crawford, you are recognized to open on your amendment.

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

Floor Debate
April 25, 2019

CRAWFORD: Thank you, Mr. President, and good afternoon, colleagues. Colleagues, AM1476 has two substantive components. First in our last conversation on this bill, some were concerned with the recent flooding and with counties being behind on their bridge repair, they wanted to ensure that half of the commissions that are-- that counties get to keep from in this bill would go to road funding and half would be kept in the General Fund, where the original bill was 75/25. And so in a compromise then, this amendment has it-- they go 50/50, has the division of the funds, one-half go into-- 50 percent goes into the General Fund and 50 percent of each amount is deposited into the county roads fund for two years. So on or after January 23rd, 75 percent-- it goes back to 75 percent and 25 percent. So this does both, it addresses the immediate concern that counties may need more money for roads after the flooding and to make up for backlogged projects, but then also recognizes the importance that the bill is, in large part, to address unfunded mandate to county treasurer's offices. So it's important that overall the commission is getting returned-- a portion of the commission is getting returned to the county treasurer's office over the long haul. The second substantive change is that it just changes the operative date and this was to address an issue that the DMV raised. Originally it was October 1st and they have a new computer system coming in on October 15th, so we were willing to move it to after October 15th, and then the Department of Revenue needs it to start at the beginning of the quarter. And so to meet both the needs of the Department of Motor Vehicles and the Department of Revenue, the new effective date will be January 1, 2020. Thank you, Mr. President.

SCHEER: Thank you, Senator Crawford. Seeing no one wishing to speak, you're welcome to close on AM1476. She waives closing. The question before us is adoption of AM1476. All those in favor please vote aye; all opposed vote nay. Have all voted that wish to? Please record.

CLERK: 34 ayes, 0 nays on the adoption of Senator Crawford's amendment.

SCHEER: AM1476 is adopted.

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

SCHEER: Senator Slama.

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

Floor Debate
April 25, 2019

SLAMA: Mr. President, I move that LB237 be advanced to E&R for engrossing.

SCHEER: Colleagues, you've heard the motion. All those in favor please say aye. All those opposed say nay. LB237 is advanced to E&R engrossing. Next item.

CLERK: LB237A, Senator, I have no amendments to the bill.

SCHEER: Senator Slama for a motion.

SLAMA: Mr. President, I move that LB237A be advanced to E&R for engrossing.

SCHEER: Colleagues, you've heard the motion. All those in favor please say aye. All those opposed say nay. LB237 is advanced to E&R engrossing. Next item.

CLERK: Mr. President, LB496, no E&R's. Senator Wayne would move to amend with AM1430.

SCHEER: Senator Wayne, you're welcome to open on AM1430.

WAYNE: Thank you, Mr. President, and members of the Legislature. As I explained on General File, LB496 provides proportionality and punishment for the crime of witness tampering, evidence tampering by indexing the level of punishment for tampering with the evidence to the underlying crime. For more serious underlying offenses the bill would increase the penalty for tampering from a Class 4 felony to a Class 2 felony; for minor offenses the penalty is reduced from a Class 4 felony to a Class 1 misdemeanor. AM1430 clarifies that violations of city or village ordinances are to be regarded as minor misdemeanor offenses for the purposes of determining punishment for tampering. AM1430 also makes a minor change to the terminology classifying that the more serious offenses. This is a technical change that was brought to me by the Revisor's Office as it was determined to be outside the scope of E&R change. This amendment, like the original bill, is supported by both the prosecutors and the defense attorneys. It is a minor amendment intended to simply clarify the terms of the bill. And with that, I would ask for a green support to AM1430 and the underlying bill, LB496.

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

Floor Debate
April 25, 2019

SCHEER: Thank you, Senator Wayne. Seeing no one wishing to speak, you are welcome to close. He waives closing. The question before us is the adoption of AM1430. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 37 ayes, 0 nays on adoption of Senator Wayne's amendment.

SCHEER: AM1430 is adopted.

CLERK: I have nothing further on the bill.

SCHEER: Senator Slama for a motion.

SLAMA: Mr. President, I move that LB496 be advanced to E&R for engrossing.

SCHEER: Colleagues, you've heard the motion. All those in favor please say aye. All those opposed say nay. LB496 is advanced to E&R engrossing. Mr. Clerk, items.

CLERK: Mr. President, a new A bill. LB300A by Senator Lathrop. It appropriates funds to implement LB300. An amendment to be printed to LB300 by Senator Lathrop. Announcements. The Revenue Committee will meet in Executive Session upon adjournment in Room 2022. Revenue in Room 2022. Appropriations will meet in Room 1003 upon adjournment. Appropriations in their hearing room. And tomorrow morning, Mr. President, the Agriculture Committee will meet in Executive Session at 9:00 in Room 2022.

Mr. President, Senator Ben Hansen would move to adjourn the body until Friday, April 26, at 9:00 a.m.

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