

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

Floor Debate
May 13, 2019

[]

FOLEY: [RECORDER MALFUNCTION] I call to order the seventy-fifth day of the One Hundred Sixth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections.

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

CLERK: I have one item. The Government Committee chaired by Senator Brewer reports LB109 to General File. That's all that I have, Mr. President.

FOLEY: Thank you, Mr. Clerk. Members, we'll proceed to the agenda, General File appropriations bill, LB600A. Mr. Clerk.

CLERK: Mr. President, LB600A is a bill by Senator Walz. (Read title.)

FOLEY: Senator Walz, you're recognized to open on LB600A.

WALZ: Thank you, Mr. President, good morning, colleagues. LB600A appropriates money from the Healthcare Cash Fund to the Foster Care Review Office in order to carry out the provisions for the Nebraska Children's Commission. With that, I would ask for a green vote on LB600A. Thank you, Mr. President.

FOLEY: Thank you, Senator Walz. Is there any discussion of LB600A? I see none. Senator Walz, you're recognized to close on the advance of the bill. She waives closing. The question for the body is the advance of LB600A to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 33 ayes, 0 nays on the advancement of LB600A.

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

Floor Debate
May 13, 2019

FOLEY: LB600A advances. Now moving to Select File, 2019 senator priority bills, LB86A. Mr. Clerk.

CLERK: Mr. President, LB86A, Senator Slama, I have no amendments to the bill.

FOLEY: Senator Slama for a motion.

SLAMA: Mr. President, I move that LB86A be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance LB86A to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB86A advances. Members, we're now going to proceed to Final Reading. I'll need all of you to please be at your desk pursuant to the rules. Members, we're about to commence Final Reading, if you all could please be at your desks. We'll now commence the Final Reading, LB96. Mr. Clerk.

CLERK: (Read LB96 on Final Reading.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB96 pass? Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote read.) 39 ayes, 0 nays, 3 present and not voting, 7 excused and not voting.

FOLEY: LB96 passes. Proceeding to LB179. Mr. Clerk.

CLERK: (Read LB179 on Final Reading.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB179 pass? Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please.

CLERK: (Record vote read.) 43 ayes, 0 nays, 6 excused and not voting.

FOLEY: LB179 passes. We'll now proceed to LB184. Mr. Clerk, the first vote is to dispense with the at-large reading. Those in favor of dispensing with the reading vote aye; those opposed vote nay. Record, please.

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

Floor Debate
May 13, 2019

CLERK: 36 ayes, 5 nays to dispense with the at-large reading.

FOLEY: The at-large reading is dispensed with. Mr. Clerk, please read the title.

CLERK: (Read title of LB184.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB184 pass? Those in favor vote aye; those opposed vote nay. Record, please.

CLERK: (Record vote read.) 44 ayes, 0 nays, 5 excused and not voting.

FOLEY: LB184 passes. Proceeding to LB375. Mr. Clerk.

CLERK: (Read LB375 on Final Reading.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB375 pass? Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote read.) 44 ayes, 0 nays, 1 present and not voting, 4 excused and not voting, Mr. President.

FOLEY: LB375 passes. Proceeding to LB411E. Mr. Clerk, the first vote is dispense with the at-large reading. Those in favor of dispensing with the reading vote aye; those opposed vote nay. Record, please.

CLERK: 34 ayes, 8 nays to dispense at the at-large reading.

FOLEY: The at-large reading is dispensed with. Mr. Clerk, please read the title.

CLERK: (Read title of LB411.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB411E pass with the emergency clause attached? Those in favor vote aye; those opposed vote nay. Record, please.

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

Floor Debate
May 13, 2019

CLERK: (Record vote read.) 46 ayes, 0 nays, 3 excused and not voting.

FOLEY: LB411E passes with the emergency clause attached. Our next bill is LB418. Mr. Clerk, the first vote is dispense with the at-large reading. Those in favor of dispensing with the reading vote aye; those opposed vote nay. Record, please.

CLERK: 32 ayes, 8 nays to dispense of the at-large reading.

FOLEY: The at-large reading is dispensed with. Mr. Clerk, please read the title.

CLERK: (Read title of LB418.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB418 pass? Those in favor vote aye; those opposed vote nay. Record, please.

CLERK: (Record vote read.) 35 ayes, 0 nays, 11 present and not voting, 3 excused and not voting.

FOLEY: LB418 passes. Our next bill is LB478E.

CLERK: (Read LB478E on Final Reading.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB478E pass with the emergency clause attached? Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote read.) 46 ayes, 0 nays, 3 excused and not voting.

FOLEY: LB478E passes with the emergency clause attached. Our next bill is LB560. Mr. Clerk, the first vote is to dispense with the at-large reading. Those in favor of dispensing the reading vote aye; those opposed vote nay. Record, please.

CLERK: 32 ayes, 7 nays, Mr. President, to dispense with the at-large reading.

FOLEY: The at-large reading is dispensed with. Mr. Clerk, please read the title.

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

Floor Debate
May 13, 2019

CLERK: (Read title of LB560.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB560 pass? Those in favor vote aye; those opposed vote nay. Record, please.

CLERK: (Record vote read.) 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting.

FOLEY: LB560 passes. Proceeding to LB570E.

CLERK: (Read LB570E on Final Reading.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB570E pass with the emergency clause attached? Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote read.) 44 ayes, 0 nays, 3 present and not voting, 2 excused and not voting.

FOLEY: LB570E passes with the emergency clause attached. Proceeding now to LB570AE.

CLERK: (Read LB570AE on Final Reading.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB570AE pass with the emergency clause attached? Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please.

CLERK: (Record vote read.) 45 ayes, 0 nays, 2 present and not voting, 2 excused and not voting.

FOLEY: LB570AE passes with the emergency clause attached. Next bill is LB595. Mr. Clerk, the first vote is dispense with the at-large reading. Those in favor of dispensing with the reading vote aye; those opposed vote nay. Record, please.

CLERK: 37 ayes, 7 nays, Mr. President, to dispense with the at-large reading.

FOLEY: The at-large reading is dispensed with. Mr. Clerk, please read the title.

CLERK: (Read title of LB595.)

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

Floor Debate
May 13, 2019

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB595 pass? Those in favor vote aye; those opposed vote nay. Record, please.

CLERK: (Record vote read.) 47 ayes, 0 nays, 2 excused and not voting.

FOLEY: LB595 passes. LB155.

CLERK: Mr. President, I have a motion on the desk. Senator Wayne would move to return LB155 to Select File for a specific amendment, that being AM1611.

FOLEY: Senator Wayne, you're recognized to open on your motion to return the bill.

WAYNE: Thank you, Mr. President, and colleagues. This is a bill my freshman year-- or area of my freshman year that I had a lot of debate, a lot of conversations about. And as I watched Senator Brewer work tirelessly through this bill, I couldn't help but bring up some issues that I think we as a body have to address in the next two years. I'm going to give you a little quick history of how we got to where we are in public power, but I do hope you pay attention and listen to where we should go, hopefully, in the future. In 1993, this body decided that it was a-- we should have a formation of a government to help run our public power. Since 1887 to 1933 there were a lot of areas in rural Nebraska that public power or power companies refused to serve. They didn't feel like putting the capital investment to do such a service. So in 1933 is when we started a conversation around public power. By 1946 there were 43 nonprofit or public utility systems to make sure that everywhere in the state you had access to public power. That is the foundation of where we're at today. We are operating off a 1946 statute or goal instead of a modern day history. Why is that important? Because two things happened that fundamentally shifted our public power. And if you ask anybody in the energy sector, they will tell you, in 2009 when we decided to enter into the Southwest Power Pool, that fundamentally changed what we do. 2014 when the Southwest Power Pool created its new integrated market, that completely changed the operation of public power in Nebraska. Many of my colleagues might think when the lights are on in here, that Lincoln Electric is actually powering our lights, that maybe NPPD is actually wholesaling and providing when I turn on my light, boom, it's NPPD or LSE. If you live in Omaha, you might think it's Omaha Public Power District. The reality is, in 2014 we became a part of a commodity system in which we buy and sell energy like we do stocks. So you may not receive anything from Nebraska when you actually turn on your lights on a hot, summer, warm, windy day. Why? Because wind is such tax credit and it's first in, first out because you can't hold it because their technology isn't there for a battery that wind goes first into the system. You can go on Southwest Power Pool right now and see energy that is costing zero when we have coal plants right now running costing millions of dollars. So guess what? That coal plant gets turned down to 50 to 60 percent so they can utilize the wind on the grid.

Floor Debate
May 13, 2019

And, in fact, if you were to move all of Nebraska's generation, there is still enough electricity in the grid to power Nebraska on a regular day. So what does that mean for us as state legislators? We have what we have. We have assets that are sitting there. We have assets that aren't making money and no good business model says that. Why I filed this amendment was because of Berkshire Hathaway shareholder meetings. Our dear friend, Warren Buffett, got up and said there was no competition on this side of the river. That is why many businesses are choosing to do business on the other side of the river. A World-Herald article came out and said that in the commercial market, we've lost significant competition. Our industry rates since 2008 have went up nationally 8 percent, but if you adjust them for-- inflation has gone up 29 percent. What else sparked this is I have a school, not in my district, but a high school in Omaha who wanted to do net metering. Why this touches a chord with me is that when I did the first bond in 2014 for Omaha Public Schools, I wanted to put solar on top of every high school and middle school that we had. And the thought process is we can save dollars, 2 to \$3 million, sometimes up to 8 million, depending on how many schools we did, and put that back into our general operations fund. Had that been available at a competitive rate, maybe we would have already a solution to part of our bond issue in OPS because we could be using that eight to ten million dollars for the next 30 years to replenish that bond-- or our pension, I mean. But we couldn't do it because after 25 kilowatts, there's no law that governs 25 to 250 kilowatts in net metering. So public power has taken upon themselves to stifle anybody who is trying to lower their-- any commercial business who is trying to lower their energy rates and their cost of energy in doing business in Nebraska. Think about this. We live on I-80 and we are just across the street from I-29. Logistical warehouse transportation companies could be booming here, but many of those products have to have a certain temperature and one of their highest cost is energy. We have a high school that can't build a solar power because they made it economically infeasible. We have logistical companies who I met with last week who reminded me that they have to keep their product at a certain rate and they are looking to move outside of Nebraska because of their energy rates. Because if they move to Iowa or if they move to Kansas, they can put up a solar panel that will generate 100 kilowatts to help offset their cost. So this amendment is to send a shot across the bow to everybody to say, at some point, when we're talking about 93 counties, we start talking about 244 school districts, we also have to talk about public power. That we have to fundamentally change how we think when it comes to public power if we're going to move into the twenty-first century. The greatest threat to public power is not wind, it's not solar, it is a battery. Once a battery, which they have been working on for the last ten years, and I think will be here in the next five years, can store wind energy and solar energy, that makes our coal plants pretty much useless. And we have a \$1.5 billion asset sitting in western Nebraska that we will have to pay for somehow. So I would love to have a conversation a little bit today, but I told Brewer I'm not trying to kill his bill, but I do think as we move forward and interim studies are done, we have to make sure that net metering for commercial industry is on the agenda. If you don't like wind in the Sandhills, then offer an alternative for us in the city who want to be green. And the fact of the matter is, is OPPD has the infrastructure to do net metering. The fact of the

Floor Debate
May 13, 2019

matter is, we're not talking about the farmer down the end of the line that doesn't have the capability or the wire or the infrastructure to generate electricity back. We're talking about cities who can. LES, Omaha Public Power District can. Let us at least do that so we can start changing how we do public power. If we don't, we're going to be sitting on abandoned assets, we're going to be sitting on an infrastructure that cannot generate, and we will have people continue, like Google and Facebook, buy off of the grid rather than using our facilities to actually buy from. With that, thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. (Visitors introduced.) Debate is now open on the motion. Senator McCollister.

McCOLLISTER: Thank you, Mr. President. Good morning, colleagues. I couldn't let Senator Wayne's discussion go unanswered, so I respectfully will do that right now. He had a rather eloquent discussion about the SPP. I think he explained it very well. But what I don't think he did talk about very well was the role of renewable energy in Nebraska. And that has actually kept energy prices low, low indeed. In fact, the SPP service area has some of the lowest energy costs in the entire country. You compare the rates in Chicago, Minneapolis, any other area, and the rates are much higher. In Nebraska, I think if you look long-term, 10 years, 15 years, also has some of the lowest rates in the country. Why is wind so cheap? Well, it does, in fact, get entitlements from the federal government. Once those entitlements are gone, and they're ending soon, and Nebraska offers no incentives at all, but when that occurs, all wind energy has, there's no fuel cost. So as a result, it is a cheap form of energy. Let's talk about net metering. I did have a bill before this body this year and I took some of the cues from Senator Wayne and, boy, that bill went nowhere, absolutely nowhere. Where is the greatest opposition? Not OPPD. NPPD was neutral. It's the rural electric companies that had the greatest opposition to that bill. We do need to work on net metering and I look forward to working on that with Senator Wayne in the years to come. My bill is still stuck in committee, so it could very well be resurrected and brought back to this body next year. So I look forward to the opportunity. One last thing, batteries will be a game changer for renewable energy, particularly whether its solar or wind, batteries could be the big game changer and we'll see how that works as battery development gets better in the years to come. Thank you, Mr. President. And thank you, Senator Wayne, for bringing up an important topic.

FOLEY: Thank you, Senator McCollister. Senator Groene.

GROENE: I appreciate Senator Wayne's attempts here, but on policy and what we do in this body, folks, too often we're getting bills amended to bills that have gone through the process of hearings, introduction. When we amend things on the floor, it should be change a date, change of policy from "shall" to "may", but it should be on things we've had hearings on I would think. But

Floor Debate
May 13, 2019

that said, I agree with Senator Wayne, if you want to put a solar power on top of your school, go right ahead. I do disagree that-- I've heard a couple of testifiers already write the obituary for my Sutherland Power Plant, coal generating power. One of the reasons rural Nebraska doesn't appreciate this, we have surges in times that we need power. When those pivots are turned on, it's a massive use of energy quickly. A coal fired power plant can do that, wind cannot. Neither can batteries run a pivot. Batteries are used to start the motors that run the pivots sometimes, but we are realistic. Wind is a dream. Look what's happening in Germany, by the way, with their wind initiative. They're finding out you cannot rely on renewable energy. It's nice to walk your city streets and watch the gas burning cars and all the lights on and dream about renewable energy with windmills in my district, but that's not reality. Can we do a balancing act? Yes. Can we put some windmills in Memorial Park, on the sleigh riding hill in Omaha? I'm all for it. I'll help you. But keep them out of my Sandhills. You're not doing us any favors. We have very high-paying jobs at the Sutherland Power Plant. It is a blessing, not a negative to the state of Nebraska. Senator McCollister, at least he was honest. We had Nebraska Public Power, we don't have the Southwest Electrical Pool Power. Although we do, but when Nebraska power was Nebraska power with nuclear plants and coal, we had one of the lowest electric rates in the nation. We have dropped down in the lower end of the top ten now because of wind and because we're not efficient. It's Nebraska Public Power. It is not the Southwest Pool of energy. Let's remember that. Our rates have gone up in Nebraska because we're not efficient anymore like we used to be when we relied on the jobs and the coal from Wyoming and Sutherland and our nuclear power plants. Dream all you want, save the planet if you want, but I want my lights, and I want my irrigation pivots to turn on when we need to do that. Thank you.

FOLEY: Thank you, Senator Groene. Senator McCollister.

McCOLLISTER: Couple more points, Mr. President, and I'll stand down. Senator Bostelman pointed out to me that, yes, wind did get some advantages. Nebraska Advantage did get some credits from that. So it's-- you know, there is some advantage that Nebraska gives renewable energy. Number two, this energy situation in Germany isn't quite as clear as people make it out to be. They have lignite plants in Germany, and once again, we have people employed in those plants and they felt it necessary to utilize that dirty form of energy over some of their wind. Not only that, but they contracted forward some of those renewable energy prices about ten years ago; and as those contracts end, Germany will have lower cost energy as it comes about. One last point, Senator Groene is right, there are times during the summer that we need every form of energy available, including those coal plants. Those pivots use a lot of energy and the grid can't supply all that energy with renewables, and I don't think it's been necessary to import energy, but those coal fired plants are necessary during those times of peak demand. Thank you, Mr. President.

FOLEY: Thank you, Senator McCollister. Senator Slama.

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

Floor Debate
May 13, 2019

SLAMA: Thank you, Mr. President. I wasn't planning on speaking on this bill, but I thought it would be a good idea to get up and remind folks that when we're talking about the growth of renewables, the expansion of renewals, net metering, there's also significant long-term impacts of this shift on rural Nebraska, including job losses. I mean, you only need one or two people to run a wind farm once its built, so we to keep that in mind if we're looking towards shutting down our current facilities. But also I would like to note another form of green energy that's not a renewable but it has a zero carbon output and that is nuclear energy. My district is home to Cooper Nuclear Station, the lone remaining nuclear station in the state which provides around 700 jobs for the area in an economic impact of over \$112 million annually. And let's just keep in mind that in addition to wind and solar, there's another green option out there and it is nuclear. Thank you, Mr. President.

FOLEY: Thank you, Senator Slama. Senator Hughes. He waives the opportunity. I see no further discussion. Senator Wayne, you're recognized to close on your motion to return the bill.

WAYNE: Thank you, Mr. President. And I did a quick vote count and I know the vote is not there right now, but I think after the LR study we'll get there. I just wanted-- because sometime on Final Reading when everybody is here, I think this is important for us to raise the issue that is really going to affect us in the next 20 years and public power is one of them. So I do have a commitment that I've made to Senator Brewer to do an LR on public power this year and look at structurally, but I will make it clear that net metering for commercial will be, if not my priority next year, my priority bill. I believe in it that strongly and I think if we're going to be a manufacturing and distribution facilities around my district and around Omaha area, this is one way for us to lower costs without going through a tax route. So as we continue to think about LB720 and LB298, understand that energy costs are right there with these companies who are trying to come to Nebraska. And with that, I'd like to withdraw my motion.

FOLEY: Thank you, Senator Wayne. The motion is withdrawn. Members, this is our last bill on Final Reading. If you all would please be at your desks, we can finish up this last bill of Final Reading. LB155. Mr. Clerk.

CLERK: (Read LB155 on Final Reading.)

FOLEY: All provisions of law relative to procedure having been complied with, the question is, shall LB155 pass? Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: (Record vote read.) 44 ayes, 0 nays, 3 present and not voting, 2 excused and not voting, Mr. President.

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

Floor Debate
May 13, 2019

FOLEY: LB155 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following legislative bills: LB96, LB179, LB184, LB375, LB411E, LB418, LB478E, LB560, LB570E, LB570AE, LB595, and LB155. Members, pursuant to the agenda, we'll move to Select File, 2019 committee priority bills. Senator Stinner is absent today and Speaker Scheer has indicated we're going to pass over LB334 and LB334A, which takes us to LB600. Mr. Clerk.

CLERK: Mr. President, with respect to LB600, I have E&R amendments first of all.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB600 be adopted.

FOLEY: Members, you heard the motion to adopt the E&R amendments to LB600. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted.

CLERK: Mr. President, Senator Bolz, I have AM1483 and AM1575. I understand you wish to withdraw those?

FOLEY: The amendments are withdrawn.

CLERK: Mr. President, Senator Bolz would move to amend with AM1650.

FOLEY: Senator Bolz, you're recognized to open on AM1650.

BOLZ: Thank you, Mr. President. This amendment encompasses three relatively small changes for the body's consideration this morning. The first is a technical fix to the funding stream for the Children's Commission, which was amended into LB600. It's just a technical change to clarify how those dollars will flow from the Healthcare Cash Fund to the Children's Commission. The second change is a small change to the makeup of the Children's Commission made at the request of the Department of Health and Human Services to include the director of the Division of Behavioral Health, but not include the division of-- developmental disabilities or division of Medicaid. So that makeup was at their request and I think that makeup makes excellent sense for the overall goals of the Children's Commission. The third change amends into LB600 the contents of LB332 which, again, is a relatively minor change to the Bridge to Independence Program. Our Bridge to Independence Program is a support program for young people transitioning out of the foster care system. The Children's Commission has a subcommittee that makes recommendations related to the Bridge to Independence Program. One of their

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

Floor Debate
May 13, 2019

recommendations was to essentially rightsize this program. What that means through the vehicle of LB332, is that we would no longer fund young people who choose to no longer be residents of the state of Nebraska. In other words, if you move out of the state because you choose to go to school out of state or move a family out of state or join the military, it may no longer be necessary to fund those adult support programs for youth. And instead of funding that population, we would fund a more needy population, a population that is in need of more support, and that is kids you have experience with the child welfare system in their history, but rather than aging out of the child welfare system, they will age out of the juvenile justice system. This is a very narrow population of young people who don't otherwise have a home to go to when they age out of the juvenile justice system and have that experience with the child welfare system in their history. And it's cost neutral and it had the support-- the unanimous support of the Health and Human Services Committee. I'd be happy to answer any questions, but I think it is a compromise between advocates and the Department of Health and Human Services. It is cost neutral and it was unanimously supported by the Health and Human Services Committee. I would very much appreciate your support of AM1650. Thank you, Mr. President.

FOLEY: Thank you, Senator Bolz. Is there any discussion on the amendment? Senator Arch.

ARCH: A question for Senator Bolz if she would be willing to respond.

FOLEY: Senator Bolz, would you yield, please?

BOLZ: Sure, of course.

ARCH: Senator Bolz, could you please explain the fiscal note. Refresh our memory on funding for this.

BOLZ: Uh-huh. So funding already exists for the Bridge to Independence Program. This amendment would be cost neutral because we're moving out one population and moving in another. And my conversations with the department and our legislative fiscal analyst say that we can basically rightsize the program with the resources that we currently have. Supporting those young people who are out of state through the Bridge to Independence Program is actually very expensive because it includes travel, it includes keeping track of those young people, it includes their existing ongoing needs, and the population of young people in the juvenile justice system who would be newly eligible under this amendment is very small. It's small for two reasons. One is that our juvenile justice system does a very good job of trying to find the right place for young people transitioning out of the juvenile justice system before they age out, so we have a relatively small number of kids who need ongoing support. And the second is-- the second reason that it's a small population is because we're talking about kids who might have a

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

Floor Debate
May 13, 2019

developmental disability or a mental or behavioral health need and can't otherwise transition out on their own. So, all in all the amendment is cost neutral and I think it's-- I'm sorry, I'm taking a lot of your time. I hope that answers your question.

ARCH: That's OK, that's OK. So LB332 was heard in committee, of course, but it didn't come to the floor in General File because it wasn't prioritized, is that right? Is that why you're amending this now to LB600?

BOLZ: Right. It is germane to LB600 as amended by LB330. So this was just a way to get a relatively small change done that I think better serves the population of kids who are in the Bridge to Independence Program.

ARCH: Thank you, Senator.

BOLZ: Thank you.

FOLEY: Thank you, Senators Arch and Bolz. Senator Linehan.

LINEHAN: Thank you, Mr. President. Would Senator Bolz yield to a question?

FOLEY: Senator Bolz, would you yield, please?

BOLZ: Sure.

LINEHAN: I'm just not quick enough using my phone to figure this out. So how much-- I know it's revenue neutral, but what is the amount of revenue involved here?

BOLZ: Let me pull up the fiscal note here. So the-- the fiscal note says that the bill estimates that stipends for youth-- the Bridge to Independence stipend is approximately \$760 per month, and I think there were a total of about 24 individuals who may newly qualify under this change that would allow young people transitioning from the juvenile justice system to qualify for Bridge to Independence. And the idea is that the individuals who are being served out of state who are more expensive will more than counter balance that 24-- that group of 24 young people who will be served.

LINEHAN: Thank you. Is there a total amount though on the fiscal note? And I'm sorry I couldn't--

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

Floor Debate
May 13, 2019

BOLZ: You're OK. It says, assuming the current Title 40 penetration rate, which is our matching funds from the federal government and these kids would qualify, the cost would be about 150,000, 119,000 of General Funds, and 31,000 of federal funds in '19-20, a little tiny bit higher, 158,000 of General Funds in 2021. So the cost of the out-of-state kids counterbalances the new kids.

LINEHAN: So it's-- I don't know if Chairman Howard is here today?

FOLEY: I do not see Senator Howard on the floor at the moment.

LINEHAN: OK. So why wouldn't have-- to Senator Arch's question, why wouldn't Health and Human Services bring this to the floor either in one of their bills-- committee bill?

BOLZ: I guess I thought-- I think that's what we're trying to do here, we're trying to--

LINEHAN: But it didn't get voted out of committee.

BOLZ: It did get voted out of committee.

LINEHAN: Oh, it did get voted out. OK.

BOLZ: Yep, it was unanimously supported by the Health and Human Services Committee.

LINEHAN: OK. OK. All right. Thank you, Senator Bolz.

BOLZ: Oh, you're welcome.

FOLEY: Thank you, Senators Linehan and Bolz. I see no further discussion. Senator Bolz, you're recognized to close. She waives closing. The question for the body is the adoption of AM1650 to LB600. Those in favor vote aye; those opposed vote nay. Senator Bolz.

BOLZ: I think I'm going to need a call of the house and a roll call vote.

FOLEY: Thank you, Senator Bolz. There has been request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, please.

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

Floor Debate
May 13, 2019

CLERK: 19 ayes, 6 nays to place the house under call.

FOLEY: The house is under call. All senators please return to your desk and check in. The house is under call. All senators please return to the Chamber and check in. The house is under call. Senator Kolowski, could you check in, please. All unexcused members are now present. The question for the body is the adoption of AM1650. A roll call vote has been requested. Mr. Clerk.

CLERK: (Roll call vote taken.) 28 ayes, 3 nays on the adoption of the amendment.

FOLEY: AM1650 is adopted. I raise the call. Anything further on the bill, Mr. Clerk?

CLERK: Nothing further.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB600 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB600 advances. Moving to Select File, 2019 senator priority bills, LB538. Mr. Clerk.

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

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB538 be adopted.

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

CLERK: Mr. President, the next amendment. Senator Lathrop, I have AM1544 with a note you wish to withdraw.

LATHROP: That's true.

FOLEY: Amendment is withdrawn.

Floor Debate
May 13, 2019

CLERK: Senator Lathrop, AM1768.

FOLEY: Senator Lathrop, you're recognized to open on AM1768.

LATHROP: Thank you, Mr. President, and colleagues, good morning. AM1768 reflects further discussions between my office and the office of Senator Albrecht, and Senator Albrecht, the Governor's Policy Research Office and other stakeholders. The amendment makes a handful of specific changes to LB538, most of which address concerns which were raised on General File by Senator Albrecht and some others. I promised to work on this before it got to Select, and we have. The first change, we've added language to ensure people with devices already in use will not be forced to shut them down while awaiting the final decision from the Revenue Department. Second, we've set an age limit of 19 on those devices which make it through the state's vetting process. This reflects the existing age limit for lottery, keno, and was done at the request of Senator Albrecht. Also, at the suggestion of Senator Albrecht, we've removed the ability for credit or debit cards to be used as a form of payment in these machines. In addition, we've established a limit on the total number of devices that may be installed at any one location, which is one device per 1,000 square feet for a maximum of 15 devices in any one location. Lastly, we have specified that the fees collected for the administration of this program will be placed in the Revenue Department's Revenue Enforcement Fund. This helps ensure that all fees-- receipts are used explicitly for the purpose of enforcing this act and make it easy for the department and the Legislature to monitor this program in case future changes are needed. I want to thank Senator Albrecht for her willingness to work with me on this between General and Select, PRO and others for their contributions to this amendment and the underlying bill, and I ask for your support on AM1768 as well as LB538. Thank you, Mr. President.

FOLEY: Thank you, Senator Lathrop. Debate is now open on AM1768. Senator Chambers.

CHAMBERS: Mr. President, members of the Legislature, and Senator Lathrop, words do mean something. Words that may sound alike but be spelled differently will have a different meaning. I always listen carefully when Senator Lathrop speaks because either it confirms something that I already believe, or it teaches me something new. In this instance, I need a clarification. Senator Lathrop, at one point you mentioned stakeholders. Would that word be spelled "steak" or "stake"? If the bill were mine, it would be spelled "stake", so which way would it have been--

FOLEY: Senator Lathrop, would you yield, please?

LATHROP: I think it's "stake", s-t-a-k-e, having nothing to do with beef.

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

Floor Debate
May 13, 2019

CHAMBERS: OK, and it has nothing to do, as it would if it were my bill, with a sharpened piece of wood which can be driven into the heart of an individual who is not liked? It does not have that meaning of "stake" does it?

LATHROP: No.

CHAMBERS: Which meaning does it have, for the record, so we're completely clear?

LATHROP: So we're completely clear, it would be those people who have an interest in this subject matter.

CHAMBERS: Thank you very much. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers and Senator Lathrop. Senator Hughes.

HUGHES: Thank you, Mr. President. Wondering if Senator Lathrop would yield to a question.

FOLEY: Senator Lathrop, would you yield, please?

LATHROP: I'd be happy to.

HUGHES: Thank you, Senator Lathrop. The concern that I have with this, just looking at this very quickly, is why the limit of square footage. Where did the one per-- you have to have at least 1,000 square feet per machine. Where did that come from?

LATHROP: OK. So one of the things that Senator Albrecht and I discussed between General and Select was a concern that she expressed during General File debate, which is having a convenience store or a bar turn into a parlor of these cash machines. They may be-- they may carry the proper decal, but I think they still have-- a number of people are concerned with the proliferation of these devices, and it was an accommodation to Senator Albrecht's concern that we not have parlors of these places showing up, or that the convenience store on the corner doesn't have 12 of these.

HUGHES: OK, thank you, Senator Lathrop. Would Senator Albrecht yield to a question?

FOLEY: Senator Albrecht, would you yield, please?

Floor Debate
May 13, 2019

ALBRECHT: Yes, I would.

HUGHES: OK. Thank you, Senator Albrecht. Would you care to expand on your heartburn with this thousand square feet a little bit more? I'm just trying to flesh out more why it's in there.

ALBRECHT: Well, thank you for the question. Certainly I stand opposed to gambling. I am on this bill to regulate it and make it become a stronger bill for the state of Nebraska if we have to deal with these skilled machines. So my concern in the beginning when I asked Senator Lathrop if he would entertain four machines, that's what the state of Iowa does. With four machines, you don't have establishments all throughout the state opening up gaming, basically, with these skilled machines that were authorized by, if you would, the Supreme Court said that they were just games of skill. But when you pay money out, that is what gives me heartburn. And I don't want young children getting started sooner than they need to. I do not want to see more machines than there has to be. So going back and forth, the square footage, I think, helps, because then it's just not everywhere. Everywhere you go, you just don't have games of skill being played throughout the state.

HUGHES: Thank you, Senator Albrecht. I guess I certainly appreciate your stance on limiting gambling in the state of Nebraska. I guess I'm on the other side of that. I think we're missing out on a lot of opportunity for revenue. I've stated before that, you know, this is entertainment for a lot of people. They're willing to spend their entertainment dollars. If there are problem gamblers or problems associated with gambling, they still come back home and we are paying the bill for that. We're just not receiving any of the revenue. My concern, I guess I'm still troubled with the thousand square feet. You know, I don't see that that's a benchmark. I mean that's a number pulled out of a hat, if you will, of limitation. I guess I would like to see that eliminated, and I don't know what other benchmark we could put in there. I do agree with the 15 machines, but I think it should be up to the individual proprietor of what they feel the market is going to be in their establishment. I'm assuming these machines cost them money of some sort. It does take up space that they're not able to use--

FOLEY: One minute.

HUGHES: --to sell other products. So I guess, I don't think them just putting a whole wall of these machines in in lieu of potato chips and pretzels and corn nuts, I think that we're taking the business decision away from the business owner and I don't think that's the-- should be the response of the government in this instance. They should be allowed to allocate their floor space to their best advantage. I'm going to listen to a little bit more of the discussion, but I think that 1,000 square feet is too small. Thank you, Mr. President.

Floor Debate
May 13, 2019

FOLEY: Thank you, Senator Hughes. Senator Wayne.

WAYNE: Thank you, colleagues. Thank you, Mr. President. Colleagues, I'm adamantly opposed, one, to this underlying bill, but this amendment, I think, makes it even more complicated. When you take a square footage of a thousand, you begin to eliminate a lot of opportunities for many charitable organizations to raise dollars for their events and for their organization. More importantly, I think there's still this issue of burden. This is an issue where I just-- no other place do I know where we allow self-incriminating evidence. It's a constitutional violation and I just don't understand how we continue to move this bill along when there is a constitutional problem. It is shifting the burden. You are turning into vice in which it could be used against you criminally. Now I do have a bill to take care of the criminal part by decriminalizing the gaming altogether. If we're going to say this is an administrative issue, and there's going to be a tax issue and the tax is going to have civil penalties then let's eliminate the criminal device altogether. But for those who have small organizations out in rural Nebraska and in Omaha and Lincoln, who use these as a way to fund raise, we are going to hurt them in a way that I think we are not calculating right now. In addition, if Iowa allows four, I'm not sure why we're at one. I mean, we're a fourth of the restriction of there, and again, we're going to lose out on basic opportunities for our organizations to fund raise. I just don't support this underlying bill. I would ask that you vote red on this and we'll have more conversations when my two amendments come up later. Thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. Senator Briese.

BRIESE: Thank you, Mr. President. Good morning, colleagues. LB538 was heard before the General Affairs Committee and it seeks to further define and regulate skilled cash devices. LB538 as amended by AM900 and AM1278 previously, essentially reaffirmed existing case law determined by the Nebraska Supreme Court and that is the determination of what constitutes gambling, hinges on whether it's predominantly based on skill or chance. In doing this, the bill lays out several criteria for determining that and anytime you can lay out a process, provide some standards, give the party some guidelines, or move some subjectivity, I think everybody wins. So I think the bill, as amended, is a good policy improvement. And it provides a needed limitation on the proliferation of these games. And now we have AM1768. And I want to applaud Senator Albrecht and Senator Lathrop for working together to arrive at some of the provisions in here, and I do support various aspects of this amendment. Limiting the use of these machines to individuals 19 and over I think is good policy for our state, as is prohibiting the use of credit cards to fund play on these machines. And as far as allowing the operation of these machines until 30 days after notification that they are not in compliance with the act is a reasonable accommodation of the interest of these distributors. It will serve to incentivize the department to issue rules in a timely manner. And it will serve the-- incentivize the department to make a timely determination on some of these applications. Essentially provides a safe harbor for some

Floor Debate
May 13, 2019

of these distributors and could-- has the potential to reduce some lawsuits. And I support limiting the number of these machines, as Senator Albrecht does, and it's my understanding that PRO, you know, was involved in some of these negotiations, and I think they've essentially agreed to this what's presented in the bill here, maximum of a 15, no more than one per thousand square feet. And somebody can correct me if I'm wrong on that, but I think that's basically the product of negotiations here, which I think it's a reasonable place to be on this. And as far as Senator Wayne's concerns about a shifting of the burden, you know, we talked about that last time. And, you know, we're talking about administrative process here. We're not talking about a criminal process and procedure here. This is administrative and that's why appeals are directed to the Administrative Procedure Act. And so I'm not concerned about any shifting of the burden. I don't think that should be a concern in this instance. You know, if you have a machine without a decal in operation, and you're going to get prosecuted for having an illegal gambling device, the government still has the burden. They're going to have to prove it's your machine. You operated it. Didn't have a decal. And so-- and I think we addressed that issue fairly well previously on General File. We moved it forward and I think it's time to move this amendment and this bill forward. Thank you, Mr. President.

FOLEY: Thank you, Senator Briese. Senator Albrecht.

ALBRECHT: Thank you, Lieutenant Governor Foley. Again, I stand to thank Senator Lathrop for taking a look at this because he certainly didn't have to put an age restriction in there. He didn't have to put the credit card restriction in there. And I do believe this just regulates the establishments today that are not in compliance and they'll have the time to come into compliance and to get the right machines. But I disagree with Senator Wayne saying that there will be a problem for them in the future because I think it spells it out in the amendment, AM1768, and I just want people to think about-- you know, there are people that are going to want to do a vote again of the public whether they want to go gambling throughout our state. They have keno already, you have lottery, you have these machines, these skilled machines that you can play. I think we are going above and beyond allowing things to happen behind the scenes. I appreciate this bill being able to restrict some of those bad machines that are out there, and I only can hope that those on the floor would not want to change this up any. We can certainly revisit it next year and see how things are going, and see where we land, if there is an initiative that changes things. But I do rise to talk about the people who do have problems with this. And I don't care if you're going throughout the state and the other 90 counties that want a machine in their establishment, they do make a lot of money. The people that own the establishments don't own the machines. I'm sure they just lease them from these companies that make the correct machine. That's a skilled game. So I just want to caution people that for every dollar that they put in one of those machines, we're spending \$3 just to take care of their woes, to try to win back their homes, their families, their vehicles, their children. You know, if you want to spend your paycheck on one of those games versus taking care of your family, that I have an

Floor Debate
May 13, 2019

issue with. And I don't think that the state of Nebraska needs to try to help with that. Whether people say that they can go gamble regardless, they can go to Iowa, they can go to any of the reservations that have a casino, that is not something that I rise in favor of. I am on this bill for the regulations and to take into consideration how many are out there. So with that, I'll just yield my time back to you, Senator.

FOLEY: Thank you, Senator Albrecht. Senator Lathrop.

LATHROP: Thank you, Mr. President, and colleagues, once again. I'd like to respond to a statement Senator Wayne made about these machines in the fact that there's somehow self-incrimination involved in this process. This happens all the time, right? So amusement rides is one thing that comes to mind. We have now the Fire Marshal, used to be the Department of Labor, goes out and looks at amusement rides that are put out by these traveling operators when they set up at your church festivals. And once a year, they're required to do an annual inspection and place a sticker on there that says this has been inspected by the state of Nebraska and whatever comes along with that, presumably it means it's a safe amusement ride to be on. This process is no different. And this bill is about trying to provide a practical enforcement mechanism. Remember, right now what they do is the State Patrol goes and picks up a machine, they have it tested, then they file a ticket or cite the operator, and the operator then has to go through a trial just to determine whether or not his machine, or her machine, is a device of gambling or a device of skill. We're doing that at the front end, so now we're going to eliminate those machines that are essentially slot machines. There is nothing about this that is changing the burden of proof or creating some kind of-- testifying against yourself or incrimination. Colleagues, the concern this morning, it sounds like, is with the number of machines per facility. In an agreement that I reached with Senator Albrecht, we landed on this language. I know that you may have VFW's or something like that where the one per thousand is a problem. Senator Wayne is going to offer an amendment to strike that one per thousand. I think it's been filed or will be, that strikes that one per thousand. So I would ask you to move AM1768 to LB538, and if you want to take up the question about whether there should be a limit per thousand square feet of space by the person who is providing these to their customers, we can do that on the Wayne amendment. But don't not vote for AM1768 because of that, if you wouldn't mind. And once again, I would encourage your support of the amendment as well as the bill. And I'm happy to answer any questions you might have in that regard. Thank you.

FOLEY: Thank you, Senator Lathrop. Is there any further discussion on AM1768? I see none. Senator Lathrop, you're recognized to close on the amendment. He waives closing. The question for the body is the adoption of AM1768 to LB538. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

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

Floor Debate
May 13, 2019

CLERK: 32 ayes, 1 nay, Mr. President, on the adoption of Senator Lathrop's amendment.

FOLEY: AM1768 has been adopted.

CLERK: Mr. President, Senator Wayne, I now have AM1511 in front of me.

FOLEY: Senator Wayne, you're recognized to open on AM1511.

WAYNE: Thank you, colleagues. Bear with me, I want to make sure we're on the right amendment.

CLERK: It's the one that starts out with fantasy contest act.

WAYNE: Yes, we are on the right one. Thank you, colleagues. Mr. President and colleagues, we are talking about regulating an industry, regulating something that we would-- to determine whether something is a game of chance or a game of skill. Well, this amendment is about a game of skill. This is to add and create a fantasy contest act and create-- basically it will create a system for daily fantasy contest operators like FanDuel or DraftKings to have to register with the Department of Revenue to do business in the state, and it would allow them to operate in the state legally. Why is that important? 'Cause currently there is no regulations at all when it comes to fantasy sports-- completely at all. What we heard on this bill and the underlying bill is that we got to have regulations to determine what is a game of skill and what is a game of chance. Well, the Supreme Court multiple times has said fantasy sport is a game of skill. It is not a game of chance. Therefore, it is not gambling. This is not expanded gambling. This is a way for us to regulate an industry that is currently going on in our state anyway unregulated. We have fly-by-night fantasy sports operators who are taking advantage of individuals because it's not regulated. This will allow for the regulation. Now, I will say that this bill had a hearing, LB137. It was before the General Affairs Committee. It came out of the General Affairs Committee and is sitting on the floor. I have supported this bill for the last two years and that's why I'm putting this bill on this-- this amendment on this underlying bill. If we're going to talk about relating and determining what is gambling and what is not gambling, then this body needs to be consistent. We need to make sure that we are regulating those things that are not gambling and making sure we are driving revenue off of this. Again, the federal government does not think this is gambling. Supreme Court does not think this is gambling. Fantasy sports is a thing that you can play on your computer, on your phone, and multiple people play it in the state of Nebraska. I would ask for a green vote. I would like to hear a debate on this. Hope people are engaged on this conversation because we continue to talk about, and many of us don't support gambling for the reasons of being taken advantage of, for the reasons of all these negative consequences. I'm not one of those people, and, in fact, within 95 miles of most of Nebraskans-- 95 percent, I should

Floor Debate
May 13, 2019

say-- sorry, 80 percent of Nebraskans live within 90 miles of a gambling facility. Gambling is here in Nebraska. We just don't have the revenue from it. But let's not be confused, this is not gambling. This bill is about fantasy sports. You get in a pool, you have some fun, you bet on some games, but you don't bet as far as dollars. You're in a pool and you're going one-on-one with individuals who also have a series of players and you have to analyze those players to make sure they're not hurt, make sure they're not sick, what defense they play in, can the quarterback throw against the 5-4 versus the 4-3? Those are the things that go on and why there are so many factors that go into fantasy sports, they've deemed it as a skill because you have to take time to analyze how to play this type of-- in this type of industry. So this is not gambling. But if we're going to be consistent, let's be consistent. We need to regulate this industry and that is why I am asking you for a green vote, 'cause currently it is not regulated. Thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. Debate is now open on AM1511. Senator Lathrop.

LATHROP: Thank you, Mr. President, and colleagues. I'm going to have to oppose AM1511 and I will tell you that apparently there was some kind of significant debate about this bill last year. I wasn't here, of course. I don't know anything about the bill. I don't know anything about the history. I do have some concerns that if we affix this to LB538 that it's going to drag it down and LB538 will suffer the same fate that fantasy sports did last year. That's my concern and the reason for my opposition. And on the subject matter, I really can't speak to it because I'm not conversant with fantasy sports, whether it is or isn't gambling, whether it will draw its own crowd of opposition which would in the end bring down LB538. So I would at this time oppose AM1511. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Briese.

BRIESE: Thank you, Mr. President, and good morning again, colleagues. I oppose AM1511. This is an expansion of gambling in our state, plain and simple. That's why I oppose-- this bill or this amendment reflects a bill that we had in the General Affairs Committee and it was actually voted out of committee 5 to 3 and I certainly opposed it, had several reasons for doing so and I'll talk about them in a little bit. But I hear the folks talk about fantasy sports, they're here, we're already doing it. Well, we're already doing a lot of other destructive, illegal behavior in this state and we're not going to legalize it just because it's going on. And folks have talked about the potential revenue to be generated by this and the revenue under the language of this amendment, it's easy to overstate the revenue. It's not going to amount to much, near as I can tell, but somebody might have other opinions on that. But you look at the language of the bill and we're talking about the gross revenue, but I believe that gross revenue is defined essentially as the net profits after winnings are paid out. And so why did I oppose this bill specifically? Page 4, Section 4, I believe that's right section, we're making an exception to the Public Records Act

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

Floor Debate
May 13, 2019

with this bill. Typically those exceptions are found in the Public Records Act itself at 84-712. Here we're making an exception without putting that exception in the right statute. The proponents also suggest strongly this is a game of skill. Well, on page 7, Section 8, we're saying with this amendment that a person engages in gambling if they participate in a fantasy contest not conducted in accordance with this act. So essentially by the language of this bill, we are admitting that playing fantasy sports is illegal gambling. And this bill seeks simply to carve out an exception for some of these operators. Page 4, Section 5, we provide that the department, quote, shall not adopt and promulgate rules and regulations limiting or regulating game rules and other things, including statistical components. If we were going to allow this and regulate this, why would we allow our department to promulgate rules governing statistical components. That sounds like a recipe for problems for the average participant in this game. And Senator Wayne, would you yield to a question, please-- couple questions?

FOLEY: Senator Wayne, would you yield, please?

WAYNE: Yes.

BRIESE: Thank you, Senator Wayne. I apologize for not giving you heads up on this beforehand or I certainly would have if I had thought about it, but on page 7, Section 7, we talk about penalties for the same transaction or occurrence. Do you have any insight on what the same transaction or occurrence would be?

WAYNE: You said page 7?

BRIESE: I believe so, yes.

WAYNE: I don't-- my amendment, page 7, doesn't have that language.

BRIESE: Page 6, I believe. My fault.

WAYNE: What was your question?

BRIESE: What constitutes the same transaction or occurrence?

WAYNE: I'll have to get back to you on that.

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

Floor Debate
May 13, 2019

BRIESE: OK. Very good. You know, if we're going to put a penalty in there, we need to be specific on what we're talking about and-- yeah, we can sure talk about that off the mike.

WAYNE: I have my light pushed so I can answer your question.

BRIESE: Sure.

FOLEY: One minute.

BRIESE: And at one point here the language provides that there need-- I think it's page 5, Section 6, we allow people to restrict themselves from this play. And Senator Wayne, would you yield to another question?

WAYNE: Yes.

BRIESE: Do you know why we would allow people to restrict themselves from playing this game or participating in this?

WAYNE: Because if they want to not participate and feel that they made a household decision not to, they can make that decision to restrict themselves, like we do in a lot of other areas. People can restrict themselves from a lot of things.

BRIESE: OK. Thank you. But it would seem to me that-- you know, you play this game by choice, nobody is forcing you to play this game. Why would we put a provision in there to allow people to restrict themselves? Is it because they are concerned about having an addiction to gambling? Concerned about overplaying this game and causing themselves or their families problems?

FOLEY: That's time, Senators.

BRIESE: Thank you, Mr. President.

FOLEY: Thank you, Senator Briese and Senator Wayne. (Visitors introduced.) Continuing discussion on the amendment. Senator Blood.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I originally was going to stand down on this bill, but because it is my bill that Senator Wayne is attempting to amend, I thought

Floor Debate
May 13, 2019

I'd give a little background and speak a little bit on the bill. At this time I'm not sure how I feel about the amendment or Senator Lathrop's bill. I'm going to listen to the debate. But I want to kind of give you some clarification on what LB137 is about. Many of the people that are standing here that are going to be in opposition to this bill are the same people that were very anxious to tax Nebraskans to help Nebraska with their budget. And although LB137 is not going to generate a giant amount of income, it will generate, we feel based on the amendment that we brought forward, a minimum of \$100,000 and more a year for the state of Nebraska for our General Fund. One of the things I worked on this last summer was trying to find unique ways to generate revenue. And Senator Lathrop is correct, this bill was brought last year by Senator Larson. But I feel that the debate last year really never touched down on how the process works and what it's about. I've spoken to many senators, such as Senator Murman, who I hope will yield to a question, and others, including some of the female senators who have participated in fantasy sports, it is a game of skill. It's not like a slot machine that you pull down and anybody's chance as to what's going to happen with that slot machine, you have to pick your players and based on the skill of those players, it's how well you're going to do. And I think it's really interesting how Nebraska is pushed by a certain organization consistently told that we need to spend millions of dollars to help people with their gambling addictions, even though the vast majority of them are coming over from Iowa with those gambling addictions, and we don't think twice about that. And we stand and we say how we're against expanded gambling. I'm against expanded gambling too. I don't want a casino in Nebraska. But over and over and over again, you can nitpick on this, but the courts are clear that fantasy sports is not about expanded gambling. With that, I would ask that Senator Murman stand for-- yield to a question.

FOLEY: Senator Murman, would you yield to a question, please?

MURMAN: Yes.

BLOOD: Senator Murman, I hate to put you on the spot, but would it be correct in saying that you and your family members have participated for a very long time in fantasy sports?

MURMAN: Yes.

BLOOD: And what's been your experience with this? Have you lost your home?

MURMAN: No. It's a good experience. I don't feel it's gambling.

BLOOD: OK. And it's been a good family activity, if I understood you correctly, that you've done together?

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

Floor Debate
May 13, 2019

MURMAN: Well, it's not so much a family activity as with friends.

BLOOD: OK, with friends. And would you say that in general, you're a conservative person?

MURMAN: Yes.

BLOOD: All right. Thank you, Senator Murman. And I appreciate you being honest. You know, we do a really effective job on this floor of putting fear into people and we put that fear into people based on antiquated ideas. We get a lot of our information from a specific organization that really is 20, 30, 40 years behind of what's really going on in the world today. We are willing to spend again millions of dollars to help 1 to 3 percent of Nebraska's population with a gambling problem, and I don't see a problem with that, but it's hypocritical when we have an opportunity to regulate something that already exists, to generate income no matter how small, while we are willing to pretend we don't care about that millions of dollars that we spend on the gamblers to help them, and we pretend that it's OK to go ahead and tax Nebraskans 'cause we're trying to balance our budget, but we're not willing to open the door--

FOLEY: One minute.

BLOOD: --to generate income on something that already exists. And so I'm-- it was not my idea to bring this bill forward on this bill, Senator Briese, but it did get voted out of committee and I want to make sure that you remember that. We do have an opportunity to do something different. Please don't come up to the mike and read everything that Nebraska, the good life gambling group gives you. Let's talk about what's really at hand, which is regulating something that already exists. Thank you, Mr. President.

FOLEY: Thank you, Senator Blood. Senator Wayne.

WAYNE: Thank you. Thank you, colleagues. Senator Briese, will you yield to some questions?

FOLEY: Senator Briese, will you yield, please?

BRIESE: Yes.

WAYNE: Senator Briese, do you think BankShot is gambling?

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

Floor Debate
May 13, 2019

BRIESE: Well, Nebraska Supreme Court addressed BankShot in the-- well, we call it the BankShot case, I don't recall what the exact name is. And they determined pursuant to existing interpretation of existing law, it's not gambling. BankShot was determined to be predominantly a game of skill.

WAYNE: And that is because our Supreme Court said it was a game of skill?

BRIESE: Yes, in interpreting constitutional provisions and interpreting prior case law, I believe.

WAYNE: So why do you take a different opinion when it comes to the court's determining that fantasy sports is not gambling?

BRIESE: Well, I don't know that the Nebraska Supreme Court has addressed that issue.

WAYNE: But the U.S. courts have.

BRIESE: Well, Nebraska Supreme Court hasn't.

WAYNE: But you would agree that the United States Supreme Court is the law of the land, correct?

BRIESE: Well, like I said earlier, according to the language of the bill and the amendment we're dealing with here, we are essentially signing off in saying that fantasy sports is illegal gambling unless conducted pursuant to this act. So we're admitting right in the bill here that it is gambling--

WAYNE: Well, what if we wrote a bill that said--

BRIESE: --in the amendment.

WAYNE: Well, isn't it essentially what we're doing with these underlying bill if they're not BankShot and they have a game of chance we're admitting that those are gambling too?

BRIESE: What was that?

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

Floor Debate
May 13, 2019

WAYNE: So the underlying bill says that you have to have the Department of Revenue determine whether it's a gambling or not, correct?

BRIESE: Yes, on those gray machines.

WAYNE: So those gray machines, we're admitting that they can be used for gambling too, correct?

BRIESE: Some of them could be and that's what the purpose of the bill and the amendment. The bill and the amendment we're talking about here instead of this amendment, that's the purpose of it to make that determination and to lay some groundwork to help them make that determination.

WAYNE: And in the underlying bill, if they are found to be gambling devices, there is a civil penalty associated with it if they're played, correct?

BRIESE: There can be, as per the distributors.

WAYNE: So then there's no difference whether if they're not regulated as a fantasy sports, there's a penalty associated with playing the game, or playing, or running a business outside of the Fantasy Sports Act that's also a penalty. That's consistent with the underlying bill, isn't it?

BRIESE: To a certain extent.

WAYNE: So then we are being consistent, whether a bill mentions gambling or not, the functionality of both bills are saying the same thing, that if you operate outside of what we deem to be not gambling, it is considered gambling and, therefore, a penalty is associated with it, correct?

BRIESE: I'll take your word for that.

WAYNE: So then if our courts have determined that BankShot is OK, but they relied on the same U.S. courts that relied on the fantasy sports to be OK and considered not gambling, I guess I don't understand how you're making a distinction between the two.

BRIESE: Nebraska Supreme Court didn't rely on U.S. Supreme Court or even federal court decisions in determining the legality of the BankShot machines. They relied on their own precedent.

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

Floor Debate
May 13, 2019

WAYNE: Their precedent is determined from the same precedent established by the Supreme Court, established by the court of appeals that allowed for the factoring of tests, correct?

BRIESE: No, not relative to BankShot. It was prior case law--

FOLEY: One minute.

BRIESE: --dealing with our constitutional-- I believe a provision of our constitution and statutory interpretation. So they were relying on their own precedent. We're looking to outside courts.

WAYNE: So then what would you say if there was a fantasy machine that meets the definition underneath the Department of Revenue's placed in a building in Nebraska?

BRIESE: If it meets their approval pursuant to what we've laid out here, what's been laid out here in the amendment, a machine like that would be legal.

WAYNE: So then you're not necessarily against fantasy sports. You just don't like it being done from your cell phone. You rather it be done from inside of a facility.

BRIESE: Well, in general it's my view that fantasy sports are not a game of skill. And essentially, like I say in the language here, we're admitting as much. We're saying that it is illegal gambling unless it's done pursuant to this act, pursuant to this carve out for these companies that want to put it in place in our state.

WAYNE: And we're essentially saying the same thing underneath the underlying bill too--

FOLEY: That's time, Senators.

WAYNE: --for devices.

FOLEY: That's time, Senator.

WAYNE: Thank you.

FOLEY: Thank you, Senator Wayne and Senator Briese. Senator Arch.

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

Floor Debate
May 13, 2019

ARCH: Thank you, Mr. President. Senator Wayne, could I ask you a question, please?

FOLEY: Senator Wayne, would you yield, please?

WAYNE: Yes.

ARCH: Is fantasy sports in the state of Nebraska, at the current time, illegal if you participate in it?

WAYNE: It's a gray area, just like the gray machines. We don't know.

ARCH: I guess, my understanding is that at the present time-- I mean when I sat through that hearing as did you and we heard the issues, I guess my understanding was that you could participate in fantasy sports. However, the passing of this bill then would, I say-- I'll use the term loosely, legitimize that and we would declare that-- we would declare by passing this bill that fantasy sports is legal within the state of Nebraska, that this is not-- that this is not outside the law. Is that your understanding?

WAYNE: Well, no, it's actually a gray area just like these devices that-- we currently, I think over 100-some thousand-- or actually I think it was 400,000 people participate in the state of Nebraska. We just don't know 'cause it's not regulated. Just like with the underlying bill, it's not illegal until it's caught or until somebody prosecutes it and we're trying to define what's illegal and what's not. And that's what we're trying to do in this bill or amendment, define what fantasy sports is and what it is not.

ARCH: So we would say with the passing of this bill that fantasy sports is not gambling. It would be a definitive statement by this Legislature that it is not gambling.

WAYNE: It is not gambling as it meets the requirements in the type of game that is played. It's not the sports betting.

ARCH: OK. Thank you, Senator Wayne. I guess as I sat through the committee hearing, one of the things that surprised me, and it caused me to kind of cock my head a just a little bit, was when industry came in and was a proponent of this. Those who are involved, the industry involved in fantasy sports asked for regulation. There was discussion of possible taxation, no problem with that. And I asked the person representing the industry, why is it that-- I mean, you don't hear many industries coming into committees and saying, please regulate and tax us. And that puzzled me. And I think it goes to the issue of this bill and this amendment, in this particular

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

Floor Debate
May 13, 2019

case, putting a stamp on fantasy sports and saying we believe that it is not gambling and it legitimizes fantasy sports. And I don't know that we were ready to do that. And I guess that's what caused me to vote no in the committee is that, are we ready to say that? Are we ready to say this is safe? I mean, we know that this, as far as game of skill goes, this is not baseball. This is not in that category of game of skill, but rather it is-- and I think Senator Wayne said it well, it's within that gray zone, that gray area. Is it or isn't it, but with the passing of this amendment we have declared that it is not gambling and it is legitimized within the state of Nebraska, and I-- frankly I just wasn't ready to do that without further study. So that's why I voted no and will vote no on AM1511. Thank you.

FOLEY: Thank you, Senator Arch. Senator Hunt.

HUNT: Thank you, Mr. Lieutenant Governor. In terms of this amendment, I'm way more inclined to regulate something that's definitely already going on in Nebraska instead of telling people we're going to tax their vet bills or we're going to tax water for them. This is something that makes a lot more sense to me. I'm going to be opposed to this amendment because I feel like it's a poison pill for the bill that Senator Lathrop has worked so hard on, but I admire and I'm amused by what my friend Senator Wayne is doing and I will yield him the rest of my time.

FOLEY: Thank you, Senator Hunt. Senator Wayne, 4:20.

WAYNE: Thank you. Again colleagues, this is a very simple bill. We keep saying whether it's gambling, whether it's not, and the fact of the matter is there's no court in the state of-- in the country has found this to be gambling. In fact, they consistently continue to say that it's not. And for us to sit up here and say we know more-- I guess, Senator Briese, would you yield to a question?

FOLEY: Senator Briese, would you yield, please?

BRIESE: Yes.

WAYNE: Would you be in favor of an amendment that says, we will send it to the Department of Revenue to determine whether it's gambling or not?

BRIESE: No, I don't believe so.

WAYNE: Well, isn't that what we're doing with the underlying bill to determine what's gambling and what's not gambling?

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

Floor Debate
May 13, 2019

BRIESE: Yes, it is.

WAYNE: So what's the distinction on that one?

BRIESE: Underlying bill has had a committee hearing, has dealt with the issue you're talking about there. We've discussed and dealt with the standards that we're going to provide the Department of Revenue with. We've laid out a list of standards for the Department of Revenue to use and how to address those issues. You're talking about telling them right now, without a hearing, we're going to send something to them that, hey, you figure this out for us, too, while you're at it. You know, that doesn't make sense to me, but bring a bill next year and we can try it. I'd be willing to entertain the bill next year. We can have a hearing on it.

WAYNE: Thank you. Senator Arch, a similar question. Would you yield?

FOLEY: Senator Arch, would you yield, please?

WAYNE: Would you be OK with a bill that allow--

ARCH: Certainly I will.

WAYNE: You would be OK with it?

ARCH: No, certainly I yield. [LAUGHTER]

WAYNE: Would you be OK with a bill that allows the Department of Revenue to look at fantasy sports and determine whether it is gambling or not?

ARCH: I would agree with Senator Briese. I think that's a worthy bill to bring to committee and have a hearing about that.

WAYNE: So, now I want both of you guys to think about, can we have a bill that is different or on opposite sides of federal law? Senator Briese, will you yield to that question?

FOLEY: Senator Briese.

BRIESE: Yes, I'll yield.

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

Floor Debate
May 13, 2019

WAYNE: Can our state law be contrary to the findings of federal law?

BRIESE: Well, normally the supremacy clause would tell us no, but in this situation this isn't an issue of federal law. We're talking about determining what constitutes gambling in Nebraska and that's a interpretation of our state constitution, state statute, and relevant case law from the Nebraska Supreme Court. It's not a federal issue.

WAYNE: So you think somebody has to get prosecuted first in order for them to raise the constitutional issue, or walk me through how that gets before the Supreme Court unless we pass a bill?

BRIESE: Oh, I would say yes.

WAYNE: So then we need this bill in order to have a test case to go up to the Supreme Court, wouldn't you agree?

BRIESE: Well, I'm not going to pass legislation just to generate a lawsuit.

WAYNE: Oh, I don't think we'll be generating a lawsuit.

BRIESE: Or a criminal matter, excuse me.

WAYNE: Thank you, Senator Briese. I do appreciate the conversation. Now, we did have a hearing on this bill. We did deal with all the issues on every other bill. We aren't circumventing our process, and the fact of the matter is federal government has already said this is not gambling.

FOLEY: One minute. One minute.

WAYNE: Oh, thank you. The federal government and federal courts have determined multiple times that this is not gambling. But here we are wanting to wait for a test case that can never come because there's no law regulating it. And Senator Arch is right. The industry came in and said please regulate me. They are trying to get a handle on all of this themselves and came up with model legislation to regulate themselves. The industry is saying, please regulate me. Now, just pose that or compare that to the LB538 underlying bill where no one in the industry is really saying regulate me. Most people who are operating in this area is saying leave me alone except

Floor Debate
May 13, 2019

for one person who produces BankShot because that's the only case that's been before the Supreme Court.

FOLEY: That's time, Senator Wayne, but you're next in the queue, you may continue, 5:00.

WAYNE: But the rest of the industry is not saying that. They're saying, leave us alone, we're fine. It is the prosecutors who are saying, we don't have time. The sheriff is saying, we don't have time. We can't figure this out. So if the prosecutors and sheriffs are saying we need help regulating this industry, do you not think it's a go-around to put it in the Department of Revenue underneath the administrative statute when the prosecutors and the criminal sides are the ones having the problem with it? That's a go-around. That's taking away your Fourth Amendment legal search and seizure, that's taking away your right to a jury, that's taking away your right to a criminal self-incrimination. And I'm just appalled that Senator Hilgers hasn't engaged in this conversation more, because every time I get up and I hear him not agree with a bill, it's typically on the constitutionality of a bill. Senator Briese talks about the constitutionality of a bill. Most attorneys in here have said one time or another-- Senator Lathrop, during the right to farm, constitutionality of the bill. But on this one we're ignoring it completely. That you are going to allow the government to take a statement or a report from you and use it against you without you having the right to counsel. Not only that, if they decide that it is gambling, it's underneath the APA. What does that mean? Your appeal process is, did they follow their own procedures? Was it arbitrary and capricious? You have no authority to go back. If you don't know what arbitrary and capricious is, in the other world, in the civil world of litigation, it is unreasonable. So out-- far out there you can't think of it. It is what we call an abuse of discretion in trial work. And Senator Lathrop, will you yield to a question?

FOLEY: Senator Lathrop, would you yield, please?

LATHROP: Yes.

WAYNE: How many times have you seen abusive discretions being overturned at the Supreme Court level in Nebraska?

LATHROP: I couldn't tell you. No, they do that from time to time. Yes, I see it happen when they-- in those cases, for example, domestic relations when they say effectively that the trial court is entitled to deference, they saw the witnesses, they reviewed the exhibits, and we're only going to return-- overturn them for abuse of discretion and they do it all the time.

Floor Debate
May 13, 2019

WAYNE: And that happens in the cases where they don't follow some logic or procedure or a connection of reasonableness on how they got to their decision, isn't that correct?

LATHROP: Well, it can happen because they exercise judgment outside of the broad norm that we provide for trial courts.

WAYNE: Thank you, Senator Lathrop. That is my point, outside of the broad norm. So abusive discretion is almost similar and actually it's less. I mean it's higher than arbitrary and capricious. It's got to be completely outside of the broad norm. And that's what we're saying that allows these people, our state, to determine whether you have a criminal gaming device or not. Because if you choose to use it, you have-- you will be criminally charged and they have already got an admission from you and their record from you before you even start. That's a huge fundamental problem in this bill. Again, while we are trying to regulate gambling, I appreciate that. Now, I'm on the opposite side. Of course, I would legalize gambling for property tax relief and funding education tomorrow if I could. The fact of the matter is, you don't have to go across the river in my district no more, you literally can just drive to it in my district because of Carter Lake. So we are on the opposite sides of that.

FOLEY: One minute.

WAYNE: But what we can agree on, is there should be regulation and you have an industry saying we want to regulate better. We want to regulate and be consistent from state to state on how we operate. And we're telling them no. We are saying, we know what's better for the industry than the industry expert. That is like saying, I know what is better for a farmer when I don't farm, but we're OK with that. That's just mind-blowing to me when I think about all the conversations we have here. This is not expanded gambling. This is about being able to regulate an industry that is asking to be regulated. And if you believe this is expanded gambling, and if Senator Lathrop believes this is a poison pill, then his underlying bill is supporting gambling. His underlying bill is expanded gambling, otherwise Senator Albrecht would not had her concerns about limitations, because in her mind they're all the same.

FOLEY: That's time, Senator. Thank you, Senator Wayne. Senator Lathrop.

LATHROP: Colleagues, my friend, Senator Wayne, reminds me of sometimes when I'm in court and I am trying a case and there's the lawyer on the other side that's throwing up dust in the air. Just throwing up doubt and dust and making things seem confusing and like it's a big problem and everything I'm talking about is somehow misguided. So we offer an amendment dealing with fantasy sports, and then the argument vacillates between not liking the underlying bill to fantasy sports and back again, and we throw in the constitution. You know, we regulate in this state a lot

Floor Debate
May 13, 2019

of things. We regulate what can be in an insurance policy. Right? You want to write insurance in this state, the Department of Insurance is going to look at your policy and see if it comports with the things we've said need to be in there or can't be in there. You want to run an amusement ride company, you got to take your amusement ride in or have the Fire Marshal come out and put a sticker on it. This is no different than that. So to the extent that some of the dust that's been thrown up in the air, let me assure you, there's not a constitutional problem with this bill. There's not. I also want you to know that AM1511 came out of committee apparently 5-3. I don't have a dog in that fight. OK? But I do know what it took to get LB538 to Select File. I have been working with Policy Research; I had been working with the Governor's Office. I have been working with people who have concerns about the subject matter, and I've been-- I've been working with people who know the industry. This thing has gone through so many rewrites that I have a conversation with my LA every time he brings me a new one, which one are we on, and does it have the last four things that we changed? This has taken a lot of work to get LB538 here. I don't need something on it that's going to be a drag. We don't know if it's going to get signed. We're-- we're taking care of a real problem here. OK? It may have a cousin over in the fantasy sports world. That's a bill that made it out of committee, but was never prioritized. I don't know the work that's gone into it. I don't know who likes it and who doesn't like it. I don't know what it's going to do or if it's going to create drag on LB538. OK? When it's up here as a freestanding bill, I'll give it a look. Maybe it makes sense. But I'll say this. I'll say this. And it's that time of year, Select File, we're down to the last ten days or something, and people are going to try to hook stuff on. Some of it, I call them hitchhikers, some of the hitchhikers are OK. Like everybody goes, that's good policy, that's something that ought to be there. And some of them are either a poison pill or they're going to create drag or bring me a veto. I don't need that stuff. This has taken a lot of work. I put a lot of work into this. Senator Albrecht has put a lot of work into this. Policy Research has put a lot of work into this. I would appreciate you voting red on AM1511 and move LB538. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Friesen.

FRIESEN: Thank you, Mr. President. I wish I could have been here for the whole time. I'm enjoying the conversation so much I'm going to yield my time to Senator Wayne.

FOLEY: Thank you, Senator Friesen. Senator Wayne, you're recognized for 4:45.

WAYNE: Thank you. Again, we're just having a conversation. I'm kind of getting a vote count going. I'll see where it's at and I'm not afraid to pull it, and this is not a poison pill. But I do have to ask Senator Lathrop some questions and then Senator Briese some questions. Senator Lathrop, will you yield to a question?

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

Floor Debate
May 13, 2019

FOLEY: Senator Lathrop, would you yield, please?

LATHROP: Yes, I will.

WAYNE: Oh, that was almost like Senator Brewer. [LAUGHTER]

SENATOR LATHROP: Well, I'm excited about the prospect.

WAYNE: Was the 1,000 square foot-- did that have a hearing?

LATHROP: Oh-- I don't think it needed a hearing. I don't know what-- what conversation happened, or I don't recall what conversation happened at the hearing relative to how many of the lawful machines can be in any one establishment.

WAYNE: Well, going from one-- going from unlimited number-- I thank you, Senator Lathrop. Senator Briese, will you yield to a question?

FOLEY: Senator Briese, would you yield, please?

BRIESE: Yes.

WAYNE: Going from unlimited number at an establishment as long as they were being proven to be not gambling, to 1 to 1,000, do you think that's a significant change?

BRIESE: No, not overly. It's a reasonable change, it's a reasonable tweak to the language addressing some of the concerns brought up. Perhaps not at the hearing on this bill, but some of the concerns brought up by Senator Albrecht at the hearing on her bill.

WAYNE: I don't require the number of devices being discussed at all during any of the opening bills, it was whether the devices were gambling or not, correct?

BRIESE: And I don't recall that either if we did.

WAYNE: So do you think we're giving the public a fair shake when they went from fighting the bill going to unlimited, as long as they were not gambling to now they can maybe only have one

Floor Debate
May 13, 2019

in their entire establishment even if it's determined not to be gambling? You think that should have had a hearing?

BRIESE: I don't have any problems with that. I don't think that's a significant enough change that it would need to be discussed at a hearing.

WAYNE: But it's a significant enough issue that we have to have an amendment on it to bring people to the table. You don't think it's significant enough to have a hearing?

BRIESE: No, not really.

WAYNE: Thank you. Again colleagues, I think there's some fundamental issues with the underlying bill. I just want this body to be consistent. Whether Senator Lathrop read the underlying bill, call it dust, call it kickup, call it throwing spaghetti at a wall to see what lands, doesn't matter to me. At the end of the day, this is not expanded gambling. If we're arguing that these machines have to determine what is expanded gambling and what isn't, and our Department of Revenue is going to do that because we are trying to regulate the nongambling, then we should be supportive of the underlying bill. We should be supportive of the underlying bill. But I see that we're still not. So with that, I'll withdraw my amendment.

FOLEY: AM1511 is withdrawn. (Visitors introduced.) Mr. Clerk, is there anything further on LB538?

CLERK: There is, Mr. President. Senator Wayne would move to amend with AM1512.

FOLEY: Senator Wayne, you're recognized to open on AM1512.

WAYNE: Hello, colleagues. I won't spend a lot of time on this. This is a simple bill that is very, very simple in the sense that I want everybody to be consistent. If we're going to say we're going to make the department determine, and it's going to be civil penalties, then let's remove the criminal provision of a gaming device. It can be all handled civilly now. If you have a gaming device, you will be fined. That-- we're being consistent. If you send it in, and it's determined to be a gaming device, you should not have it in your facility, nor should it be sold to you. If it is, there's already a civil penalty under LB538. So in efforts of making sure we lower prison population, Senator Lathrop, I think we should decriminalize the gaming device, although you won't go to prison with a Class III-- or a Class II misdemeanor. I just thought I would throw that in there, because he says I'm throwing up dust today, so I want to throw some more dust up. More like chalk, like LeBron, chalk. [LAUGH] Anyway, I do think it's important, though, on a

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

Floor Debate
May 13, 2019

serious note that if we're going to be consistent about civil penalties, then be consistent. So I am going to ask for up or down vote, but I'm not going to have a lot of discussion on it. It's just saying that we remove the criminal-- the criminal aspect of a gaming device. Thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. Is there any discussion of AM1512? Senator Lathrop.

LATHROP: Thank you, Mr. President. Will Senator Wayne yield to a question or two?

FOLEY: Senator Wayne, would you yield, please?

WAYNE: Yes.

LATHROP: Senator Wayne, I was trying to pull your amendment up and listen to you at the same time, and I'm not really clear what this does. If you have a gambling device that's currently or in the future might be unlawful, would this take away the criminal penalties?

WAYNE: Yes, 'cause your bill includes the civil provisions of penalties for having that gaming device and I don't think we need to have both.

LATHROP: So going forward, if the State Patrol walked into a gas station and there is a gaming device, and let's say it's a slot machine or a craps table or a roulette wheel or any of those devices commonly found in a casino, there would be no criminal sanction for that?

WAYNE: No, but they could turn it over to the Department of Revenue and they would be fined underneath their tax and they would have a civil penalty that actually is more than the criminal penalty.

LATHROP: OK. So we're getting rid of the crime of-- the criminal sanctions for a gambling, but making them all civil penalties.

WAYNE: Correct. According to your bill that-- yes. It would stay consistent that there would be a civil penalty.

LATHROP: OK. Thank you, Senator Wayne. I'm going to have to oppose AM1512 as well. If we decriminalize this activity, and we can't even contemplate all of the game-- the gambling devices,

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

Floor Debate
May 13, 2019

or just how egregious this might be, or become in the future, basically-- yeah, it's not-- it's going to cause problems for LB538. Senator Wayne, can I ask another question?

FOLEY: Senator Wayne, would you yield further?

WAYNE: Yes.

LATHROP: Senator Wayne, is this a concept that started out as a bill and actually had a hearing, or are we going to eliminate criminal sanctions for gambling altogether without a bill ever having been introduced?

WAYNE: Well, your bill created a-- your bill does create an affirmative defense to a criminal prosecution without a hearing, so I was going with that concept.

LATHROP: Yeah, let me go back to the question and I'll try it again. Is this a concept that started out as a bill that had a hearing in front of General Affairs?

WAYNE: It did not have a hearing in front of General Affairs.

LATHROP: Was it ever a bill?

WAYNE: It was not a bill.

LATHROP: OK, so it's just an amendment to LB538.

WAYNE: Correct.

LATHROP: OK. Thank you, Senator Wayne. Colleagues, so we all have an idea where the lane is on a bill before you attach something to it that has never been a bill and never had a hearing. This is outside the rail. This is outside the lane. We're now dealing with something that is more significant than simply addressing the number of machines when a bill deals with those particular kinds of machines. Now we're broadening this out to all gambling devices, and not simply the ones that are subject matter of LB538, and eliminating criminal penalties. I think that's something that needs to go through General Affairs or Judiciary Committee as it may be referred to or referred by the Referencing Committee. And again, I would oppose AM1512. Thank you.

Floor Debate
May 13, 2019

FOLEY: Thank you, Senator Lathrop. Senator Wayne.

WAYNE: Colleagues, what you didn't hear is a germaneness issue. Colleagues, what you didn't hear is the fact that there were criminal proceedings, or criminal statutes that were a part of this bill in front of General Affairs. And that the first amendment on the floor that we adopted was an amendment to create-- let me repeat, to create an affirmative defense. All I'm doing is eliminating the entire section. So ask yourself, why is it OK to create an affirmative defense to the crime but not eliminate the crime? Why do I need a hearing but that didn't? That doesn't make sense to me. The fact of the matter is, if we're creating a civil penalty, now imagine this. You have two ways the federal government-- or the Nebraska state government can penalize you. Underneath his original bill there is no either/or. So if you have the gaming device, and Senator Halloran sends that exact same gaming device to the Department of Revenue and they determine it to be a gambling device, now I didn't send mine, but Senator Halloran sent his. So now that device is a gambling device. Without any notice to me, I also have a gambling device. And because I didn't send it in to the Department of Revenue, correct, I should be penalized. I should be civilly penalized. But if we leave the status quo, not only am I civilly penalized, but that sheriff and prosecutor can charge me with a crime. There's two prosecutions there. An administrative one and a criminal one. I think we have to be consistent. Do we want to have a criminal prosecution for having a gaming device, or do we want to have civil? This bill is saying civil. Civil penalties when you do not comply and you continue to have or maintain a gaming device or sell one. But why are we criminalizing it? Why do we create an affirmative defense for one group but not everybody else? We don't have an affirmative defense for the person at home or the charity who has it stored up and not a retail. My point is, let's eliminate the criminal altogether. Either we're going to have criminal penalties for a gaming device, or we're going to have civil penalties, but it shouldn't be both. That's a simple answer. It shouldn't be both. So how I got here is the same way that I watch Senator Chambers insert that the city of Omaha has to provide free trash service on the floor. The same way that I saw the Learning Community be created and taken out on the floor. We do things all the time on the floor. And, in fact, if a section of law opens up, we have the ability to move it or negotiate it or change it. That door was opened by Senator Lathrop, not me, when he added the affirmative defense. And I am simply removing it completely, the affirmative defense and the underlying crime. With that I would support a red vote-- or a green vote on AM1512 and I appreciate, Mr. President.

FOLEY: Thank you, Senator Wayne. Senator Lathrop.

LATHROP: Thank you, Mr. President. More dust, more obfuscation. I-- [LAUGHTER] Senator Wayne, you did a great job and you're smiling for good reason. It almost sounded like it made sense, but it does not. So imagine this is the difference. Imagine LB538 comes in and we're dealing with machines that-- these gray machines, the so-called gray machines. You have a hearing and people come in. Now, if you saw that, you're "Joe Citizen," you read what's on the

Floor Debate
May 13, 2019

agenda over at General Affairs, and you see that they're going to take up these gray machines. And let's say that you don't like any. Like you're worried about casinos coming to Nebraska. You wouldn't necessarily show up on this bill if the object was to do what Senator Wayne is talking about, turn everything into a civil penalty. But if you came to the hearing on LB538, you may say, well, I like these machines, and some people say I don't like them at all, and some people would say, boy, don't let people use credit cards as we heard on General File. Or maybe we should-- there's certain things that are expected as part of the conversation on a subject matter and certain things that are outside that. That's sort of where the line is on whether something needs a separate hearing and a separate bill. I don't know if the guy running that hammer is-- [CONSTRUCTION NOISE] [LAUGHTER] OK, you didn't put him up to that, Senator Wayne, hopefully. You wouldn't expect somebody to address whether we ought to have civil penalties instead of a criminal code relative to gambling on the LB538. You would not find it unusual to have somebody say, yeah, I understand we're going to have these machines, but there ought to be a limit on the number. And that's the distinction between whether-- by the way, this is germane, I wouldn't argue that it's not germane, because they both deal with sort of, is it gambling, is it not gambling, what should we do with gambling, but it is something bigger than LB538 by such a large amount, or by such a significant change in policy that it needs its own bill and its own hearing. Colleagues, Senator Wayne has been upfront that he doesn't like LB538. He told us that early on. He likes gambling, he likes expanded gambling, and this is simply an effort to allow those people that are operating in the state in violation of the law to continue to do what they're doing, and he would expand gambling at every opportunity. Now, maybe fantasy sports is a good idea. I don't know. After it gets to the floor, we can have a debate and I'll make up my mind at that point, but LB538 addresses a specific issue. These amendments are designed to derail this bill, to talk it to death, to see if it has enough votes to clear a cloture, perhaps. Don't be confused and don't be misled by the amendments. This bill has been thought through, it's been worked through, and I would appreciate your continued support and a red light on AM1512. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Wayne, you're recognized to close on AM1512.

WAYNE: Thank you, colleagues. So I was going through the versions of the bill because we're talking about substance changes. I would argue-- because the first-- first person --the first version of the bill did not have anything to do with a-- I can't even think of the word. When you're charged with a misdemeanor, a way to get around it. I can't think of the word. Senator Briese, will you yield to a question? Never mind. I don't want to yield because I can't think of the word but I'll think about it. Anyway, how we got here. The first version was straight gambling, all it did was change it from 3 to 4. The amendment added an affirmative defense. That is a fundamental criminal code change. So think about it. If I go and say you have first degree murder and we're going to allow you an affirmative defense, and I put that on a floor amendment is what happened, or a committee amendment, but then I come in and say, no, let's strike that out, let's just eliminate it altogether, I think it's all the same. We are fundamentally changing the

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

Floor Debate
May 13, 2019

criminal code by allowing an affirmative defense. All I'm doing is removing the entire-- altogether. We cannot have two lanes of prosecution, a civil side with a civil penalty with a criminal side and a criminal penalty. The state of Nebraska has to pick which one it wants. And I think we have enough laws and enough criminal laws on the books. I think that we should decriminalize a criminal device when there is adequate avenue underneath LB538. There's adequate avenue underneath LB538 to punish those who have a criminal device in a civil-- or a gambling device in a civil way. This is on Select File. So on an effort of being a good colleague, I'm going to have more conversations and I'm probably going to bring it back from Final Reading to add this to it, or we can do a straight up and down and vote now. But you have to decide if you want to criminalize and allow for the civil prosecution of this matter. You can't have both. Can't have both. I'm pausing because I'm thinking whether I want to withdraw this or not. Because part of me says I want to-- keep this from hijacking a bill or a poison pill. I don't look at it as a poison pill, but I guess he does. But part of it is, I am looking to decriminalize things where we can. And this is one thing we can. If you don't have a tax stamp, there is a penalty on you for having that machine. But now we're also going to criminalize it? I just fundamentally don't think that's right. With that, I would ask for a green vote.

FOLEY: Thank you, Senator Wayne. Members, you have heard the discussion of AM1512, the question for the body is the adoption of AM1512. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 3 ayes, 27 nays, Mr. President, on the adoption of the amendment.

FOLEY: AM1512 is not adopted.

CLERK: Mr. President, Senator Wayne, I now have FA70, Senator.

FOLEY: Senator Wayne, you're recognized to open on FA70.

WAYNE: Yes, thank you, Mr. President. This is part of an ongoing deal. I think Senator Lathrop has another one. So I'm going to-- go ahead and withdraw this one right now. Thank you.

FOLEY: FA70 is withdrawn. Further discussion on the bill.

CLERK: I have, Mr. President, I'm sorry. I have Senator Lathrop, I have-- I'm sorry, Senator Hughes, you want to withdraw yours, Senator? OK. I assumed so. Thank you. Mr. President, we have an amendment that we just received that's being processed. I understand it's in the system now and it's from Senator Lathrop.

Floor Debate
May 13, 2019

FOLEY: Senator Lathrop, you're recognized to open on your amendment.

LATHROP: Thank you, Mr. President. Colleagues, we've had a lot of discussion about the number of machines. Let me tell you what this amendment does. It changes the-- you earlier accepted an amendment that said no more than 15, or more than 1 per thousand square feet in an establishment. We're going to strike that language and replace it with-- I'm going to paraphrase because I probably won't say it exactly, a limit of four machines per establishment. If you have more than 4,000 square feet in your establishment, you can add a machine for every 1,000 square feet in your establishment up to a maximum of 15. This is an accommodation to the concerns expressed, and I think I heard Senator Brewer, and certainly Senator Hughes have expressed concerns, some VFW clubs, and places like that, have these. These will be the legal machines now, have the legal machines in their establishment as sort of a revenue stream that helps keep them afloat. This will allow four machines per facility. And if you have more than 4,000 square feet, you can add a machine for each 1,000 square feet you have in your establishment. It is a reasonable compromise. I think it addresses the concerns of some of those charitable-- I'll call them the VFW-type places that have concerns that these are something their members enjoy, and something that provides some supplemental income to help with their charitable purposes. And with that, I would encourage your vote on and support on FA-- Lathrop. Thank you.
[LAUGHTER]

FOLEY: Thank you, Senator Lathrop. Members, debate is now open on the floor amendment that's being processed. It will be in your machines in just a moment. Senator Chambers, you're recognized.

CHAMBERS: Thank you, Mr. President. Members of the Legislature, Shakespeare intrudes into a lot of things just like the "Bibble." This really is much ado about nothing, in my opinion. I had opposed when Senator-- the other senator who used to be here and brought this bill on the sports gambling. They didn't call it that, they called it a fantasy. I had opposed it-- Senator Larson. I had opposed it because it is gambling, in my opinion. And I decided that if the body wanted to allow that to be done, I'd let them do it, because I believe the court will strike it down. Now, I do know something about sports betting where you have a bookie and you bet on the outcome of a game. That is gambling, however way you want to cut it. But there is skill that can be applied to any kind of gambling-- oh, I see Senator Wayne, I would like to ask him a question before he leaves.

SCHEER: Would Senator Wayne please yield?

WAYNE: Yes.

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

Floor Debate
May 13, 2019

CHAMBERS: Senator Wayne, going back to this fantasy betting, Las Vegas has a gaming commission, or whatever it's called, that regulates gambling. Are you aware that that is the commission that would regulate this fantasy activity if it were to be done in Las Vegas legally?

WAYNE: I am not aware of it, Senator Chambers. I would ask that we-- I didn't realize where we were at on time and I don't want to take this to a full filibuster. And I think we only got like four minutes but I can engage with you on the next bill on that conversation.

CHAMBERS: I will let it go. I will terminate what I'm saying, too, then.

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

HUGHES: Thank you, Mr. President. I just wanted to chime in quickly on FA72, the compromise that has been worked out with Senator Lathrop and Senator Albrecht and myself. I think it is a good compromise and I would certainly encourage your green vote. Thank you.

SCHEER: Thank you, Senator Hughes. Seeing no one wishing to speak, Senator Lathrop, you're welcome to close. He waives closing. The question before us is adoption of FA72 to LB538. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 42 ayes, 0 nays on adoption of Senator Lathrop's amendment.

SCHEER: FA72 is adopted.

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

SCHEER: Thank you, Mr. Clerk. Seeing no one wishing to speak, Senator Lathrop, you're welcome to close on LB538.

LATHROP: Thank you, Mr. President. Colleagues, thank you for your support on that last amendment. I appreciate your support on LB538. And, Senator Wayne, thank you for your courtesy. He could have talked until this thing got pulled and he was aware of the time. I appreciate the courtesy and, again, I would appreciate your support of LB538. Thank you.

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

Floor Debate
May 13, 2019

SCHEER: Thank you, Senator Lathrop. The question before us is advancement to E&R engrossing of LB538. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 40 ayes, 0 nays on the advancement of the bill, Mr. President.

SCHEER: LB538 is advanced. Mr. Clerk.

CLERK: LB538A, no E&Rs. Senator Lathrop, I have AM1571 in front of me-- in front of the A bill, Senator.

SCHEER: Senator Lathrop, you're welcome to open on AM1571.

LATHROP: Thank you, Mr. President, and colleagues. AM1571 moves all the revenue and expenditures in LB538 from the General Fund to the Department of Revenue reflecting the change we just made in the underlying bill. Again, I want to thank everyone for their support of LB538 and ask you to vote yes or green on the A bill. Thank you.

SCHEER: Thank you, Senator Lathrop. The question before us is adoption of AM1571 to LB538A. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

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

SCHEER: AM1571 is adopted. Mr. Clerk.

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

SCHEER: Thank you. Senator Slama for a motion.

SLAMA: Mr. President, I move that LB538A be advanced to E&R for engrossing.

SCHEER: Colleagues, you've heard the motion. All those in favor please say aye. Those opposed say nay. LB538A is advanced. Mr. Clerk for items.

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

Floor Debate
May 13, 2019

CLERK: Mr. President, a number of things. Bills read on Final Reading this morning were presented at 10:00 to the Governor. (re LB96, LB179, LB184, LB375, LB411E, LB418, LB478E, LB560, LB570E, LB570AE, LB595, and LB155.) Enrollment and Review reports the following bills to Select File: LB492, LB690, LB427, LB447, LB447A, LB315, LB281, LB454, LB260, LB726, LB476, LB505, LB374, LB248, LB571, LB571A, LB561 and LB525. In addition, Mr. President, amendments to be printed: Senator Hilkemann to LB528; Senator Kolterman, LB720; Senator Bolz, LB468, LB297 and LB294. Resolution: Senator Vargas, LR125; that will be laid over. Senator Hunt, LR126, Executive Board, because it calls for an interim study. In addition Mr. President, additional bills reported to Select File: LB609, LB719, LB719A, LB62, LB559, LB220, LB135, LB244, LB308, LB392, LB564, LB123, LB414, LB533. Name adds: Senator Blood to LB433 and LB532; Senator Vargas to LR118.

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

SCHEER: Thank you, Mr. Clerk. Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. 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. Mr. Clerk, please record.

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

SCHEER: Thank you, Mr. Clerk. Are there any items for the record?

CLERK: There are. Judiciary reports LB582 to General File; LB593, LB686 to General File with amendments. That's all that I had, Mr. President.

SCHEER: Thank you. We'll proceed to the first item on the afternoon's agenda. Mr. Clerk.

CLERK: Mr. President, LB670 is a bill by Senator Linehan. (Read title.) Introduced on January 23, referred to the Revenue Committee. The bill was advanced to General File. There are Revenue Committee amendments pending.

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

Floor Debate
May 13, 2019

SCHEER: Thank you, Mr. Clerk. Senator Linehan, you're welcome to open on LB670. I apologize for the additional noise.

LINEHAN: Thank you, Mr. President, and good afternoon, members of the Legislature. I'm pleased to introduce LB670, my priority bill for this year. LB670 would provide an income tax credit to individuals and businesses that contribute a state-- contribute to a state approved scholarship granting organization. In turn, the scholarship granting organization would provide scholarships to low-income students to attend an accredited nonpublic school of their parents' choice. Any school that could accept scholarship students would be accredited and regulated by the Nebraska Department of Education. The Opportunity Scholarship Act takes no money away from Nebraska's public schools. As a member of the Education Committee and Chair of the Revenue Committee, I have worked diligently with several others in this body to increase funding for Nebraska's public schools and to ensure they can meet the needs of their students and to provide much needed property tax relief. LB670, again, will not affect state aid to K-12 public schools. Multiple tax credits already exist for Nebraska taxpayers. For example, in 2016, Nebraskans claimed over \$11.5 million in childcare tax credits. Nebraska also provides multiple tax credits to encourage job growth across our state. On March 6, none of the education lobby testified against LB720, the ImagiNE Nebraska Act. It is disingenuous to claim that LB670 will reduce school funding when similar concerns have not been raised regarding other tax credits. Eighteen states currently offer tax credit scholarship programs including Iowa, Kansas, South Dakota, and Oklahoma. According to the Iowa Department of Revenue-- and I have it here if somebody wants to look at it --it's from the Department of Iowa's Revenue Department, Iowa's tax credit scholarship program saves Iowa \$12 million annually. A recent study concluded that Oklahoma's tax credit scholarship program saved \$1.39 for every dollar of revenue that was offered in their tax credit program. Each year scholarship granting organizations in Nebraska turn hundreds of low-income families, wanting additional educational options, away for a lack of funding. Two private schools, serving predominantly lower-income children here in Lincoln, are being forced to close at the end of this school year, not for a lack of families wanting to send their children there or for a lack of academic performance, but for a lack of scholarship funds. One of those schools is right across the street. Yet taxpayers are spending hundreds of millions of dollars to build new schools in both Lancaster and Douglas County. If we know, based on 20 years of evidence, the effects of programs in other states, the Tax Credit Scholarship Programs improve outcomes for children in both public and private schools, and save taxpayers dollars, and are in high demand by families, why resist such policies in Nebraska? Julie Trivitt, who is a professor of economics in the University of Arkansas, was at the hearing and she provided-- you've got, I think five or six handouts on your desk --so this is the one I'm speaking to right now. It says her name at the top. Tax credits, as I've said, have been around for 20 years. Eighteen states have them. There have been 42 academic studies to look at tax credit funded scholarship programs. Of those 42 studies, 39 have found that it has a net positive on state revenue. That the education expenditures no longer need-- needed exceed the credits that were

Floor Debate
May 13, 2019

granted. There were three where they found they didn't have a distinguishable effect in either direction. None of the studies, none of the 42 studies showed-- have shown that a bill like LB670 has a negative effect on state budgets. And if you follow this chart, which she did, at the bottom, is 80 percent. I think most of us know this, 80 percent of the kids, around 80 percent of the students in Nebraska are in urban districts. Urban districts get a large-- well, they get most of the equals if not all the equalization aid. So if look at the bottom of this page, what she's saying, if all 10 million was used, it would provide scholarships for almost 3,000 children. And if used the average of what private tuition is in the state of Nebraska, in the first year, if 80 percent of those children were from urban school districts, the state would save \$15,389,339. And then if it was only 70 percent from urban districts or 60 percent, you could see even if it was only 40 percent of the children from urban districts, we would still save over \$2.5 million. Column B is just elementary students, and column C is high school students. So, and I can answer questions on that if there are any. Finally, I want to address another subject that's been brought up multiple times, and you also have this form on your desk, it's the opt in form. I think each of you know that I'm committed to children with special needs and learning differences. We often hear that it's-- and it's certainly been claimed by opponents of LB670 that this bill will discriminate against special needs students. We have no evidence of this. Certainly private schools are limited in their resources and they may not be the best fit for the most high-need students. But we should be giving parents more choices, not fewer. In other states there are private schools that cater specifically to students with dyslexia, to students who are autistic, and to foster care students, and to bullied students. You will note on the form, the option enrollment form which we took from the Department of Ed, Nebraska Department of Ed's Web site, the first question down here is, does this student require special services? Yes. If yes, does this student have an individual education program or an IEP? So, if you're a parent in Nebraska looking for another public school to serve your child, and your child has a learning difference or an IEP, that public school that you're wanting to opt into does not have to accept you. We're one of only three states-- only three states that allows schools to turn down a child because they have an IEP. I want to end with this point. And I know-- I know that you would --I can't believe anybody in the Legislature would disagree with this, but maybe there's someone. Every member of this Legislature would do what it takes to make sure their own child or grandchild wasn't limited by a school that is not meeting his or her needs. Maybe we'd have to move as I did when my children were small and struggling with reading. We moved from one district to another school district because we could afford to do so. Or maybe you have a junior high student who is not thriving in a larger school, so you're willing and do pay tuition for a private school. I did all those things because I could afford to, but not everybody has those options. It's not a privilege shared by all Nebraskans. But as elected officials, we can do something. We can even the playing field for lower-income children and provide parents who want nothing but what's best for their children, the necessary assistance to make that dream of finding the best school, the best fit for their child a reality. Thank you, Mr. President.

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

Floor Debate
May 13, 2019

SCHEER: Thank you, Senator Linehan. As the Clerk noted, there is a committee amendment from the Revenue Committee. As Chairman of the Revenue Committee, you're welcome to open on AM1112.

LINEHAN: There is this amendment, AM1112, and there's also another amendment I just filed, so I'll speak to both of them. AM1112 and this was helped-- my very, very hardworking Revenue Committee had concerns that we didn't cap the amount of tuition. So this amendment clarifies the maximum scholarship amount awarded by a certified organization to any student will be limited to the cost of tuition and fees at the qualified school the student is attending. The amendment also requires the certified organization limit the scholarships amount awarded to ensure that the average scholarship amount awarded per student does not exceed 75 percent of the statewide average General Fund operating expenditures per formula student for the most recently available, complete data year as defined under TEEOSA. So, in plain English, that means that your average student cost, let's say it \$10,000, no scholarship could be more than \$7,500. So it limits any scholarship to 75 percent of the cost of a public school student. The other amendment that I just filed brings down the amount a family can earn to free and reduced lunch. So no child would be eligible for this program that was not eligible for free and reduced lunch. So 185 percent of the poverty rate which is exactly what-- so if a child is in school, and this is both in private schools and public schools, they qualify or would qualify, if they are in kindergarten for the first time, for free and reduced lunch. They would also qualify for scholarship. If they are above that income limit, they would not qualify. Thank you very much, Mr. President.

SCHEER: Thank you, Senator Linehan. For clarification, your amendment you filed this afternoon is actually to the bill itself and there are two amendments to the committee amendment. (Visitors introduced.) Mr. Clerk.

CLERK: Mr. President, the first amendment I have to the committee amendments by Senator Kolowski, AM1351.

SCHEER: Thank you, Mr. Clerk. Senator Kolowski, you're welcome to open on AM1351.

KOLOWSKI: Thank you, Mr. President. AM1351 tells it like it is and would rename this donation and scholarship activity as what it is, a private schools program. I don't have a problem with private schools, their educational achievements, or people donating money to legitimate organizations. I do object to using taxpayer dollars to finance the tax credit portion of this bill. In fact, I believe it is unconstitutional. Article 7 of the Nebraska Constitution addresses education. Section 1 states, and I am paraphrasing slightly, the Legislature shall provide for the free instruction of persons between the ages of 5 and 25 in the common schools of the state. It goes

Floor Debate
May 13, 2019

on to say the Legislature may provide for the education of other persons in education institutions owned and controlled by the state or a political subdivision. Article 7, Section 11, states that appropriation of public funds shall not be made to any school or institution of learning not owned or exclusively controlled by the state or political subdivision. LB670 is an end run around these provisions of the Nebraska Constitution. The Montana Supreme Court struck down a similar tax credit program as unconstitutional. So did Wyoming's court. LB670 puts a few steps in-between the state and the privately owned school, but it is state money going to support private schools, schools with no accountability or transparency to state government on this money or any other monies. Nebraska's case law had some relevant guidance as well. In 1974-- a case in 1974, state on behalf of Roger vs. Swanson, states that an act which indirectly benefits private institutions through public grants to students is unconstitutional. In a 1956 case, United Community Services vs. Omaha National Bank stated that the Legislature cannot authorize donations by public corporations for religious or charitable purposes. Ninety-four percent of private schools in Nebraska have a religious ownership or affiliation. This program is unconstitutional. Colleagues, we have constantly-- we constantly debate how to fund public schools and how to administer education funding. This bill would put even more pressure on funding for public schools and our constitutional duty to educate students. My second objection is that I viewed the mechanism used in this program as taxpayer dollars being used for private gain-- private gain, not so much to each parent of a child or a private school or-- but the private school and the donor. In Arizona, their program is called the Private School Tuition Tax Credit Program, and it is very similar to the proposal in LB670. Let's talk about what happens in Arizona. In Arizona, donations go to an entity called School Tuition Organization, or STO. Signed in 1997, the program was touted as a tool to make private education more accessible to families who could not otherwise afford it. Trent Franks, author of the Private School Tax Credit Law, wrote in a 1999 column that in the past only wealthy parents could afford their children such an opportunity. An investigation of the program by the Tribune newspaper revealed that even though these STOs took in millions of dollars in scholarships, the state's private schools have hiked tuition dramatically since the law and program was established. This has pushed the cost of private education further from the grasp of middle and low-income families, not closer. The Tribune's investigation showed that the Arizona tuition program has failed to increase access to private schools for low-income or minority students. A majority of the tax credit donations are earmarked to give scholarships to students already enrolled in private schools. Just 7 of the state's 55 tuition organizations use financial need as the primary factor in deciding who gets tuition scholarships. The Arizona law specifically bars parents from donating to a tuition organization and claiming a tax credit to pay their own child's tuition. However, there is no state agency with authority to prevent or penalize even the most brazen misconduct. Yet, according to some of the parents interviewed, they violate this prohibition. One private kindergarten even pairs up parents to exchange tax credit donations and a legal quid pro quo transition from under the federal tax law. In Arizona, 76 percent of the scholarships went to students whose families already had the means to attend private schools without the scholarship. According to an ACLU report from

Floor Debate
May 13, 2019

2017, Indiana taxpayers financed private school education to the tune of \$147.1 million, mostly to families who would have sent their children to these schools without the taxpayer funding. Under LB670, students at 370 percent of the federal poverty level would be eligible to qualify per scholarship. This means that in the fiscal year 2019, a family of four with an income of up to \$92,870 would qualify. That income puts the family in the top 40 percent of Nebraska earners. The general financial standard that most schools use for income guidelines is free and reduced meals. Three hundred seventy percent of federal poverty guidelines is doubled the income limit for free and reduced meals. Despite LB670's requirement that scholarships are-- be awarded first to students who receive, one, the previous year students who already have the funding to go to private school and then to low-income students. Most private schools are built in affluent areas of town and do not provide transportation to students who live in the neighborhoods further from school. Most private schools don't provide special education, the highest of all student costs. These and other factors make it a highly unlikely that any of the touted goals of giving students from low- or even middle-income families any access to private schooling will be realized. Programs like the one proposed in LB670 does not provide school choice. It's a thinly-veiled tax break for individuals in upper-income brackets and corporations. I'll stop there and continue at a later time. Thank you, Mr. President.

SCHEER: Thank you, Senator Kolowski. Returning to floor discussion, those waiting in the queue: Senator Bolz, Slama, Lowe, Pansing Brooks and others. Senator Bolz, you're recognized.

BOLZ: Thank you, Mr. President. I appreciate the debate today and I know that Senator Linehan has done a lot of work on this bill, and I appreciate her deliberateness and her tenacity, but I rise this morning with concerns, or I guess this afternoon, with concerns about the revenue impact. And I appreciate the distinction that's being made this afternoon about this not having a direct impact on public school funding, but I do think it has a significant impact on our state budget and I want to talk about that a little bit today. Foregone revenue is revenue that we can't use to pay the bills of the state. And this is foregone revenue through a tax credit mechanism. That foregone revenue per the fiscal note filed on LB670, and I have not reviewed the fiscal impact of the amendments filed, but the fiscal note on LB670 shows a fiscal impact of lost revenue of \$10 million in the first year, \$12.5 million in the second year, and according to my calculations would be up to \$93 million per year by the year 2030 because there's a projected increase of 25 percent in the cost of these tax credits per year. And I have several concerns about those fiscal impacts that fall into a couple of different categories. The first is that when we have foregone revenue, it holds us back in terms of funding the obligations we already have. And second, the actual impact of the revenue that will be lost in terms of whether or not we're using that investment wisely. So in the first category, I just think it's helpful for those of you who are not on the Appropriations Committee to hear a couple of numbers. One is that to fully fund the Nebraska Opportunity Grant, as an example, which is our scholarship program for higher education students who are low-income but want to pursue their college degree, to fully fund that

Floor Debate
May 13, 2019

program, we would need over \$30 million in additional funding per year. We're only funding that program at 36.5 percent of the demand. Another example is if we were to fully fund the developmental disability waiting list, and this is also about education in a different way. It's helping people who aren't career ready when they transition from the K-12 special education system, helping them in a community-based setting, to fully fund that waiting list which is just under 2,000 people per year, we would need an additional \$65 million. We're not able to keep up with the expenditures in special education. We were only able to increase that funding by 1 percent per year, but the cost of special education funding is mostly related to personnel, and the cost of personnel increases with salaries and health insurance and training and recruitment at far greater than 1 percent per year. When special education started, we were funded at about 75 percent of the costs and now we're down to 55 percent of the full cost according to some numbers that I received in 2017. Another example is, I had a bill this year that would bring our child care assistance program up to 165 percent of the federal poverty line. We cut it down to 130 percent several years ago under the Johanns administration. To fund that, we would need an additional \$10 million per year. Lest you think that I am advocating for additional spending, I'm not. I'm saying that when we have to make hard choices to say no to kids in a number of different ways, I can't support an idea that funds a significant amount of lost revenue--

SCHEER: One minute.

BOLZ: --year over year to the tune of \$93 million by 2030 to fund an expenditure that we're already taking care of in our budget. I also want to talk briefly about some of the concerns I have about the way this is put together. This is significantly more generous than other tax credits or benefits we get for other giving. And I think that because we are not only not placing limits on the overall amount that you can contribute, but also because we're allowing that growth of 25 percent per year, the cost of this program will grow significantly more quickly than our revenues, than our state revenues, which have been, to be fair, pretty lackluster over the past few years. And so, colleagues, I rise mostly to put this bill in the context of my perspective on the Appropriations Committee. I think this is a bill that does have a fiscal impact. It will put additional pressures--

SCHEER: Time, Senator.

BOLZ: --on other expenditures and I do have concerns. Thank you, Mr. President.

SCHEER: Thank you, Senator Bolz. Senator Slama, you're recognized.

Floor Debate
May 13, 2019

SLAMA: Thank you, Mr. President. I rise still listening to debate on LB670, but I'd like to yield my time to Senator Linehan so she can address some of the concerns that have been raised thus far.

SCHEER: Senator Linehan, 4:45.

LINEHAN: Thank you, Senator Slama. I'll just try to address the concerns as they were brought up by Senator Kolowski and Senator Bolz. First, it is constitutional. It's not state money, it's the donors' money, and until it comes to as revenue, it's not state money. So there's no constitutional problem with this. As I said in my opening, 18 states including Iowa, Kansas, and South Dakota have this program. These programs have been challenged and the U.S. Supreme Court has found them to be constitutional. We are not giving private schools any state funding. It's the donors that are giving the money and they get a tax credit just like we do for a whole bunch of other things. The private gain, I don't even understand this argument. The bill specifically says that you cannot both take the tax credit and the deduction from your federal income taxes. So you can have one or the other, you can't have both. So if you give \$1,000 to the scholarship granting organization, you, if you owed \$2,000 on your state income taxes, you could get a \$1,000 credit. But you couldn't turn around and also deduct that from your federal income taxes. So that was an issue with last year's bill; we corrected it in this year's bill. On the special education, there are many private schools that accept special ed children. Many of our public schools work with the private schools to provide services that those children need. And the schools are required by federal law, it's Individuals with Disabilities Education Act, schools are required by federal law to provide those services. It is true that special ed funding has not kept up with the needs, but that is-- it is not true that it's a completely state responsibility. When federal IDEA was passed in the '70s, the federal government said they would pick up 50 percent of the costs. They have never met that. When I worked in the Senate, we worked on it. We got it up a billion dollars every year. I think since Senator Hagel left the Senate it is stuck there and now we're down to 14 percent. So if we want to do something about funding for special ed, we need to talk to our federal delegation because that is where the leakage is. On the revenue impact, I know what the Fiscal Office note says. I just don't agree with it. If you, as Senator Bolz said, it could grow to \$93 million, that would mean somewhere between twenty and 40,000 students would leave public school and go to a private school. If twenty to 40,000 students leave public school, we are going to save some money. I don't care how you look at it. You can't-- I understand if one or two leave you might not save any, but if somewhere between 18 and 30 leave, you're going to save some money. And remember, low-income kids-- well, they're children who qualify for free and reduced lunch are all over the state, but 80 percent of our students are in three counties. They are in Douglas, Sarpy, and Lancaster County. In those counties, you have private schools with empty seats. When we-- let's compare to option funding. When a child or student--

SCHEER: One minute.

Floor Debate
May 13, 2019

LINEHAN: --leaves one public school and opts into another public school, the state provides the school they opt into \$9,800. If that child instead opts into a private school on a scholarship, right away we save \$4,000. So I just don't buy that this costs money. Every study, as I said, 39, I believe, it might have been 42, every, out of the 42 studies, 39 of those studies showed it saves the state money. Thank you, Mr. President.

SCHEER: Thank you, Senator Slama and Senator Linehan. Senator Lowe, you're recognized.

LOWE: Thank you, Speaker Scheer. There was a young man, Jacob Idra, who testified at the hearing. He is now a freshman at Creighton University, but he had scholarships to attend Catholic grade schools and high school. His family is refugees from Egypt. His father has made tremendous sacrifices for Jacob to ensure he gets the best opportunities in life. I stand in support of LB670 and against AM1351. Jacob stated, I vividly recall the experience of leaving Africa and heading to our new home in the United States. It was late in 2003 in Egypt and I remember the air was filled with a number of mixed emotions followed by tears flowing in the moment as my family filled the bus with the other refugees' families heading to the airport. I did not understand why our family members were weeping that were not getting on the bus, but we were heading to the land of the free. Isn't this what we have been praying for? If so, why was everyone crying as if we would never see each other again? At the moment I did not know this exodus to America would leave the most powerful image of my childhood experience. I was not sure what the future had in hand, but I was confident in my father's words, everything will be OK. Our journey of tribulations and blessings in America was about to begin. We landed in Omaha, Nebraska, where life took off at 100 miles an hour. One would expect me to say, we had nothing, but in reality we had each other. We had family, we had a special blessing stored for us by God. That blessing was now our extended family. That blessing was All Saints Catholic Church. At a very early age my father engrained the importance of education in our identity. Day in and day out repeating yet another one of his famous phrases: keep your focus on school. My parents worked countless hours to make sure we had a good private education. Their hard work, along with All Saints' flexibility, allowed for us the privilege of receiving private education which had been a blessing from God. From All Saints I was blessed enough to receive scholarships that allowed me to attend Mount Michael Benedictine which has altered my life in so many positive ways. I remember early in my freshman year at Mount Michael, I asked my father to transfer schools. He asked where? I answered South High School. He turned to me with a serious look in his eyes and answered my question with a question of his own. He usually did this trying to prove his point. He asked me why? I looked away as I did when I lied and I said, it's a magnet public school and you won't have to pay for anything for my schooling. In reality, I wanted to join my best friend's basketball team as they went on to win the state championship, but I left that part out. Then my father looked at me again, and I was still looking away, and he said, do you know why I brought you to America? As I was silenced, his words rung in my head: Keep your focus on school.

Floor Debate
May 13, 2019

SCHEER: One minute.

LOWE: Thank you, Mr. President. He responded to my silence, do not let money define what you can or cannot do, he continued. Son, nothing in America is for free. You must work for everything you have. I sent you to a private school to challenge you. Nothing good is easy. You must work for everything you want. I haven't questioned my father again since that day. My father had helpers in his corner, the biggest being God. God blessed me with the opportunity to attend Mount Michael Benedictine leading to a scholarship at Creighton University. Truly speaking, I'm not one who likes to boast about himself; in fact, I would argue that I am nothing without opportunities that were presented to me while at All Saints, Mount Michael, and now Creighton. I would argue that I am nothing without my dedicated teachers, and he lists his dedicated teachers. I know that I am nothing without my father's words.

SCHEER: Time, Senator. Thank you, Senator Lowe. Those waiting to speak: Senator Geist, Halloran, Blood, Albrecht, and others. Senator Geist, you're recognized.

GEIST: Yes, thank you, Mr. President. And I just wanted to make a couple of statements. One of those would be that I do stand in favor of LB670. And I would like to say that I think you can be for these opportunity scholarships and be for public school. I just happen to believe that because I am. One of the-- I think next time I get on the mike I'll explain exactly how that intersected with my family experience, but first, I would like to speak to the two private schools that are in my district. One is Villa Marie Home and School for Exceptional Children and then St. Joseph Catholic school. And I know that there is a mindset that private schools don't provide for special education. And I just want to read a little bit about what these two individual schools do in order to reach the students who have special needs in their area of teaching. And the first one is Villa Marie which is a Nebraska Department of Education Rule 14 approved K-8 nonpublic school or private school. Villa Marie is singularly dedicated to serving children in need of special education services. Villa Marie was established in 1964. The Marian Sisters of the Diocese of Lincoln have helped run the school throughout its 65-year history in the community. The Sisters along with other education professionals provide high-quality instruction to both day students and boarding students. This is the only facility in Nebraska that offers such education and supervision with all the teachers being certified in special education. Villa Marie has a capacity to serve 24 students, and this year has 16 students. In other words, Villa Marie is a very special place and has a long tradition of serving some of our most at-need children. Notably for some time during its history, public schools, such as Lincoln Public Schools, used to contract with Villa Marie for special education services as Villa Marie was better suited to meet the educational needs of some of the public school children with special educational needs. Today, these public schools are now better accommodated to meet the needs of the students through their resources and facilities and no longer have a need to contract with Villa Marie. As well today, Villa Marie works closely together with Waverly Public Schools which assist Villa

Floor Debate
May 13, 2019

Marie-- which assets Villa Marie offers special education services that the students are entitled to receive under federal law, such as speech and occupational therapy. These mutually enriching relationships demonstrate the effectiveness of private and public partnerships that are focused on the educational needs of each and every student. While Villa Marie is a Catholic school, like countless other Catholic schools, not all their students are Catholic. Currently, a third of their students are non-Catholic as well. Over Villa Marie history, a large percentage of students are eligible for free and reduced lunch. Because of the difficult and strained financial situation of many of the families, and the unique learning needs of each student, tuition is determined on a case-by-case basis.

SCHEER: One minute.

GEIST: With so many families at 185 percent of federal poverty or below, it is readily apparent to the-- that the tuition paid by parents hardly covers the educational expenses of their child. Because of that, the school relies on private donations to heavily subsidize the overall cost of education per student. And when I'm up next, I will speak directly to St. Joseph's Catholic School. Thank you, Mr. President.

SCHEER: Thank you, Senator Geist. Senator Halloran, you are recognized.

HALLORAN: Thank you, Mr. Speaker, colleagues, Nebraskans. Hopefully this won't, and I don't believe it has at this point, but hopefully this does not devolve into a, I love public schools, or I love private schools, but I can't love one or the other or both. It is not about an institution, be that institution public schools or be that institution a private school. Shouldn't the discussion revolve around, I love students. And if we focus on that being the focus of the discussion here, I love students, then it shouldn't become parochial, if you will, loving one type of school over another. It should be what's best for the student. And one size-- this has been said a lot, but one size does not fit all. And for those that just don't find a fit, or their parents don't feel that their child fits well in the school they're in, this is an opportunity to say, I love students. Give that child an opportunity. Give that child a second choice to maybe attend a different school. And it's encouraging private giving. It's not encouraging increasing taxes here. As has been said, this is not pulling from-- it's not pulling from the general revenue. It's not pulling from taxes received, it's giving credit to people who are contributing to a scholarship fund. So I think in this day and age where we all want to be more charitable, it's not just charity, but it's allowing for, by giving to a scholarship fund, it's allowing for students and their parents to say OK, give my child a chance to attend this school or that school. And it is not about public schools, it's not about private schools, it's about the students. The balance of my time I will give to Senator Linehan if she would like it.

Floor Debate
May 13, 2019

SCHEER: Senator Linehan, 2:40.

LINEHAN: Thank you, Senator Halloran. Thank you, Mr. President. I just going to-- as I expect they will come up, some of the misconceptions about LB670, I would like to address one of the things I heard in e-mails that LB670 will only help the 37,839 students who are already attending the 191 private schools in Nebraska. The bill specifically states it cannot provide a scholarship for a student who has already enrolled in a private school. So if they're already enrolled in a private school and attending a private school, they will not be eligible for the scholarship. With one exception, if they leave eighth grade and go into high school because, I think as most of us know, some students go to private elementary school and there's no high school, or they go to public elementary and then to a private high school, so at ninth grade you could be. But also I would remind you, this is only for children who qualify for free and reduced lunch. Now there are many children in private schools today that qualify for free and reduced lunch, but they're on-- they're there because of scholarships, or as Senator Geist said, because the organization that supports the school is raising funds privately to help make that support. Another misconception about the program-- about the bill, legislation, is that a donor could give money for their grand kids or their niece or nephew. That is not allowed. A donor cannot--

SCHEER: One minute.

LINEHAN: --specify a student and the scholarship granting organization cannot be for just one school. So, Mount Michael was brought up. Mount Michael cannot have a program that just benefited Mount Michael. There has to be a separation so that you cannot work for your own grand kids, your nieces or nephews. You cannot direct money directly to them. And as we go forward, I'll bring up other misconceptions about the bill. Thank you, Mr. President.

SCHEER: Thank you, Senator Linehan and Senator Halloran. Senator Blood, you're recognized.

BLOOD: Thank you, Mr. Speaker. Fellow senators, friends all, I am not sure how I stand for or against the amendments or the bill itself. I have a lot of questions that I'm going to need answered. And because I have so many questions, I'm not going to ask that Senator Linehan yield to my questions, but perhaps, maybe, write them down as I walk through my concerns. One of the concerns that I have from the immediate start, though, is I keep hearing that this is about loving students. I love students. This isn't about public schools versus private schools. For me, my children participated in both avenues. We are Catholics. My oldest went to Gross High School. My youngest ended up having-- wanting to finish both her junior and senior year together and we ended up having to do that through a private school. And it's not because the public schools didn't offer what we wanted, but we were just looking for something different. And that's what bothers me, I think, about this whole conversation is that our public schools, they

Floor Debate
May 13, 2019

have to prove on a regular basis that they're providing a quality education to Nebraska's children, but apparently private schools really don't. But yet we're standing up here and saying that because we love students, private schools are superior to public schools, and I'm not seeing proof of that. And it hurts my heart to hear people keep saying that over and over again that we can provide a better education for those in need who want a different or a better education. And I personally know that in my district that I am consistently talking to folks that are military and have military families and they tell myself and Senator Crawford over and over again that Nebraska is one of the few states they serve in where they send their children to public school because our schools have so much to offer. And with that said, one of the concerns I have is our JROTC, so now that we have students that are home schooled, some in private school, I'm not sure based on what I'm reading in this bill, can you be a part-time student or do you have to be a full-time student to receive this scholarship? And I know that in other states that have pushed this forward that children that are in private schools have not been allowed to participate in JROTC and I do have concerns for that. So that's one of my questions. I did read through the Iowa Department of Revenue's report because I was trying to verify that the state saves \$20 million annually, and the closest thing that I can find to support this claim is on page 7 and 30 of this report. But the explanation really isn't very clear. In fact, if you look at pages 12 and 13, it notes that the estimated savings are based on assumptions. Again, assumptions, not facts about the number of transfers. So on page 29 then I learn that the report assumes that 30 percent would have otherwise attended public school. So notably on page 20, they state that every year there are recipients with no measured financial need. So if we're using this as a platform, for me, I need evidence, not assumptions. I did see the investigation by the Gazette and they found that there is no verification process for financial need. Now I know that we are saying that 90,000-plus for a family of four is what you would need for the criteria, which, again, I think I said this last time we had this bill, I find that distasteful when the average median income in Nebraska is \$59,970, I believe now. I could be off a little bit depending on who's stats you read. If I made \$90,000, and I wanted my kids to go to private school, they would be going to private school. I wouldn't need a scholarship to do that. I wouldn't need a tax exemption to do that because it's my job as a person who does participate in the upper 40 percent of income in Nebraska--

SCHEER: One minute.

BLOOD: --to take care of my own. So the assumption that I worry about is that if we had a classroom full of 27 kids and we took out three of those kids for private school, how is that going to change our per-student cost? I'm not clear on that. And I do have several other questions. I'm glad to hear about the special needs, but I'm not hearing about LGBTQ and many of these religious schools have the right and should have the right to refuse them should they choose to do so, but can we force them with this bill to accept our LGBTQ community? That would be the other question I have. Thank you, Mr. Speaker.

Floor Debate
May 13, 2019

SCHEER: Thank you, Senator Blood. Those waiting in the queue: Senator Albrecht, DeBoer, Crawford, Lathrop. Senator Albrecht, you're recognized.

ALBRECHT: Thank you, Speaker Scheer. I'd like to stand in support of LB670 and AM1112. Still have some questions on AM1351. I would like for Senator Linehan also to think about a few of the questions that I'm going to ask and then I would like to yield her the time to explain. In my district, it's very evident that some of the-- probably superintendents I've heard more from than any of the teachers, I have heard from a few teachers. But because my name is on this and it was in the NSEA magazine that Senator Albrecht, Halloran, and Kolterman were in support of Senator Linehan's LB670, the questions that I need answered: Is there a constitutional issue with this bill? Are there constitutional concerns? And then it says LB670 would provide 10 million in tax breaks in the first year and increase exponentially each year thereafter with no cap. By 2020, it could cost the state more than 93 million each year. These tax breaks will work in total contrast to any discussion I have heard this year about balancing property taxes and school funding. Certainly those are concerns for all of us on this floor. I am enlightened to see many people sitting at their desks listening because education is one of the most important things to most all of us on this floor. The second question, or third actually, would be public schools are open to all children. Senator Blood alluded to this. On the other hand, LB670 only prohibits participating private schools from discriminating against students based on race, leaving them open to discrimination based on religion, special education needs, English-language learners status, refugees status, gender identity, sexual orientation, etcetera. And the fourth, research shows that tax credit scholarships do not improve academic performance. Can you answer some of these questions, Senator Linehan? I would like her to yield, please.

SCHEER: Senator Linehan, would you yield, please?

LINEHAN: Certainly. Thank you. Thank you, Senator Albrecht. On the constitutional issues, no. Again, the U.S. Supreme Court has decided this. The funding never comes to the state, so it's not state funding. It's not our revenue. We're not appropriating. If we don't-- we appropriate no money in this bill. So there is not a constitutional problem. On the ten million that is what is the bill and it does go up every year, if, in fact, that's used. What I would say is if there's concern that we're going to go up to \$93 million, then there must be a huge appetite for this bill. As I said previously, that would be somewhere between 18,000 and 36,000 students would opt to go to a private school. I mean, if that happens, I don't know that there's that much of a desire there. This is what I do know, this is about low-income children whose parents are hardworking. It could be immigrants. Many of them are. And they can't afford the tuition that many others can, or they can't afford what many people are doing where I live in Elkhorn--

SCHEER: One minute.

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

Floor Debate
May 13, 2019

LINEHAN: --buildings new houses and moving to a neighborhood where they want to access Elkhorn Public Schools. On the English language learners and refugees, we have three schools in Omaha-- well, we have St. Mary's across the street. And I'm pretty sure that several of those children sitting up there are immigrants, first generation Americans. I'm not going to embarrass them by asking them to stand up, but I want to very much. So I think if you look up there, it's pretty clear that we have a private school across the street, St. Mary's, that's going to be forced to close this spring that is serving those children. It doesn't look like discrimination is a problem over at St. Mary's. I'm going to end there because I can't quite remember the last question. Thank you, Mr. President.

SCHEER: Thank you, Senator Albrecht and Senator Linehan. Senator DeBoer, you're recognized.

DeBOER: Thank you, Mr. Speaker. Good afternoon, colleagues. I stand in opposition to this bill. I told Senator Linehan ahead of time that I was going to oppose it. I greatly respect Senator Linehan. I respect the general concept that she is trying to promote here that she wants to make private schooling a more affordable option for parents who would want to choose that. I appreciate her attempts. I know this is a very important topic for her, but respectfully I must oppose. This bill isn't the way to do it. My first concern is fiscal. During the two years that I was running for office, I spent every minute I could reading everything I could about Nebraska's specific policy, everything I could get my hands on from the Platte Institute, OpenSky, everything about how state and counties and municipalities work together to fund roads, about school finance, and TEEOSA. Even read not just the history of TEEOSA, but I actually read the TEEOSA statutes, so everything I could to supplement my economics degree and law degree with more policy information about Nebraska. And one of the first things I learned when I was studying Nebraska's policies-- it's true everywhere, is that tax expenditures are some of the trickiest expenditures a legislative body can make. Of course, tax expenditures include both tax exemptions, like all of the sales tax exemptions, and tax credits, like the one found in this bill. And as we've discovered in LB289, the Revenue Committee's package bill trying to put the genie back in the bottle with a tax expenditure is quite difficult, and I think that Senator Linehan would even agree with me on that statement. The sheer number of e-mails that I received by particular people or groups who would be effected by removing those tax exemptions was pretty staggering. And the thing is, each group has a compelling reason, a compelling argument to make. For example, while getting your nails done or getting your hair done at the salon are luxury goods in some definitions of the word, these services are often done by small businesses who are concerned about losing some of their customers if their prices effectively go up if their sales tax exemption goes away. Many have made, nevertheless, compelling arguments that we are giving away our sales tax base by having all of these tax exemptions-- sales tax exemptions. It's very difficult to put the genie back in the bottle. But it isn't just that these types of tax expenditures are difficult to get rid of, but that they operate differently than all the other

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

Floor Debate
May 13, 2019

expenditures that the Legislature makes. In the few years before I got here, this Legislature had to make deep, deep cuts to its appropriations. We cut provider rates or didn't appropriate inflation increases. We cut the university. We didn't fully fund our public schools through the TEEOSA formula. We drew down our cash funds. Across the boards, we made cuts. But what did not get cut, what could never get cut are our tax expenditures. We don't appropriate them. You just heard Senator Linehan saying that we don't appropriate them, so they are just there, fully funded as it were. So that if we pass a tax credit and the tax credit is 100 percent received by the taxpayer, whether other things are cut or not, so whether we are in lean years or years of plenty, 100 percent of that tax credit is there. We don't appropriate it, which means the only hearing that it gets is the one--

SCHEER: One minute.

DeBOER: --that it had this time, the first time, and then when it's passed, so this first time without any specific appropriation every year, it retains its full amount no matter what else is happening. So that's tax expenditure is in general, but the 100 percent tax credit here is especially burdened by these difficulties. And respectfully I would say to Senator Halloran, I disagree. I think this is pulling money from the General Funds because those are monies that we would otherwise collect. So one of the first things that senators who were mentoring me as I began here in this body told me was basically don't write a bill with a fiscal note because you won't get it passed. We don't have any spare money in this state. There is a recognition by lawmakers here that we don't really have an excess of funds right now, that we need to work on property tax relief. And here's an expenditure and one that we don't have to appropriate each year.

SCHEER: Time, Senator.

DeBOER: Thank you, Mr. President.

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

CRAWFORD: Thank you, Mr. President. Good afternoon, colleagues. I rise in opposition to LB670, and-- but first, I do want to compliment Senator Linehan for important changes in the bill. I think the amendments that she has provided have been important improvements to the bill and I appreciate her attention to those concerns that have been raised, especially the amendment that we don't have up yet, which is the one lowering the income limit for the students who are served, because I think that really does better target the students that I think we're wanting to target is those who are actually in a situation where their family could maybe perhaps not afford a private education. I want to speak in my turn, one of the things that concerns me still is the fiscal impact of the bill and the bill still has a \$10 million beginning cost and then it increases by

Floor Debate
May 13, 2019

25 percent each year if it has a 90 percent or greater uptake. And, colleagues, I think that's a higher rate of increase than we have in just about any of our other programs. And so-- and as other people have mentioned, it gets very high and gets to be very high over the years. Now one of the things that Senator Linehan has mentioned is, well, we save money if that many people get into the program. So what I want to do in this turn is just talk a bit about those studies that argue that the programs save money and some of the concerns with those studies and some of the questions that we should have as we consider whether or not we would save money by passing LB670. So the first issue is that when you're deciding whether or not you're going to save money on a tax scholarship program such as this, the issue is how much switchers that you have, because any student that would already be going to private school without the scholarship program is just a cost to the state because they otherwise wouldn't have been in our public school buildings anyway. And so everything that we spend on those students who would already attend private school is simply a cost to the state. The only way that we save money, because the scholarship is less than the amount of money we pay for students, is for those students who are what we call switchers, so those students who would not have gone to private school otherwise. And it is important that there is, I think, a partial attempt to try to focus on switchers in the bill in the sense that it is asking, requiring that you attended public school before. But there are three-- there are four important exceptions to that which I think would really open the door to a lot of students receiving the scholarships who would otherwise already be attending private school. And again, so those are students that we do not save any money on because we are basically losing all of the money we're spending on those students because they wouldn't be in our public schools anyway. And that is, the exceptions that we have to that are when students are entering kindergarten. So it doesn't matter if you would have attended private kindergarten otherwise, when you are at that kindergarten age, that's considered somebody who is able to receive the scholarship. And the second time is in ninth grade. So again, if you're entering school at ninth grade, regardless of whether you would have attended a private school already anyway, you qualify for the scholarship. But there are two other provisions that open the door even further and that is that a sibling of a student who is receiving an education scholarship and resides in the same household qualifies for these scholarships. So if you have three kids that are already attending private school and your youngest then is entering kindergarten, then it's the case that all four of your students-- all four of your children would qualify for these scholarships. And those three other students--

SCHEER: One minute.

CRAWFORD: Thank you, Mr. President. Those three other students are ones who, again, are a basic cost to the state because they would be attending private school otherwise. And the second clause that opens the door further is a clause on page 3 of the bill and that is, that those who have previously received an education scholarship and is continuing education at a qualified school is qualified for this program. And it doesn't specify it has to be the scholarship granting

Floor Debate
May 13, 2019

organization scholarship, it just says any scholarship. So any of our students who are already in private school, already getting scholarships, then qualify for this program. So there are several ways in which the program opens up to make it more likely that students who would already be attending private schools would be attending-- would be receiving these scholarships in which case these are not students that we save money on, but only, again, we only save money on switchers. And I'll talk a little bit more about what we know about the current study on switchers--

SCHEER: Time, Senator.

CRAWFORD: --in a future turn. Thank you, Mr. President.

SCHEER: Thank you, Senator Crawford. Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President, and colleagues, good afternoon. I am opposed to LB670. I have concerns on a number of different levels. I think the primary concern that I have relates to the fact that it is a credit and not a deduction, and that's an important distinction that we should understand that we are making. Currently, if I want to support a Catholic school, and by the way, I went to Catholic schools. Nine Lathrops all went to Holy Name, and big Catholic family, and then my children did too. So I'm a believer. This, on the other hand, has a consequence to our General Fund. It is not a deduction. So every year when-- at the end of the year, sometime between Christmas and New Year's, I don't know when you write those checks, but I write them somewhere between Christmas and New Year's, and I'll send contributions to Holy Name, where I went to grade school; to Roncalli, where I went to high school. I send some to Creighton, as a matter of fact, too, among other charitable organizations. I can do that and for that I get a deduction. All right? Costs us a lot less. If I write that same check, I get 100 percent of that comes off my tax liability when it's a credit. Here's the difficulty. Don't think that this doesn't have a General Fund impact because it does. It has a significant General Fund impact. It is no less of an impact on our General Fund than if we simply wrote a check to these places, had the money come in and wrote a check to these various and primarily religious schools that are private. Believe me, I don't have to be sold on what they do and the benefits. What they're doing up at Holy Name, by the way, is terrific stuff for kids that live in that neighborhood. Many of whom are no longer-- not Catholic children. But the fact that it's a credit means it's going to take a big hit out of our General Fund. Now, let me take you back one week when we were talking about the General Fund, when we had the budget and we had LB289 out here, we didn't want to properly fund our rainy day fund. That money needed to go to property tax relief, so we yanked it out of the budget, took it from the rainy day fund where, frankly, I feel like the only conservative left in this place. I think the money should have been put into the rainy day fund for the next recession that we're going to experience. Those of you who had made property tax relief

Floor Debate
May 13, 2019

a priority said no, no, no, I don't care about the rainy day fund today, I want the money to go into property tax relief. Well, colleagues, this money is never going to make it to the General Fund so we can provide any type of property tax relief. It's just gone. And it is an attempt to work around a constitutional prohibition against appropriating money to sectarian schools, to religious schools. It's right in our constitution in Article 7, Section 11. There is a prohibition against the state contributing money to religious education. This idea that we're going to make it a credit is a work around that constitutional challenge. In Montana, by the way, their Montana Supreme Court just about six months ago with a similar constitutional prohibition found this type of legislation--

SCHEER: One minute.

LATHROP: --unconstitutional. Unconstitutional in the state constitution sense. Similar provision to ours, this type of legislation offended that prohibition against giving money to religious schools. We can't afford it. It has a General Fund impact. I don't think it's good policy either. We have-- everyone in the state has access to a free and public education. Our focus in my judgment should be on improving that public education. It is the great equalizer and our debate should center on what do we have to do to make those public schools in the state be everything we hope these children will find when they go to one of these schools that would qualify under this bill. So I appreciate, once again, the time and the effort that Senator Linehan and the Revenue Committee has put into this topic--

SCHEER: Time, Senator.

LATHROP: Thank you.

SCHEER: Thank you, Senator Lathrop. Those waiting to speak: Senator Williams, Walz, McCollister, Cavanaugh, and others. Senator Williams, you're recognized.

WILLIAMS: Thank you, Mr. President, and good afternoon, colleagues. In my five years in this body, I have consistently been a supporter of public education. I have consistently stood in opposition to charter schools, to voucher programs, and today I stand in opposition to LB670 in the creation of a credit based on the scholarships. We all come here with life experiences based in our path and, certainly Senator Linehan does, and I applaud Senator Linehan's ability to raise children in the district or just outside of the district. And when I had the opportunity to be in the district on a regular basis over a period of years, my wife and I developed a number of friends and just like we were doing back in Nebraska raising our kids and watching our grandkids, they were doing the same things. And every one of those parents that we met and got to know at that point in time, every one of them sent their kids to private school. And my wife and I found that

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

Floor Debate
May 13, 2019

rather odd when we looked back at our experience in Nebraska. So we spent time talking to them, as you do, about your kids and grandkids and it became very evident that each one of those parents were making a decision based on two primary factors. One was the quality of education and the feeling about how do I ensure the fact that I am preparing my kids or grandkids to have the best opportunity to be successful in life? And they didn't feel that was being done in the public school where they were. The second thing became a safety issue of whether their kids would feel safe or actually be safe. And my wife and I remarked over and over to ourselves how proud we are of our state, when we would fly home, land in Omaha and begin that drive three and a half hours to Gothenburg, about the fact that we enjoy high-quality public education and safety in our schools. I have 13 school districts in my legislative district. I actually don't have any private schools. That may be a little bit hard for everyone here to believe, but that's one of the reasons why I find it easy to support this. We have strong public education. We have also been talking over and over about the fiscal responsibility that we have as a state and that we have as senators. One of the other things that I always talked about when flying back to Nebraska, as opposed to some other states, I was happy and now I'm even more happy that we have a constitutional requirement to balance our budget and not spend money that we don't have. And this program leads us down that path with the fiscal note that we have in front of us and also the advent of how this fiscal note and the cost can increase over time. And I think that would be irresponsible for us to look at doing that. Just before I started talking, Senator Lathrop talked about the clear difference between a tax credit and a tax deduction. That is certainly another reason why I am in opposition here, but I won't go into that because I believe Senator Lathrop--

SCHEER: One minute.

WILLIAMS: --and his conservative nature clearly led to a full discussion in that area. I would also, though, like to just talk about a comment that was made about tax credits. We certainly have some tax credits on our books right now that I will stand and defend totally. And attempting to compare the tax credits under LB670 to the tax credits that we will be talking about later this week in LB720, that are the tax credits that could be created under the ImagiNE Nebraska Act. You will hear this on Wednesday. LB720 is revenue neutral. You can't say that about LB670. With that said,

SCHEER: Time, Senator.

WILLIAMS: I am proud to support--

SCHEER: Time, Senator.

WILLIAMS: --our public education.

Floor Debate
May 13, 2019

SCHEER: Time, Senator.

WILLIAMS: Thank you, Mr. President.

SCHEER: Thank you, Senator Williams. Senator Walz, you're recognized.

WALZ: Thank you, Mr. President. Well, first of all, I want to say that Senator Linehan and I have agreed to disagree, and I'm sure she's not going to find it any surprise that I stand in opposition of LB670 for many reasons, but today I want to talk about the cost. Colleagues, as you are well-aware, the impact of a tax credit is really similar to a budget expense. You just plan to pay for a loss revenue. The proposed tax credit will reduce revenue funds collected by the state and would impact our budget in a negative way. I'm sure you're also well-aware, as we debate LB289 to provide property tax relief while we're trying to find hundreds of millions of dollars, that LB670 would lower the resources available to the state forcing the cost of our public education in Nebraska to be paid by who? Property taxpayers. If you really have any interest in reducing property taxes, you would agree that LB670 is a step in the wrong direction. A tax credit of up to \$10 million in the first year of implementation would absolutely divert much-needed funding from public schools. And although the tax credit cap is set at \$10 million the first year, if 90 percent of that amount is used, the cap would grow by 25 percent the following year. Assuming the credit grows 25 percent each year, the tax credit could total \$93 million by 2030, and, yes, that is a reality because nothing stops corporations or individuals from contributing or donating. It's not the amount of the scholarship being paid. We're talking about \$93 million in tax credits. This loss revenue would dramatically affect public education, as well as Department of Health and Human Services. In fact, \$93 million generated for tax credits is more than we allocate out of General Funds for the following. It is more than the \$90 million for all of our community colleges. It is more than General Funds allocated for behavioral health, which we know is a growing and critical service to Nebraskans; that's \$71 million. In fact, colleagues, \$93 million for tax credits is more than-- listen carefully -- aid to ESUs, high ability learning programs, early childhood programs, nurturing healthy behavioral programs, our school lunch program, textbook loan program, school breakfast program, adult education, Learning Community aid, summer food program, high school equivalence assistance, step-up quality childcare, and voc rehab put together. The scholarship program giving tax credits to people who can afford to give away money, people who are rich, exceeds all of those programs, all of those programs by \$66 million. That does not make any sense to me. We need to cut spending, not raise taxes, to provide property tax relief. This bill is a perfect example of increased spending due to lost revenue. I trust that you will do the right thing for Nebraskans and for taxpayers and oppose LB670. Think about your priorities, think about your taxpayers, and think about your children. Thank you, Mr. President.

Floor Debate
May 13, 2019

SCHEER: Thank you, Senator Walz. Senator McCollister, you are recognized.

McCOLLISTER: Thank you, Mr. President, good afternoon, colleagues. I think I have known Senator Linehan for well over 20 years, and I appreciate her passion on educational choice issues and her dogged support of this particular bill. I should also say that about ten years ago, I came to the Platte Institute and that is a free enterprise, limited government, and personal responsibility, free market, think tank. A conservative organization to be sure. And that particular organization supported educational choice big time. And their philosophy supported the Friedman Foundation and their work, but they pushed charters, vouchers, tax credits. And since that time, I guess I've come to the conclusion that the research isn't particularly supported, doesn't particularly support those kinds of programs, the vouchers, charters, or tax credits. I think of Diane Ravitch who is a big charter school supporter and then she made a 180 degree turn, no longer supports that. So I think the research isn't compelling to support educational choice programs. In fact, I would like to recite some myths that come about. There's a group called the National Education Policy Center that does a great deal in review of the Institute of Justice. And the Institute of Justice is the group that many educational choice supporters cite in some of their work. What is the first myth? No empirical study has ever found an educational choice program to cause a negative fiscal impact on either taxpayers or public schools. Moreover, inflation adjusted funding for traditional public schools has skyrocketed in the last 40 years with no appreciable learning gains and there is no evidence to suggest that spending even would produce better educational outcomes. What is the fact? Well, the fact is that educational choice programs take money from already underfunded public school programs. Moreover, evidence cited in the IJ report, that's Institute of Justice, indicates the exact opposite of what the IJ report claims. While on multiple occasions, the IJ cites a couple of national public radio reports on Indiana's voucher programs support its claims, those reporters clearly state that Indiana's program has shifted from an effort to give options to disadvantaged school students to a subsidy program for wealthier families who have never sent their children to public schools, thus placing what some have estimated an additional cost of \$50 million on the state's taxpayers. This contradiction to the IJ report claims it's clearly stated in the report. Myth number two: The overwhelming preponderance of existing empirical evidence demonstrates that educational choice programs improve academic outcomes for those who participate in the programs. Not only is there no evidence that educational choice programs improve academic outcomes for students who participate in the programs, but recent studies show that such programs actually harm academic performance. Number three: There is abundant evidence that competition works--

SCHEER: One minute.

McCOLLISTER: --and encourages traditional public schools to improve. Myth: There is no evidence that market-driven competition from educational choice programs encourage traditional

Floor Debate
May 13, 2019

public schools to improve. Those are some of the myths. As soon as I get back on the mike, we'll finish that discussion. I also want to talk about deductions versus credits too. There's an inherent unfairness there that I find very objectionable. Thank you, Mr. President.

SCHEER: Thank you, Senator McCollister. Senator Cavanaugh, you are recognized.

CAVANAUGH: Thank you, Mr. Speaker. I rise today in opposition to LB670 and wanted to talk a little bit-- we've heard from a lot of the opposition already so far, I want to talk about some of the concerns that I have. And I would note that I, too, attended parochial school for my entire life and I went to a Catholic school for my undergraduate degree, University of St. Thomas in St. Paul, Minnesota, and I have a great fondness for the schools that I went to and the education that I received. And currently, my niece and nephew are at school at Marian and Prep in Omaha and I think those are wonderful schools and offer an amazing education. And I know that there are children at those schools that do receive scholarships to attend them. I know that there is fund-raising efforts to provide scholarships to students that wish to go to those schools. I know that the Que school, or that's gone by a few different names in Omaha, that provides a Catholic education for children who are new to this country. I've participated in fund-raisers for that school. I actually participated in a fund-raiser with our Governor for that school. He's been very active in raising funds for that school and it's a wonderful school and it's a wonderful opportunity. The Marian High School has MarianFEST every year. Prep High School has prep bash. I'm sure Gross High School has some annual bash as well. And these are wonderful opportunities for people to give money to those schools to help maintain the schools, to help underwrite the cost of those schools, much like the Omaha Public School Foundation raises funds to help support our schools. But none of these get an extra tax credit. They're just donations. And that's how the system works. You give a donation to a public school foundation or you give a donation to a private school, it's a tax write-off. But it's not an extra thing. It is not an extra special thing. And if you really feel that strongly about sending children to these schools, I encourage you to give money to those schools. They all have scholarship programs. They will offer to pay for children to attend, but you don't need to create a special program to make that happen. I also have concerns about the level at which this is being funded at the 300 percent level. I qualified to send all of my children to school with these scholarships, which is fine by me, if I choose to do that, but I mean-- obviously, I don't make a lot of money here in the Legislature so that would be helpful but it's not necessary. And our public schools will do above and beyond an adequate job of educating my children, I know. I'm very excited for them to be in the public school system. But I'm also concerned with our tax break-- our tax brackets here in Nebraska. So, we're trying to create a tax credit for people when our highest tax break-- bracket is 31,000 for an individual. Anyone who makes \$31,000 or more in this state is taxed at the exact same rate whether you make \$2 million or \$31,000. And we're trying to subsidize education for people who are in that \$31,000 range, but we're not trying to create a tax-- any sort of tax relief

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

Floor Debate
May 13, 2019

for those people. And I think that that's really important to acknowledge that these families, what they really need are more supports from us.

SCHEER: One minute.

CAVANAUGH: What they really need is to have-- Thank you, Mr. President. What they really need is to have adjust our tax brackets. If they own property, to look at our property taxes, but they don't need this extra. People don't need this extra tax credit. This is detrimental to our fiscal health as a state, and it's detrimental to the very children we're talking about serving, and it's very detrimental to our public education system here in Nebraska. So with that, I yield the remainder of my time to the Chair. Thank you.

SCHEER: Thank you, Senator Cavanaugh. (Visitors introduced.) Those waiting in the queue: Senator Clements, Linehan, Briese, Kolowski, and others. Senator Clements, you're recognized.

CLEMENTS: Thank you, Mr. President. I stand in support of LB670. I personally had the ability to send my children to private school, but I had people tell me that they could not afford private school and wished they could. The lower-income people that I knew urged our public school to merge with a nearby school so more academic classes could be offered. And that merger did happen, it was a benefit, but many areas can't do this. I did continue to pay property taxes to the local public school, which did not educate my children. Thousands of private school parents are supporting public schools while not sending their children there. I don't support reducing public school funding out of this program. I think we can continue to do both. There are at least 40,000 private school students in Nebraska now at an average public school cost of \$10,000 per student. That is saving \$400 million per year to the public system. I think the revenue effect of this program is but a fraction of the amount already being saved by the private school parents. And so, I speak in support of LB670. I think both programs-- both public and private are important and can exist together. With that, I'd like to yield the rest of my time to Senator Linehan.

SCHEER: Senator Linehan, 3:15.

LINEHAN: Thank you, Senator Clements. It's a little discouraging, I think, if we listen, or if somebody is listening at home, for people to stand up and say this was their choice and this is what they did and they sent their kids to private school and they went to private school, but somehow it's a problem to provide a way for low-income families to have those same opportunities. It's a bit shocking actually. I just asked Senator Crawford about the issue, if there is a loophole. If there is, it's the way the bill is written and I will address that. Children who can receive scholarships through this LB670 are going to be first-time students, and that would include kindergarteners and ninth graders, but they cannot already be in a public school. So it--

Floor Debate
May 13, 2019

excuse me, they cannot already be in a private school. So the 38-some, plus, almost 40,000 students who are currently in a private school, unless they're entering ninth grade, that's the one exception, would not qualify for these programs. On the one question that you had, Senator Blood, you said how do we know their levels? Well, first of all, I think parents are probably the best judge of their education their child is receiving at their schools. As we said before, many parents move schools, move where they live. They decide to send their kids to private schools. So I do trust the parents to make that decision. But private schools that are accredited by the Department of Education also must administer whole grade, norm-referenced tests no earlier than grade two, and at least in one grade in each of the following two levels, grade two and five and grade six and eight.

SCHEER: One minute.

LINEHAN: Thereafter, normal assessment instrument, ACT, must be administered at least once in high school. So they are required to take norm-referenced testing, as are the public schools. On the Iowa Department of Revenue and the word "assumptions", all of these-- our fiscal notes are all built on assumptions. I mean there's-- this whole, which I strongly disagree with, is an assumption that there won't be enough kids to leave like, especially when you get up to \$93 million, 40,000 kids, but none of those kids would be-- none of those students would be enough for one school to save any money. I just don't agree with that assumption. I think it's kind of silly on its face. And I'm going to run out of time here, but on the \$93 million, and again, that would take ten years to get there, and if we've got that much of a desire in the state of Nebraska, I think we really ought to think why we're saying no here. \$93 million--

SCHEER: Time, Senator. Thank you, Senator Clements and Senator Linehan. However, Senator Linehan, you are next in the queue.

LINEHAN: Yeah, it was good timing. Thank you. So we spend through TEEOSA, \$100 million in option funding, \$100 million, ten times what this bill starts out at. So if I am a student in an Omaha area school and I decide, or my parents and I both decide that I want to opt into another public school, the state of Nebraska, we send the school they opt into, I think is about 9,800 and change. So every student that leaves a public school to go to another public school, we pick up the tab of what the average cost per student across the state is. So we spent \$100 million on that program last year. We could spend more next year. Fifty million of that, and I don't have this in front of me, but I've looked at these numbers many times-- 50 million of that is for students in Omaha Public Schools who opt into Bellevue, opt into Westside, opt into Millard. So let's just say that would be 5,000, over 5,000 children in the Omaha area are currently using that program to go to a different public school. If just 1,000 of them decided instead to go to a private school, because they could do so because they got the scholarship, we would save about \$7,000 per

Floor Debate
May 13, 2019

student. So I do math badly when I don't use pencil and paper, but what is \$7,000 times 1,000? Seven million dollars. Oh, my goodness. So just a 1,000 of those children in Omaha instead opted into a private school, we would save \$7 million without-- and it's all state money, not taxpayer money, it's not considered into that what's saved. It's \$7 million in savings with just one-fifth of the children and students and parents having that option. I think I addressed the switcher's question. I think another thing that we're kind of overlooking here is the state of Nebraska, we do-- how we fund our public schools can be questioned and we are questioning that with LB289. But I don't think we should-- we should remember how much is spent on public education, whether you agree or don't agree, it's \$4 billion a year. Four billion dollars a year because we spend, as Senator Clements mentioned, we spend over \$12,000 per student on students that are in K-12. What if we reversed the optics here and almost 40,000 students who are now enrolled in private schools turned around and went to public schools? That would increase our cost to educate the students in Nebraska by half a billion dollars. We have many areas-- 10 percent of the kids are in private schools. We have some counties, two that come to mind right away, one being the Speaker's district where 25 percent of the children in that school district are in private schools.

HUGHES: One minute.

LINEHAN: Now who can argue that that doesn't save the state and the property taxpayers money? I just-- I don't see how. But put the money aside, really. The money for me, at least, is secondary. Every child-- not just because they were lucky enough to be born to parents who can afford to, every child ought to have the opportunity to go to the school that best fits their needs. From what I've heard today, many of us in this body have exercised that opportunity for our own children or helping grandchildren do so. I don't see why-- I don't know how you can say it's fine for me, but not for somebody who isn't as fortunate as I have been. Thank you, Mr. President.

HUGHES: Thank you, Senator Linehan. Those in the queue are Senator Briese, Kolowski, Groene, Bolz and others. Senator Briese, you're recognized.

BRIESE: Thank you, Mr. President, and good afternoon, colleagues. We're having a good discussion today. A lot of folks engaged, and it's good to see, but why so much passion on this issue? It's because most important thing we do is how we educate our children. Because of that importance, I've always felt when it comes to education, all options should be on the table and that means discussing those options. And when we're were talking school choice, you know, there's multiple options there whether you're talking charter school or vouchers or credits like these, what we're talking here, scholarship tax credits. As I look at some of these options, it boils down-- what it boils down to for me is whether the option can improve outcomes, educational outcomes, or whether it can maintain outcomes and save taxpayer dollars. If either of those is

Floor Debate
May 13, 2019

true, whether it can improve outcomes or at least maintain those outcomes and save dollars, then it deserves a hard look. Here we're talking about a program, an option, a scholarship tax credit that a lot of experts suggest has the most potential to improve or maintain outcomes and save some state dollars. And if that's the assertion, if that's true, which I tend to believe it could be true, can be true, then we should at least discuss and consider the option. You know, there are multiple ways to design a scholarship tax credit. Yes, there certainly are, and the effectiveness of it, I believe, depends on how it's designed and, you know, there's a lot of variables there. They can include the percentage of the credit, the income limitations, the limits on the amount qualifying for the credit, the amount of scholarship. So I am intrigued by the concept and I do look forward to the discussion, and with that I would yield the balance of my time to Senator Linehan if she would like it.

HUGHES: Senator Linehan, 3:06.

LINEHAN: Thank you, Senator Briese. I'm not going to talk about ACT scores and outcomes. I made a commitment to somebody in public schools who I have great admiration for and who is trying, taking on a very heavy load, that I wasn't going to do that this year. So I'm going to go back to the fact that parents will do almost anything to make sure their kids have every opportunity that they can afford to give their children. So this bill gives a chance to a single mom who has-- well, there's all kinds of personal stories --take a single mom who has three children and one who is struggling. Maybe they're getting bullied. How would you like to get up in the morning and have to send that child to school, or get in trouble because they're truant because you don't send them to school, because you have no other option? You can't go into your savings account and take out money to pay the tuition because you don't have a savings account. You can't go borrow money against your home because you don't own a home. You are working two jobs already and you are doing the best you can to hold your children's lives together and your own life together, and yet you have a child who gets up every morning crying, pretending they're sick--

HUGHES: One minute.

LINEHAN: --because they don't want to go to school. So I would just ask that you all put yourselves in that situation. You have no other option than to put that fifth or sixth grader out the door in the morning to go to a place where they are going to be miserable for eight hours. That could be any school. Doesn't have to be a public school, could be a private school. But because of your inability to access funding, you can't change. I would just ask you all to think about being in that person's situation. Thank you, Mr. President.

HUGHES: Thank you, Senators Briese and Linehan. Senator Kolowski, you are recognized.

Floor Debate
May 13, 2019

KOLOWSKI: Thank you, Mr. President. I'd like to take just 30 seconds to make sure that everyone has an opportunity to look at the Omaha World-Herald on Sunday, May 12, where the academic team of the year was chosen with the nine top students in the state of Nebraska, followed by the various groups, the All Metro Team, the Eastern Academic Team, and the western, All West-Central Academic Team, and then a Western Iowa Academic Team. I've served as a judge in these deliberations in the past. I know how many outstanding students we have in the state of Nebraska, and I hope you all get a chance to look at that and have an opportunity to relish the excellence that those students have shown. I'll go back to where I left off as far as the tax break for individuals in upper-income brackets and corporations, thinly veiled as it was. Let's talk about the mechanism described to distribute the tax credits. An individual or company that has given a qualifying contribution under this bill would be eligible for the total amount of such contributions made during the tax year, or 50 percent of the income tax liability of such taxpayer. Plus the portion of the contribution not used can be carried over to claim on future taxes. How interesting. What 501(3)(c)-- (c)(3), I'm sorry, can offer that kind of results to a donor? This is a special treatment for these organizations, again, which again is unconstitutional. Nebraska Constitution, Article III-18 provides that the Legislature shall not pass local or special laws granting to any corporation, association, or individual any special or exclusive privileges. I offer a local scenario. According to its Web site, the Quest Forward Academy of Omaha, a private high school founded by Joe Ricketts, offers full scholarships to offset its tuition of \$14,500. Currently, if the Ricketts family or Ameritrade donated \$1 million for scholarships to attend the private high school, their state tax deduction would be worth \$68,400. Under LB670, assuming that an income tax liability of at least \$2 million, the tax credit under LB670 would be worth \$1 million, wiping out the cost of the donation. While a scholarship granting organization under LB670 would have to grant scholarships to more than one school, the conceivably-- these conceivably could grant scholarships to only two schools so long as the scholarship granting organization provides one scholarship to another school, an unlimited number of scholarships could be granted to students attending Quest. In this way, state taxpayers could pick up the cost of the Ricketts family Quest Forward Academy. Maybe there is no coincidence that this tax credit program is being called the Opportunity Scholarship Act--

HUGHES: One minute.

KOLOWSKI: --when the Web site giving information about Joe Ricketts philosophy on education at his Quest Forward school network is at the Internet address Opportunity Education.Org. If that is the case, then this act is appropriately named. However, I would offer a different-- that the intent is not to fund one school only. Therefore, its name is more appropriately AM1351 would change the name of the act and all references from the Opportunity Scholarship Act to the Private School Scholarship Act. The name change will not change my disdain for the program itself. It would only call it what it is, a private school funding mechanism and detrimental to Nebraska public schools. Thank you, Mr. President.

Floor Debate
May 13, 2019

HUGHES: Thank you, Senator Kolowski. Senator Groene, you're recognized.

GROENE: Thank you, Mr. President. I stand in support of LB670. Two years ago, I thought of myself as just a taxpayer and I didn't like the credit and it was going to be a budget buster. After another two years here, I have come to the conclusion that LB670 is work force development, another opportunity, another expansion of ability for young people to seek an education that fits who they are, who their families are, and we need to expand educational opportunities as wide and as far as we can. I've got a list from the Department of Revenue about all the tax credits now, the Nebraska Advantage Act, there's three of those, you know, about 100 million or 80 million a year, we want to expand that. Nebraska Child Dependent Care Refundable Credit, Beginning Farmer Credit, Nebraska Earned Income Credit, Angel Investment-- by the way, Nebraska Earned Income Credit is for poor people for opportunity, that's what LB670 is--Angel Investment Tax Credit, Credit for Qualified Volunteer Emergency Responders, School Readiness Tax Credit for Qualified Staff Members. We give \$250 to every teacher for, if they buy their own pencils and paper and stuff for their classroom. So we do do tax credits. All of those, I'm assuming, some would think that there's only taxes and funding schools, but I don't see the relationship this LB670 in anything to do with public schools. It has absolutely nothing to do with it. The public school is where the state does their constitutional duty to supply free instruction in our common school. We do that. What child walks in the door in September or late August, has nothing to do with that government employee who is in that building. We send the students there who the parents bring to them. If a student decides to go a different path, that's absolutely not a concern of the government employees in the public school system. It's not. We do have freedoms. We do have choices in this country. This takes absolutely no money from public education whatsoever. That is an entirely different budget. Factor that we deal with here, this is giving opportunity. I called my local St. Pat's. They've dropped, since '14 from 412 students to 342. Why? Because parents come in crying into the office, they can't afford the tuition on \$4,160. That's for one student. If they have multiple students, they get the whole package for \$7,100. They can't afford it. We're taking opportunity away from children because we refuse to help. This is not a competition between private and public schools, not at all. Did you know that every bill that comes to the Education Committee concerning education also list private schools? Did you know that every private school has to follow Rule 10 because it affects our children? It's not just the public schools. This is about opportunity, this is about freedom. Why would you deny somebody a chance? Why would you deny a young child who wants to follow their faith, and the parents who want their beliefs taught, that they could combine that along with their education? Why wouldn't you allow somebody to help them? This has absolutely nothing to do with public education.

HUGHES: One minute.

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

Floor Debate
May 13, 2019

GROENE: Read the bill. You quote me the phrase where it mentions public schools. You quote me the section that talks about aid to public schools. You show it to me. This has to do with opportunity. This happens to deal with parents and their rights as parents to what education they want their children to have. This actually saves money. This saves money for the state. If the state budget is all you're worried about, every child that goes off to one of these schools at two to \$3,000, or whatever it is, tuition they get a bonus, it saves the taxpayers in equalization aid eight to \$10,000. So if that saves, and we're going to budget for public education anyway, that means more money for the rest of them. How does that hurt public education? I don't want to talk conspiracies, but this is about--

HUGHES: Time, Senator. Thank you, Senator Groene. (Visitors introduced.) Mr. Clerk.

CLERK: Thank you, Mr. President. Some items. Enrollment and Review reports LB600A to Select File. New Resolution: Senator Hunt, LR127; Senator Matt Hansen, LB128 and LR129. All are interim studies. Amendments to be printed: LB720 by Senator Kolterman; Senator Groene, LB675; Senator Walz, LB600A; Senator Wishart, LB610; Senator Cavanaugh, LB532; Senator Slama, LB592; Senator Chambers, LB519. Mr. President, new A bill, LB610A is a bill by Senator Lindstrom to appropriate funds to implement LB610. And finally a communication from the Governor withdrawing the name for an appointment to the Niobrara Council. That's all that I have, Mr. President. Thank you.

HUGHES: Thank you, Mr. Clerk. Those in the queue: Senator Bolz, Pansing Brooks, Lowe, Hunt, and others. Senator Bolz, you're recognized.

BOLZ: Thank you, Mr. President. And I appreciate having the opportunity to continue the dialogue and to offer a somewhat different perspective than Senator Groene just offered on the microphone. And what Senator Groene and I have in absolute common and really are in agreement about are making sure that young people have opportunities to pursue their passions and to pursue their careers and pursue their dreams. So I do appreciate Senator Groene's perspective in that way and do think it's really sincere. But I have a different perspective when it comes to how this bill would impact the state budget. And having served on the Appropriations Committee for seven years now, foregone revenue does have an impact on the resources that we have in the decisions that we make when we try to put a state budget together. So I do want to try to get my head around what people who have different perspectives are saying about the potential cost savings and I was hopeful that Senator Linehan would yield to a couple of questions.

HUGHES: Senator Linehan, will you yield?

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

Floor Debate
May 13, 2019

LINEHAN: Yes, certainly. Thank you.

BOLZ: Thank you. Thank you, Senator Linehan. My first question is, I was thinking about how this bill would impact kids and you referenced, I think, at one time on the microphone that in the future, if we were spending \$93 million on this program, that that would be thirty or 40,000 kids. But at the average scholarship for this program, it would be \$9,500 at average which would equal 9,800 kids. Is there something I'm missing in the way that I'm thinking about those numbers?

LINEHAN: That's the 9,800 is what we currently pay, what the state currently sends to a public school for an option child. So, meaning option student. So if a student opts out of-- and this does happen --opts out of Elkhorn to go to Millard because Millard has a International Baccalaureate--

BOLZ: Baccalaureate program.

LINEHAN: Right. So we then send Millard, the state does, Department of Ed does, sends Millard, I think it's-- it was \$9,500--

BOLZ: So maybe just because it's my time, maybe to ask the question in a slightly different way. What would the average cost for student for the Opportunity Grant Scholarship program be?

LINEHAN: Well, according to Julie Trivitt who is a columnist at the University of Arkansas and who is nationally known expert on this, the average cost, and from this sheet I handed out to everyone, the average cost for all tuition across Nebraska in private schools is \$3,076, elementary \$2,536, high school \$6,048.

BOLZ: OK, so it could be somewhere on a continuum. Would \$9,800 be the maximum --\$9,500 be the maximum?

LINEHAN: No. The maximum is 75 percent of the average. So it would be 75 percent of the \$9,800 and the reason we wrote the bill that way, and we can negotiate further, is we didn't want exclude any possibility of a child with special needs being able to access private education.

BOLZ: OK. That's reasonable. So my next question is related to the bill, page 3, Section 3(b), and this section is talking about the kids that are eligible for this scholarship program. And you said on the mike a couple of times, and I think it makes sense, that a qualifying kid would be a young person entering kindergarten or ninth grade, or transferring from a public school. Here is the part that I'm getting hung up on.

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

Floor Debate
May 13, 2019

HUGHES: One minute.

BOLZ: It says, has previously received an education scholarship and is continuing education at a qualified school until such students graduate from high schools. I'm not sure how there's cost savings to the state if we are providing a tax credit to a student who has never been in a public school and is instead just continuing their school experience at a private school.

LINEHAN: And I've discussed that with Senator Crawford and I will say again. If we need to adjust that language to make it more clear, I'm more than willing to do that. This program is only supposed to be for children that are switchers, which Senator Crawford explained, or going into kindergarten or high school

BOLZ: OK. My last concern, I'll just pop on the mike while I've got some time left is, I'm not sure that whether or not we're calculating the full cost of savings from a public school for a child leaving, or a portion of that cost, because it seems to me that it will only be a portion of the cost because the school will still have overhead and supplies and the teacher salary.

HUGHES: Time, Senator.

BOLZ: Thank you, Mr. President.

HUGHES: Thank you, Senators Bolz and Linehan. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. Speaker. Well, I stand in opposition of LB670 and I think Senator Linehan knows that I've had continuing concerns about any kind of public dollars that would go to private education. I don't believe that we're a wealthy-enough state to do everything for everybody. And yeah, I believe that we should allow every kid to have as many opportunities as possible. I believe that our public schools are doing that. And if people want to send their children to private schools, then hopefully they can. Hopefully there are scholarships available at those private schools. Those are things that we need to really consider. Some of my colleagues have said this has nothing to do with public schools. It has everything to do with public schools. This is more pressure on property taxes. It's more pressure on the General Fund. No other tax credit that Nebraska offers is one dollar for one dollar. No other tax credit. So when you look at this, there's all sorts of information about this. You know, this is a tax credit rather than a voucher. We're trying to get around that, but if you look at what's happening nationally, vouchers, tax credits, also the 529 Plans nationally are all ways for people to get public dollars for private schools. And the constitution, as you've heard, talks about not having the-- to providing for the free instruction in the common schools. That's the blessing of our educational system. The fact

Floor Debate
May 13, 2019

that we do offer it for everybody. And maybe it's not every single thing for every single person, but it's a lot for most people. And again, we've talked about Article 7, Section 11 talks about that the public school shall be free of sectarian instruction. Sectarian means religious instruction. And it goes on to say, a religious test or qualification shall not be required of any teacher or student for admission or continuance in any school or institution supported in whole or in part by public funds or taxation. Again, I will continue to fight for our public dollars to go to the public schools. If you look at the bill, there are a number of concerning items. Section 12 to me is one of the most problematic. The scholarship act, the Opportunity Scholarship Act shall not be construed as granting any expanded or additional authority to the state of Nebraska to control or influence the governance or policies of any qualified school due to the fact that the qualified school admits and enrolls students who receive education scholarships, or as requiring any such qualified school to admit or once admitted to continue the enrollment of any student receiving any education scholarship. In our public schools we have to educate everybody. All means all. There's no control by the state. There's no criteria, no direction. We do not do that with our public schools. We are giving them instructions all the time. Things that they must follow. Senator Slama just brought the bill regarding the civics test. That was a big requirement. We fought about that for quite a while. But the private schools, they don't have to follow any of that.

HUGHES: One minute.

PANSING BROOKS: Then if you look at what is required as far as what a qualified school means, and there isn't any discrimination provision, but that any discrimination provision, 42 USC 1981, only covers race and ethnicity, nothing else. It doesn't cover gender. So they can discriminate against women. It doesn't, of course, include LGBTQ or anything like that. All it is is race and ethnicity. Friends, this is not sufficient for our public dollars to go to a particular group of people who want to teach a particular group of people and not all the people. Thank you, Mr. President.

HUGHES: Thank you, Senator Pansing Brooks. Senator Lowe, you're recognized.

LOWE: Thank you, Mr. President. I stand in support of LB670. In Kearney, we have Kearney High and Kearney Catholic. If a student gets kicked out of Kearney High, they have a choice of either leaving town and going to one of the smaller schools around and their parents have to transport them, or they have to transport themselves, or they can come to Kearney Catholic. We work hand in hand. And that's what this is. This is about students. This is not about schools. This is not about schools and it shouldn't be about schools, but that's what we are turning it into. As parents, we want the best education for our children and we should have some sort of means to allow that no matter how much money we have. If we cannot afford to send our kids to a private school, what's wrong with a scholarship? And that's where this comes from. And it was brought

Floor Debate
May 13, 2019

up that if a family donates a million dollars, they get a tax break. If they donate \$2 million, they get a million dollar tax break. How is it that when you give \$2 million away, it's a good deal to get a million dollars back? If I hand you a \$5 bill and I ask you for \$2.50 back, is that a good deal for you? No, it is not. This is something the people are willing to give their money to to educate children. Now whether you send your kids to private school or public school, I'm a public school graduate. My wife is a Kearney Catholic graduate, my sons are Kearney Catholic. We sent them there because of the student to teacher ratio. And yes, we had special needs children at Kearney Catholic. I'm not sure if there are any there right now, but I know in the past there has been. They accepted them, because it's about the children, not about the school. Let's educate our kids. Let's do it the way the parents would like them to be. And if you don't have the money to send your kids to a private school but you would like them to go there, why not give them the opportunity with a scholarship? That's what this is. This money that people would give for here is not the school's money, it's their money. They're choosing to do this. If we're treating this as the school's money, then we should not treat it as Medicare money, because if we're taking Medicare money out of the people's hands, then we're taking it away from the schools also. Anything we allocate money to away from schools, we must be taking it away from the school children, whether it's roads or anything else. So let's keep this on track. Let's talk about children and not about the schools. With that, I yield my time to Senator Groene.

HUGHES: Senator Groene, 1:34.

GROENE: Thank you. What a parent decides to teach their children their values and stuff, that's also included in education. We're kidding ourselves if it isn't. And those parents and that child should be able to decide what school they want to go to, protect those values, to influence those values, to ingrain those values. This is America.

HUGHES: One minute.

GROENE: Why would you disagree with that statement I just made? Why would you think the government has the ability to ingrain values into a student, into a child, and that's part of the public education mission? But that's what I heard a little bit here, that it should never be, even though we know it is. This is about America, freedom, give an opportunity. And if that opportunity comes to a tax break because we can raise more money for that opportunity, I see nothing wrong with that. This is about poor kids. Yes, being in smaller classes, smaller rooms, dedicated teachers. And maybe being successful when they wouldn't-- when they got thrown into the masses and the crowds and the public institution. What's wrong with that?

HUGHES: Time, Senator. Thank you, Senator Lowe and Groene. Those in the queue are Senator Hunt, Friesen, Geist, Brandt, and others. Senator Hunt, you're recognized.

Floor Debate
May 13, 2019

HUNT: Thank you, Mr. President. I'm just going to make a point that I haven't heard made yet and it's an honest point. I don't make enough money to send my child to public-- or to private school and I don't want to send my child to private school. My whole attitude about education is that if a school isn't good enough for my child, it's not good enough for any child. And one of my major purposes as a leader, especially as an elected official, although I was doing this before I was elected, is to do what I can to ensure that public education options exist for every child regardless of who they are. I've introduced AM1787, which it doesn't-- I don't think it's realistic that we'll get to that, but I think it was important to get that into the record to correct what I think was an oversight in the nondiscrimination clause on page 3 of the bill. Senator Bolz, Senator Pansing Brooks all sort of referred to this a little bit when they were speaking, and I know Senator Morfeld has a very similar amendment, because there is definitely a need to make sure that when schools are educating kids, they're educating all the kids. To explain what this amendment does, it inserts the language on page 3, does not discriminate on the basis of race, color, religion, national origin, ancestry, citizenship status, gender, sexual orientation, gender identity, disability, or special education status. One thing that I have spoken about frequently in my career is how there is more to education than what you're taught in school. The name of the school that a child goes to doesn't tell us anything about that child's intelligence, doesn't tell us anything about that child's capability to learn, or their discipline, or their emotional intelligence, or their curiosities. The advantages of the diversity and aptitude are evident in the public school system. A system that serves all children, is its own life preparation. And I know that this isn't about public schools versus private schools, but when we're taking revenue out of the state to support private schools over public schools, I think that that's worth mentioning. It's important to understand that and talk about this. The most important advantage of a strong, well-funded public school system is simply that they serve every child in a community. And at a time when we're facing a budget shortfall, Nebraskans who care about sustainable and healthy public school system should have serious concerns about a dollar-for-dollar tax credit to further reduce our revenue in Nebraska and create more opportunities for wealthy donors in Nebraska to benefit from our tax system. So to not include discrimination protections in this bill is a very significant omission to me. People have the freedom to send their kids to private school. This is not about liberty. But they cannot take public funds for this, and tax dollars are public funds, period. This is redirecting taxpayer funds to private schools. And to say no taxpayer dollars are going into these scholarship programs is deceptive. Nothing is preventing someone from donating \$500,000 to a scholarship program already. But they should not be entitled to a \$500,000 credit for that on their taxes. That's not about supporting kids. That's about using the tax code to continue to protect the wealthy while weakening public schools. That's the only way that I see this. If a wealthy donor would not support a private school without LB670, without being able to get a dollar-for-dollar tax credit, then that is not the state's problem. And it is not our business in the Legislature to take revenue out of what we have to work with to provide essential services to rebuild our rainy day fund, to create a mechanism to incentivize wealthy donors to give money to private organizations. That's just not something that I consider as part of my job description.

Floor Debate
May 13, 2019

HUGHES: One minute.

HUNT: This amounts to a huge loss of revenue in Nebraska that we just cannot afford. I think it's worth returning to the question of why do we have public schools at all? If we have LB670, why do we have public schools at all? The answer is because we all benefit from having an educated society and we believe everybody should have access to an education. Now if these public schools are not performing adequately, the solution is not to cut taxes on the rich, which seems to be the preferred solution to every problem large and small here, the solution is to address problems in public schools. So this is not a bill that I think is an appropriate priority for the Legislature right now. There are already tax incentives to give to charity. Where does the money go for these-- that comes out of the revenue? It goes into rich donors' pockets. That's what it is; couldn't be more straightforward. This bill is a gift to rich people under the pretense of helping poor people. It's very plain. Thank you, Mr. President.

HUGHES: Thank you, Senator Hunt. Senator Friesen, you're recognized.

FRIESEN: Thank you, Mr. President. I stand in opposition to LB670. This is my fifth year here trying to deal with property taxes and how unfairly our K-12 system is funded. And each time I bump up, how are you going to pay for it? How are you going to pay for it? Where is the money? We can't raise taxes, and yet we keep trying to give away revenue. I'm not going to get into an argument about private school versus public schools. If you want to send your kid to a public school, you get a deduction off your taxes. You can do that any time you want and you've been doing it for the last 50 years, keep doing it, enjoy it. There are some areas the state don't have those options. There are some kids that have no option whatsoever. They go to the school that's there and they can't afford to transport to another school farther away, whether there is a scholarship there or not. And yet those schools, there's a 170 schools that are not adequately funded by the state. They're totally dependent upon our property taxes. If you want to give me dollar-for-dollar credit for every time I make a donation to my public school, I'll fund those too. I would be more than happy to do that. But I don't-- I get a deduction off my taxes because my property taxes are deductible, thankfully. But my schools don't get state aid, very little of it. I don't care if we want to take away the option funding because in my area, there is no option. Most people have no choice. They send their kid to that school and if there is a problem with those schools, let's fix them. If you really love kids and want to contribute to kids, go ahead and donate to a scholarship fund, take your tax deduction that you can get, and if you truly love them, you won't need an extra tax credit. There shouldn't even be a tax credit for contributions. Those should come from the bottom of our hearts, for the good of the poor that can't afford it. Why do we even let them deduct it off of their taxes? If you really feel like you owe something or need something, make a donation. If the donation is just because of a tax credit or a write-off from your taxes, I'm not sure that you really feel like that donation is needed, or you're doing it for the taxes, or what are the other reasons. We have come up with all kinds of solutions for

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

Floor Debate
May 13, 2019

problems we don't have. We are short of revenue. We can't get money put into our cash reserve. We want to keep making tax cuts because we're a high-tax state, and yet we keep finding ways to give away revenue. Whether it's in this bill or 720 coming up, we've given away a lots of revenue and our revenue stream seems to be continuing on a downward path. If we can't get agriculture turned around in the state, we'll continue down this path. And yet we keep trying to give away revenue to everything else. If people love their private schools, have them fund them. If there's rich people who want to make big contribution, have them make contributions out of the bottom of their heart. I'm sure they'll love them just as much then as they do with this tax credit. With that, I'll yield the rest of my time to Senator Crawford.

HUGHES: Senator Crawford, 1:20.

CRAWFORD: Thank you, Mr. President, and thank you, Senator Friesen. I'll just lay on the record a couple of points about some of the studies that have been referenced in terms of showing cost savings from the program. One of those studies is-- and I'm just going to mention two, maybe is all I'm going to have time to do so today. One of them is a study of Florida, and in that study the assumption of the study was that 90 percent of the students were switchers. And, again, I think that's a very unrealistic expectation that 90 percent are switchers. The study that Senator Blood mentioned earlier was a study, and Senator Linehan also mentions the study in Iowa. And the study in Iowa assumes that 30 percent of the scholarships are going to switchers, when actually there is a report in Educational Choice, which is actually a sympathetic journal that tried to assess the real number of Iowa switchers, and they found it was closer to 13 percent. So, colleagues, again the logic of cost savings is based on assumption of a pretty high number of switchers. And it's difficult to structure a program that actually has a high number of switchers, because for other good reasons, you want kindergarteners to be able to come into the program, and you want ninth graders to be able to come to the program, and you want siblings to be in the program, those are all valuable and meaningful things that we might want to accomplish.

HUGHES: Time, Senator.

CRAWFORD: But those all reduce the number of switchers. Thank you, Mr. President.

HUGHES: Thank you, Senator Friesen and Senator Crawford. Senator Geist, you are recognized.

GEIST: Thank you, Mr. President. Again, I stand in support of LB670. And again, I want to reiterate that I reject the notion that you can't be for LB670 and for public schools. And I say that, again, because my children were all public school educated, so are my grandchildren being public school educated, and I robustly support our public schools here in Lincoln. I do want to

Floor Debate
May 13, 2019

talk, though, to the point of how some private schools, and I know the ones in my district do target educating those in my district and within their reach are those who may not fit in, in some cases in a public school, or may, and assumption is is that private schools don't address the needs of all students. And for instance, at St. Joseph Catholic School, where-- let's see, Monsignor Liam Barr, the former pastor of St. Joseph's parish worked with the school principal, Sister Mary Cecilia, to create a more inclusive education program that would specifically support the needs of special education students. In 2016, the Inclusive Catholic Education program was established and this program seeks to provide enhanced in-classroom resource support using individually designed educational plans, or IEPs, and this has meant that the school has hired more full-time resource teachers and paraprofessionals. In addition, like Villa Marie, St. Joseph School works closely and amicably with their public school district, the Lincoln Public Schools, to ensure that every child is receiving services they're entitled to by federal law. Children in the program have a range of needs related to down syndrome, autism, blindness, and among other physical and intellectual disabilities. The benefits of this program are numerous, but some notable benefits are the inclusive education program helps more students get help-- get the help they need in their classroom setting, which as we all know, is far superior to having children removed from the classroom instruction, or spending time being transported to and from a different school for services. The program also helps families keep their children together. As some, St. Joseph is now better equipped to serve all children. And in that mode, keeping their children together, one of the complaints among private schools in the past who did not serve the needs of the special education students was families had children in several different schools so that their individual needs could be met. And some people are willing to do that or have been forced to do that. And currently in my district, private schools are going above and beyond at no expense to the state or the federal government to supply the needs of special education students in order to keep all children in the family together. So in that sense, I think that for some, for those who desire it, for those who wish, and for those who can get funding, or have the personal means to have funding for private schools, I see that as a very positive asset to living in my district and also being served by-- whether you choose public school or private school. Thank you, Mr. President.

HUGHES: Thank you, Senator Geist. Senator Brandt, you are recognized.

BRANDT: Thank you, Mr. President. I'd like to thank Senator Linehan for bringing LB670. I would also like to thank Miss Adams, Miss Morton, and Mr. Arnold, my teachers at First Trinity Emmanuel Lutheran School, the elementary school I attended for eight years. I personally know what it is like to have your family sacrifice to send kids to parochial school. I received a great education. I really believe it is why I'm standing here before you now, but it was my parents' choice to send my brother and I to a parochial school. In exchange for that choice, they knew that the state would not be paying for any part of tuition because of the separation of church and state. Let me be clear, I do not support this bill because I believe public funds should not be used for private schools. These are two different types of school systems and, therefore, require two

Floor Debate
May 13, 2019

different types of funding sources. Public funding for public schools, and private funding for private schools. I have 13 public schools and four parochial schools located in Legislative District 32, all very good schools that educate students to the best of their ability. We recently debated LB289 which would have capped public school budget growth at CPI up to a maximum of 2.5 percent. LB670, as proposed here, could increase state funding obligations for private schools 25 percent annually or at a rate ten times versus public schools. I believe we need to use our tax dollars wisely and that means spending limited state dollars to support our underfunded public schools, particularly the 175 schools that do not receive equalization aid today, 12 of which are located in Legislative District 32. Where is the money for LB670 coming from? When we debated LB289 last week, the proposed bill was basically funded with new revenue streams, primarily sales tax increases. What funds LB670? Also, the way the bill is written, the unused tax credits can be carried forward five years. This is bad fiscal policy. All you need to do is look at the Nebraska Advantage Act to see the effects of this. Currently private school donors receive a federal tax benefit and, therefore, LB670 is not necessary. I would urge you to vote red on LB670. I would yield the rest of my time to Senator DeBoer.

HUGHES: Senator DeBoer, 2:20.

DeBOER: Thank you, Senator Brandt. Thank you, Mr. President, colleagues. I do want to say thank you truly to Senator Linehan for her work on this bill and for her willingness to compromise with the committee amendments. I do very, very strongly feel for folks who want to send their kids to private school. There needs to be a way to help them. I just don't think this is it. The second major concern, I talked about the fiscal concern, but a second major concern I have with this bill is that it could actually hurt our religious institutions in this state. It may very well make our struggling churches have an even harder time raising money. The way we fund organizations, religious organizations in this country is somewhat unique, or it was when the founders were starting the country. It's different from how it operates in many places in the world still today. One of my very best friends, a gal I met in seminary, is German. She was here on an exchange program at my seminary. She is an employee of the state as a pastor. She has a state pension. She gets paid by the state through taxes. You check a box. Do you want it to go to the Evangelist, which is the Lutheran.

HUGHES: One minute.

DeBOER: Do you want it to go to the Catholic? There is Islam, Judaism. I think those are the-- I think you can also choose humanism, so there's basically like five boxes. That doesn't seem like a system we would want here in Nebraska. We have many more forms of religious expression. There also comes obligations with that that she has to follow. She teaches the kindergarten, etcetera. She has to perform marriages for people who live in her area if they ask. So this isn't the

Floor Debate
May 13, 2019

kind of system we want. We have a voluntary system which means that we don't have requirements for how much the churches make. They have to prove their worth. They have to sing for their supper. And if you're currently competing against other charitable organizations right now for a standard deduction, they have a chance. But if you put them against 100 percent tax credit, now they're at an uneven playing field with their own schools. And what they found in other states who had these kinds of scholarship programs is in fact--

HUGHES: Time, Senator.

DeBOER: --they lose money. Thank you.

HUGHES: Thank you, Senators Brandt and DeBoer. Those in the queue are Senator Morfeld, Blood, Albrecht, DeBoer, and others. Senator Morfeld, you're recognized.

MORFELD: Thank you, Mr. President. Colleagues, I rise in opposition to LB670 for several different reasons. First off, I think that one of the things that's been noted by many of our colleagues today is that we currently have a public education system that isn't well-resourced enough, whether it be for purposes of property tax relief, or just in general, in terms of being able to provide the resources and necessary means for a growing and growingly diverse population of students across the state. So, until we can fully fund our public education system as it is, I will not be in support of a system in which we funnel additional public dollars to a private education system. Second, I introduced an amendment, I don't think we'll get to it, but it was an amendment that broadened the antidiscrimination clause within the legislation, which I believe is on page 3 and starts at line 19. It states, qualified school means any nongovernmental, privately operated, elementary or secondary school located in the state and is operated for profit, complies with the antidiscrimination provisions of 42 USC 1981. Now, that sounds great until you look at 42 USC 1981 and it only covers race and ethnicity. So it also does not cover religion or sex, which for me is a big problem. If you're going to be taking public funds, you should be taking anybody of any religion and certainly not discriminating on the basis of sex. So my amendment would remedy that and narrow the different classes, but broaden it overall and make the different classes more specific. In addition, one of my other concerns, and I don't think we touched on this yet, in terms of the Nebraska Constitution, I know we touched it a little bit broadly, but on page 7, line 12, it states, the taxpayer may not designate all or any part of the contribution to a scholarship-granting organization for the benefit of any eligible student specifically identified by the taxpayer. That makes it so that it essentially goes directly to the institution. And this is a problem because in the state of Nebraska, Ex Re Rogers v. Swanson, in 1974 the Supreme Court ruled on constitutional statute that provided for public grants to students in need of tuition aid to attend only private colleges. The court ruled that grants amount to an appropriation for public fund in aid of a sectarian or a private education, institution not exclusively owned or controlled

Floor Debate
May 13, 2019

by the state. And that the primary intent of the statute was to provide financial aid to private colleges, in this instance, through tuition grant. That's essentially what this legislation is doing, colleagues, and why I'm particularly concerned about that as well. To me, colleagues, I think that we need to remain focused as we have over the last many decades on ensuring that our public education system, our K-12 public education system has enough resources and is fully funded as much as possible, because for me, a strong public education is the great equalizer in our democracy. I respect private schools. I went to a private school for a while and then I went to public schools in OPS, Ralston, and then also up in Sioux Falls, South Dakota. And I'll tell you that my public education was high quality. I will also tell you that my private education, as I recall, I was only in kindergarten and first grade at the time, was also high quality. But my parents chose to send me to a private school. That was a choice they made. It's a choice that they continue to make if they want to. It's a choice that I can make in the future, and it's a choice as to whether or not I want to donate to that institution, and in some cases, get tax benefits for that anyway. But that's a choice. And we talked a lot about choice, colleagues, already in this body, whether it comes to pseudo science and reverse abortions, or whether it goes to--

HUGHES: One minute.

MORFELD: --choice in the sense of having an abortion or not having an abortion. So this is a choice that people make. It's a choice that people make to send their kids to private school. If they want to do that, I think that's fine. I think that's great. I think in some cases if they donate to that private institution, it's a nonprofit organization, that's fine that they get a tax benefit. But what I'm not fine with is funneling public dollars to private institutions, particularly ones that in this statute, in this forum, would actually be able to discriminate on the basis of religion. And I'm not fine with it particularly when we have needs that aren't being met in our public education system as it is. Thank you, Mr. President.

HUGHES: Thank you, Senator Morfeld. Senator Blood, you are recognized.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, even though we may not agree on this issue, I think I do stand opposed to both the amendments and the bill. And I'm going to tell you why, because I do believe, as Senator Lowe and others have said, that this is about the kids. And I do believe that this is about parental choice. But when I heard Senator DeBoer saying, surely there is another solution, I started doing some research. So one of the things I'm having an issue with before I get to the research, though, I remember Senator Lowe standing up and saying when we talked about SNAP benefits, that when his wife was pregnant and he needed to generate more income, he got a second job, but I don't hear him saying that on this bill. So sometimes I think that we stand up at the mike and we talk out of both sides of our mouth, and I certainly am not saying that Senator Lowe did that, but I think we have to really be careful about

Floor Debate
May 13, 2019

what we say on record, where are we coming from and what's important to us. So after Senator DeBoer said that, I wanted to know how many schools in Nebraska are religiously affiliated. Eighty-seven percent. So I started thinking about what Senator Linehan said to put yourself in the position of the single mom with three kids and I wanted to know what's the average tuition in Nebraska for private school. Well, for grade schools it's like \$2,536, and granted there's more in some schools and less in other schools, this is the average. For high school it goes up quite a bit, \$7,038. I know that we paid less for UNO than we did for Gross High School with my oldest. But I wanted to know what was available for these students. So I went right to the horse's mouth. I went to the Omaha diocese and the Lincoln diocese. And we started talking about switchers, I immediately thought railroad and now I understand that you mean it's kids who want to go back and forth. So the Omaha diocese has something called a Welcome Tuition Grant who supports families who want to provide their children with a Catholic education and come into their school system. And so, the students receive a Welcome Tuition Grant that started in 2015 and that's \$1,000 that they reduce tuition the first year. And then \$500 the second year. And then, of course, pretty much everybody in the school system receives some type of discounted fees when it comes to their tuition. So I went to Lincoln. So Lincoln has said that all students receive significantly discounted tuition in their school systems thanks to the generous support of local school parishes in the form of discounted tuition. So then it also talks about the Good Shepherd Scholarship, which basically it's 200 percent of the federal poverty level based on the adjusted gross income from the federal tax form. So a family of five, I think it's \$29,420 is the level of income that we would start with. So 200 percent, \$58,840 for a family of five, so that would be the math for the federal poverty level at 200 percent. So they would be able to get a Good Shepherd Scholarship anywhere in the Lincoln diocese, and the distributed yearly to needy families are a process that takes into account family size and income. They also have a Family Tuition Cap Scholarship. So if they have multiple children, anything above and beyond three, they don't have to pay tuition. So this is off their Web site. This isn't something that I just pulled out of the air. So then I started thinking about the Catholic schools that they have been talking about closing. And again, I am Catholic. I am not anti-Catholic school. I just-- I need us to have facts. One of the reasons Catholic schools are closing--

HUGHES: One minute.

BLOOD: --is because the ratio is 6.5 to 1 of people leaving Catholicism to joining it. And that's very telling. So I just want to make sure that when we put things out there, when we talk about people who can't afford to go to private schools, the vast majority of private schools are religious-based. They do offer tuition for all of the students, or reduced fees, and some of them have full rides. Let's put it in perspective. Let's talk about what this really is. Thank you, Mr. Speaker, or President.

HUGHES: Thank you, Senator Blood. Senator Albrecht, you're recognized.

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

Floor Debate
May 13, 2019

ALBRECHT: Thank you, President Hughes, and I'd like to yield my time to Senator Groene.

HUGHES: Senator Groene, 4:52.

GROENE: Thank you, Mr. President. I want to clarify as the Chairman of the Education Committee, I am in full support of public education, public education. It is, as Senator Morfeld said, the great equalizer. But for some reason, it isn't doing its job across the board of all education that we have such poverty in our country. We're not emphasizing to the youth when they walk in those doors that this is it. Take advantage of a free public education. Have a work ethic and pass a drug test and you'll be foreman the first week of your work. The American dream is still alive and we need to be emphasizing that in our schools. But no, I defend it. I think I've been Education Chair long enough that people know I defend public education, but this isn't a public education bill. This is an opportunity bill. This is freedom bill. Choice. I heard from some say that, well, this is just a rich person's extra write-off. At the end of the day, these folks will pay more money, not less. They will lose the federal deduction if they're in the 30 percent tax bracket or more, they will lose that. So now they lost a \$1,000, they lost 300 there. They lose the 6.84 percent, they lose for a deduction, charitable deduction from the state. We're pushing 40 percent now. They only get a 50 percent, up to 50 percent tax credit. So if they give a million, let's hope some of them do, they get a \$500,000 tax credit against the million of taxes they paid. Add that up, folks. Instead of just the million in taxes, they have a million and a half total money that they are using towards education or funding in some way. I think my math is right. They don't, at the end of the day, put more money in their pocket. They actually give more for freedom and children's choices and parental choices. This bill does not harm public education. To Senator Friesen's point, I brought it up to him about a rural situation. Do you want some real life situations where it does work? You look at Elgin, Nebraska, you look at Humphrey, Nebraska. You look at O'Neill, Nebraska. About a 50/50 split of the kids going to private versus public. Those three public school districts have some of the lowest levies in the state. Why? Because everybody in that district is paying property taxes and they only have to spend it on half the kids to educate, so the levy goes down. State aid is a lot less. Well, state aid is nothing because, as we all know, those small school districts don't get state aid. Those are real life examples of the relationship with a private and a public school system. It works. Don't quote me as accurate, but I think it's 28 or 30-some thousand kids in the Omaha area go to private schools. Can you imagine if those kids were dumped into the public school system, the cost to the state? Take it times 8,000, \$9,000 and figure out how much more money we'd have to come up with. This is just common sense. This is about education, period. To me it's education. As Chairman of the Education Committee, I am not chairman of the public school education committee. I'm Chairman of the Education Committee. All of our bills when we direct about education, Rule 10 and Department of Ed, it makes no difference which school you sit in, a private or public, the rules are there. We guarantee education and good education.

Floor Debate
May 13, 2019

HUGHES: One minute.

GROENE: This feud, for some reason, I don't understand. We are talking about a government entity. I hear we force the public schools to do this, we force the public schools to do that. We don't-- they're not an entity on their own. They're created by the people of Nebraska. They're no different than the courthouse or the county jail. We give them directions of what they should do and the employees in there do it. They are not an entity that is doing good works and then the government gets involved and makes them do things. They exist because of us. They are a government entity that the public wants as a public service so that their children can learn and be productive citizens and be good voters 'cause they are knowledgeable. They don't compete with anybody. Maybe we ought to get rid of sports in schools and stop this competition thing because somehow they think they're competing.

HUGHES: Time, Senator. Thank you, Senators Albrecht and Groene. Senator DeBoer, you're recognized.

DeBOER: Thank you, Mr. President. I was trying to talk last time a little bit about this idea of volunteerism, which is the way that we fund religious institutions in this country. I won't take the whole time. I just wanted to sort of make that point a little less abruptly and quickly. In the U.S., we cannot fund religious institutions through taxes. That's a decision that we made as a country from the very beginning. So then we had to innovate. We had to figure out a new way to fund religious institutions. And so we run our churches with money from voluntary contributions. It's called volunteerism in the history books. So as a church, you have to try to recruit people to your church and then you have to ask them to support with their own voluntary contributions. Obviously, there are some problems with that system, too, but it's the best system that we've got. And that's the kind of system that we now have in place for these religious schools. It is a voluntary contribution, just like the churches, it's tax deductible. Senator Cavanaugh provided me with the name of a particular scholarship fund where you can do that. It's called the Children's Scholarship Fund of Omaha. I would encourage you to give money there if you would like to support folks in making those choices for children. I believe that's probably a Catholic one, and they gave 16-- or 1,695 scholarships in 2016. So they give quite a few scholarships. So there are opportunities to voluntarily support parochial education, just as there are for our churches. It's the same system that's set up. It's got its problems, no question. Our churches right now are struggling. There are less people attending church than before, that's what the Pew Institute tells us, and they're having trouble. Church attendance is down. And people are giving less money to their churches. So many churches are struggling, particularly in rural areas, and having to close their doors. It's not just parochial schools that are closing, it's also churches themselves that are closing from lack of funding. So currently, the churches compete on an even-playing field. Same opportunities, same opportunity for a tax write-off for giving money to a church that you would have for a parochial school. The study at Notre Dame found that when

Floor Debate
May 13, 2019

you have a voucher system in place, what happens is you actually find that there are far more money-- far more dollars coming in from those voucher or scholarship funds than from any other single source so that the churches then tend to shift their focus to become more educational. And, you know, I just don't want them competing against themselves amongst other things. It's just math, you know. If you get 100 percent back and you're giving to what you believe is your church, if you're giving to this fund, you know, you can have your money and you can give it to your church, too. And that's why we don't want to unbalance this system. So we want to keep these things even, have the same tax write-off when you're giving it to, let's say the American Cancer Society, or when you're giving it to a church school, when you're giving it to a church, all of these philanthropic organizations compete equally against each other that way.

HUGHES: One minute.

DeBOER: And I think that's really important to keep as we're trying to make sure that we can support this really historic and robust system of volunteerism to keep our religious institutions in place. Thank you, Mr. President.

HUGHES: Thank you, Senator DeBoer. Senator Crawford, you're recognized.

CRAWFORD: Thank you, Mr. President. And good afternoon, colleagues again. I think we've been having a very good debate covering many different dimensions of this issue. I know there is much more to the issue than just cost, but that's just an element of the debate that I'm wanting to put on the record for our conversation and have us consider for our debate. And on that front, I appreciate Senator Friesen gave me some time, so I got a chance to put a little bit more on the record. Just going to put two quick issues on the record right now. And one is that in addition to thinking-- if we're trying to consider the cost and cost savings of the program, one question that I've already discussed is the issue of switchers. And the second issue is the question between fixed cost and variable cost. I mean, there are some costs that are fixed costs in a school, the building, the buses, and there are variable costs that vary by student, perhaps textbooks, supplies. And so the issue is when you have a small number of students leaving, you're not likely to have an impact on the fixed cost, but you're just going to have an impact on the variable cost. And the conservative Friedman Foundation estimates that the fixed costs are about 36 percent and the variable costs are about 64 percent. And so if we're doing the calculation or trying to see how much we're going to save or what our net cost is going to be, it's important to consider that it's our variable costs is a weight, and it is the number of switchers, or percentage of switchers that matters. And those both have to be factored in if we're considering what the net cost of this program is going to be to the taxpayer. And with that, since I think I'm probably one of the last speakers, I'm going to yield the rest of my time to Senator Linehan.

Floor Debate
May 13, 2019

HUGHES: Senator Linehan, 3:12.

LINEHAN: Thank you very much, Senator Crawford, I appreciate that. Senator Hunt, I think has left the floor, but I was just going to hit a couple of things that seemed to be very-- people are very confused, or we just don't know, or I didn't-- probably my fault, I didn't make it clear. Let's go back to the special ed students that people gave concerns that somehow they would be discriminated against, though nobody today has brought up one example where they showed that that was actually a problem. But as I said in my opening, every public school in the state of Nebraska can discriminate against a child, a student with an IEP. It's right here on the form, folks, I handed it out. First question-- there you are, Senator Hunt. You had concerns about this? Right here on the form it says, does the student require special education service? If yes, does the student have an Individualized Education Program, an IEP? If a parent checks these, the school has every right-- we're only one of three states that allow this to happen, one of three. The school can say no, don't have to take you, sorry. So we have some discrimination things to fix in our own schools. What Senator Crawford was just talking about, I appreciate this. If that's what we believe that only 64 percent of the funding is variable, then I don't know how that adds up to-- I'm going to use my calculator here, \$12,999 is what we spend per student, times 64. We shouldn't be paying \$9,800 for option kids. We should be paying something like \$7,000 for option kids, because if those costs don't follow, if the fixed-- I mean, if variable costs are only 64 percent, why are we spending almost \$10,000 for option funding?

HUGHES: One minute.

LINEHAN: Children Scholarship Fund, Senator Cavanaugh, thank you for bringing that up. It is a great organization. It, however, does not only serve Catholic students, it serves students all over the northeast and great deal of Nebraska. It doesn't even only serve children who go to parochial schools. There are private schools that get funding from Omaha's Scholarship Fund that have nothing to do with any religion. But the sad note is, Senator Cavanaugh, they turned a lot of kids away last year. They couldn't come close to meeting the needs and the requests. So we've talked a lot about money today. We talked about fixed costs and we talked about there's-- oh, another misconception, huge misconception, Senator Friesen has left the floor.

HUGHES: Time, Senator. Time.

LINEHAN: Oh, thanks.

HUGHES: Thank you, Senators Crawford and Linehan. Senator Hilkemann, you are recognized.

Floor Debate
May 13, 2019

HILKEMANN: Thank you, Mr. President. I rise to oppose LB670 and my biggest concern with this is that we are starting another costly statewide program that we really don't know what the limits are on what this is going to end up costing. We're talking about \$10 million this year and each year it will continue to grow and there does not seem to be a limit on it. As you know, last week we had the discussion about the property tax relief fund. And I'm sure back in 2008 when this was talked about for the first time and we were talking about \$100 million that they had extra in the budget that they put into the property tax relief, I cannot imagine that there was a senator in that building that could have imagined that that property tax relief fund would have grown to \$275 million by now and is one of the major controllers of our budget. And I'm concerned that this is what is the potential on this bill is to-- that we do not know how long and to what extent. If you're a high income earner, I would much rather be giving money to a group and get that back as a credit. And you know, you can dictate more of where your money is going than if you did it the other way. The other thing that I-- was brought up about the TEEOSA money. Well, if we hadn't put another \$27 million into the property tax relief fund this year, we would have had more money available for TEEOSA. You have to make choices. That's what it's all about. And all we keep hearing is property tax, property tax, property tax. Well, it's starting programs like this that is going to continue to take more and more of our state resources and it's going to keep continuing to take money away from the property tax relief that people are crying for. And Senator Linehan, I know this is a very-- this is a huge issue to you and you have worked very hard on that, and I know I have a little time left and you were just trying to finish up there, so I would surrender what remaining time I have to you, Senator Linehan.

HUGHES: Senator Linehan, 2:02.

LINEHAN: Thank you, Senator Hilkemann. Thank you, Mr. President. I think when Senator Friesen was speaking, I'm not sure if-- but I think what I heard him say is tuition is deductible. I think there is probably several, Senator Walz, Senator Lathrop, Senators-- other Senators here who have paid tuition for private schools. It is not deductible. That is a fallacy. You write-- now when you write a check out to Children Scholarship Fund, or I write a check out to St. Patrick to support St. Patrick School in Elkhorn, I can, in fact, deduct that. But when I write-- and I wrote many of them, tuition checks out to schools, that is not a deductible expense, just like when you write a tuition check out to college, it is not a deductible expense. So there's a fallacy there. We're going to come here to a close. I certainly hope that everybody who got up today and said they were worried about school funding and worried about property tax--

HUGHES: One minute.

LINEHAN: --is going to come tell me that they're supporting LB289 when I come around with a vote card because we got an Appropriation bill we're going to be on tomorrow that took money

Floor Debate
May 13, 2019

out of TEEOSA funding, so we should be talking about that tomorrow. And if we really want to do something about school funding and property taxes, we have an option here, it's LB289. Nobody loves it. I don't even love it. But-- and if somebody has got a better idea or something we can do, but for all the talk today about property taxes and fully funding schools and that's why we can't spend this \$10 million, which I still don't think would cost anything, I think we would actually save money, but that's another subject. I hope that in the next 48 hours when I reach out to you on LB289, or others from the Revenue Committee do, I will be getting a positive response. Thank you very much for all you sticking around today and I appreciate the debate.

HUGHES: Thank you, Senators Hilkemann and Linehan. Senator McCollister, you are recognized.

MCCOLLISTER: Thank you, Mr. President. Good afternoon, colleagues, again. This has been a good debate and I appreciate the full participation of this body. I guess well over 25 of the senators spoke on this issue. The distillation of this debate for me has been state budget issues, it's been the church-state relationship, I thought that's been interesting, tax credit versus deductions, the merits of the bill itself, and the bill's effect on public schools. Those are some of the big issues that I picked up from our debate today. And unfortunately for my friend, Senator Linehan, I have to oppose this bill. But with that, I probably am the last speaker, so I would yield the balance of my time to Senator Linehan.

HUGHES: Senator Linehan, 4:04.

LINEHAN: Again, thank you all for being here this afternoon and engaging in the debate. I guess I'll end with this. We do a good job, maybe not enough, but I think for a state that's not overly wealthy, we treat low-income students fairly well. Maybe we can do better. We have free and reduced lunch program, we expand that, some summer programs. We have backpack programs. We have a CHIP, Children's Insurance Program that covers, I don't know, somewhere not quite 50 percent, but in the mid-40s of many children in our state, I think up to 200 percent of poverty level. We fund a lot of things for low-income children with very little argument. And most of the people who spoke against this bill today are very much supporters of those programs. So it strikes me as odd that this is the only thing that I can think of, maybe somebody else can tell me, where we basically say to low-income folks, tough luck, you don't have enough money to pay tuition. I think somebody suggested today they should get another job. We're talking about people who already have a couple of jobs and if they're lucky enough to still be together, they're both working jobs. We're talking about people who have sacrificed greatly, and all this bill does is gives them the same opportunity to get their child into a school that is the best fit for their child. The same ability-- well, I heard one senator said they couldn't do it today --but the same

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

Floor Debate
May 13, 2019

ability that many in this body exercise today, have exercised in the past, and will exercise in the future, 'cause you had the financial means to do so. What? I don't know how we can take care of their insurance needs. We hear constantly how we should increase funding, but this one thing, this one thing, giving them an opportunity to ensure that they've got a happy child who wants to go to school every day at a school they like, that fits them best, is a one thing we can't do for low-income kids. I don't understand that. So obviously we're not going to vote on this today.

HUGHES: One minute.

LINEHAN: It will sit here 'til next year. I will work with you all, all summer. I do want to fix property tax problem, the school funding issue. I've been-- I've got my neck way out there on that. So I look forward to having your support on LB289 so we can fix school funding and we can fix property taxes and when we get that done this year, we need to get it done this year, we'll come back and make sure we get this done next year. Thank you very much.

HUGHES: Thank you, Senators McCollister and Linehan. Speaker Scheer.

SCHEER: Thank you, Mr. President. We've reached the allotted time on this and we'll move to the next item, which will be adjournment.

HUGHES: Mr. Clerk.

CLERK: Mr. President, Business and Labor Committee reports LB448, LB527 to General File with committee amendments attached. Enrollment and Review reports LB86A as correctly engrossed. Amendments to be printed: [Senator Linehan, LB670;] Senator Hunt, LB670; Morfeld, LB670; Erdman, LB512; Wishart, LB720. Resolutions: LR130, LR131, LR132, those are by Senator Wayne; Senator Geist, LR133. I have a Reference Report referring a gubernatorial appointee to standing committee for confirmation hearing. Mr. President, Senator Kolowski would like to add [SIC--withdrew] his name to LB720. And finally, I have an explanation of vote from Senator Wayne.

Mr. President, Senator Williams would move to adjourn the body until Tuesday morning at 9:00 a.m.

HUGHES: Colleagues, you've heard the motion. All in favor say aye. Opposed. We are adjourned.