

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

Floor Debate
March 11, 2008

[LB653 LB653A LB755 LB756 LB777 LB784A LB851 LB855 LB878 LB880 LB903
LB1014A LB1049 LB1092 LB1095 LB1113 LB1125 LB1157 LB1157A LR271 LR272
LR273 LR274]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for this, the thirty-ninth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Father Rick Moon from Christ Episcopal Church, Beatrice, Nebraska, Senator Wallman's district. Please rise. []

FATHER MOON: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you. I call to order the thirty-ninth day of the One Hundredth Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record. []

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

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

CLERK: I have no corrections, Mr. President. []

SENATOR LANGEMEIER: Thank you. Are there any messages, reports, or announcements? []

CLERK: I have but one item. Senator McGill offers LR271; that will be laid over, Mr. President. (Legislative Journal pages 895-896.) [LR271]

SENATOR LANGEMEIER: Thank you. We will now proceed to the first item on the agenda, legislative confirmation reports. []

CLERK: Mr. President, Health and Human Services reports on a series of appointments to the Nebraska Rural Health Advisory Commission. (Legislative Journal page 798.) []

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on the first report offered by Health and Human Services. []

SENATOR JOHNSON: Mr. President, thank you, and good morning, everyone. We have three reports this morning. The first is on the Nebraska Rural Health Advisory Commission. Our committee met over five people. The meetings were on January 30,

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

Floor Debate
March 11, 2008

31, and February 14. All of the people were either interviewed via telephone or in person, and all were unanimously approved by the committee. First was Kathy Boswell, a new appointment to a three-year term, former teacher, now farms with her husband near Allen, Nebraska, in Dixon County. Douglas Dilly, new appointment, three-year term, is a physician in Neligh and works at the Antelope Memorial Hospital. Think it's interesting that he is a recipient of a Nebraska rural health medical scholarship while he was in medical school at UNMC. He has been in the rural area practicing now for ten years. Steven Dokken is a reappointment for a three-year term. He is a dentist, lives in Pawnee City; received his training at UNL. Martin Fattig is a reappointment, three-year term. He is the administrator at the Nemaha County Hospital. And number five is Sharon Vandegrift, a new appointment, three-year term. She is a nurse in Fairbury and works at the Jefferson Community Health Center. She is a member of the Jefferson County Drug Coalition and is on the executive board of the Nebraska Nurses Association. Our committee is pleased to ask for the confirmation of these five appointments to the Nebraska Rural Health Advisory Commission. []

SENATOR LANGEMEIER: You have heard the opening on the first confirmation report offered by Health and Human Services Committee. The floor is now open for discussion. Seeing no lights on, Senator Johnson, you are recognized to close. []

SENATOR JOHNSON: I would only ask for your serious consideration to these five outstanding candidates. Thank you. []

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing on the first confirmation report offered by Health and Human Services. The question before the body is, shall the confirmation report be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal page 896.) 28 ayes, 0 nays, Mr. President, on adoption of the confirmation report. []

SENATOR LANGEMEIER: Confirmation report is adopted. Mr. Clerk. []

CLERK: Second report, Mr. President, involves a series of appointments to the Board of Emergency Medical Services. (Legislative Journal page 798.) []

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on the second confirmation report offered by Health and Human Services Committee. []

SENATOR JOHNSON: Thank you, Mr. President. This is for five appointments to the Board of Emergency Medical Services. The committee again met on January 30, February 7, and February 13 to consider these appointments. All appointees either were interviewed via telephone or directly at the committee, and all were unanimously

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

Floor Debate
March 11, 2008

approved by the committee. Number one, Shawn Baumgartner is a reappointment, three-year term. He serves as operations assistant and is the senior paramedic on the Valley Ambulance Services in Gering. Michael Buscher is a reappointment, three-year term, EMS instructor for the city of Omaha and now lives in Plattsmouth. Robert Dunn is a reappointment for a three-year term, retired photographer in Lincoln who serves as a public member on the board, graduate of both Nebraska Wesleyan and UNL. Ann Fiala, new appointment, three-year term, administrator of an assisted-living facility in Ainsworth. She has been an EMT in Brown County for nine years. And I'm not sure this is correct. I don't know if I say that she was a fireman or are they "firewomen" or are they...firefighters, I've been instructed. She is a firefighter with the Ainsworth Fire Department for seven years. Next and last is Leon Sykes, reappointment, three-year term, is a physician, assistant professor of surgery and director of trauma and surgical intensive care unit at the Creighton University Medical School. I would ask your serious consideration of these appointments. I believe that they are outstanding candidates. Thank you. []

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the opening on the second confirmation report offered by Health and Human Services Committee. The floor is now open for discussion. Seeing no lights on, Senator Johnson, you're recognized to close. Senator Johnson waives closing. The question before the body is, shall the second confirmation report offered by Health and Human Services be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal pages 897.) 32 ayes, 0 nays, Mr. President, on adoption of the confirmation report. []

SENATOR LANGEMEIER: The confirmation report is adopted. Mr. Clerk. []

CLERK: Third report, Mr. President, by Health and Human Services involves two appointments to the Foster Care Review Board. (Legislative Journal page 798.) []

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on the third committee confirmation report offered by Health and Human Services. []

SENATOR JOHNSON: Thank you, Mr. President. We have just two appointments to the Foster Care Review Board. One was heard at a public hearing on January 31 and the other on February 13. Again, all appointees were talked to directly and were approved unanimously. These excellent candidates are: Larry Brown, a reappointment, three-year term, physician in private practice at Alegent Health in Omaha specializing in internal medicine and pediatrics, he received his medical education at UNMC; Dave Schroeder is a new appointment to a three-year term, he is a journalist with KRVN Radio in Lexington, Nebraska, and has served on the board of the Dawson-Gosper County

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

Floor Debate
March 11, 2008

Foster Care Review Board in the past. Again, outstanding candidates. Ask the approval of the body. Thank you. []

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the opening on the third confirmation report offered by Health and Human Services. The floor is now open for discussion. Senator Nantkes, you are recognized. []

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues, and not to continue exactly in the same pattern as yesterday, but since we do have an opportunity with some issues related to Health and Human Services I did want to get up on the mike this morning and say that I think we had a good debate yesterday and brought some needed attention to some serious issues. And today I think the next steps that we need to look at are working with the administration, working with the Governor, pulling together divergent and interested parties to find solutions. This is not about partisanship. This is about leadership, and this is leadership that strongly, strongly needs attention, needs us to come together, put aside any sort of silly notions about partisanship and find solutions. So today I ask you to join with me in working with the administration to help find solutions in our limited time together for the remainder of this session. With that, thank you, Mr. President. []

SENATOR LANGEMEIER: Thank you, Senator Nantkes. Seeing no other lights on, Senator Johnson, you are recognized to close. Senator Johnson waives closing. The question before the body is, shall the third confirmation report offered by Health and Human Services Committee be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. []

CLERK: (Record vote, Legislative Journal pages 897-898.) 36 ayes, 0 nays, Mr. President, on the adoption of the confirmation report. []

SENATOR LANGEMEIER: The confirmation report is adopted. Mr. Clerk, next item on the agenda, General File appropriation bills. LB1157A. [LB1157A]

CLERK: LB1157A by Senator Raikes. (Read title.) [LB1157A]

SENATOR LANGEMEIER: Senator Raikes, you are recognized to open on LB1157A. [LB1157A]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. This A bill, of course, accompanies LB1157, which is the bill dealing with statewide assessments. Important points about this A bill: No additional funds are necessary and this assumption or this provision of the bill is contingent on the funding that was provided last year in LB653A, and LB1157 is a follow-up to LB653. An A bill is necessary even though there are no funds required, additional funds required, because the Department

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

Floor Debate
March 11, 2008

of Education needs to exceed the limit on expenditures for permanent and temporary salaries so they can position two more people to do the statewide assessments in math and reading. So I think that's the story. If there are any questions, I'd be happy to try to address them. Again, there are no additional funds required via this A bill. Thank you. [LB1157A LB1157 LB653A LB653]

SENATOR LANGEMEIER: Thank you, Senator Raikes. You have heard the opening on LB1157A. The floor is now open for discussion. Senator Fulton, you're recognized. [LB1157A]

SENATOR FULTON: Thank you, Mr. President. Would Senator Raikes yield to a quick question? [LB1157A]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB1157A]

SENATOR RAIKES: Yes. [LB1157A]

SENATOR FULTON: Senator, this has to do with the A bill, but it's probably more appropriate in the bill itself, but it's a question anyway that has to do with money so I'll ask the question. Within the statute, did we...I'm trying to recall with what we actually passed. Did we have reference to No Child Left Behind in the statute itself, not the A bill? Do you recall if there was actually a reference specifically? [LB1157A]

SENATOR RAIKES: I don't recall, Senator. It's a good question. I would say generally the policy is...would not be to require or to reference specifically a federal law, but I'd have to check in order to get you an accurate answer. [LB1157A]

SENATOR FULTON: Okay. I'll just...I'll cease here and I'll just maybe talk to you about that. Thank you, Mr. President. [LB1157A]

SENATOR RAIKES: Uh-huh. [LB1157A]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Seeing no other lights on, Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question before the body is, shall LB1157A be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1157A]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB1157A. [LB1157A]

SENATOR LANGEMEIER: LB1157A does advance. (Doctor of the day and visitors introduced.) Continuing on the agenda to General File, 2008 senator priority bills, LB878. [LB1157A LB878]

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

Floor Debate
March 11, 2008

CLERK: Mr. President, LB878, a bill originally introduced by Senator Engel, relates to the election act. It changes provisions relating to recall. It was discussed yesterday, Mr. President. The committee amendments were adopted at the end of the day. I do have an amendment pending to the bill. [LB878]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Engel, would you please give us a brief reopening on LB878? [LB878]

SENATOR ENGEL: Mr. President, members of the body, we discussed the bill yesterday and it's about recall and the only thing left in the bill now is a judicial review process for reasons for recall and reporting requirements, and that's in subsection (4) of Section 5. And again, like I mentioned yesterday and others have, too, I believe that we definitely need the recall process, but I think we should have it a little...some teeth in it to where at least people have a reason to recall not just some frivolous reason, not a frivolous reason but a real reason. And I think there's safeguards in this, in the bill. If they have a petition they take it to a judge and all the judge is going to do--and he's going to presume that everything in the petition that they present is true and they're going to be actually in favor of those folks, really--all they're going to do is make a decision whether the...what they have in a petition meets the requirements of being mis-, mal- or nonfeasance. That's all it does. It's not a hearing; there's not anything else. And if the judge says it does meet that, then the petition goes forward and then the person who is going to be recalled still has the option of putting in his defense in the recall petition. If the judge says that it doesn't, then that's the end of it. So that's all this does. It's very simple but I think it is a little bit more protection for those people who are being recalled so frivolously across our state, destroying reputations of them and their families and discouraging people for running for these public offices on a local level, because, like I said yesterday, it is a sacrifice when you run for those offices. The pay is either none or very little, so it's not a lucrative business at all. It's just a service like actually we are down here. We're down here to serve, certainly not to make money or make a living. And so that's why I presented this bill. I know it's been presented before, but we had a situation in Dakota County that really brought it to the fore for me and I thought it was just high time we do something. So hopefully, hopefully, we can get it done this morning and we'll just have to see how it gels out. But that's where we're at as of now. Thank you. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Engel. Mr. Clerk, for a motion. [LB878]

CLERK: Senator Chambers would move to amend with FA199. (Legislative Journal page 892.) [LB878]

SENATOR LANGEMEIER: Senator Chambers, you are recognized to open on FA199. [LB878]

Floor Debate
March 11, 2008

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this amendment will be found on pages 6 and 7. I wrote the amendment like this so you can locate it, but I intend to strike subsection (4). This is a very problematic provision. What it does is put the court in the middle of a recall. Your minds are not burdened down today at this stage as they may have been yesterday afternoon because we had discussed it at some length. The court does not get involved where political questions are concerned. Senator Lathrop and Senator Lautenbaugh tried to analogize what this provision does with what might happen in a lawsuit. A lawsuit is a judicial proceeding. It is a judicial proceeding. A recall is a political proceeding. To try to put a political proceeding into the posture of a judicial action won't work. Now you can accept what Senator Lathrop told you, but I disagree with it. We are dealing with a political question. He gave the analogy of a lawsuit proceeding and some issue is raised and then the court looks at that and makes a determination whether you can proceed. I'm simplifying it in stating it. That is done in the context of a lawsuit or an adversarial proceeding. Under American jurisprudence, lawsuits are adversarial. There are two parties with conflicting interests. They cannot collude to try to make the court give what amounts to an advisory opinion. Their interests have to genuinely collide. If one wins, the other must lose. What we're talking about here is not an adversarial proceeding. This language does not say that every one of these petitions which is filed, one of these statements of accusation or whatever you call it, to distinguish it from the actual petitions that are circulated to get signatures, it's up to the one who is being recalled as to whether or not the court will be invited in. This is not a duty being placed on the district court. The district court is not being told that your responsibility is to review all of these petitions or these statements of allegation. Here is something that I don't know whether Senator Lathrop thought through or if he feels it's irrelevant. The Legislature cannot define away a judicial function. The Legislature cannot define an executive function as judicial and compel the court to deal with it. There are certain accoutrements, traits or essentials that are a part and parcel of the judicial process itself and the Legislature cannot impinge on those in any way. There are three branches of government. The Legislature cannot intrude into the realm of the judiciary. This that this bill is attempting to do not only complicates the recall process, but it involves the courts, in my opinion, in action where the court has no place. The court is being required, if they accept this, to take a position on a recall effort. If the court says no, then the court, in effect, has taken away the right of a citizen or a group of citizens to recall a local official, and that, in my opinion, ought not to be done. If you look at the language of the proposition, it says at the bottom of page 6 that the judge "shall determine, without hearing," "without hearing." There is no evidence, no argument, just a piece of paper. We're not charging anybody with a crime that is punishable under the criminal law. Nobody is being sued so that if he or she gets an unfavorable decision he or she is going to be out of some money or sanctioned in any way. There is no legal consequence to anybody, but there is a consequence to the process of recall. All that a person would have to do if you leave this in, and to show what a mockery it is and a

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

Floor Debate
March 11, 2008

travesty, is to say, I charge this person with malfeasance in office, nonfeasance in office and misfeasance in office, and that should be enough. When a crime is charged, a crime which will carry a punishment if a person is convicted, the Nebraska Supreme Court has said that it is sufficient if the crime is charged in the language of the statute. If you use the language of the statute that describes the crime, that is sufficient to get the person charged and require him or her to defend himself or herself. If you are going to accept what the court has said, what are you achieving by saying that a person will charge malfeasance, nonfeasance or misfeasance in office, and if the judge looks at that he says those allegations, that statement, establishes what is required under the statute? There is nothing in this provision that says the court must act in a timely fashion. We are dealing with local elected officials. Judges could be involved. Friends of the judge could be involved and the court should not be dragged into this political process. The purpose of recall, and has always been its purpose, is to let the public change its mind about somebody that the public put in office. The same jurisdiction, the same district, whatever was the area from which the electors came who voted for that person, they are the only ones who could vote to recall. If a person were on the city council of Bellevue, people in Omaha could not vote to recall that person. If a person is elected by district, the people in that district are the ones who'd have to recall that person. If a person is the mayor of a city, the people in that city who are allowed to vote for that person for mayor are the ones to vote to recall. If you get a petition or this statement of allegations which is cockamamie, that will come out if and when the persons... [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: ...seeking to recall that individual accumulate sufficient signatures to have petitions issued to circulators. If they don't get enough signatures, there is no election. If they get enough signatures, during the process of preparing for the election both sides can make their case. If the public, which will be allowed to vote, are not persuaded, that individual will remain in office. If, on the other hand, a majority of the voters don't want that person, then that person should be told hit the road, Jack, and that is done by way of the recall process. So I'm really not in favor of doing anything to change it,... [LB878]

SENATOR LANGEMEIER: Time. [LB878]

SENATOR CHAMBERS: ...but I certainly want this taken out. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on FA199 offered to LB878. The floor is now open for discussion. Those wishing to speak, we have Senator Lathrop, Friend, Louden, Lautenbaugh, Engel, and Chambers. Senator Lathrop, you're recognized. [LB878]

Floor Debate
March 11, 2008

SENATOR LATHROP: Thank you, Mr. President and colleagues. I stand in opposition to FA199 and I would suggest that, if I'm listening to Senator Chambers correctly and carefully, as I think I am, what we have is a philosophical difference and we're using procedure to pull people off the bill. And let me explain. Right now, you can take a recall petition, file one and have a recall battle over an elected official for virtually any reason. I don't think there's any limitations in the law as it exists right now. That's what I understand the case to be. And so the question...and I think, as I hear Senator Chambers, I think he's advocating for leave things the way they are, people ought to be able to have a recall of an elected official for any reason whatsoever. So we have that proposition that seems to be the position of Senator Chambers, and then we have the bill filed by Senator Engel, LB878. And what LB878 says essentially is there ought to have to be a reason, there ought to have to be a reason. And I think that there's a logic to LB878 and the logic is you have to have done something wrong in the discharge of your duties or have been convicted of something that would suggest that you're not fit to serve. One of those things ought to happen. And so we can continue with a process if LB878 doesn't pass where anything will get you recalled, including doing the right thing that may be unpopular. So how does that work? I read the paper. We don't have a lot of recalls. We have one in Omaha now apparently, but we don't have a lot of recalls in Omaha, but outstate I see this happen time and time again. Our paper is full of it and it's some sheriff does something people don't like, or somebody on a school board raises taxes because they have to. They do their job and there are unpopular aspects to any elected official's responsibilities and that can sometimes create some push back. And should those people be the object of a recall because they've done what they should do, however unpopular? I think the better approach is to have some standard for when a person who is an elected official can be recalled. Why? Because it costs money to recall these people. But more importantly and philosophically, I think it discourages people from making the tough decisions that they were elected to make for fear that there is going to be a recall effort if they raise taxes, if that's what's in order, or otherwise make an unpopular decision. If you're the county attorney, you're doing tax foreclosures. I've seen county attorneys whom I know who have quit the job because they don't want to do tax foreclosures. It makes them unpopular depending upon who they are going after, and that's just one example. So I think LB878 provides us with a standard. Now FA199 guts LB878. If there is no process by which someone determines whether the purpose or the reason behind the recall effort amounts to the criteria that's in LB878, then the bill is worthless. It doesn't accomplish anything. If we say there must be misfeasance, malfeasance or nonfeasance, and nobody makes a judgment about whether the allegations rise to that level, then we haven't changed the rule. We have rules that people can ignore. They simply...if FA199 passes, you can say anything you want, call it whatever you like, label it a malfeasance... [LB878]

SENATOR ERDMAN PRESIDING [LB878]

Floor Debate
March 11, 2008

SENATOR ERDMAN: One minute. [LB878]

SENATOR LATHROP: ...and you get a recall. And I think Senator Engel is on to something with LB878. We ought to provide a standard that should apply, and having a judge...having a judge make a determination and, believe me, this is an every day kind of a decision for a district court judge. They do it in what we call a 12(b)(6), what used to be called a demur. Those are the kinds of decisions district court judges make every day. They can do it without a hearing. That keeps it from becoming political. It allows for a quick decision. I think Senator Engel is on to something. We ought to support LB878 and I do oppose FA199. Thank you. [LB878]

SENATOR ERDMAN: Thank you, Senator Lathrop. Senator Friend, you're recognized to speak, followed by Senator Loudon. [LB878]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I apologize, I missed the beginning of this discussion yesterday afternoon and I don't always feel an overbearing...as I mentioned maybe a week or a couple weeks ago, I don't always feel an overbearing need or an obligation to speak to my vote on a particular committee, least not all the time. Sometimes I do because it could provide some clarification, especially since, if you look at your gadget, I was the only one that actually voted--and, by the way, I'm signed on to this bill--but I was actually, after the testimony, one of the only ones that voted not to advance this measure. I didn't vote no, but I had some questions. And my concerns were, I thought, pretty pedestrian, pretty normal, pretty standard. And I brought this up at a hearing, I brought this up during the hearing. You know, I read this morning, before any of this discussion, Eliot Spitzer in New York has got some issues. He's got some big issues. I just wonder if he were a mayor, you know, in Omaha or Blair or something like that, that would be funny, obviously, but if he were could the people actually, if this bill passed, could they recall him? And if you look at the language, I think that they probably could. Elected officials may be...we all know what he did, right? Or we think we know what he did, allegedly. "Elected officials may be recalled only for malfeasance in office, misfeasance in office, nonfeasance in office, or conviction of a crime involving an act of dishonesty or a false statement." Well, Eliot Spitzer fits right into that puzzle. That's not a...that is not a square peg going into a round hole. You don't abdicate your office when you leave the state. You're in office and you're working, and if you hire a prostitute I think that that probably falls under this, wouldn't you? All Senator Engel is doing is asking for some clarification, somebody to make that determination as to whether a guy like that actually did something wrong, and whether somebody like that could be ousted from office. I know I'm stretching the analogy, but somebody could be ousted from office for that type of behavior. The other problem that I had, and I think I've...I'll continue listening but the other problem that I had at that particular point was I think that there were different ways to address this problem. It didn't have to necessarily be language like this, at least I thought that. You could seek a greater number of signatures. You could change the law to go out and

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

Floor Debate
March 11, 2008

force a lot of communities to seek a greater number of signatures. You could also limit the application process. Let me give you an example. One of the things that was brought up on the committee is that the same person will come in over and over again when they fail, for whatever reason, and continue to drop those applications in; say, you know, I didn't succeed before, I didn't have all the people in place, I'll go ahead and try the recall again. You can go four years of a mayor's service and the person could be recalled, if I'm not mistaken, for the same particular item that that person has in his or her head countless times. You can just keep filing the application over and over again. So you can limit that application process. I thought about that during the hearing. Then you could force the analysis of these signatures, and here was the problem, and I think this is what tips the balance or tips the scales for me in favor of LB878, a bill that I signed on to. Because you can't...you can't even do the analysis. It's my understanding the Nebraska City News-Press tried to get... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR FRIEND: ...tried to get information from a person that was trying to impeach the mayor down there. Person walked into the News-Press and destroyed the stuff in front of the newspaper...in front of the editor. So in other words, took all the signatures that they had, he or she had, and destroyed them; said, no, you can't look at them, and burned them or did something else. That's weird. That's strange. And to me, I mean, wouldn't you want a little bit of accountability? I mean now this person can go back again, if that person was still mayor, and continue to do it over and over again and just try to, you know, go about the same folly, if you will. Look, we could have done any of those things. Senator Engel felt like that this was the best approach. I'll continue to...I mean, Senator Chambers has a point, but I...the problem that I have is... [LB878]

SENATOR ERDMAN: Time. [LB878]

SENATOR FRIEND: ...Hergert is gone because of the same point that he's making. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Friend. Those senators wishing to speak are Loudon, Lautenbaugh, Engel, Chambers, and Wightman. Senator Loudon, you're recognized. [LB878]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I think Senator Chambers explained his amendment quite well and I think that's exactly what it does, and he explained the process for a recall election. Senator Lathrop mentioned that what...how easy it was or I guess what it would take to recall and how often you could do it, or whatever his explanation was along that line. But you want to remember, recall isn't easy. You've got to circulate petitions. And when they do make the press, you always see, talks about seeing it out in the western areas where there's a recall

Floor Debate
March 11, 2008

election, usually makes the press. It isn't a recall election. They'll make the press that there's recall being asked for, there are recall petitions being circulated. But how many times do those end up in an election? I've known very few times that they end up in an election. Sure, there will be a recall petition circulated, just like there is in Seward County now over that Peterson case there. There's some people that probably made some very big mistakes in there and somebody has to be accounted for it. Now whether they have an election about it, that remains to be seen, and whether they are successful with their petition drive. All of those work. I think as I looked at LB878, I think as a person that's been in the cattle business all my life, I always think of when you go to an auction barn and you see what they call a trader cow, and that's a cow that comes through the barn that's got brands from various owners and you can nearly trace the history of the state of Nebraska on her side with the brands. And as I look at LB878, I see this brand LB878 on there so as I kind of look at little closer then I see a brand on there, LB786 in 2006 on there is another brand on there. So then I go back into some of my brand books to see what happened in LB786 and then, if you look real close underneath, there's kind of a hair brand underneath there and you see some Blair Airport Authority branded back underneath there in recall elections and stuff. So this has been going on for a long time and I think the process works the way it is. About every so often somebody has someone that they think has been unduly brought before a recall petition and so they go back and dig this same old cow back up out of there and run her through the auction barn again, and this is what I think we're getting done here, as I looked over some of Senator Chambers' amendments on LB786 were incorporated into LB878. So it's...it all seems to be kind of the same animal here that we've talked about over the years and I don't see where we're going to improve anything. This recall situation, this is the people's way of doing business in government. If they have someone in there, they vote someone in there and things don't work out like they planned, and if you can get enough people to agree that that person shouldn't serve anymore, then that's the way it happens. Otherwise, there isn't any way to change the situation. People are put in for four years and you either live with it. So this is the people's part of government and I really don't think that we should be working or doing something to tamper with the people's way of government. That's their local control. That's what they want to do and that's how it's been done for several years and it seems to be working quite well. Sure, there's been recall elections that people were...really nasty elections, there's been recall petitions that didn't work, there's been some...as when you say frivolous, I don't know if any recall petition circulating is frivolous. It's probably frivolous to some people, but it's not always frivolous to the people that...on the other side. So any issue can be frivolous to one side or the other. [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR LOUDEN: So I think I would support the amendment but I really wouldn't support the bill as the way it's written. I don't think this is something that the Legislature needs to get involved in and, as far as I'm concerned, the system has worked quite well

Floor Debate
March 11, 2008

over the years and I would hate to take away any more local control than what we already have. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Loudon. Senator Lautenbaugh, you're recognized, followed by Senator Engel. [LB878]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do rise in opposition to this amendment and continuing support of the underlying bill. And I would point out that court involvement in this, this would not be novel, really. As we are changing this, as the underlying bill states, whether or not we have this provision in there for judicial review, if we are saying that you have to set forth reasons--malfeasance, misfeasance, nonfeasance--does anyone really believe that a target of a recall would not file an action saying this doesn't meet the level; judge, please enjoin this while we figure out if this really complies with the statute? If there's a standard in the statute, a standard in the law, anyone could go, well, the target of a recall could go hire an attorney and have it sorted out. What I was trying to explain yesterday is there are proceedings in the court that are unusual, if you will. The one I was trying to explain yesterday is an ancillary proceeding. Now that's not this. What I was trying to explain is that the circumstance where there's a lawsuit in another state and one of the parties, for whatever reason, wants to obtain discovery or something in this state from something or some entity located in this state, you file an action with the court. It's not a traditional action where there are two parties identified. It's one party requesting the court enter an order of discovery, allow discovery to proceed. It's not a traditional lawsuit. It's not what you normally think of the courts doing with two parties involved in service of process and all that, but it surely happens. Now that's not exactly akin to this, but what I was trying to say is, in response to the argument yesterday that this somehow creates an improper duty to have advisory opinions from the court, that really isn't this case. The provision in the bill as it now stands that provides for a judge to take a look at this and say, regardless of the truth of the allegations, do they rise to the level of the standards set forth in the statute, that would actually, in my mind, be a benefit to the process. Because the other choice, if we put any standards in the law at all, put anything in there that says that you have to allege malfeasance, misfeasance, nonfeasance, we're still going to have a judge probably review this after a legal action is filed by the target of the recall and that's just going to be a protracted fight. The mechanism in this law is set up to have a judge look at it without a full-blown trial, without an evidentiary hearing, review it and say, yes, if these things are true, that would rise to the level set forth in the statute. So I think what we're getting into here, at a very basic level, is just a philosophical discussion on whether or not you want to put any incumbrances or limits on this recall process. I'm a supporter of the recall process. I'm a supporter of the petition initiative process. We've had that debate earlier this year a couple times. I don't want to put unwarranted limits on this process or either of those other two processes, but, that said, I think it makes perfect sense to take the steps proposed in this bill. I think we've explained the reason for doing it and I think this

Floor Debate
March 11, 2008

minimal step of judicial review at least creates some kind of minimal gatekeeping at the front end. The voters still get to decide whether or not the charges have merit. The voters still get to decide whether or not there should be a recall. The signers of the petitions still get to decide whether or not they want to sign, based on the allegations set forth on that petition. This is just a minimal way of saying, look, at a very basic level, there are standards in the statute. At a very basic level you should enunciate something that fits within those standards for recall, and who better...who would be in a better position to decide that at the front end than a judge before the recall is off and running? So once again, I do oppose this amendment and I do support the underlying bill. And I'll yield the rest of my time to Senator Engel. [LB878]

SENATOR ERDMAN: Senator Engel, you have 1 minute. [LB878]

SENATOR ENGEL: Thank you, Senator Lautenbaugh. I'd like to respond to a couple things here. First of all, I oppose this amendment because that basically guts the crux of the bill as far as making any changes in the procedures. But as far as Senator Chambers mentioned, as far as, you know, judges making the decision, they could be friends of the persons and so forth, but you know I've always felt that when judges are appointed that they are...part of their charge is to do everything on an unbiased manner and follow the law and not be playing favorites. I realize sometimes that does occur, but I think in the majority of cases it does not, so I don't think that's a big issue. And as far as people changing their mind, they just elected somebody and they say, whoops, we don't like them now, so we changed our minds so let's petition them out, well, I believe in our process now for elections. We elect somebody and we elect them for a two-year term or four-year term and perhaps they're not doing everything the way we like to see it, but they haven't done anything and committed any crimes or anything. [LB878]

SENATOR ERDMAN: Time. [LB878]

SENATOR ENGEL: Okay. My light is on next though. [LB878]

SENATOR ERDMAN: You may continue. [LB878]

SENATOR ENGEL: Okay. So they haven't really done anything wrong so at the next election that you have the opportunity...thank you, Mr. President,... [LB878]

SENATOR ERDMAN: My pleasure. [LB878]

SENATOR ENGEL: ...at the next election to exercise their right to get rid of those people and get someone else in there. So that's...and again, like I say, the reputations are destroyed. As far as what Senator Loudon mentioned, my good friend Senator Loudon mentioned that people don't file frivolous lawsuits. Well, there's an example I can give you up in my district again. In Wayne, Nebraska, there was a petition to get rid

Floor Debate
March 11, 2008

of the parking and it was defeated. It was a parking issue in town, it was defeated, so a group of students started a recall petition of the mayor. But when they were passing out the petition--here's what people will do, what people will sign--they told the people that it was another petition on the parking issue. So a lot of people signed it, of course, without reading the petition or having it be explained to them except what the students told them. So then, when they found out that they had enough...all these signers on it, some people found out that...what it really was about. It was a recall of the mayor. And some of them were related to the mayor and didn't realize that that's what they were signing. Now here's where you can get yourself in a little jam. They went to the judge and wanted their names removed and the judge said he would not remove their names from the petition because the judge said you should have had read it yourself. So people will sign petitions without really asking, getting information they need and really know what they are signing. So there are frivolous petitions out there, regardless of what people say, that have nothing to do with really what's going on. And there's...and so...but the thing is there's been, like I say, there's been lots...and Senator Louden said most recalls are not successful, and I agree with that. They are not successful, but that doesn't mean that reputations are not destroyed and that's the biggest purpose for this bill, is so if there is going to be a recall it will meet one of those criteria: misfeasance, malfeasance, nonfeasance, or committing a crime. At least there's a reason there. And all the judge...again, I have to emphasize, all this judge is doing is saying that it meets one of those criteria. Now if they come in and say...they say all the petition says is he's committed mis-, mal- or nonfeasance, well, I wouldn't think a judge would do anything with anything like that because there's nothing saying that...just the word itself doesn't mean they've committed it. So with that, I do not support this amendment, do support the bill, and hopefully we can carry forward. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Engel. Senator Chambers, you're recognized, followed by Senator Wightman. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I think Senator Lautenbaugh inadvertently misspoke. If a judge decides that the allegations do not constitute one of the feasances, the judge does not enjoin anything. The judge notifies the clerk and the clerk does not allow or provide petitions to be circulated. The judge does not issue an injunction. That's left for others to do. So the judge does not complete the judge's work. Senator Lautenbaugh was arguing from the standpoint of what judges generally do when they reach a decision. After they reach the decision, they do something. In this case, the judge does not act on the judge's own decision. Now if the clerk, despite what the judge said, would issue the petitions to be circulated, the law doesn't say what happens to the clerk. It cannot be contempt of court because there's no order from the judge. You commit contempt of court when you disobey an order of the court. There is no order from the court in this case. And I know you all are not going to listen to what I say or pay heed, but I want it in the record because I think if lawyers evaluate what we've said, mine will stand rather than what Senator Lathrop and

Floor Debate
March 11, 2008

Senator Lautenbaugh are saying. A demur is one of those statements that says to the court, if everything in this piece of paper is taken as true, no cause of action is stated. That means nothing of which the court can take cognizance and render a decision on. But that is not necessarily the end of the whole process. The sustaining of a demur does not, in all cases, for all purposes, end the lawsuit. A lawsuit can even be dismissed and the court can say without prejudice. A part of it can be dismissed. What you're talking about here is not a lawsuit. These lawyers know it and they are muddying the water by using language and principles that do not apply here. I feel that my legal education is as valid as that of any lawyer on this floor. Senator Friend is not a lawyer. He said he thinks that what Eliot Spitzer did, if this law were in effect, would allow for a recall. Senator Friend, no, it wouldn't. The limitations on malfeasance, misfeasance, and nonfeasance, as defined in this bill, would have to do with specific duties of that person's office. Spitzer did not violate a duty of his office. He did not...he is not convicted of anything. And if he were convicted of solicitation, that's not a crime of dishonesty. That does not involve a false statement. So he cannot be gotten out by recall on the basis of commission of the two crimes mentioned, the two types of crimes, and the act did not violate any duty of his office. So people are accepting this bill without even understanding what it does. They think it's doing something which it is not doing. Those who support it want to... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR CHAMBERS: ...create hurdles in the path of people who are trying to bring about a recall. All you have to do, first of all, none of these allegations would have to be true and there's nothing that says a person is subject to any perjury or any other thing if they put false statements in this thing that the court winds up looking at. So you just go in here and you allege this person did not discharge this duty, that duty and the other duty, and the judge would have to say that rises to the level of misfeasance, nonfeasance or malfeasance, so the petition can go forward. And what have you done? Nothing. Then you get right back to where we are now. The one against whom that charge is made writes out a defense statement. It's just another hurdle, but you don't get past where we are now. And every allegation... [LB878]

SENATOR ERDMAN: Time. [LB878]

SENATOR CHAMBERS: ...could still be false despite what the court said. [LB878]

SENATOR ERDMAN: Time, Senator Chambers. [LB878]

SENATOR CHAMBERS: Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you. Senator Wightman, you're recognized, followed by Senator Lautenbaugh. [LB878]

Floor Debate
March 11, 2008

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I also rise in opposition to the amendment and in favor of the underlying bill, LB878. I admit that the standard here on going into court is quite minimal, and probably that's good. We haven't taken away very much by passing LB878 except we've provided that there has to be at least some standard. They have to admit one of the four tests set forth in statute, or proposed statute, before a person could have a valid petition, and those are, of course, malfeasance, misfeasance, and nonfeasance in office, or being convicted of a crime that involves honesty or misrepresentation. All of this having been said, I still think that it's going to eliminate some of what would, in my opinion, be unjustified recall elections because they would, at least, have to set forth some objective standard. Now I think Senator Chambers is right when he talks about going into court, that these allegations as set forth in the petition can all be false. However, the person sought to be removed has a right to file a counter-affidavit setting forth his position. So I think there would at least be some possibility of contesting those allegations if they were false. But right now, there would be nothing to keep some disenfranchised voter for bringing up recall elections time after time just because he did not like the candidate because he didn't agree with his political views, and that, quite frankly, that is the basis for an awful lot of the recall elections. I mentioned a couple of them yesterday that occurred in my district. One of them was not long following a school bond election in which the people had a right to hear all the issues. They were given the vote and then after the vote was taken but some time later there was a recall election in which they tried to recall all of the members of the school board. Again, it was the same dispute that had been discussed and was the subject of the election only a few weeks previously. So I think this section that Senator Chambers is suggesting be removed by amendment is a good section. I think that it at least provides some limitation and some possibility of a third party, being the court in this instance, to determine at least somewhat the feasibility of the reasons for the recall. And so I will continue to listen to the debate, but right now would oppose the amendment and, again, support the underlying bill. Thank you, Mr. President.
[LB878]

SENATOR ERDMAN: Thank you, Senator Wightman. (Visitors introduced.) Continuing with discussion on FA199, Senator Lautenbaugh, followed by Senator Chambers.
[LB878]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Maybe I wasn't clear in my comments earlier, maybe I was just misunderstood, but I do want to clarify this. I was not saying under this bill there's a requirement that the judge issue an injunction. What I was saying is, if we're putting requirements in the statute for when a recall can go forward, what will happen without this initial step of judicial review that is the subject of this amendment is that anybody who is subject to a recall can then file an action seeking an injunction saying, judge, what's set forth in that recall petition doesn't rise to the level in the statute. That is what will happen if we remove the language that's

Floor Debate
March 11, 2008

in the bill now, which is what this amendment seeks to do. Once again, I think this is...the bill, as it is written, is written this way for a reason. It provides a preliminary threshold of review, not a full-blown legal action. And as we discussed yesterday, maybe it would be appropriate if the language said, and the judge shall issue an order that the recall proceed or not proceed, so it's clear that's what would happen. I think that would be a friendly amendment if we have to go that route to address this concern, but I think it's clear the judge is going to rule on this and it probably should be an appealable order. But that said, that's not what's in the bill now and that's not what this amendment seeks to do. This process is merely another hurdle in the recall process, but it's a warranted hurdle. In a past life I was an election commission in Douglas County and I had to deal with these things as they came in. I remember a proponent of a recall coming in and you have to set forth a reason for the recall, and I don't even remember who he was trying to recall now, this has been several years ago, but the language he offered was I want to recall him because he failed to do what a person ought to do. And so that started the process rolling. I have no idea what that meant. I don't think the proponent knew what that meant. I don't think that rises to malfeasance, misfeasance or nonfeasance in office without a little bit more information. It would have been nice to have a judge look at it and say, look, this vague assertion does not meet this standard, you need to do better, you need to tell the voters what you're actually complaining of before we start the ball rolling, incur the expense and start gathering these signatures. That's the point of this bill and this amendment would remove that. Once again, I'm not saying that under the bill, as it's written, the judge would issue an injunction. What I'm saying is, if we don't take out...or if we do take out this provision for preliminary judicial review, what we will end up with is a circumstance with our standards in the bill, standards in the law when this passes, an anybody who's subject to a recall can file an action seeking an injunction then if this amendment is successful. They could still do it otherwise. But if we vote down this amendment, leave the provision in there for just the preliminary level of judicial review, minimal though it be, we at least might avoid some of these problems down the road and avoid full-blown litigation over every petition, every recall. I believe that's the spirit in which the bill was drafted. I believe that's what it's hoping to address. And so I again rise in opposition to this amendment and I will yield the balance of my time. Well, I'll just let the balance of my time go. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Lautenbaugh. Senator Chambers, you're recognized to speak for your third time. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I continue to oppose this badly crafted bill, this ill-conceived effort. First of all, we have not been given a clear, compelling reason for involving the court. Let me say again what I said earlier and Senator Lathrop, the resident defender of this bill, and Senator Lautenbaugh, the resident advocate of the bill, have not dealt with. If a crime is charged by the prosecutor, the crime can be charged in the language of the statute that creates

Floor Debate
March 11, 2008

the crime. If what you're looking at is malfeasance, misfeasance or nonfeasance, you can charge it in the language of the statute. All a person would have to do is go to the definition in the statute and allege the things that are in that definition, and can allege all of them. The person can lie. The person can say this individual was convicted of embezzlement, when the person never embezzled, and the judge would have to let that petition go forward because the statute says without hearing and without regard to whether the allegations are true or not. If they were true, would it be malfeasance, nonfeasance or misfeasance? The judge would have to say, no, that's not what's alleged. Does it allege the conviction for a crime of dishonesty? Yes, embezzlement. And the judge can know that there was no embezzlement, but the judge, under the statute, is required to say that this statement can go forward because it makes an allegation which would constitute a basis for a recall. That's what you want to put the judge in a position to do? That's what Senator Lathrop thinks is great? That's what Senator Lautenbaugh is telling you all you ought to support? Are you listening? Do you hear anything that I'm saying to you? The judge can know that what is in this statement is a lie. If I offer something in the context of a lawsuit and the judge knows it's a lie, the judge does not accept that and give it any credence. In this, you require the judge to stand behind that lie. And the judge cannot explain anything when an issue is alive and pending. So I allege that Senator Carlson was convicted of perjury and was convicted of embezzlement, and the judge looks at that and the judge grits his teeth or her teeth and knows that it's a lie, both allegations are lies, but the judge is required under this language to tell that clerk that a basis for recall has been stated and you must release those petitions to be circulated on the basis of what is here. Then the person against whom the allegations have been made will do exactly what is done now without this bill, will write a statement of defense of 60 words or fewer. You bring that person, after this has gone to court, and put the judge in a position... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR CHAMBERS: ...as I've described, you put that person and everything right back where it is right now without this law. You all don't hear me, but I'm saying it for the record. If this transcript is ever read, I won't look like a jackass. I have not said make a judge who knows something is a lie certify it, in effect, and say the basis for a recall has been stated. How ever way you cut it, that's what it comes down to. Or I can say this...I can look up what the duty of a mayor is and I can say the mayor did not discharge that duty and that is nonfeasance, according to your definition, even if the mayor performed that duty, and the judge has to say a basis for recall has been stated, and it's a lie and everybody knows it's a lie. Why do you want to create that and make people lie? Because if they're of a mind to circulate that petition they're going to say whatever they have to, to get it out there. And you... [LB878]

SENATOR ERDMAN: Time. [LB878]

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

Floor Debate
March 11, 2008

SENATOR CHAMBERS: ...are creating a lying situation. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Louden, you're recognized, followed by Senator Lautenbaugh. [LB878]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I listen to the debate and the discussion on this bill, I keep thinking, we keep talking about recall elections. We're not exactly talking about recall elections. We're talking about circulating petitions. This is what it's all about--can they circulate petitions and what do they have to go through in order to circulate a petition? The recall election comes up afterwards. But if you put enough hoops that they have to jump through to circulate a petition, like Senator Chambers said, they'll find a way to do it. So I think by putting more obstacles in their course, all it does is cloud the issue and probably make for more of a problem than what would be caused at the present time. A recall petition has to be signed by the voters. If they don't get enough votes, then it doesn't happen. And most everyone has been discussing the recall elections. How many of those petition circulators...circulations actually result in a recall election? Not that many. I can only remember about one out in the western end of Nebraska here in the last few years. I think that was over in Kimball and the election was held and the person that was trying to be recalled won the election again, and all that amounted to was quite a little expense for the county, of course, but nonetheless the outcome didn't change. So I think whether this is...the bill is passed or not, I don't think it will probably change anything. There will be the difference, you have to write the 60 words or so on why, you have to find reasons why that person is being...mostly because of some type of a feascance of office, but nonetheless, if they wanted to recall someone, it would. At the present time, they can circulate the petitions; if they don't get enough signatures then it's all over with, and we've seen that happen many times. A lot of times when you see it in the papers it makes the media about having a recall election or circulating petitions and that's about all it amounts to. It doesn't even go any farther than that. Ones that we've read in the papers lately, I questioned. I don't know if they've actually went to the trouble to circulate petitions. We will probably find out later on. But as always comes out, somebody makes a threat at some type of a meeting that they're going to do a recall and the media usually picks up on that because that's always news. So I think we're probably worrying about something that doesn't happen that often and, when it is, it's usually an individual case some place that brought this to attention of someone and we'll be on the floor here discussing it for most of the morning. But with that, I still don't support the bill. I probably will vote for the amendment, but I don't...I will not support the bill. I don't think this is something we have to have. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Louden. Senator Lautenbaugh, you're recognized for your third time. [LB878]

Floor Debate
March 11, 2008

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do want to respond to something I did hear. It is correct to say that people can lie to get over this threshold. People can lie. People do lie routinely, I believe, sometimes, I should say. That said, that said, we are not trying to set up a circumstance here where the judge passes on the truth of what is asserted. The judge is not deciding whether the person should be recalled. The judge is not deciding whether or not the charge is true. The charge may very well be false. That's left for the voters to decide. So when it is argued that this bill would allow a judge to look at the bare allegation and say, if true, even though I believe it not to be true, if true this would be sufficient to proceed with the mechanism of the recall petition issuance, so be it. That's how the bill is designed. We are not trying to substitute the judge's will for the will of the voters. We're just trying to have some initial level of review that says, look, if this is true, it is a sufficient reason under our laws for recall. We don't want the judge to decide the underlying issue. We don't want the judge to issue an order that says this person should be recalled. We're just asking, is this meeting the bare minimum? And, yes, the other side--the person subject to recall would be able to respond. If an allegation is made that's proven to be false or that is false, the person who's subject to the recall would have to run a campaign, still, demonstrating, hey, this is false; what I'm being accused of isn't true. That's the way the process works. That's the way the process should work. We aren't trying to ruin the recall process here. We're not even trying to put huge hurdles in front of the recall process. In committee, I argued for the amendment that took out the cost estimate of the recall because I thought that was extraneous to what we are trying to accomplish here. I did not see where the cost estimate was relevant to the issue of whether or not there's a basis for the actual recall, so that's not in the bill anymore. Believe we passed the amendment yesterday and I think that's an improvement on the bill and I voted for that in committee and out here. But I still believe what we're trying to do is important. It's not a huge hurdle for someone to overcome, to still go forward with a recall if there are grounds, as defined in the underlying bill. And if you have to lie to make the hurdle, well, you'll be called to account for it. Not perjury necessarily, we're not going that far. It's still up to the person who is the target of the recall to point out these allegations aren't true; they're being made, but they aren't true. At least with this bill we're forcing the proponents of the recall to set forth something that would constitute a basis for going forward, a legally sufficient basis, as we're defining it in this bill. That's all we're trying to accomplish here. This is not meant to destroy the recall process or even unduly hamper the recall process. It's meant to improve it with some basic level of clarity as to what we're doing and whether or not it is the type of thing we should be removing a person from public office for. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Lautenbaugh. Senator Howard, you're recognized, followed by Senator Wallman. [LB878]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I'm not an attorney and I, while I admire my learned colleagues who are, I'd have to express my

Floor Debate
March 11, 2008

concern. I find it very troubling that we would place judges in the position of being virtual gatekeepers for average citizens who are concerned enough about an issue to become organized and to seek petitions or seek signatures on a petition to address this. I feel strongly that the petition is the citizens' method to address a problem that they feel is serious enough, serious enough to hold a public official accountable for his or her actions. I'm going to continue to listen to this, but at this present time I can't vote for this bill and I just...I find this, in simple words, to present an impediment to the process of the average citizen in addressing a serious problem. I'd like to offer the remainder of my time to Senator Chambers. Thank you. [LB878]

SENATOR ERDMAN: Senator Chambers, 4 minutes. [LB878]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, "Lady" Howard. Members of the Legislature, despite what Senator Lautenbaugh said, how is the public going to view what we're doing? I can go...I can make an allegation against a person which is absolutely untrue. I, who am making the allegation, am not the one who can get it into court. I can't. I have no day in court. I make the allegation; I have no day in court. The only one who has a day in court is the one against whom I make the allegation. So I lie. I say Senator Carlson embezzled. So this person files an action in district court, according to the statute, and says, Your Honor, this is a lie; I have here affidavits from the company for which I worked and they say not only did I not embezzle, they have never suffered an embezzlement. The judge says: I cannot accept any evidence, there can be no hearing; your affidavits mean nothing; all I can look at is the allegation against you; the allegation says that you were convicted of embezzlement; that is a crime of dishonesty; under the statute, and I will read it for you...and then the judge reads the statute about the crime of dishonesty. Then the judge goes to this language: The judge shall presume the allegations in the statement are true and construe them in the light most favorable to the principal circulator or accuser and shall determine, without hearing and without cost to any party, whether the allegations in the statement establish the existence of malfeasance in office, misfeasance in office, or nonfeasance in office, and then what you added with the committee hearing or the committee amendment, a crime of dishonesty or a false statement. The crime of dishonesty is embezzlement. The judge would have to tell that person with all of his affidavits, with officials of the company prepared to testify that this never happened, and the judge must say this can go forward. If it were true, a statement has been made which will justify this recall in going forward, and that's all I do, I wash my hands of it. You cannot appeal that judge's decision. There is no appeal. There's nothing. That's it. So if you're going to have somebody try to recall you, why do you want to put them in a position where they're going to have to allege that you were convicted of committing a crime or that you failed to do certain specific duties connected with your office or you did duties negligently that are connected with your office or any of the other things that must be alleged? Why do you want to compel the person to do that? Because once it's out there, that goes on the petition that is circulated. That goes on the petition, and everywhere a

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

Floor Debate
March 11, 2008

petition goes... [LB878]

SENATOR ERDMAN: Time. [LB878]

SENATOR CHAMBERS: ...those false statement goes. Thank you. [LB878]

SENATOR ERDMAN: Thank you, Senator Chambers. Senator Wallman, you're recognized, followed by Senator Carlson. [LB878]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. And listening to this dialogue, thank you to Senator Chambers, Senator Howard, Senator Louden and others. And I, too, appreciate what are we trying to, you know, restrict some more government? This is a Unicameral and we should not be afraid of recalls, and it's going to happen. People get involved. And do you realize how hard it is to carry a petition against somebody? That's not an easy thing to do. So most people that carry these petitions have a reason, whether it's valid or not. So why do we want to restrict it when it's worked all these years? And sometimes we change, sometimes it's for better, sometimes not. And I yield the rest of my time to Senator Chambers. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Senator Chambers, 4 minutes, 15 seconds. [LB878]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Wallman. Members of the Legislature, I wish you'd read the language of this bill. That's the problem. People won't read the language. Let me read for you what nonfeasance consists of, and it's found on page 2, beginning in line 23: "Nonfeasance in office means the knowing and intentional failure by a public official to perform a specific act which is a required part of the duties of such public official." Any act, it can be ever so small, ever so slight, ever so innocent, it might not even produce a harmful result, but you just allege that. Now whether it's knowing and intentional nobody knows, but you just allege that this person knowingly and intentionally failed to do such and such, and it goes to court and the judge says, well, under the statute, that can go forward. So when the petition is out there it says Senator Carlson knowingly and intentionally failed to perform this duty which he is required to perform. And that's what the public sees and they know that a court certified this to go forward. And you can tell me all you want to that the person can deny it and say, well, no, the court wasn't saying it's true or false. People will say, well, courts are not going to send something out there if it's not true. You all have seen the movies and the dramatic depictions where a lawyer will persuade somebody to say something that the lawyer knows should not be allowed and the judge will tell the jury disregard that. But it's been said. You cannot put the genie back in the bottle. You cannot unstrike the match. So what you are being asked to do in supporting this bill is to take leave of your senses and throw away everything that your brain tells you is true in the real world, and in a political setting that's what we're dealing in. You know how

Floor Debate
March 11, 2008

people are going to make the most of anything, so if I'm trying to recall Senator Carlson, I'm going to know how to make an allegation that constitutes nonfeasance, one that constitutes misfeasance, and one that constitutes malfeasance, and I don't have to have all of them, any one of those or allege conviction of a crime involving dishonesty or conviction of a crime where a false statement was made. And the court has certified that this goes forward. And you're going to tell me the public does not lend any weight to the fact that the court was involved, that the court put its imprimatur on what is out there being circulated? And you can say all you want to, it's a lie, it's a lie, it's a lie, and people say, but the court, but the court, but the court... [LB878]

SENATOR ERDMAN: One minute. [LB878]

SENATOR CHAMBERS: ...said that this should go forward. And if I were circulating the petitions, that's what I would say. This wouldn't be out there if the court had found that it does not provide a basis for the recall to go forward, and I can prove that the court did it. And if the court renders a decision, it's going to have to render it somehow and in writing, and I just get a copy of what the court said and I carry that with my petition. That won't be on the petition, but I carry it with me and I show people both of them. Now what are you going to do? And if that happens, then people are going to look at the Legislature and say they're a bunch of fools, and that's when everybody is going to scramble. Senator Lautenbaugh is not going to voluntarily go out there and say, I wanted this. Senator Lathrop is not going to go out there and say: I insisted on this; we defeated Senator Chambers when he said we shouldn't do it because we didn't think it would work this way; we thought it would be different; we thought the public would understand; we thought they'd read the statute; we... [LB878]

SENATOR ERDMAN: Time. [LB878]

SENATOR CHAMBERS: ...thought they'd know this or that. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Chambers and Senator Wallman. Senator Carlson, you're next to speak. [LB878]

SENATOR CARLSON: Mr. President and members of the Legislature, in listening to the debate this morning, Senator Chambers makes a compelling argument about forcing a district judge to say yes to something he may know is absolutely false, and he's used me as an example, and talks about embezzlement. And I'm glad that he refers to that as something as being absolutely false because I believe it would be. But part of his statement and part of what's in the bill says, if this were true. So I'd like to address a question, not to Senator Chambers but to Senator Wightman, if he would yield. [LB878]

SENATOR ERDMAN: Senator Wightman, would you yield to a question from Senator

Floor Debate
March 11, 2008

Carlson? [LB878]

SENATOR WIGHTMAN: Yes, I will. [LB878]

SENATOR CARLSON: Senator Wightman, in listening to this, in putting a judge in position to address the question, if this were true, and then moving forward on something that he may know is absolutely false, why do we want to put a judge in this position? [LB878]

SENATOR WIGHTMAN: Senator Carlson, I've thought about that even before you asked me the question and I agree that most judges are probably not going to particularly like the position that they're put in, in this instance. But at the same time, judges probably frequently don't like the positions they're put in. But that's what they are, they're arbiters, they make judicial decisions and this would be set forth in the statute. I imagine if you polled the district judges it might well be the case that a majority of them would not particularly favor this. I don't know that for sure, and I haven't talked to any of them. But they are put in a situation. On the other hand, the standard is low as far as what they're going to have to determine. I think very few of them, quite frankly, would find that the election should not go forward. I do think it will discourage recall elections where a person has no political reason or no legal reason for really wanting the person recalled, other than he doesn't like action that was taken. Usually, that does not involve probably misfeasance or malfeasance in office, probably less likely even to involve misfeasance in office. Perhaps the standard is a little easier with regard to the fourth one that was added, which was conviction of a crime for dishonest acts. Nevertheless, I think that a court would make that decision, and I think that a high, high percentage of them, they're going to set forth sufficient reasons, sufficient allegations that probably they're going to find that the election should go forward. But I think it's going to discourage the recall elections just by having that provision in the act. So if you have no follow-up questions, maybe you do, I'll give you that opportunity. [LB878]

SENATOR CARLSON: Well, thank you, Senator Wightman. So I think that maybe what you're thinking is that there is an intended good to this bill but an unintended consequence by what we force the judge to do. [LB878]

SENATOR WIGHTMAN: Well, I don't know if it's unintended completely because the bill addresses that, and it's probably not totally unintended. Maybe the feeling of the judge in having to render a decision in this case would be unintended. But as far as...I don't know if I could say it was unintended, because the statute or the proposed statute addresses that situation. [LB878]

SENATOR CARLSON: Well, if it's not...if it's not unintended it may be a consequence that the judge is faced with that's very difficult. [LB878]

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

Floor Debate
March 11, 2008

SENATOR WIGHTMAN: I would agree with that. [LB878]

SENATOR CARLSON: Okay. Thank you, Senator Wightman. And I'll just continue to listen to the debate on this bill. Thank you, Mr. President. [LB878]

SENATOR ERDMAN: Thank you, Senator Carlson. (Visitors introduced.) And now, Senator Chambers, you're recognized to close on FA199. [LB878]

SENATOR CHAMBERS: Mr. President, members of the Legislature, every lawyer knows that the...this statement I'm going to make is true. Courts will recognize what they call plain error. That means something has been put before the court or not put before the court which the court, on its own motion, recognizes and raises it as an issue, and that issue which the court itself raised may dispose of the action. And if it's something, I'm not going to try to remember all the things that they say, but if the failure to take note of it would result in a patent or plain injustice, the prejudicing of somebody's rights, something substantive like that, even if neither party raised the issue the court will raise it itself to prevent a blatant injustice. You take that away from the court, and I don't think the court will let you do it. The court is not going to say the Legislature cannot put a judge or a court in a position where it cannot recognize plain error. And with what we're talking about here, it goes beyond plain error. It goes to malicious falsehood, clearly false. But the judge is bound by the statute, or the judge says that is an unconstitutional limitation you're putting on the court. The court is not going to be put in a position by the Legislature to allow a knowingly false statement to pass through this court, receive the court's imprimatur as though it's true. The court will not do that. In the context of a lawsuit the court will say you don't have a cause of action and strike that down. The court can't do that here. The court cannot consider whether malfeasance actually exists. The court cannot consider whether you were actually convicted of a crime. The court cannot consider that. Right now in the context of a lawsuit, in the context of an appeal where the court is supposed to deal only with the issues raised by the parties, that's what happens on appeal, but because of the nature of the judiciary and its job to see that justice is done, the court will take note issues not raised by either party. That is done now. You all don't listen. What are you doing to the court? Forget that you don't like what I say, that you think you're going to stick it to me. Don't stick it to the court at the same time. You'll have other issues where you can do that without implicating the court. I think the court would ignore this. The court is not going to put its...let itself be put in a position by a numskull Legislature which does not read, which does not study, which has contempt for the law and justice and the dignity of the court, is going to require the court, if they could, to go along with something which is patently untrue. Newspaper articles have said it's untrue. I, as a judge, know it's untrue, but I've got to act as though it's true? Uh-uh. You cannot take away the independence of the judiciary. If you'd read the Code of Judicial Conduct, one of the first statements in the preamble is that there must be an independent... [LB878]

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

Floor Debate
March 11, 2008

SENATOR ERDMAN: One minute. [LB878]

SENATOR CHAMBERS: ...judiciary. You are taking away the court's independence, you are taking away the court's judgment, you are taking away the court's intelligence, you are taking away the court's common sense, and the court is not going to let you do it. I hope you defeat my amendment and I will mock you, I will scoff at you, I will ridicule you. I am telling you the truth. If some of you know a judge, talk to that judge on the q.t. and ask the judge, can the Legislature, because it's stupid, require the court to be co-conspirators and abettors in the Legislature's stupidity by going along with it? And the court might say, well, those stupid senators will ask like kids in a sandbox but not the judges, we're above that, we know better. And these politicians can want what they want, but they're not going to get the court to go along with it. Mr. President, I would ask for a call of the house. [LB878]

SENATOR ERDMAN: Members, the question before you is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB878]

ASSISTANT CLERK: 26 ayes, 0 nays to go under call, Mr. President. [LB878]

SENATOR ERDMAN: The house is under call. Would all unauthorized guests please leave the floor. Unexcused senators please report to the Chamber. The house is under call. Senators in the Chamber please check in. Senator Heidemann, Senator Schimek, Senator Cornett, Senator Kruse, Senator Burling, Senator Preister, Senator McDonald, Senator Fulton, please report to the Chamber. Members the house is under call. Senator Schimek, Senator Heidemann, Senator Preister, the house is under call. All members are present or accounted for. Senator Chambers, how do you wish to proceed? Members, the question before you is the adoption of FA199 to LB878. Senator Chambers has requested a roll call vote in regular order. Mr. Clerk, please call the role. [LB878]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 898-899.) The vote is 20 ayes, 17 nays, Mr. President. [LB878]

SENATOR ERDMAN: The amendment is not adopted. The call is raised. (Visitors introduced.) Mr. Clerk, next motion. [LB878]

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend. (FA200, Legislative Journal page 899.) [LB878]

SENATOR ERDMAN: Senator Chambers, you're recognized to open on your amendment. [LB878]

Floor Debate
March 11, 2008

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this amendment will be found on page 7, in line 3. Now the geniuses who put this bill together did not put any time line on the judge in terms of when a decision must be reached. If a judge doesn't like the idea of this recall, doesn't think that the person who is the target should be the target, but nevertheless the statements in the petition would constitute one of the bases for a recall, so the judge sits on it. This is not an action that has to follow the progression of actions laid down by the Nebraska Supreme Court because it is not a lawsuit, it is not a case or controversy. These lawyers know what case or controversy means, they know. And I'm saying it in the record and then let them stand up here and say that it's not true, they didn't have a chance to address what I said about plain error. Let them stand up here and say that I'm wrong about that, that an appellate court, this is what I say, on appeal the courts have said over and over, whether it's the Court of Appeals or the Nebraska Supreme Court, if you do not allege an error and argue it, then the Supreme Court will not consider it. The Supreme Court nevertheless, on its own motion, will and has raised issues as being plain error. So what I am doing here is putting in a requirement that the judge in this crazy procedure, that some of the more intelligent senators voted for, the judge would have to do it in five days. You know why I wanted a roll call vote? So the record will show those senators who ought to know better. But they are so locked into the idea that some particular local official they know should not have to face a recall. So let me run this by you all again and you see how much good you have done rather than looking like a...I'm not going to say what it looks like. I will give a description and if it fits you, apply it, and if it doesn't fit you, don't apply it and don't get angry at me. That last vote will make the Legislature look like a group of heehaw, heehaw, heehaw. Now if the hat doesn't fit don't put it on your head. If I make the description and you apply it to yourself, it's on you. But you ought to be ashamed of yourselves, except that you don't listen. Twenty people have doubts about this procedure, twenty people. Twenty from forty-nine is twenty-nine. That's not enough for cloture. I wonder how many people are willing to go on the line for a bad bill like this? But I'm going to fight it because it demeans the Legislature and it attempts to demean the court. Why do I say a five-day limit? Because you've heard Senator Lautenbaugh, you heard Senator Lathrop acknowledge that there is to be no hearing, there is to be the presentation of no evidence. The judge reads a piece of paper. You know why I gave the judge five days? The judge may be as dumb as my colleagues and it may take the judge five days to read one sheet of paper. So I'm giving the judge five days to read it. Now vote against this amendment. You may as well, you've shown what you are. Don't back away from it now. Stick by your principles, that's what you ought to do. You look foolish. We are grown people and I'm not going to let you get away with it. I'm going to see if Senator Lathrop will deny what I said about a court finding plain error and bringing up an issue that neither party brought up. And the court says to prevent an injustice, then the court is going to recognize a plain error and act on it. And sometimes that plain error will dispose of the cause of action and it was raised by neither party. And this I also said: I don't believe a court is going to be put in a position where a statement known to be false is alleged and the court will say the

Floor Debate
March 11, 2008

Legislature has bound my hands, so I have to go along with this stupidity. If I can raise plain error in a lawsuit which is a judiciary proceeding they're not going to make a fool out of me in a political proceeding. And furthermore, I rule this to be a political question and outside the realm of what the courts do, and the court is not going to rule on it. Let the Legislature find a different way to do it, or let the Legislature set up some entity in the executive department or in the legislative department which will do it. You all have somebody who will look at these petitions that are put together to put something on the ballot to change the constitution. Let the Secretary of State do this too. Put the stupidity of the Legislature on others. I criticize the courts for a lot of things, but I've never tried to take away their independence or put them in a position to look as foolish as the Legislature often looks. Why do people vote for you all? They're not required to have a reason to vote for you. If you run for reelection and they vote against you, they don't have to have a reason for voting against you. So if they vote to put the person in, then decide they want to take the person out, why do they have to have reasons for that? They have the right to change their mind, in my opinion. And the more the legislators, some of them, kowtowing to these local officials, will abdicate not only their responsibility but their common sense, the more they tinker with this, the worse they make it. I've got an amendment that I'm going to offer and I'm going to keep us here. And some of you may vote cloture just to get rid of me, but I promise you on this one I'm not going to let it go. I'll stay on this one. Senator Lathrop acknowledged that he contrived the language that talks about conviction of a crime involving an act of dishonesty or false statement. Well, now if those two types of crimes were committed and a conviction obtained, the person would be deemed unfit enough for office for you to have a recall. But here are some that I'm going to offer by way of amendment. If the person committed assault, that's not a basis for a recall. If the person committed and was convicted of each one of these: sexual assault, that is not a basis. There is misdemeanor sexual assault. There can be a first-degree sexual assault which is plea bargained down to a lower misdemeanor. Be convicted of child abuse, that's not a basis for recall, and it can be done on the street where everybody does it, out in the yard. Domestic abuse, spousal abuse, that is not a basis, if you're convicted for that, for being recalled. And remember, these crimes that are listed in the committee statement have nothing to do with the office. They are not crimes committed in connection with the office but outside of the office, on your own time, in your own house, in a bar, in a tavern, in a car, anywhere. Resisting arrest,... [LB878]

SENATOR LANGEMEIER PRESIDING [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: ...convicted of that, that's not a basis to be recalled. Driving under the influence, that's not a basis to be recalled. So why are you going to name two types of crimes and others far worse that go to the character of the individual, but there can be no recall on the basis of that? You see what the geniuses are putting you all in a

Floor Debate
March 11, 2008

position to do? And you're supposed to be trying to make a situation better? And you are shielding certain crimes from being a basis for a recall after you've specified two types of crimes which are. Somebody made a false statement and was convicted for it, and that's deemed a basis for a recall, but not sexual assault, spouse abuse, child abuse, sexual assault. It boggles my mind. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. You have heard the opening on FA200 offered to LB878. The floor is now open for discussion. Senator Lathrop, you're recognized. [LB878]

SENATOR LATHROP: Thank you, Mr. President and colleagues. The amendment would provide a time limitation on the court in terms of how much time the judge would have to render an opinion. The amendment would make it five days. I think that's a perfectly reasonable amendment and I would support it. Thank you. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Chambers, you are recognized. [LB878]

SENATOR CHAMBERS: Thank you, Mr. President. And Senator Lathrop is right, it's a perfectly good amendment or I wouldn't have offered it. But I do want to use the opportunity to continue to discuss what we're doing. You can find a copy of the Code of Judicial Conduct probably on the Internet somewhere and just read the first page where it talks about what the purpose of it is. And it might be the first paragraph that goes into the requirements that a judge must meet in order to avoid discipline of any kind. And that first item relates to the independence of the judiciary, and the court is not going to let anybody infringe on its independence. That's what the Legislature is doing here. Let's say that Warren Buffett decides to run for the school board, and I don't like Warren Buffett because he's too liberal and he wears rumples suits. And when I file my petition I call him "Rumplesuitskin," otherwise known as Warren Buffett. And I say Warren Buffett was convicted of embezzling from his company and that's why I want him...I want to recall him from the school board and I write that on the piece of paper. I'd like to ask...oh, Senator Lautenbaugh is gone. I'd like to ask Senator Lathrop a question. [LB878]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB878]

SENATOR LATHROP: Yes. [LB878]

SENATOR CHAMBERS: Senator Lathrop, I'm trying to give an example that is absurd on its face. But based on the language of this statute, my alleging that the...that he was convicted of a crime of dishonesty, namely, embezzlement from his company, that would cross the threshold laid down by the statute and I could go on with my recall, or do you disagree with that? [LB878]

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

Floor Debate
March 11, 2008

SENATOR LATHROP: I'd have to agree with it. [LB878]

SENATOR CHAMBERS: Thank you. Members of the Legislature, do you see what I'm saying? So here's what the court is presented with: Warren Buffett, the richest man in the world, is alleged to have embezzled from his own company. I know--I'm the judge--I know that is untrue. It would be a travesty, it would be a misuse of the judiciary to have the court go along with a process that allows such a preposterous, absurd, outright lie, a libel to be the basis for the court approving of the circulation of petitions to get this man off the school board. The court is not going to do it. The court will not rule. You think you can make the court do this? I'd like to ask Senator Schimek a question. [LB878]

SENATOR LANGEMEIER: Senator Schimek, would you yield to a question? [LB878]

SENATOR SCHIMEK: Yes. [LB878]

SENATOR CHAMBERS: Senator Schimek, can anybody make you lie? [LB878]

SENATOR SCHIMEK: No. [LB878]

SENATOR CHAMBERS: But we want...can anybody make you treat a lie as though it's true when you know it's a lie? [LB878]

SENATOR SCHIMEK: No. [LB878]

SENATOR CHAMBERS: This would require the judge to do that. Do you think that's good legislation, because you voted against my amendment? [LB878]

SENATOR SCHIMEK: But I'm going to support this one, Senator Chambers. [LB878]

SENATOR CHAMBERS: Well, this one is nothing, (laugh)... [LB878]

SENATOR SCHIMEK: (Laugh) [LB878]

SENATOR CHAMBERS: ...that's why Senator Lathrop supported it. I want to keep you on what you cast your vote for. First of all, in order to be fair, did you hear me ask Senator Lathrop the question about the lie that I would tell on Warren Buffett? [LB878]

SENATOR SCHIMEK: I caught part of that conversation. [LB878]

SENATOR CHAMBERS: Okay. And he acknowledged that under the language of this bill the judge, knowing it's false, would have to say that a statement can go forward as a basis for a recall, even though the court knows the statement is absolutely false. And

Floor Debate
March 11, 2008

you think that's a good procedure? I'm asking...I put it as a question, do you? [LB878]

SENATOR SCHIMEK: I don't think that's the intent, but it certainly could happen. [LB878]

SENATOR CHAMBERS: And do you think... [LB878]

SENATOR SCHIMEK: And I don't know how we could prevent that from happening in any event, because if there isn't the court to make a determination whether it even meets the... [LB878]

SENATOR LANGEMEIER: Time. [LB878]

SENATOR CHAMBERS: Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Chambers, you're recognized. [LB878]

SENATOR CHAMBERS: Senator Schimek, you can finish your statement. [LB878]

SENATOR SCHIMEK: Thank you. I...thank you, Senator Chambers. Thank you, Mr. President. I think that in any event the person could lie, could lie, I suppose, when they went to the court, could lie when they took out the petition. I don't think there's anything that we can do that can make someone tell the truth if they are intent on a lie. [LB878]

SENATOR CHAMBERS: So why then do we create a situation where that is encouraged and it's... [LB878]

SENATOR SCHIMEK: It's not encouraged, Senator. [LB878]

SENATOR CHAMBERS: ...not required now? [LB878]

SENATOR SCHIMEK: I don't believe it's encouraged. All that we're trying to do is make certain that at least what they say are the grounds for recall are in accordance with the definitions. [LB878]

SENATOR CHAMBERS: But you agree, along with Senator Lathrop, that under the language of the bill what I said can be done. And I had said I want to take the most absurd circumstance that everybody knows is untrue. But even in that situation the court would be compelled, if the court would follow this language, to put its approval on this going forward. That's what it does. [LB878]

SENATOR SCHIMEK: I believe that you're correct. [LB878]

Floor Debate
March 11, 2008

SENATOR CHAMBERS: Thank you. And that's all I'll ask you, Senator Schimek. Members of the Legislature, people can make a mistake. You know the difference between me and my colleagues? If I make a mistake, I'll acknowledge it on the floor. I'll change my vote because I don't see an advantage to me, based on what I think of myself, the respect I want to have for myself, holding to a position that I know is incorrect. I want to be correct. And if somebody shows me I'm incorrect, then I will change. It doesn't hurt me. We are creating a process here which is outlandish and it accomplishes nothing. So let us say that the scenario that I created for "Rumplesuitskin" goes forward and he takes it to the court because he thinks the courts operate from the standpoint of rationality--doing that which makes sense. So he presents it and he says, Your Honor, this is untrue. And the judge says, well, that has nothing to do with anything; if it were true, it's a basis. And he walks away shaking his head because "Rumplesuitskin" didn't know the courts work like this. So then you know where he is? And Senator Schimek knows this because I think she's read the bill. He's right back where he was before he was put through that nonsense in this statute. He writes a statement of defense, denying what the petition alleges. That's the way it is now. So why are you going to put this travesty, this atrocity into the law which accomplishes nothing? And after you've gone through this atrocity then you put the person right back where we are now. You haven't changed anything except you have corrupted the court, if a judge would not throw the whole thing out and says, I'm not going to be a part of that. If Senator Wightman were a judge, he wouldn't go along with it. If I were a judge you know I wouldn't go along with it. Those rubes over in the Legislature are going to tell me that I've got to put this court's stamp of approval on something which I and everybody else knows is a lie, and this court has to go along with it? Not here. So then what happens? Whether the court goes along or not, you're right back here where you have allegations made. Even if the court joins you, the court doesn't have to determine whether these allegations are true. They still... [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: ...go on the petition just as they were made. You said time, Mr. President? [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: Oh, thank you. They still go on the ballot, I meant on the petition. The judge does not indicate that the statements are untrue. They go on the petition exactly as they are presented to the court. Warren Buffett was convicted of embezzling from his own company. And that is on the petition that is circulated. That's what you are creating. It goes on the petition, according to the statute. And then Warren Buffett says, I didn't do it. And people who don't like him say, I think he protests too much, I think he did it and finally they caught him. Or maybe they'll believe Warren

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

Floor Debate
March 11, 2008

Buffett. That's what you deal with when you have recalls. People may believe every allegation... [LB878]

SENATOR LANGEMEIER: Time. [LB878]

SENATOR CHAMBERS: ...in the petition and still not vote to recall. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Lautenbaugh, you're recognized. [LB878]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I'm proud to rise in favor of this amendment. I think the five days is entirely reasonable for a judge to make this determination. And I'm proud to be perhaps speaking in front of a bunch of citizens who are well-informed on the recall process, pursuing some modest changes and clarifications. To address some of the concerns that were just raised about this, yes, again it is true the judge would be saying these allegations, though perhaps not true, do meet the statutory definition of a basis for a recall. And if we're worried about people misconstruing that, one of the things we could do in this very bill would be to set forth specific language for the order in which the judge says, whether or not these things are true I don't know, and I make no determination. But they either check the box yes, check the box no, do meet the statutory minimum allegation yet to be proven or they don't and leave it at that. It'd be very clear what the judge is saying. It is not unheard of for a judge to hear something or pass on something that is false. We have an exception to the hearsay rule, where you're offering evidence not for the truth of the matter asserted, but for the effect on the listener. This is something judges understand. This is something that a judge would not be troubled by, look at it and go, oh my gosh, how could I possibly deal with this unforeseen circumstance? The judge is going to understand very clearly what we're asking. Judge, we're not giving you any evidence. You don't have to decide if any of this is true, just look at it and see if what it says meets the minimum in the statute. And by the way, here's a fill-in the blank, check box order you can sign off on, so it's very clear what you're saying. You're not saying this is true; you're not saying this is false. You're saying it meets the statutory minimum. That's what this bill is trying to accomplish. It is not an unwarranted impediment or intrusion on the recall process. It's just something that would help perhaps forestall some frivolous recalls at the front end. It's a minimal thing, a very minimal thing, in my opinion. But once again to the underlying amendment saying the judge should do what he does in five days, I think, is well taken and I would support. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. (Visitors introduced.) Continuing with floor discussion on FA200 offered to LB878, those wishing to speak, we have Senator Erdman, Engel, and Chambers. Senator Erdman, you're recognized. [LB878]

Floor Debate
March 11, 2008

SENATOR ERDMAN: Mr. President and members of the Legislature, I...it reminds me...what happened on FA199 reminds me of a commercial in which there is a board room sitting around and the one guy says, we can save a bunch of money if we would do all of our copying with a certain business. And then the boss says, we could save a bunch of money by doing our copying with this certain business, and everybody thinks that's great idea. But the original guy, everybody thought that was a dumb idea. I mean we don't even need FA200. Maybe I should have been out of the penalty box, down here doing whatever I could to help. But what Senator Chambers offered us in FA199, I think, was appropriate. And maybe some of you didn't want to vote for it because it was his idea. But you're just simply wasting--this is my nonlawyer, candid opinion, listening to all of the lawyers and legal scholars debate FA199--it's a candid waste of time, subsection (4) in this bill. It is. It does nothing for you. You got a judge that says, yeah, if it is true, it could happen. That doesn't mean that it is. We have nothing in the bill that says that the judge has any authority to stop anything or to make any determination whatsoever. And if you're listening to this and hearing this for the first time, it's because you weren't listening to Senator Chambers when he said it before. The fact is that that's problematic in the bill. If you want to limit what people can be recalled for, do that. But if you want to create a circus and have people jump through hoops, whether they're lit on fire or not, then go ahead with LB878 in the form that it's in. But what we're doing with FA200 is further correcting what is already a problem. I guess, I haven't heard the compelling reason why we want a nonbinding opinion that doesn't tell us anything in this process. I can go to a court. I can say, hey, guess what? Senator Lautenbaugh is stealing from the treasury. No, let me rephrase that. If Senator Lautenbaugh were stealing from the treasury, he should be recalled; however, state senators can't be recalled, so let's change that. If an election commissioner, which happened to be an elected office, which it's not, were stealing from the treasury, he could be recalled and the judge would say, you know what? If he was stealing from the treasury, he could be recalled, go ahead. Ultimately, what's lost in this, which is also lost in the petition process, is that not some judge that's appointed by some Governor is going to make that determination. It's the same individuals that elected you and I. They're the judge, they have the vote that matters. The judge, in LB878, doesn't even have a vote. They just throw out their ideas and say, you know what? You've created a better mousetrap, go see if you can catch a mouse. It doesn't mean it's the only way to create a mousetrap. If you want to limit what people can be recalled for, fine, do it. That's in the committee amendment. The provisions that we're amending and the provisions that Senator Chambers tried to take out of the bill don't accomplish anything other than an additional step which is permissive. So if you don't go to the court, which is not a requirement, then you can still proceed as you would otherwise under the bill. It makes no sense. It creates mischief where there doesn't need to be, or it creates more mischief where there already is some. Senator Loudon has said previously, and hopefully I don't get this wrong, but I generally share this philosophy so I'll just attribute it to myself. We don't have to have a reason to get elected. People don't have to have a reason to vote

Floor Debate
March 11, 2008

for you. Should there be limitations on why they can "unelect" you or remove you? I don't know. We've heard some pretty interesting ideas about why people get elected... [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR ERDMAN: ...to office. But the fact is, is that if you want to limit why you can remove them from office, do that without the craziness of section (4) of this bill...subsection (4). And some of you may not want to vote for FA199 because Senator Chambers offered it. If it makes you feel better, I'll offer it. But I think if it stays in the bill that is a problematic procedure that is unnecessary for the electorate to have to jump through because ultimately you're asking a judge to do nothing when ultimately the final judge in this process is the electors, is the people who vote. And if they need the right, they should have it. And if you want to limit that to be reasonable, fine. But by keeping this judicial provision in here, this core provision, it's lost on me why that's beneficial. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Engel, you're recognized. [LB878]

SENATOR ENGEL: Mr. President, members of the body, I, too, think this amendment is okay. The thing is, as far as if the judges think there's a time limitation on five days, it says 60 words or less in the petition. It shouldn't take any judge five days to decide whether it meets those criteria--mis-, mal-, or nonfeasance and so forth. So I think it's...to me...to me if they look it over and they know the law so well, and they need to know the law well if they're already judges, probably wouldn't take them more than just 20 or 30 minutes. So I'm not worried about the five days, that portion of it. But as far as Senator Erdman doesn't think this is necessary, but the reason I do is, to me, it's a safety valve. And Senator Erdman isn't listening to me, but that's okay. But to me this is a safety valve. It gives the public a chance to sit back and at least consider what's going on. And they...they...so I think it's necessary to keep section (4) in the bill. Otherwise, what do you have? You don't have anything much different than what you have right now. And we don't have any protection for those people who are frivolously being...their reputation is being maligned and their families, businesses and so forth, and I think it's something that is necessary to do that and not taking away anybody's rights, not anyone's rights. So with that, I'll turn the rest of my time over to Senator Lautenbaugh, if he'd like to have it. If he doesn't, he can... [LB878]

SENATOR LANGEMEIER: Senator Lautenbaugh, 3:30. [LB878]

SENATOR LAUTENBAUGH: Thank you, Senator Engel. Briefly, and I have been listening to the debate on this as well. I do believe this section serves a purpose, section (4). And I do believe it should stay in the bill. I did listen to Senator Erdman's comments

Floor Debate
March 11, 2008

regarding what purpose does it do, it's another hoop to jump through. Once again, I believe it to be an incredibly minimal hoop to jump through. This was referred to as a circus or something like that. This is a proceeding without a hearing where the judge just reviews it and says, yeah, this meets the statutory minimum, or no, it doesn't. If that's a circus, I would not buy a ticket for it. That seems pretty minimal and not really worth the cost of admission. All we're asking here is for some minimal review on the front end to see if what is alleged at least meets some statutory definition of the basis for a recall. And that is why I voted against FA199. So, yeah, I support this amendment still because I believe it is important to give the judge a certain time limit to do this very simple task so that the process isn't unduly delayed or impinged upon. But I do believe that the provision is in there for a reason. I believe Senator Engel put it in there for a good reason. And I still stand in support of section (4) remaining in this bill. I realize that's not germane to the pending amendment, but that's what we're talking about, so that's what I'll choose to talk about. Thank you. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh and Senator Engel. Senator Chambers, your light is on. You have used your times. Senator Erdman, you're recognized. [LB878]

SENATOR ERDMAN: Thank you, Mr. President. Unlike Senator Engel, I can hear without looking at him, so I will respond to what he said because I did hear him. What's a safety valve for? You've been to a gas station recently, they'll say at the gas pump, safety valve to shut off the pumps is located at such and such location. It's on the side of a building somewhere, nearby. What that's for is that if an accident happens where a pump malfunctions, there's gas spewing everywhere, somebody can go and hit that safety button and it will stop the flow of fuel, it will stop it all, and it avoids a problem. Senator Engel has in his bill a safety valve. The problem is he hasn't hooked it up to anything. He's still got it in a nice box somewhere, sitting on a shelf. And so to say that the provisions of...and it's subsection (4), not Section 4, but the provisions of subsection (4), which Senator Chambers is amending, is somehow a safety valve, is equivalent to that box sitting on the shelf that's not hooked up to anything. Or it's the equivalent of the shutoff that you have at your home on the water line so that the plumber can come in and do the work, except again it's not in the line, it's laying next to the line. And if you turn the handle it doesn't shut off anything, or if you press the button in the box that Senator Engel has sitting on the shelf, it doesn't stop anything. There's no safety valve here at all. That's what this safety valve is. It's unnecessary as much so as that item that's not actually hooked up or located in a position to stop something. That's what we're talking about. If you candidly think that what's in this bill, with the judicial process that Senator Lautenbaugh won't buy a ticket to because he doesn't think it's a very good circus, then go for it, but it is not. It doesn't stop anything, it's not even required. But you're missing the whole point of what LB878 was designed to do. LB878 was designed to provide clarity in the law as to when an individual in public office, locally elected in the state of Nebraska, could be subject to recall. News flash: That's not in subsection (4) of

Floor Debate
March 11, 2008

this bill. It was in the committee amendment. That does not amend this subsection. You still have that in the bill without this proceeding. And even if you have this proceeding in the bill it does not do anything. So a judge gets this recall petition in front of him and it says in the...you know, these things happened, or rephrase, if these things happened it's malfeasance, nonfeasance, misfeasance. Judge says, yeah, if they happened they are. There's no finding of fact, there's no opinion that they actually did happen. And if there were that would be a true safety valve. But that's not what's in this bill. It again goes back to that safety valve that's not hooked up to anything and somehow we think by pressing the button you're going to stop something. It's more like an easy button from Staples. If you get one of those and you press it, it says, that was easy, and that's all that it does. It doesn't do what the commercial shows you. So we spent all morning debating about a process that doesn't do anything and lose sight of the fact of what actually you're trying to accomplish with LB878, and that is limit why people can be recalled. And if Senator Chambers' amendment is adopted or not it's irrelevant because it's amending a section of law that doesn't do anything. What it does do, if his amendment is adopted, is require that within ten days of the initial filing of the court... [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR ERDMAN: ...of a potential recall or an actual recall, that that court has to tell all parties whether or not it is within the confines of those items. Again, it doesn't say whether it actually has violated those items, just whether it's reasonable and whether the person that presented it could make that case. That's fantastic, waste all morning doing this to do nothing. And it's all because we wouldn't accept an amendment that I thought was reasonable. And we can disagree on whether you think it's reasonable, but if you candidly read the bill the safety valve that you have in place doesn't do anything. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Howard, you're recognized. [LB878]

SENATOR HOWARD: Thank you, Mr. President, members of the body. I've been waiting for four years for this opportunity to say this: I stand in agreement with Senator Erdman. (Laughter) I think his points are well taken. And I'd like to ask Senator Chambers a question, if I may. [LB878]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB878]

SENATOR CHAMBERS: Yes, I will. [LB878]

SENATOR HOWARD: Just...Senator Chambers, just a point of clarification for my own information. When you specified the five days, is that five calendar days or five working

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

Floor Debate
March 11, 2008

days? [LB878]

SENATOR CHAMBERS: It would just be five days. When you say five days, then it would be calendar days. [LB878]

SENATOR HOWARD: Calendar days. [LB878]

SENATOR CHAMBERS: Um-hum. [LB878]

SENATOR HOWARD: Thank you. And I'd like to give the remainder of my time to Senator Chambers. [LB878]

SENATOR LANGEMEIER: Senator Chambers, 4:10. [LB878]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, "Lady" Howard. Members of the Legislature, Senator Engel did not put subsection (4) into this bill. Those who wanted him to bring it put it into the bill. Senator Engel was mistaken when he thought that the document that the court would review was the 60 words or fewer that would be in the defense statement. The court is not going to review the defense statement. The court is going to review the allegations in the petition that the person wanting the recall is going to submit. So I'm saying again, people don't know what is in this bill. They haven't read it, they don't understand it. But they've gotten their marching orders from certain groups and individuals, and that's all that they need. They don't need to understand. But I want it clear from the things that I say on this floor that I have read it, and make it clear why I oppose the things that I oppose. Those who drafted the bill for Senator Engel did not see fit to put a time limit on the judge holding off on making a decision. So I decided, since you might put this crazy thing through, I will do that garbage person's job and try to clean up the mess that you all are willing to accept. And you don't even see the problems with the bill. This amendment that I'm offering, which people agree with, and it is a good amendment, it's so obvious that it should have been included in the bill. If the judge or the court is going to be put in the middle of this, the judge or the court should not be in a position to be a dead cat on the line and stop everything from going forward by just sitting on the petition forever, which the judge could do without my amendment. Those who support the bill didn't put the amendment there; they don't see the need to because you're going to follow them. They say oppose the amendment, you oppose it; they say support the amendment, you support it. Charlie McCarthy, "Charlene McCarthy," and Edgar Bergen is out there in the corridor laughing at you, and other people will laugh at you. Lawyers who know better have to act as though they don't because they somehow got yoked to this bad piece of legislation. This amendment they're willing to accept because they can argue, even though Senator Chambers brought it, we couldn't hardly...and that's inappropriate grammar, but that's what they'd say, we couldn't hardly disagree with it. If they want to be correct they'd say, we could hardly disagree with it. But sometimes when you use correct grammar, people

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

Floor Debate
March 11, 2008

don't understand what you're saying, so you have to double a negative and then they get it. All that this amendment would do is say that... [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: ...the judge has five days to render a decision. As Senator Erdman pointed out and as I've tried to get across to you all, if the one against whom the recall is directed does not take it to court, it does not go to court, and nobody determines whether the allegations constitute malfeasance, nonfeasance, or misfeasance. Are...you all...you don't understand that? Nobody makes that determination, nobody. If that's what you're trying to do, you haven't even done that. The transcription will not say, Senator Chambers said with great emphasis, so I'll say the words, that comment I made just before this little explanatory, textural material I made with great emphasis. Mr. President,... [LB878]

SENATOR LANGEMEIER: Time. [LB878]

SENATOR CHAMBERS: ...I will ask for a call of the house. [LB878]

SENATOR LANGEMEIER: Senator Chambers, you were not closing. You were on Senator Howard's time. So do you still want the call of the house? [LB878]

SENATOR CHAMBERS: Oh, good. (Laughter) Oh good. Good. [LB878]

SENATOR LANGEMEIER: I didn't think so. Senator Engel, you're recognized. [LB878]

SENATOR ENGEL: Mr. President, members of the body, I'd just like to clarify something to Senator Chambers. I did not say that the judge would look over the defense statement. I just said he'd look over the petition itself, which will be 60 words or less, and determine that, whether it meets these three criteria. I did not say anything about defense statement. So I just wanted that corrected for the record. Thank you. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Engel. Seeing no other lights on, Senator Chambers, you are recognized to close on FA200. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the only limitation in terms of number of words is the defense statement. Senator Engel still doesn't know his bill, and that's in the existing law. The defense statement consists of 60 words or fewer. There is no limitation on the number of words in the petition. So I knew what he was talking about, but he didn't. He didn't know what he was talking about, but I did. He mischaracterized it. I tried to bail him out, and then he's going to compound the error. Now don't you all get at me. It's his bill. He ought to know what it

Floor Debate
March 11, 2008

says and he doesn't. Maybe he knows now what that says. But I'm going to go over what I pointed out again. The only way the court gets involved is if the target of the recall takes it to court. And maybe the one against whom the recall is directed does not want to go through a court proceeding, even though there will be no hearing. That person may say, just go ahead and let's get at this. Then, Senator Adams, nobody determines if the standard of misfeasance is met, nobody determines if the standard of malfeasance is met, nobody determines if the standard of nonfeasance is met. So you see what you all voted against and what you supported? You support something that doesn't even do what those who wrote it tell you that it does. This is more serious than you all are willing to concede. You are changing something that has been available to the people for a greater number of years than I have been in the Legislature. I won't say than I've been on the Earth, because that would be pushing you back to a time when they wrote with styluses. But at any rate, this is bad legislation, poorly crafted, ill-conceived. But everybody pops up here, I support the amendment and I'll support the underlying bill, and they don't even know what's in the bill. And when they've got to do all this jumping around and offering you analogies from other procedures in the law and acknowledge, but this is not like what I'm talking to you about, they cannot justify it on its own basis. They are muddying the water to try to make themselves feel like they have a rational basis for what they're doing when they know there is none. It's bad legislation, it's a bad idea. And if the 20 people who voted for my amendment will not give them a vote on cloture, I can make this thing go away. I can make it go away and we don't have to deal with it interminably, and we don't have to deal with it again on Select File, and again on Final Reading. It's not worthy of that. What you are trying to take away from the people you're not succeeding in doing here. You're involving the court in nonsense. And the court doesn't have to be involved, unless somebody decides to pull the court in. So the court is just sitting there, twiddling its thumbs, waiting to see whether or not somebody is going to make the court...try to make the court do something that is preposterous and would undermine the independence of the judiciary. What Senator Lautenbaugh continues to emphasize for you all is what I've tried to tell you over and over and over. The court doesn't determine whether anything in that petition is true. So if I'm going to submit a petition for a recall... [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: ...you think that I'm not going to write some things down that will make the court say that I've met the standard? That's what I'm going to do. I'm going to do it. I am going to do it. Then if the person against whom it's directed takes it to court, the court rules in my favor. But that person may say, I'm not taking it to court, because if the court upholds what Chambers is doing that will seem like the court supports the recall, so I'm not going to court, and then all this stuff in subsection (4) does not come into play. And even though you talk about these "feasances," not one of them has to be established as existing, not one. Can't you all understand that? Am I speaking a language that you do not understand? Children are not this hard to reach.

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

Floor Debate
March 11, 2008

Maybe the Holy Ghost has set upon me... [LB878]

SENATOR LANGEMEIER: Time. [LB878]

SENATOR CHAMBERS: ...and I understand, but I'm speaking in a tongue that nobody else does. Now I will ask for a call of the house, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. There has been a request to put the house under call. All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB878]

CLERK: 26 ayes, 0 nays to place the house under call. [LB878]

SENATOR LANGEMEIER: The house is under call. Senators please return to the Chamber and record your presence. The house is under call. All unauthorized personnel please leave the floor. Senator Heidemann, Senator Stuthman, the house is under call. Please return to the Chamber. Senator Chambers, as we wait for those two to arrive, how do you wish to proceed upon their arrival? [LB878]

SENATOR CHAMBERS: We can take a machine vote at this point, if that's okay. [LB878]

SENATOR LANGEMEIER: Okay. Thank you, Senator Chambers. Senator Chambers, did you indicate you're ready for the vote? Okay. Thank you. The question before the...there has been a request for a board vote. The question before the body is, shall FA200 be adopted to LB878? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB878]

CLERK: 45 ayes, 0 nays, Mr. President, on adoption of the amendment. [LB878]

SENATOR LANGEMEIER: FA200 is adopted. With that, I raise the call. Mr. Clerk, for a motion. [LB878]

CLERK: Senator Lathrop would move to amend the bill. (FA201, Legislative Journal page 899.) [LB878]

SENATOR LANGEMEIER: Senator Lathrop, you're recognized to open on your floor amendment. [LB878]

SENATOR LATHROP: Thank you, Mr. President and colleagues. My floor amendment, which should be up on the gadget shortly, basically takes us back to an amendment offered by Senator Chambers yesterday. And he withdrew it before we had a chance to vote on it. And I intended to support it because I thought it made sense, and that is to

Floor Debate
March 11, 2008

change the language which, frankly, I came up with originally, which is "conviction of a crime involving an act of dishonesty or false statement," and replaced it with "conviction of a crime evincing moral turpitude." We have had a long discussion when we were taking up the subject of the constitutional amendment for the criteria or the standard for impeachment, so this language is familiar to all of us on the floor. It is responsive to something Senator Chamber alluded to earlier and that is the language that we had in the amendment originally, that was adopted and now part of LB878, which was "the conviction of a crime involving an act of dishonesty or false statement" leaves the door open for conduct which many of us feel probably ought to be the proper subject of a recall. The amendment that I'm offering now will gather more of the things that Senator Chambers talked about: the sexual assault of someone, beating your wife. Those kinds of things would be the proper subject of a recall. It broadens what might be the proper subject of a recall, and it also makes it consistent with what I expect will be, perhaps presumptively, the language of our constitution for an impeachment proceeding. So the two will now be coordinated. I want to suggest something, and that is that I am...I think that LB878 is a good idea. We do need some limitation on what people can bring a recall petition for. I want to work to improve LB878 so that when it passes it's in proper shape. I'd like to be responsive to the concerns of Senator Chambers and anybody else who has something constructive to say about the bill. So I look forward to the balance of the discussion on LB878 and encourage you to vote for FA201. Thank you. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. You have heard the opening on FA201 offered to LB878. The floor is now open for discussion. Senator Chambers, you're recognized. [LB878]

SENATOR CHAMBERS: Mr. President, members of the Legislature, when I offered the language I had said it covers everything and touches nothing, and I did withdraw it. I wanted to discuss the issue and point out the deficiencies that I saw in the language. Now what I had offered is being submitted by Senator Lathrop and I still don't think it makes a good bill. What you've got that creates the main problem is that subsection (4). And as I stated when I ran out of time something about the Holy Ghost, which you all may not understand, on the day of Pentecost all these disciples were sitting around, then suddenly tongues of fire sat upon each one of them and they began to speak, every man, in another tongue. And other people did not understand what they were saying. And they said, these men are babbling, they must be drunk. And somebody said, well, I don't know that they're drunk, it's not the hour of day when people would be drinking. Well, I guess, these guys who were doing the babbling in the strange tongue knew what they were saying. I know what I'm saying. Maybe nobody else understands me at all, but you're being courteous and polite and you will know when I finish speaking because I'll stop. If I didn't understand you, I would know you had finished because you sit down. So I will just proceed as though I'm understood. No matter what you do to this bill, no matter what you do with this bill, it is not a good approach to take. And you still left the involvement of the court in place. It doesn't matter what you put in the bill as a

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

Floor Debate
March 11, 2008

basis for the recall because if I'm going to circulate a petition and you put a crime of moral turpitude, a question or two needs to be asked to clarify that. And I'd like to ask Senator Lathrop a question or two. [LB878]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB878]

SENATOR LATHROP: Sure. [LB878]

SENATOR CHAMBERS: Senator Lathrop, there is nothing in the bill which says I must detail facts that constituted the crime or offer any documentation to prove it. I'm sure you've read where the court has said that if a complaint is...charges an offense in the language of the statute, that's sufficient. Do you agree with that? You've read language like that? [LB878]

SENATOR LATHROP: I think that's generally true... [LB878]

SENATOR CHAMBERS: Okay,... [LB878]

SENATOR LATHROP: ...and pretty common. [LB878]

SENATOR CHAMBERS: ...so here...so here, if my petition alleges that this person was convicted of a crime evincing moral turpitude, is that sufficient? Because the judge has to presume it's true. [LB878]

SENATOR LATHROP: I...I'd have to reread the thing. I'd have to...I'm not trying to avoid your question. [LB878]

SENATOR CHAMBERS: I know. [LB878]

SENATOR LATHROP: And you may be making a great point, which is perhaps the thing needs to say--and it sounds like you're offering a constructive suggestion--it should suggest or lay out facts which, if true, establish one of the criteria set out in the bill. [LB878]

SENATOR CHAMBERS: That's all I'll ask you, Senator Lathrop, because you go too far in answering your question. And if you were in court, I'd ask the court to strike that answer as being unresponsive. But here is something that is in my mind, we're not dealing here with any of the "feasances", the "feasance" family--misfeasance and "Mr. Feasance," and their babies, nonfeasance and malfeasance, are not involved. We're dealing with conduct outside of the office. And one of the things that we're going to look at now, if you adopt Senator Lathrop's amendment, is a crime evincing moral turpitude. If you allege that on your petition, under the existing language of this bill, you don't have to put anything else... [LB878]

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

Floor Debate
March 11, 2008

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: ...because the judge is not required, as with the case of the "feasance" family, to make certain findings, just the allegation of the conviction of this particular crime and that's enough. And maybe it ought to be enough because it keeps it simple. I still, if I'm required to state particulars, can manufacture them as I've manufactured everything else. You can't get a way from that problem. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Engel, you're recognized. [LB878]

SENATOR ENGEL: Mr. President, I, too, support this amendment. I would have voted for it the other day if it would have...if it would have come to a vote. I think it does make it a better bill. And I think it would appease a lot more people by having that in there because I think that's one of the bigger problems we have in politics today, too. So I do approve the amendment. And, of course, I still support the bill. Thank you. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Lathrop, you're recognized. [LB878]

SENATOR LATHROP: Thank you, Mr. President. And having had a moment to read the bill, Section 4, line 14, requires not that they make a conclusory statement which would be that this elected official engaged in conduct and was convicted of conduct evincing moral turpitude, but it requires that you allege facts. So I don't think it's enough to simply put a conclusion and then take the conclusion to the district court and have it blessed. I think you have to have facts under the language of the bill. So, I guess, I take exception with Senator Chambers' last remarks. And that's all I have. Thanks. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Chambers, you're recognized. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'd like to ask Senator Lathrop a question. [LB878]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB878]

SENATOR LATHROP: Sure. [LB878]

SENATOR CHAMBERS: Senator Lathrop, I wasn't quick enough to get what you said, the page number and the line you were looking at. [LB878]

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

Floor Debate
March 11, 2008

SENATOR LATHROP: In Section 4, line 14, it says that the person has to...this is the language immediately after "concise," in 60 words or fewer, they have to allege facts. And it's not enough simply to put a conclusion of law into this or even a petition that we file or a complaint that we file in district court proceeding. You have to allege the facts that constitute one of these things. And then the process requires the judge to look at the facts and see if they fit within the criteria. [LB878]

SENATOR CHAMBERS: Which page are you on? [LB878]

SENATOR LATHROP: Four. [LB878]

SENATOR CHAMBERS: Oh, I was looking at subsection (4). And line 6? [LB878]

SENATOR LATHROP: No, it's line 14, Senator. [LB878]

SENATOR CHAMBERS: But, Senator Lathrop, we're not talking about any of the "feasances." We're talking here about a new element that was introduced by the committee amendment. [LB878]

SENATOR LATHROP: But I think the committee amendment added to the list of the "feasances," and if we adopt FA201 it would place, in addition to the "feasances," the language about moral turpitude. [LB878]

SENATOR CHAMBERS: Now suppose a person put moral turpitude. It's your view from your reading of this language that that petition for recall could not go forward. [LB878]

SENATOR LATHROP: I think it would fail the standard, because it fails to set out any facts. [LB878]

SENATOR CHAMBERS: All right. So then the person mentions a crime for which the person was convicted and none of it is true. We're right back where we were before with the other. [LB878]

SENATOR LATHROP: That's...that's a different...that's a different issue, but you're right. [LB878]

SENATOR CHAMBERS: And so we're not going to really be able to get away from that, no matter what language is used. [LB878]

SENATOR LATHROP: Not without another amendment probably. [LB878]

SENATOR CHAMBERS: Do you know of an amendment that can get around that? You cannot...wait a minute. When I say you cannot, let me not say it that way. There is no

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

Floor Debate
March 11, 2008

way to prevent a person from lying. And the judge is restricted to what is submitted.
[LB878]

SENATOR LATHROP: Yeah. Here's the response I'd add to that because you've made that argument, if I can take a couple of minutes of your time or a couple seconds.
[LB878]

SENATOR CHAMBERS: Go ahead. [LB878]

SENATOR LATHROP: This isn't the only...this isn't the only filing that can be made in the district court. If one...if the person who's being the object of a recall has had a petition filed against him or her that is untrue, I don't think there's anything in this bill that stops them from filing some type of a proceeding in the district court to enjoin them from proceeding further with the recall effort because the foundation of the recall effort is a lie. [LB878]

SENATOR CHAMBERS: How are you going to do that when this sets up the process and procedure governing recall and does not cross-refer or allow any other thing to enter in? [LB878]

SENATOR LATHROP: But I don't think this is exclusive. There's nothing about this bill that says this is the exclusive process and you can't file a lawsuit to enjoin somebody who's circulating a petition, the foundation of which is a total lie. [LB878]

SENATOR CHAMBERS: You can't find any language like that anywhere in the statute books. [LB878]

SENATOR LATHROP: I find nothing that authorizes it, nor nothing that prohibits that kind of a lawsuit. But I think it's available. [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: And on what...what would the law be that you would cite that would allow you to bring such a lawsuit when you're attacking a political activity which does not require truth? It doesn't...nothing requires anything in the petition to be true, nothing. [LB878]

SENATOR LATHROP: Well, that's...the judge has to assume the truth in this process. But I don't think the judge is...if the aggrieved elected official wants to file an action to enjoin somebody because the subject matter of this is not true, I don't think this stops them from doing that. [LB878]

SENATOR CHAMBERS: And that then would become... [LB878]

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

Floor Debate
March 11, 2008

SENATOR LATHROP: That would be an equitable proceeding. [LB878]

SENATOR CHAMBERS: That then would become a full-blown lawsuit. [LB878]

SENATOR LATHROP: That's true. [LB878]

SENATOR CHAMBERS: And whatever time it took and whatever expense was involved would have to be paid, and they would not be shielded from cost based on the language in this that we're talking about here because now you're dealing with something different. [LB878]

SENATOR LATHROP: This bill does not address that kind of a lawsuit at all. [LB878]

SENATOR CHAMBERS: So... [LB878]

SENATOR LATHROP: It doesn't authorize it, doesn't encourage it, or doesn't prohibit it. [LB878]

SENATOR CHAMBERS: And supposed the judge said... [LB878]

SENATOR LANGEMEIER: Time. [LB878]

SENATOR CHAMBERS: Oh. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Lautenbaugh, you're recognized. [LB878]

SENATOR LAUTENBAUGH: Thank you, Mr. President, fellow senators. Backing up what Senator Lathrop was just saying, I believe that would be the case. This bill sets forth standards for recall. It sets forth a mechanism where if the target of the recall wants that preliminary judicial review he can ask for it. And now in five days the judge will say yea or nay, without addressing the truth of the allegations, these allegations do meet the statutory standard. I would argue that once there's a standard in this bill that that is not the exclusive mechanism. And even a voter could challenge, in a lawsuit, whether or not what is alleged meets the standard. We're setting forth a standard in the bill. This amendment might change the standard, but either way we're setting forth a standard. The mechanism that we spent so much time discussing this morning is just something that the target of the recall may or may not choose to avail himself of. But as long as these standards are out there I would argue that any citizen who is affected, if they're a taxpayer in the district, could challenge the actions and try to enjoin the actions saying, look, judge, under that standard what's alleged doesn't meet the standard. I think that would be entirely permissible. I think there are ways to challenge a recall now,

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

Floor Debate
March 11, 2008

not based upon a standard because we don't really seem to have one, but based upon signatures, petition defects, that kind of thing. This would be another way, for someone who wanted to challenge it, how they could proceed. That would be a separate lawsuit, that would be a full-blown hearing. It would be everything that this other procedure set forth in paragraph or Section 4 would not be. So that is available, that is out there, and I hope that addresses some of the members' concerns about this. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Chambers, you're recognized. [LB878]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, can you all see how ridiculous this is becoming now that the lawyers have taken it over? Now you have a full-blown lawsuit that has nothing to do with this bill. You have now created a full-blown lawsuit that has nothing to do with this bill. And what does it grow out of? It grows out of a cockamamie proceeding that goes into district court. But because they messed that up, now they have to create a brand new, totally separate cause of action. But they're not going to write that out, because then when you see it in writing you see how preposterous it is. They're going to say somewhere in the universe of the law there's a basis for bringing such a lawsuit, but they can't tell you what it's based on. They can't tell you where the language is that would justify it. If you're going to make it grow out of what is in LB878, how are you going to do it when, by the language of LB878, the whole thing is concluded? It is concluded by the language of LB878 itself. Now the person who should have a lawsuit, but that's not allowed under this, is the one circulating the petition. And the court says, for no reason at all, that it doesn't meet the legal standard so it cannot go forth. Now that's the person who is aggrieved because the right to circulate a petition is for the citizen to exercise. And this judge, for no reason, without taking evidence, takes away that person's right to circulate the petition. That's what's being done here. But that person who's been denied the right to circulate a petition has no legal recourse, none. So you know what the person has to do? Resort to self-help, go back and write another one, take some more time of the clerk and everybody else, and the court, and try to do it right. And the judge says again, no, you haven't met the standard. So now it becomes a game of cat and mouse, because every time I do this now it's carried in the newspaper. And every time it's carried in the newspaper there is a repetition of what I'm alleging. So then I deliberately don't make it meet the standard now, and it has to go to court unless the one against whom it is brought catches on and says, I'm not going to take it to court anymore, this is working against me, so I think I'm going to go back just like it was. And that's where you are, after all of this mess that the geniuses have created for you. What did John F. Kennedy say when, at the Bay of Pigs, the CIA inspired invasion of Cuba ran aground? He said, I should not have relied on the experts, I should not have trusted the experts. They told him it would work and it didn't. Now you have all of the legal minds that you'll listen to, but you won't listen to me telling you every time I raise an issue, well, we can write another amendment and change the procedure to take care of that. But if that

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

Floor Debate
March 11, 2008

doesn't take care of it, then we'll produce and create a new cause of action to file another lawsuit. And by the time that lawsuit is taken care of maybe the person's term of office is over and recall has been effectively done away with. Now... [LB878]

SENATOR LANGEMEIER: One minute. [LB878]

SENATOR CHAMBERS: ...let's say that this person does file an action and say the court said that this can go forward, but I don't think it should, because the Legislature was stupid and said that lies could be used. Then the court would say, well, you're bringing this pursuant to an action by the Legislature; are you challenging the constitutionality of that underlying bill in the Legislature, trying to give the person a hint. So then they say, I'm going to rewrite my lawsuit. And I say that that provision is unconstitutional, and the court says, you're absolutely right, we throw this whole thing out. Then where are you? Back with the law that we have now. Somebody files a petition, meets the requirements, and then the other person writes a defense statement, if he or she chooses, and then they circulate the petitions. If they get enough signatures, there is a vote. Either the person is retained or kicked out. You're not going to get away from that no matter what you do. Thank you, Mr. President. [LB878]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on, Senator Lathrop, you're recognized to close on FA201. [LB878]

SENATOR LATHROP: Thank you. I think we've probably had enough discussion on this subject. I'd...I'll just ask the body to move FA201. Thank you. [LB878]

SENATOR LANGEMEIER: You have heard the closing on FA201. The question before the body is, shall FA201 be adopted to LB878? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. There's been a request for a record vote. [LB878]

CLERK: (Record vote read, Legislative Journal pages 899-900.) 28 ayes, 5 nays on the amendment. [LB878]

SENATOR LANGEMEIER: FA201 is adopted. Mr. Clerk, items for the record. [LB878]

CLERK: Mr. President, new resolution: LR272 by Senator Pankonin, will be laid over. Confirmation report from the Agriculture Committee, signed by Senator Erdman, as Chair. Gubernatorial appointment, be referred to Reference. Subsequent to that, Reference report referring that appointment to Business and Labor for confirmation hearing. Enrollment and Review reports LB755 and LB851 as correctly engrossed. An amendment to be printed to LB878. An announcement: Education Committee will meet in Executive Session in Room 1126 at recess today. [LB878 LR272 LB755 LB851]

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

Floor Debate
March 11, 2008

Priority motion: Senator Howard would move to recess until 1:30 p.m. []

SENATOR LANGEMEIER: You have heard the motion to recess until 1:30 this afternoon. All those in favor say aye. All those opposed say nay. The ayes have it, we are in recess. []

RECESS []

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber, for the afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record. []

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

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Do you have any items for the record? []

CLERK: I have no items, Mr. President. []

SENATOR LANGEMEIER: Thank you. We will now proceed to the first item on this afternoon's agenda. And following the agenda, it is 1:30, we will move down to General File, 2008 senator priority bills, Carlson division, LB1092. [LB1092]

CLERK: LB1092, Mr. President, a bill introduced by Senator Harms. (Read title.) Introduced on January 23 of this year, at that time referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. I do have committee amendments pending, Mr. President. (AM1974, Legislative Journal page 702.) [LB1092]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Harms, you are recognized to open on LB1092. [LB1092]

SENATOR HARMS: Thank you, Mr. President and colleagues. LB1092 is simply about seat belts, about the safety of our children riding on our school buses. And when a parent puts his child on a school bus, they expect the child to be in a safe environment. When a child gets on a school bus, they expect to be in a safe environment. And I think most schools feel that their schools have their children in a safe environment in regard to buses. But it's not, and that's the one thing I want to bring to you, is that we put our children at risk. Without seat belts, research has shown us that it does save lives, it does save injuries in cars and buses, and we have also found in the research that they've done with dummies on buses that there's less neck injuries, back injuries, spinal

Floor Debate
March 11, 2008

injuries. So safety is an issue in regard to seat belts. I would like, if I could just for a moment, if I could get you to look at a...I've handed out some material to you, and there's a Web page with a Web page address on one sheet of paper. I would really encourage you to just plug that in, because what it shows is an accident that has occurred in Nebraska with a camera running and what happens to children when a bus...when they're in a bus wreck or crash. The other one is an out-of-state that turned over. And I'll tell you, when you look at that, I left with...every time I have done that, it has made me extremely sad to think that we allow our children to go through that process of being whipped around, being thrown around on a bus, and actually becoming another weapon to kill other children. And I don't think we can any longer tolerate that. I don't think we can do that, and now is the time to make that correction. If you just look at that, you'll have a much better understanding what happens to the kids that are in a bus without seat belts. Let me give you a little data and information about Nebraska. And this really kind of caught me off guard when I asked for the Department of Roads. I wanted to know how many school bus accidents we have in this state. And you know, the only thing we ever hear about is when a child is killed in an accident. But what I realized, there's a lot more to this than just accidents and people being hurt and killed. Let me share how many accidents we have had. In January through December of 2006, we had 113 individual bus accidents. And during that time there were some serious, serious injuries. The previous year during the same span of time, we had 139 individual bus accidents. Colleagues, we're putting our children at risk. Colleagues, we are actually allowing our children to be in buses without seat belts with these kinds of accidents, and many of these have been serious injuries. Children are crippled. Children receive brain damage and brain injuries from some of these accidents. But you know what? We don't read about them. We don't know we're having this many accidents because the only thing we see, the only thing we hear is about when someone is killed. But let's look at it a little bit differently in this great state. Let's go from 1993 to 2003. Let me give you another look at this data differently. In those ten-year span of time: there were 7 deaths, fatal crashes; there were 216 individual accidents, and some of those were very serious; there were 514 property damage to the buses or cars or whatever they hit; total of 737 individual accidents. We are putting our children at risk. I think it's time to address the issue, I think it's time to correct it. Kids are used to wearing seat belts. You know, from the time they come out of the hospital until they get old enough to be able to crawl in the car, what happens? You put them in a seat belt. And they get confused now when they get on a school bus and they find out, you know what, I don't have a seat belt. Sometimes that's the first opportunity that a child has not wearing a seat belt is when they get onto a school bus or get into a school bus. We also don't reinforce what teachers and what parents teach about seat belts and safety. You do it from the very beginning...the child is old enough to understand how important it is to have the seat belt in. We do it in the schools, but yet we don't reinforce it. The federal government reinforces it, the Highway Patrol, the states reinforce it. When you hear before Fourth of July over a holiday, click it or ticket, we're reinforcing every time we can about the safety of seat belts and how important it is to have seat belts in our cars and

Floor Debate
March 11, 2008

our trucks and our airlines, but not on buses. Injuries from the bus accidents are serious. A study was recently done by the Academy of Pediatricians. And what they revealed is the kind of accidents, the kind of injuries you have are just absolutely penetrating to me. When those children are catapulted into the seat in front of them, they have brain injuries, they have skull injuries, they have neck injuries, they have spinal injuries, they have back injuries. They have all kinds of independent injuries that I don't think we should allow, that we can at least prevent or slow down or stop it from occurring. What really amazes me is that we require our bus drivers who drive those public school buses to be in a seat belt. I mean that, colleagues, that's amazing to me. Yet we put 50 children in there and we herd them in there like a herd of cattle and we say you're going to be safe. We say that compartmentalization is the answer, and let me tell you about compartmentalization. That's by taking the seats, pushing them close together, raising the seat in front, the elevation of it, and saying that child is going to be protected; that child will be okay because they'll go to the front of that seat. Isn't that a terrible explanation, to say that our children are going to be safe that way? Even the National Highway Traffic Administration now is saying they're not so sure that compartmentalization works as well as we used to think it did. If you're a child and you are sitting in a bus seat and you're on the outside aisle and you have a collision, you become a weapon. You automatically will be catapulted out of that seat, you'll go down that aisle, you become a weapon yourself, which you either injure yourself, injure other children, or even maybe kill children. Compartmentalization only works, according to the federal government, in front-end crashes and maybe some in rear-end crashes. But it does not work with side impacts, it does not work with angle accidents where they come at an angle. And in the data that I gave you and the 113 individual bus accidents in '06, 31 of those were by an angle. You think the children in that bus were safe? Do you think the children were protected by compartmentalization? No, they weren't. Compartmentalization is only good for front-end crashes. And they found in Virginia it didn't work in Virginia because they had a head-on collision and two children were killed. The National Highway Traffic Administration has decided, you know what, maybe compartmentalization doesn't work as well. They're now going to be recommending, they're going to move the seats from 20 inches to 24 inches high. It's still not going to stop you from being catapulted into that seat or over the seat on the other side. In Texas, they just recently passed a law that becomes effective in '10 in regard to seat belts. And they've had a tragic accident there where children were killed, and they have now mandated seat belts in their buses. And a parent wrote a perspective, a parent's view of seat belts in buses, and it caught my attention and I'd like to just read this to you and I quote: Obviously, even a face planted into a padded dashboard is unacceptable. Is it any wonder then that a parent consider their child's face planted in the back of a seat in front of them, the hallmark safety feature of a school bus compartmentalization standard, as unacceptable? I would agree with that parent. It is unacceptable, it is not right. We should never put our children at that point of risk. [LB1092]

SENATOR LANGEMEIER: One minute. [LB1092]

Floor Debate
March 11, 2008

SENATOR HARMS: We have a responsibility to do that, to protect them. So based on these findings, I would tell you that it's reasonable to conclude that parents expect action to be taken on this issue and that parents consider untenable, unrealistic of most of the arguments opposed to this, like seat belts are not safe, that we'll lose capacity, or they'll use them as weapons, that there's liability issues there. I am prepared today to take you down every one of those critical arguments and walk you through what I have learned and what I understand about those issues. Thank you, Mr. President. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Harms. As the Clerk has stated, there are committee amendments offered by the Transportation and Telecommunications Committee. Senator Fischer, you are recognized to open on the committee amendments. [LB1092]

SENATOR FISCHER: Thank you, Mr. President and members of the body. The committee amendment, AM1974, replaces the green copy of the bill. Several significant changes are made in that amendment. The effective date of the bill is pushed back so that each school bus purchased new on or after January 1, 2010, shall be required to come equipped with lap-shoulder belts for each passenger. This section only applies if the bus is used to transport public school children. Both public and private school authorities, as well as any private company that contracts to provide transportation for school children, are required to provide instruction in the proper use of seat belts twice a year to each pupil transported in a school bus. Each passenger on a school bus equipped with seat belts is required to wear the belt at all times while the bus is in operation. The committee amendment also provides for liability protection in Section 3(5) and (6). These new requirements do not increase nor do they decrease the liability of a school district for a personal injury to a passenger caused by the failure to use or the misuse of a seat belt. In addition, the seat belt requirement does not increase nor does it decrease the liability of a school district for the continued operation of a school bus not equipped with seat belts. This is to protect school districts that will have a combination of both new buses equipped with the seat belts and their current buses that do not have the seat belts. I would like to mention that no opponents appeared at the public hearing before our committee that was held on February 12. Thank you, Mr. President. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Fischer. One announcement: There is popcorn compliments of Senator Raikes in that box under the south Chamber--we're going to ask that they don't pass it out to you; you need to go get yours--for three reasons. On his occasion, today his wife Helen, recent testing has shown that she is cancer-free. (Applause) And the birth of his second grandson a few days ago, Theo. And number three he put on here, his last haircut was November 27. You have heard the opening to LB1092. Madam Clerk, for a motion. [LB1092]

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

Floor Debate
March 11, 2008

ASSISTANT CLERK: Mr. President, Senator Karpisek would move to amend the committee amendments with AM2260. (Legislative Journal page 892.) [LB1092]

SENATOR LANGEMEIER: Thank you. Senator Avery, I've been instructed that you are authorized to open on AM2260. [LB1092]

SENATOR AVERY: Thank you, Mr. President. I am offering this on behalf of Senator Karpisek, who cannot be here due to a funeral where he is in attendance. This amendment, AM2260, is very straightforward. It merely expands the coverage of the bill to include all school buses, not just the public school buses. The overriding objective of LB1092, the main bill, is the safety of children, as Senator Harms indicated. Why then should we concern ourselves only with children in public schools? The reason behind this amendment is to protect the safety of all children, whether they are on a public school bus or a private school bus as well. This amendment simply expands the definition or the coverage of LB1092 to include private schools as well. Currently, certain safety features already are mandated on school buses. We already have the authority to mandate safety features such as stop signs, required traffic stops, flashing lights, and things of that sort. So I think that Senator Karpisek's intent here is that we not only have the authority but the obligation to provide safety for our children on school buses. And he would argue, as I would as well, that this ought to include all school buses. That is the reason for this amendment. Thank you. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have now heard the opening on LB1092, the committee amendments, and AM2260 offered to the committee amendments. Now the floor is open for discussion. Those wishing to speak: we have Senator Christensen, Pedersen, Carlson, Avery, Kopplin, and Stuthman. Senator Christensen, you are recognized. [LB1092]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Harms yield to a question, please? [LB1092]

SENATOR LANGEMEIER: Senator Harms, would you yield? [LB1092]

SENATOR HARMS: Yes, I will. [LB1092]

SENATOR CHRISTENSEN: Senator, if this bill comes into pass here and a bus driver is driving that, right now if you got a passenger in a car who doesn't wear a seat belt, the driver gets ticketed. How will this be handled on a bus? Because it's going to be impossible to keep kids buckled all the time. Can they be stopped for this offense and will the bus driver take the ticket, or the school or whom? [LB1092]

SENATOR HARMS: It's designed that the bus driver would not get the ticket. And then the question would be whether this is primary or secondary. And since our other laws all

Floor Debate
March 11, 2008

address the aspect that it's secondary, I would not expect any change and any difference in that view in regard to the buses. And the schools also have the right and the opportunity to bring discipline among the students. [LB1092]

SENATOR CHRISTENSEN: But I guess I'll ask one more. Let's say the school bus driver gets stopped for speeding, so it's now not a primary or secondary offense, and he sees kids were moving. What prevents this bus driver for getting a ticket for some kid that was moving around? [LB1092]

SENATOR HARMS: The way that the law is and the way that we've amended this is that he would not be liable for that. Once he leaves that bus, once the bus leaves that parking lot or leaves that school and every kid is buckled up, he then loses his...he no longer is responsible for this. It's pretty hard when you have 50 kids, 60 kids, 90 children to keep track of. So that's the intent, that he would not be liable for that, and that's where the discipline would come in on the part of the school. [LB1092]

SENATOR CHRISTENSEN: Okay. One more question. I read there's supposed to be no liability further on the school and stuff. Is just the way this worded enough to make sure that people aren't going to sue for liability because their kid took it off and got hurt in a crash? [LB1092]

SENATOR HARMS: Well, first of all, we're never going to stop a lawsuit. And secondly, I've had more than one or two attorneys look at this and they all agree that this is the best we can do in regard to protecting the school and the children and the bus driver. [LB1092]

SENATOR CHRISTENSEN: Thank you, Senator. I agree that seat belts can be a very beneficial thing for protecting kids and keeping them seated in place. I'm anxious to listen to further debate as I make my mind fully. I understand, I like kids protected, and this wants to protect our kids. I understand a few people have talked about individual rights and big government, but I'm anxious to listen to the debate and learn what other people have to say here. Thank you. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator Pedersen, you're recognized. [LB1092]

SENATOR PEDERSEN: Thank you, Mr. President, members of the Legislature. Having heard the testimony on this bill was not all that I needed to support a bill like this. I was present when the Seward bus went off Dodge Street--not at the accident, but when they called for help they brought the families and those that were walking and not needing the emergency help to the Elkhorn schools, and they asked for help of people who had come in and food, counseling, and support. If we can afford to build bridges across the river for pedestrians with fancy artwork and architecture, we can surely afford to save a

Floor Debate
March 11, 2008

life in a school bus. My own belief is that the price that they come up with in having to put seat belts in this bus is overinflated. However, if we use even the price that they did provide us, I think it's worth it. Seat belts have been proven to save lives. How often do we open the front page of the paper and see one of our own children from Nebraska who was thrown from a vehicle because they did not have their seat belt on, let alone the damages that have happened to our children and death in buses. We can do something about it. We can support this bill and it will work, we all know that. With that, I'd give the rest of my time to Senator Harms. [LB1092]

SENATOR LANGEMEIER: Senator Harms, 2:40. [LB1092]

SENATOR HARMS: Thank you very much. I appreciate that. I want to take just a moment, if I can, to complete a couple of the comments that I didn't get a chance to finish, and that was that there was a study that was done by the American School Bus Council. And we can draw some conclusions from this: 80 percent of the parents that they surveyed said that they believe that all buses should be equipped with lap and shoulder belts. You're also given a numerous number of different options, and 58 percent said we still want those seat belts. And 60 percent of all the parents said we don't believe that riding in a bus is safer than riding in a care. Now if you look at what the federal government's testing has done, if you look at what a lot of people say, that a bus is safer, it doesn't make any difference what I think or what you think or what the federal government thinks. It's what the parents think, it's what they perceive, that it is dangerous. And when you look at the data and you look at the research to think, folks, colleagues, that we have 113 individual accidents one year and the year before, 139 individual accidents, don't you think we're putting our children at risk? Did we realize that we had that many accidents? You should have been at the hearing when we had children come--and I didn't orchestrate this--when the kids came from Seward, Nebraska, and testified. And Tait Rief, who had brain injury, his father helped him to tell about how important it was for us to have seat belts. You know what? He's not going to be able to have a normal life. He's not going to be able to have a family. He's not going to be able to... [LB1092]

SENATOR LANGEMEIER: One minute. [LB1092]

SENATOR HARMS: ...work. He's not going to be able to graduate from college. That's all been taken away from him. So what's wrong with this picture, colleagues? What's wrong? Well, stepping up and saying, you know what, it's time that we correct this issue. Let me also tell you that there are other states that are already there. Texas just recently passed this, starts in '10; California, Florida, Louisiana, New Mexico, excuse me, New Jersey have already passed, and New York, have already passed laws. And there's 15 to 20 other states doing exactly what we're doing here today. They're debating the issue. It has come, the time has come that we make a commitment to protecting the children who get on those buses, because that's what this is all about.

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

Floor Debate
March 11, 2008

Thank you, Mr. President. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Harms and Senator Pedersen. Senator Carlson, you are recognized, followed by Senator Kopplin. [LB1092]

SENATOR CARLSON: Mr. President and members of the Legislature, in listening to the testimony on this bill, and I'm sure as time goes on I would find it very, very difficult to vote against such a bill. I would like to address a question or two to Senator Harms, if he would yield. [LB1092]

SENATOR LANGEMEIER: Senator Harms, would you yield? [LB1092]

SENATOR HARMS: Yes, I will. [LB1092]

SENATOR CARLSON: I'm going to ask two questions, Senator Harms--they're kind of related--and then sit down and listen to you. Presently bus drivers operate buses and pick up students and the driver will be the only adult on the bus. Could you kind of explain what you would envision as standard procedure for the driver of a bus as a child or children board a bus with seat belts? And then if they're boarding one or two at a time, there's a lot of stops and opportunity, because kids are kids, for those belts to be unfastened. But just how would you envision the instructions to be for a bus driver? And then if you might touch on the liability sections, subsections (5) and (6) on pages 3 and 4. [LB1092]

SENATOR HARMS: Sure. Thank you very much, Senator. First of all, if you look at a lot of the buses today, they have cameras already in there. He could see that, they're filming it, he can observe what's actually taking place on the bus, okay? Not only that, the law--it's not the legislation that I'm introducing--but in this law they require at least two training programs in regard to the children have to go through about the seat belts, the use of the seat belts, and what the penalties will be. And also, it also helps the bus driver, you know, at this point. And then in regard to the liability...what was the pages again? [LB1092]

SENATOR CARLSON: Well, subsection (5) on page 3, and then subsection (6) on page 4. [LB1092]

SENATOR HARMS: Well, (5) removes the liability from the school district or a school bus passenger or other passenger for personal property, injury to the school bus passenger caused solely due to the failure to use the belt. What this issue is about is, the simple fact is the bus drivers are really concerned, Senator, about...the fact is that they'll be liable for those kids undoing those buckles. You're right; children are children. I can see my son doing that when he was little. He was pretty hard to corral. It takes away that liability portion of it. Now in talking with the Attorney General's Office and also

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

Floor Debate
March 11, 2008

talking with other attorneys, it will not prevent an accident...I mean, it will not prevent a suit. But they feel that what's in this law will protect the bus driver, will protect the school. And the other side of the liability question then is, what about the school buses that have seat belts and those that don't have seat belts? We've tried to address that issue here and they felt that we had covered that legally and fairly, and that they felt at least that we would not stop lawsuits but they felt it was covered well enough, and that's what I have to bank on because I'm no attorney. [LB1092]

SENATOR CARLSON: Okay. Thank you for your response there. And as we look at this as a safety factor, and I can sound like I'm talking out of both sides of my mouth, but I think that with proper instruction, that even children of kindergarten age, they can learn the importance of a seat belt and the importance of having it on properly and leaving it on. And so the liability hopefully would be handled. And I don't see this as a reason for having to require another adult on a bus. And so hopefully that's the way it would work out as we go along. Thank you. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Kopplin, followed by Senator Stuthman. Senator Kopplin, you're recognized. [LB1092]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. A seat belt saves lives, there's no question about it. I'm not sure that I'm ready to support this last amendment yet. But if I could, I'd like to ask Senator Harms a few questions. [LB1092]

SENATOR LANGEMEIER: Senator Harms, would you yield to questions? [LB1092]

SENATOR HARMS: Yes, I will. [LB1092]

SENATOR KOPPLIN: Senator Harms, my questions are not on the why we should do this or anything, but I'm interested in the material you handed out, and I pulled it up on the computer on how these seats work. It appears to me from the sketch that these can be and would be three belts per seat. [LB1092]

SENATOR HARMS: That's correct, they can. [LB1092]

SENATOR KOPPLIN: And those are approved and ready to go? [LB1092]

SENATOR HARMS: Yes, they are. Let me be...let me tell you that there's an issue here, that the federal government requires 15 inches for each seat, this is 6 inches over. And they're now negotiating that out and working that out. And they feel like that that will be resolved in the very near future in regard to that. [LB1092]

SENATOR KOPPLIN: Okay. Because it does say 41-inch seats in one place and 39 in another. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR HARMS: Correct. [LB1092]

SENATOR KOPPLIN: But then I was interested in this. In their material on the computer, it looks to me like the interior frame in a collision would move forward and leave just the padded back seat for the kids behind them? [LB1092]

SENATOR HARMS: Yeah, that's built on a very steel frame, it goes across the back and down, then it's bolted into the floor. And the portion that the seat belt is hooked to will allow it to move forward. And the reason for that is if a child is behind them, takes off his seat belt, which most kids might do, is catapulted into the back of that, it moves that forward. It saves the injury, saves the blow. And according to some of the research that's done, there's probably going to be less injury to the child on the other side. So it does have some movability and that flexibility. [LB1092]

SENATOR KOPPLIN: Yes, and that would be important. Otherwise the bar that comes up and around the seat (inaudible)... [LB1092]

SENATOR HARMS: Absolutely correct. Yeah, I agree with you. [LB1092]

SENATOR KOPPLIN: ...a weapon to the kids behind them. And I do agree with what's in your bill, that it has to be a shoulder strap type, because if it's simply a lap belt, you have that same problem of the kid flying forward and striking the armor of the seat ahead. [LB1092]

SENATOR HARMS: Yeah, I agree, Senator. [LB1092]

SENATOR KOPPLIN: Okay. [LB1092]

SENATOR HARMS: Thank you very much for your question. [LB1092]

SENATOR KOPPLIN: That answers...thank you. [LB1092]

SENATOR HARMS: Thank you. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Kopplin. Senator Stuthman, you're recognized. [LB1092]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. First of all, I want to talk a little bit about the amendment that's before us at the present time, AM2260 from Senator Karpisek. I am a little bit concerned about, you know, we are...if this does pass, if this amendment passes--which I do not support and I'll tell you that right on the surface of this--that I think we are trying to tell, you know, the parochial

Floor Debate
March 11, 2008

schools what they have to do, the private schools, you know, that they have to have the seat belts in their buses. As many of you realize, a lot of these smaller schools, the parochial schools, you know, either have the yellow bus or a small van that they transport kids around and use. And you see a lot of those kids, they'll have their congregation or their school's name on the bus. I just, I think that if there's a real need for them, I think the parents that are, you know, paying for their education in these parochial schools will address that problem. I don't think we as a state should have to mandate that. And this, I might like to also add, is, in my opinion, an unfunded mandate. And what do we hear most of the time in the community, in the local areas, the counties, the cities, the communities? Unfunded mandates are something that they don't appreciate, something they have to do that is a cost to the taxpayers and they have a real problem of trying to find the resources. I think one thing also. I think the people of Nebraska should be very thankful for families, parents that have their children enrolled in parochial schools. Those students are not a burden of the state of Nebraska. I think we should all send them a thank-you for paying for their own education of their kids. Yes, they choose that to do, but that is a real issue in some communities where half of the kids are in parochial schools, the other half are in the public schools. The tax rate for those schools for the people is probably half the amount to the public school as it could be. I think we look at a situation where if all of the kids were placed in a public school, we don't have enough schools for them as public schools. The tax rate would be very high. Now I want to talk a little bit about some of the issues that I've been thinking about over the weekend. And I did ride a school bus the first years, the first three years of high school. I rode a school bus, the old yellow school bus 18 miles one way and 18 miles back. And the school bus route was probably maybe 100 miles. One of the things in a school bus was there was only a seat to sit on with a cushion. There was nothing else in that school bus. And I really never thought about it until we started talking about, you know, putting seat belts in, the belt buckle and things like that. I think the reason there was nothing in that school bus is because, as any kid, any teenager would do, if there's something that you could get your hand onto, you'd probably use it as a little whopper, a little stick or something like that, that would be used as a tool to try to fool around on the school bus, which in turn would distract the school bus driver. And one thing we don't want to do is distract the school bus driver because that school bus driver is responsible for the kids, and also responsible... [LB1092]

SENATOR LANGEMEIER: One minute. [LB1092]

SENATOR STUTHMAN: ...for getting the kids to school. So we have to be very careful that way. And that is a reason I think there was nothing on the school bus, just your own bookbag, your lunch bucket, which we had taken at that time, and maybe a couple other things. But there was nothing on the school bus, nothing that could hurt anything or nothing that the students could use to hurt other kids. I think that's very important. I think if we...if this bill does pass, I think this is another unfunded mandate that we're putting onto the people in the districts, the taxpayers in the school districts. One of the things

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

Floor Debate
March 11, 2008

that I think was the most important thing to the people that came in a year ago, they all said lower the property taxes, lower the property taxes. This will raise your property taxes. I will... [LB1092]

SENATOR LANGEMEIER: Time. [LB1092]

SENATOR STUTHMAN: Thank you, Mr. President. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Fulton, you're recognized, followed by Senator Adams. [LB1092]

SENATOR FULTON: Thank you, Mr. President. Today I've learned about moral turpitude, Rumpelstiltskin, and whoppers on school buses. This has been very entertaining. AM2260 to AM1974, I have a question for Senator Harms if he would yield. [LB1092]

SENATOR LANGEMEIER: Senator Harms, would you yield to a question? Would you yield, Senator Harms? [LB1092]

SENATOR HARMS: Yes, I would. [LB1092]

SENATOR FULTON: Okay. This actually...my question has to do with what is within AM1974, but it is pertinent to any decisions made on AM2260. So AM1974 on page 4...and actually we've talked about this a little bit off the mike, but I want to get this into the record. [LB1092]

SENATOR HARMS: Okay. [LB1092]

SENATOR FULTON: "Nothing in this section shall be construed to increase or decrease the liability of a school district," that language with regard to liability. How does that play out? I can see this interpreted in a couple ways. It could be interpreted, A, in the way that says there shall be no change in liability with respect to any liability recognized the date that this bill passes; or B, perhaps this could be construed by saying there will be no increase or decrease in liability at the time that this becomes effectual. So could you provide some clarity? Do you understand where I'm going with that question? [LB1092]

SENATOR HARMS: Yes, I do. [LB1092]

SENATOR FULTON: Okay. [LB1092]

SENATOR HARMS: I think it would take place, Senator Fulton, the day that this bill passes. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR FULTON: Okay. [LB1092]

SENATOR HARMS: So then it would depend upon...the second portion of that answer then would be when they purchase their new bus. [LB1092]

SENATOR FULTON: Okay. So the liability that will be in place at the time the bus is purchased is to be understood as the liability that exists on the day that the bill passed, that this bill passes? [LB1092]

SENATOR HARMS: That's correct. This whole bill is all about new school buses. Okay, we are not going to be asking them to retrofit their buses. It's all about the purchasing of the new school buses. [LB1092]

SENATOR FULTON: Okay. And that's...I mean, that has something to do...thank you, Senator Harms. [LB1092]

SENATOR HARMS: You're welcome. [LB1092]

SENATOR FULTON: That has something to do with AM2260. Generally I'm...well, I can share with the body, I have an inclination to support this bill. And the reasons that I'd support the bill are the same reasons that I would support this amendment, AM2260. But having a position in principle, these principles have to act out in the real world. And so I'm going to have questions about liability, what this is going to do by way of liability to the school districts. I'll also have questions on costs. So hopefully we can have some more questions in that regard. A point that I would like to have some response on also, do we have any type of--and this is rhetorical, hopefully someone could address it--do we have any type of liability now? Knowing that there are school buses in the country that do have restraints or seat belts in them, do we as school districts in Nebraska, public and private, have some liability now? That's a question to ask yourself. This question with regard to liability that appears in AM1974, it brings up a real-life case. When we have two school buses, one of which has seat belts, the other doesn't have seat belts, the powers that be in a given school are going to have to make a decision which school bus to take. And so it would seem that if indeed seat belts make a bus more safe, it would seem that they would choose the bus with seat belts because they don't want to be exposed to extra liability... [LB1092]

SENATOR LANGEMEIER: One minute. [LB1092]

SENATOR FULTON: ...and also because they'd want what's in the best interest of the children and the passengers of that bus. So to be clear, what I am understanding in AM1974 is that that question of liability is not...does not need to be posed. So let's say this becomes law and at some point in the future, some point after this point that this becomes operative in the future, schools will not have to make the decision whether or

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

Floor Debate
March 11, 2008

not to take this bus or that bus based on liability because the liability, as a result of this law, is to be untouched. So that we're clear on that, I want that to reflect in the record, and that's going to have to be a point that will be valid if I'll give support to this bill going forward. So thank you, Mr. President. [LB1092]

SENATOR LANGEMEIER: Thank you, Senator Fulton. (Visitors introduced.) Mr. Clerk, items for the record? [LB1092]

CLERK: Thank you, Mr. President. (Read LB784A by title for the first time.) New resolution, Senator Nelson, LR273, that will be laid over. That's all that I have, Mr. President. (Legislative Journal pages 902-903.) [LB1092 LB784A LR273]

SENATOR FRIEND PRESIDING [LB1092]

SENATOR FRIEND: Thank you, Mr. Clerk. Back to discussion of AM2260, Senator Adams, you are recognized. [LB1092]

SENATOR ADAMS: Thank you, Mr. President, fellow senators. Senator Harms, would you yield to a question, please? [LB1092]

SENATOR FRIEND: Senator Harms, will you yield? Sorry. [LB1092]

SENATOR HARMS: Yes, I will. [LB1092]

SENATOR ADAMS: Senator Harms, my reservation with this bill may be very similar to virtually everyone else in this room. I'm being presumptuous. But my reservation was, first and foremost, if we pass this bill, are we, as Senator Stuthman said, posing an unfunded mandate on local school districts? And I definitely don't want to do that. Could you respond to that, first of all, the cost of this and bearing that cost? [LB1092]

SENATOR HARMS: Yes, I can. First of all, there's...the cost to actually retrofit a school bus, Senator Adams, is too expensive. And so that's why we're not requiring the older buses to be retrofitted, okay? This only deals with new buses. And the cost of putting in seat belts in the new buses averages anywhere from...depends on which bus company you talk to, but anywhere from \$7,500 to \$10,000. And if you put in the flex seat, you add \$2,000 more to that. So if it was \$10,000, it would be \$12,000 on top of that. So if it's \$70,000 for the bus, you just add \$12,000 on it. You have the flex seat and you have everything you need. Okay, now the National Highway Traffic Safety Administration is going to be making dollars available for schools to make application for funds to be able to assist them with this purchase in the future, and that's what this is about. They also realize that this is coming and we'll be there. And Secretary Peters indicated that they would put a fund together and the schools would qualify for those dollars if they needed it, some small school that just couldn't help fund themselves with that or larger schools

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

Floor Debate
March 11, 2008

have to put five or six new buses and had difficulties with that, there will be some dollars set aside. Now I have to also be very honest and frank with you. They're not going to add a lot of money to it, okay, but they are going to make dollars available. [LB1092]

SENATOR ADAMS: All right, thank you. One other question, Senator Harms. And I know that you've spent a lot of time on liability already, but for the record, one of the questions that was posed to me by two different superintendents. If we pass this bill, will the school district have to hire paras and put them on the bus to make sure that the belts are buckled while the bus is moving? [LB1092]

SENATOR HARMS: No. I don't think they're going to have to do anything different than what they do now. They've got cameras, a lot of them have cameras in it. I think the only thing the bus driver will have to do is just walk back and check to make sure that they're all...they're in their seat belts, and the liability goes away after that. [LB1092]

SENATOR ADAMS: Would it be safe to say that with the exception of saying to the bus driver now you got to make sure people are belted up, that a bus driver wouldn't have any more or less responsibility than they have right now for a kid jumping out of their seat or disrupting or hitting somebody with a notebook, let alone a seat belt buckle? [LB1092]

SENATOR HARMS: That's correct. In fact, Senator Adams, I have spoken with a number of bus drivers this summer and they told me that what lap belts they now use in some of the buses, they love because they're less active. They're constrained, they're not moving around. If you got 30 or 40 kids jumping around it's a little hard to keep track of. They actually like...many of them like it. [LB1092]

SENATOR ADAMS: Thank you, Senator Harms. In conclusion, body, I want to say this. I'm concerned about the cost to school districts. I am concerned about liability. But here's what happened to me this summer that pushed me a little bit over the edge. [LB1092]

SENATOR FRIEND: One minute. [LB1092]

SENATOR ADAMS: I had a lady come into my office whose son was on that Seward school bus there at Elkhorn. And you know what she said to me, and I'm going to make this as quickly as I can. She said to me, please help to get this bill passed. My son didn't have a seat belt on. But she says, now I have little children that I train every day that they do not get into a vehicle without buckling up their seat belt. She said, that even if you don't make it mandatory, why as a parent do I train my kid to not get in a vehicle without a seat belt and then ironically find themselves climbing aboard a bus and there is no belt? That said a lot to me about this bill. Thank you, Senator Harms. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR FRIEND: Thank you, Senator Adams and Senator Harms. Senator Gay.
[LB1092]

SENATOR GAY: Thank you, Mr. President. I was looking at the amendment and I just wanted to speak a little bit about the amendment to add to parochial, private schools. And I had some information that Senator Harms furnished to me about the total number of private school buses and public leased buses. But they were talking about 6 percent of the total buses that are in use now, and there's about 108 of 1,949 buses, so 6 percent. The question I had is, in order to...some people are having some troubles with this, and I'm having a little bit of trouble, too, of why we have to put this on some of the private schools. What I would throw out there is if 94 percent of the buses are going to have to be equipped, as a private school contracts with a bus provider, 94 percent, they're going to change all these out so they're in compliance with a majority of the schools. And Senator Harms has made it a point to say this will not take effect only on new buses. But I'm saying by mandating it, this will take effect anyway if the...just economic rules--94 percent of the population is going to need this, so they're going to go ahead and fit all the buses. So I'm a little bit concerned about adding that amendment on there and creating more...some heartburn on this bill. I support the bill. As I say, I know, looking at this amendment, I got some questions on that. So I wanted to just put that out there. I'm kind of just wondering, you know, how do you enforce some of that on private buses, can we do that. And I was having a little conversation here, I think you can. But I'm just wondering if we have it and 94 percent of the users are going to use it, I think economics, they'll go ahead and fit their buses anyway. So the idea on the cost we just discussed a little bit, what Senator Adams was bringing up, I do think if you're going to implement a plan like this, this is done in a very good way. It's giving time, it's only on new buses you're going to be buying, and it just makes some good safety sense in my mind. I think the cost involved, of course it will cost a little more, but in the long run, you know, we're all...you tell your kids to buckle up every time they get in a car. So I do believe this is a good bill. But I do put that out there and I just wondered if anyone has any solution to that. I don't think it's needed. I think it harms the bill more than it helps it at this point in the process until we know some of these answers. Now maybe during debate we'll find out some information that will contradict that. But like I say, if 94 percent of the buses are going to have to be done, and these figures are from Nebraska Department of Education, but if 94 percent of the buses are going to have this, they're just going to go ahead and do 100 percent anyway instead of us telling these schools you have to do something, especially when it comes to a private or parochial school. I'm not so sure that it's worth the effort to do that when it's probably going to happen anyway. And I would say it will happen because they're not going to just leave these buses with no seat belts attached. They're going to go ahead and fit the buses out so they can service 94 percent of their clientele. So I just bring that to the debate. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Gay. Members, we are discussing AM2260,

Floor Debate
March 11, 2008

potential amendment to the Transportation and Telecommunications Committee amendments. Senators wishing to speak: Louden, Harms, Wallman, Lautenbaugh, Wightman, Stuthman, and others. Senator Louden, you are recognized. [LB1092]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As a member of the Transportation Committee, I also heard the testimony that came with this bill. And my observation was it was probably something that needed to be done, probably should have been done a long time ago. The way the bill is now, why, when you worry about parochial schools or any place else, I think the way I understand the bill it's each bus that's purchased new. And that takes...I've been involved with parochial schools; I went to one, some of my kids went to parochial schools. And I can never remember of a new school bus being purchased by a parochial school. Now whether it means when they purchase the bus or if they have to purchase a new one isn't quite clear in here. But as far as the part about something that they have to do, I'm more concerned that it's something that you should do. This isn't something that we should say you have to do; this is something that really is that you should do. And Senator Harms passed around some handouts that show different seats that can be retrofitted, I presume. And at one time I had a relative that was in the upholstery business and that was one of the contracts he had in the summertime, was going up on the Oglala's Indian reservation and redoing the seats in the school buses every summer. And that was always a major contract because all those seats...on a lot of buses they had to put new upholstery and everything on them. So I think as time goes on, if I was on a school board, I would certainly be thinking about retrofitting the older buses with seats that had belts, restraining belts on them because of the liability issue and because it just is something that should be done. Now whether that will...what the question is of how many people will be saved or how many children won't suffer injuries with seat belts, but I can tell you one thing: seat belts will keep kids from flying all over the bus if it does roll. But I tell you another thing: you turn a bus upside down, the kid is hanging there upside down from the seat belt, you better hope they don't push the button right away or else they're going to fall about seven feet. So it works both ways. But nonetheless, this is something that really needs to be done. We do it in our daily lives with seat belts in our cars, we teach our children that. And I've noticed nowadays that many of the younger people are better at buckling their seat belts than some of the older folks. I won't go any further than that on the older folks, but I notice a lot of folks that grew up without seat belts many times forget to buckle them. So I think this is...I voted for this bill in committee. And since Senator Karpisek has brought this amendment forward, I think this is something that needs to be done. I don't see where it's going to be that much of an unfunded mandate, no difference than any other thing that we have to talk about on safety features. Now if you're concerned about the unfunded mandates for school buses, I'll have to give you one more shot, that if you had a few more Class I schools around you wouldn't have to have so many school buses to haul the kids. So that would take care of a part of that. So those of you that couldn't get LB903 off the floor, why, think about that, that if we had that, why, we'd be a few less school buses have around

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

Floor Debate
March 11, 2008

to haul kids all over the place. With that, I thank you, Mr. President. [LB1092 LB903]

SENATOR FRIEND: Thank you, Senator Louden. Senator Harms, you are recognized. [LB1092]

SENATOR HARMS: Thank you, Mr. President. How many times is it for me? [LB1092]

SENATOR FRIEND: On this amendment I believe it's your first. [LB1092]

SENATOR HARMS: Okay. Thank you very much. I wanted to walk you through a couple things, if I can, and then I'll speak a little bit on this amendment. There has been some concern that we would reduce capacity of a bus, and the new flex seat that they have coming out prevents that from happening. I want to make sure you understand I'm not pushing any particular company, SafeGuard or anybody else. There will be a lot of other seat belts, kind of seats that will come out. We're just moving into that technology. But I want you to understand that you're not going to lose capacity, because that is one of the concerns that the public school people have. The other one has been the cost. And I've looked at a number of different cost factors from a number of different people. And they all average around between \$7,500 to \$10,000. And then if you add the flex seats, you add another \$2,000 to that for a new bus. The other thing I wanted to make sure that I clarified is that we are not asking any of the buses to be retrofitted. I want to make sure that we understand that. It's strictly for the new buses that comes forward. And I've heard some people talk a little bit about this is a local issue. In fact, it's become a federal issue and the federal government has asked...given us the flexibility in the state to address this issue of large buses having seat belts. And they said as long as you don't lose the capacity, we support very strongly that we urge you to do it. Now I will also tell you that a bus that's 10,000 pounds or less is going to be required to have the lap and shoulder belt, and that's coming down very soon. So there's a lot of things that are occurring in regard to that particular issue. I think that the other side of it that I've talked to people about is that they are concerned that maybe a child could get trapped and wouldn't know how to get out of it. You know, folks, colleagues, my grandchildren at the age of three or four knew how to get out of the seat belt. They know at six, they know at ten, they're reinforced all the way through that. I don't think that's going to be an issue at all. In fact, I believe that it will save lives. Now I'd like to, if I may, address the issue here of the amendment. I have some mixed emotions about this. Private is private, public is public; children are children, safety is safety. And I guess I'm going to wait to see how the debates come out, and I can live with whatever this body chooses to do. I think it's a public policy decision that you have to make, and whatever we decide as a Legislature I can live with. But I have mixed emotions about it because I believe so strongly in children, the safety of children. I hate to see those lines become blurred, but I understand that they become blurred and I understand why they become that way. So whatever we decide to do as a body I will support. Thank you, Mr. President. [LB1092]

Floor Debate
March 11, 2008

SENATOR FRIEND: Thank you, Senator Harms. Senator Wallman, you are recognized. [LB1092]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I have...I cannot support this amendment. I got some information from bus drivers, the most important people. They set the environment for the day. They talk to these little kids. What are you going to do with a kindergartner, put a jump seat on the bus? You know, lots of these little kids are little. Are you going to have a para on the bus to help them in that jump seat? Bus drivers have a lot to do. I don't care if they have cameras; some kids are going to go back there without a seat belt. And like Senator Stuthman said, they can whip that thing around. So here are some of the bus drivers' concerns: students can and do use the heavy belt buckles as weapons, injuring other students or other riders. It's next to impossible to make sure that all students keep their belts properly fastened so that they are not injured by the belts in an accident. If a bus has to be evacuated in an emergency such as a fire, panic or disoriented students might be trapped by their belts. When drivers balance these concerns against the many safety features already built into the design of school buses they conclude that, given the way buses are presently operated, they are safer without seat belts. And I can tell Senator Loudon, if you tip...I saw a Suburban tipped upside down and he could not get his belt unbuckled and we had to help him. And if you unbelt your seat buckle in a bus and don't have your hands down, you'll probably have a broken neck. And so is this safer? In all my years, I think we had 5...25 buses had 5 accidents, never a student hurt, and 1 bus tipped over but never a student was hurt. These buses are built pretty well. If you seen the Seward accident, that was, you know, an extraordinary accident, that big a drop. It's a wonder more people won't get hurt. And racks along the side, things fly off, they're like weapons. Or if you have musical instruments, bookbags, those are heavy instruments. As you realize in the back of your car, if you put this on the ledge back there and you hit the brakes, that thing is going to come back and hit you. So there's lots of issues here. And these are the bus drivers. They take kids every day and they want safety, and most bus drivers are very safe. And kids get run over outside the bus, that's where some get killed. And so I think we got pretty safe buses and they keep making them better. Seat belts may save some lives, but it also could take some lives. Who knows? Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Wallman. Senator Lautenbaugh, you are recognized. [LB1092]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of this bill, but unfortunately not the amendment that's currently before us. The Transportation Committee did hear a lot of compelling testimony that you've already heard relayed to some extent this afternoon, and I won't go over it again. It was impossible not to listen to...it was impossible to listen to that testimony and not be moved by it, I should say. Unfortunately, I don't believe this amendment is proper for

Floor Debate
March 11, 2008

this bill. We do treat public schools and private schools differently, and they are different. And the parents who send their kids to private schools choose to do so. This bill is drafted as it is because it's meant to deal with public school students. It doesn't mean we value private school children lives differently. It just means that we are drafting this to send it to the schools that are supposed to be available...or to make it apply to the schools that are supposed to be available for all children to go to, with nothing more. If parochial schools want to choose to do this kind of thing they surely can. If the parents want to compel their school to do that at a parochial school, they surely can. This was drafted solely to apply, as it's written, to public schools. So I cannot support this amendment. Regarding the liability, we had extensive discussions about that as well, and the thinking was, as it's written, we didn't want to do anything to either increase or decrease the liability for use of the seat belt or for continuing to operate buses that still don't have seat belts, as this would be phased in as new buses are purchased. And so it's kind of unusually worded. We didn't want to give a blanket exemption. And to answer the question that was asked earlier, the reason why we did not just say we don't...there is no liability for this, I should say, the reason we didn't use that language, there is no liability, is because that is a developing area of the law. Someone in here asked earlier, is there liability now for this. And the answer is, we don't know. The argument could be made that if seat belts are available and they haven't been implemented, someone could be liable. So this bill, in a certain way, is trying to get ahead of that curve. But the liability language that's in the bill and the amendment is drafted as it is so that we neither increase liability or decrease liability. We don't want to speak to that at all. We just want the underlying policy to be carried out, which is to make the seat belts available for public school children. And with that, I'll yield the rest of my time to Senator Harms. [LB1092]

SENATOR FRIEND: Senator Harms, you have 2 minutes, 25 seconds. [LB1092]

SENATOR HARMS: Thank you very much. I appreciate that time. Some of the other issues, I think, that are important for us, and I'd just like to review that again. That is, the fact is that...don't forget that parents want their children to be safe. And until I went to the hearing that Senator Fischer had on this bill, I was really, as I said earlier, taken back by the teenager's testimony. I wish I could have taken the credit for getting them there, but I didn't. They came on their own or they may have been stimulated from someone else. It really left me with a heavy heart when I left there. And quite frankly, when they got through testifying, you could almost hear a pin drop in there because they spoke from their heart. It took courage for them to come there and they looked us right in the eye and said, why do we not have seat belts; why are you putting me on a school bus that's not protected; why do you not basically care about me; why are you concerned about what it's going to cost; how can you put a price on a child's life? [LB1092]

SENATOR FRIEND: One minute. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR HARMS: And you know, as I listened to that testimony and as I listened to those teenagers talk, it just fired me up. It made me more convinced that it's something that we really need to accomplish here, it's something we need to make sure that we do. I think we have the opportunity and the responsibility to set the standards. You've heard me say that before. We do set the standards here. And we have to make sure that our children are safe and that we've done everything that we can to make them safe. When you have 113 individual bus accidents one year and the year before 139 and in 5 years you have over 700, you know, we're asking for a lot of trouble here for kids and teenagers. And compartmentalization, as I said before, does not do what people say it's going to do. And most of the accidents are not head-on, so you're going to get it from the side, you're going to get it from the rear, you're going to have sideswiping. It doesn't make any difference. Those kids, those teenagers, our children are going to be catapulted through that bus. [LB1092]

SENATOR FRIEND: Time. [LB1092]

SENATOR HARMS: Thank you. [LB1092]

SENATOR FRIEND: Thank you, Senator Harms. Senator Wightman, you are recognized. [LB1092]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. My inclination right now would be not to support the amendment. I think we have no business passing mandates when we're not providing any of the funding. I realize even on the bill itself we are probably providing no funding for this particular equipping with seat belts, but at least we are providing some of the funding, and a major portion of the funding to schools through the K-12 education funding. So I can see a lot more reason, and I have reservations about the bill itself. As I poll my superintendents, and I haven't reached a majority probably of them yet, but the ones I have probably are opposed to the legislation because, again, they look upon this as an unfunded mandate. I think we could make an argument that as long as we are funding part of the education bill that perhaps we're providing funding, and at least have some control. But of course, that's what school districts are always concerned about, is that we reach in and take control for the funding that we do provide. But I'm going to continue to listen to the debate, but I probably will not vote for AM2260. I think that's an unfunded mandate of somebody that we're not providing any financial benefit to, any financial funding to. And it seems to me we're overreaching when we attempt to legislate that parochial schools would have an obligation to fit their buses as well. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Wightman. Members, again we are discussing AM2260. Members wishing to speak are Stuthman, Langemeier, Pahls, Nelson, Howard, and others. Senator Stuthman. [LB1092]

Floor Debate
March 11, 2008

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to mention a few things that I've heard in listening to the debate so far, and I want to talk a little bit about Senator Pedersen when he had the mike. And he stated that, you know, if we can afford a walk-bridge over the river, you know, why can't we afford this. And I will agree with that, but there's a little bit difference. The state, the taxpayers paid for the bridge. A method of taxation took care of that. I think if the state is willing to come up with the money, and I will support that, if they're willing to come up with the money to put all school buses fitted with seat belts at one time, I think that would be very important and I think that would be appropriate thing to do. But I don't think we can afford it. I have a real problem with the fact that, you know, in 2010 the new buses, you know, must have the seat belts on them. Many of the school districts have the yellow buses that are probably maybe up to ten years old, and it could be ten years before they buy their last school bus that has seat belts on. How are you going to determine...how are the administration of a school district, a school, how are they going to determine which students go on the bus with seat belts and which students go on the bus without seat belts, when they're going to a game or an away game like this? I did visit with quite a number of school bus drivers over the weekend. They were not in favor of this, but they did mention one thing that we could do that they thought would be very beneficial; that school districts should have one or two--and some of the school districts that I talked to already have this--they have the coach bus that they utilize when they go on longer trips. They don't use just the yellow school bus. The yellow school buses are used to pick up the students. When students, athletic department, or any department goes to a district contest or anything like that, they utilize the coach bus. Those coach buses are a lot safer. They're higher off the ground, they're a lot safer. And I don't think we have seen any accidents with major injuries to students of a school district that were transported on a coach bus, which I know my district, I think, has several of them. Columbus, I think they have several of those coach buses that they use to transport those kids. Another thing that the school bus drivers did mention to me was that most of the school bus drivers on these local districts that just run the school bus route in the morning, in the evening are driven by part-time people, a lot of younger ladies, but also there's a lot of elderly ladies that do drive school buses. They've driven school buses for many, many years. We have one in our area that's probably driven a school bus for 35 years. And they mentioned that if they have to be responsible, you know, to make sure that everyone is buckled up and watch and make sure that they're buckled up, it's going to be a real problem. They feel that it's going to be more liability, more demands of those school bus drivers. And I think it's very possible that there will be less people applying for the school bus driver job in those communities. And a lot of communities do not have people available to drive those school buses. [LB1092]

SENATOR FRIEND: One minute. [LB1092]

SENATOR STUTHMAN: I think that's something we ought to also take into

Floor Debate
March 11, 2008

consideration. I just feel that this, the most important thing is, if we pass this and school buses will only have the seat belts on when they're purchased new, school districts buy school buses as used buses also. School districts can't afford a new bus. They will buy a used bus that's been traded in. So we have to be very careful. And if it's going to take ten years before all of these buses do have seat belts, you know, I won't be here, a lot of us won't be here. And I think we got to take that into consideration. We either put it on them all or we don't put them on any of them. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Stuthman. Senator Langemeier, you are recognized. [LB1092]

SENATOR LANGEMEIER: Mr. President, members of the body, I rise in opposition to AM2260. And with that, Senator Stuthman has brought up unfunded mandates. And the reality is, is if we pass this, how do you pay for this? It's property tax. You all just vote to make your school boards raise property tax, which we do on a regular basis. So that should be no difference. However, with AM2260 and pulling the parochial schools into this, where do they come up with their funds? Set another fund-raiser they're going to raise? They're going to raise tuition? Where do they get that? We can send unfunded mandates down to public schools any time we want and they just raise your property taxes and we hear about that but we don't seem to care about property tax. We've heard that parents want our children to be safe. Schuyler did, and my company sponsored it, safety seat belt checks on car seats--70 percent of them failed. But parents want our children safe, except they don't take the time, they don't learn how to put the car seats in their cars properly. I'd also argue, and you look at some of those pictures. I'd also argue that those heavy school box, instrument boxes, I played the trombone, my sister played a clarinet, and they come in...the clarinet came in a little box and her flute came in a little box, but it was a hard box. If you look at those racks above those seats, there's one little cable wire that holds everything up on that rail. I would argue that that rollover and those projectile objects flying around in that bus do more damage than those kids bouncing off of kids in those high-seat seats. So I think if we really want to be safety, we need to start with how we contain instruments above the seats. If you ride a plane and every time you stop that plane they always tell you when you open the doors stuff has shifted. And things shift as they fly around in a school bus, as a heavy obstacle as it rolls around. With that, and I'm going to skip now to the committee amendment. It says in here on page 3 that these seat belts...that this bus driver and these children have to have them properly adjusted. If you look at my five-year-old son, he's at least 11 inches taller than any other five-year-old kid in his class. So is that school bus driver going to make sure he sits in the same seat every time he rides that bus, or are they going to have to adjust those lap belts every time they get in? So if you just want lap belts on, we should take out "properly adjusted." You go into the next section and we're talking about liability. We've reduced the liability for personal injury. I think Senator Christensen asked a question earlier about if this school bus got pulled over and the law enforcement officer wanted to write tickets for kids not

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

Floor Debate
March 11, 2008

in seat belts. I don't think you exempt them from that. Just reading that, all you're exempting them from, and it just says the intent is to remove personal injury liability, not to whether they have the seat belts on. That would be a heyday if you wanted to get money for the school district as you write that ticket. And so then the school bus driver has that option. And so for now I'm rising in opposition of AM2260. I think the bill, if the intent there...I think there's a lot of things could be discussed. You go back to the first page, Section 1, each seat in the school bus purchased new. New to me, new to you, new to the school? I think that's very poorly written. I don't think that states...that could be interpreted so many ways. New to my school district, new from the factory, what does new mean? I think if we're going to create legislation, I think the intent of it should be spelled out better than it is here today. And so with that, thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Langemeier. Senator Pahls, you are recognized. [LB1092]

SENATOR PAHLS: Mr. President, members of the body, you know, as I'm reading part of this bill, some of the old sections of the bill, I think it does involve the private and parochial schools. I'm just going to read just one or two sections of it: Any company or agency that provides transportation of pupils by school bus and contracts directly with the pupils or their parents, (b) the school board or board of education of the public schools, and (c) the governing authority of any private or parochial school in this state shall provide, at least twice during each school year to each pupil who is transported in a school bus, instruction in safe riding practices and participation in emergency evacuation drills, and the additional thing we're talking about right now. So right now we are concerned about the safety of students in the private and parochial world. So this is nothing new that we're asking of the people. And here's another thing that we call sometimes these unfunded mandates. I don't know if you realize it. Let's just say that...here's a sort of a cost that a lot of us don't really think much about, is twice a year every student in every public and private school must have some type of information. They must go through a bus drill so they understand how to get on and off the bus. That actually can become a pretty expensive item, because let's say you have 500 children in the school. They need to bring up two or three buses so the children can go on and off those buses so the bus driver and the teachers or other people can speak to those children on safety issues. So that's probably an unfunded mandate that we never think about. But at one time, that sounded good so we said we ought to do that, which is good. Can't argue with that. But there is a cost factor to that. And there's another issue that I'd like to discuss a little bit. As I'm reading part of the fiscal note, it does say any increased spending by school districts on school buses will increase needs in the state aid formula, which will increase state aid two years after the spending increase occurs. So that's already in the fiscal note. So there will be some cost to this. And here's another thing; I've heard a couple senators stand up and make a comment about private and parochial schools and public schools and we should be paying...please keep in

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

Floor Debate
March 11, 2008

mind, the private schools do have access to textbooks and they do have access to the No Child Left Behind money that flows through. So this is not totally a proposition where the private schools must pay for things and they do not get any help from the public school system. Thank you. [LB1092]

SENATOR FRIEND: Thank you, Senator Pahls. Senator Nelson, you are recognized. [LB1092]

SENATOR NELSON: Thank you, Mr. President. I would call the question on AM2260. [LB1092]

SENATOR FRIEND: Members, the question has been called. Do I see five hands? I see 20 hands. The question is, shall debate cease? All those in favor please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB1092]

ASSISTANT CLERK: 28 ayes, 3 nays to cease debate, Mr. President. [LB1092]

SENATOR FRIEND: Debate does cease. Senator Avery, it is my understanding you are to close on AM2260. [LB1092]

SENATOR AVERY: Thank you, Mr. President. This amendment that I have offered on behalf of Senator Karpisek simply expands the scope of LB1092 to include all school buses. It rests on the assumption or the knowledge and the belief that all kids are equally valuable, whether in private schools, parochial schools, denominational schools, or public schools. It is true that private schools are different, but the kids are not. Their lives are just as valuable as those in public schools. So the safety of public school students is no more valuable than any other. This bill should be amended to include all students and I urge you to support AM2260. Thank you. [LB1092]

SENATOR FRIEND: Thank you, Senator Avery. Members of the Legislature, you've heard the closing on AM2260. The question is, shall AM2260 be adopted to the Transportation and Telecommunications Committee amendments? All those in favor please vote aye; all those opposed vote nay. Senator Avery, for what purpose do you rise? [LB1092]

SENATOR AVERY: Request a call of the house and a machine vote in regular order. Roll call, sorry. [LB1092]

SENATOR FRIEND: Members, there has been a request to place the house under call. The question is, shall the house go under call? All those in favor please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB1092]

ASSISTANT CLERK: 33 ayes, 0 nays, Mr. President. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR FRIEND: Members, the house is under call. Senators, please record your presence. Those senators outside the Chamber please report to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Lathrop, Senator Chambers, please report to the Chamber. The house is under call. All members are present and accounted for. Senator Avery, could you repeat, how did you want to proceed? [LB1092]

SENATOR AVERY: No, I don't think I should repeat what I first said. I will take a roll call vote in regular order. [LB1092]

SENATOR FRIEND: That is correct. Thank you, Senator Avery. Mr. Clerk, please call the roll. [LB1092]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 903-904.) Vote is 23 ayes, 21 nays, Mr. President. [LB1092]

SENATOR FRIEND: The amendment is not adopted. I do raise the call. Mr. Clerk, next item. [LB1092]

ASSISTANT CLERK: Mr. President, I have nothing further to the committee amendments. [LB1092]

SENATOR FRIEND: Members of the Legislature, back to discussion of AM1974, the Transportation and Telecommunications Committee amendments. There are senators wishing to speak. They were in the queue prior to the vote. Senator Howard, you are next and you are recognized. [LB1092]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I support Senator Harms on his bill and, in fact, signed onto this. I have long been concerned about the issue of seat belts on school buses. I remember when my children were small and rode on school buses, and those are bench seats on those buses, and the fabric is similar to the fabric on the seats that we sit in--very, very slick. My concern is when those buses come to a sudden stop and those children slide right off because there is nothing for them to hold on to. I am astonished. I guess I just did not realize this or haven't been told before, but the driver of the bus wears a seat belt but the children don't. I find that very incongruous with how we would think of safety for children. If I could ask Senator Harms a question or two just for clarification. [LB1092]

SENATOR FRIEND: Senator Harms, will you yield to a question? [LB1092]

SENATOR HARMS: Yes, I will. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR HOWARD: Thank you, sir. In Omaha, we contract out the school bus transportation. Will that...how will that fit in to this particular law with a contract service? [LB1092]

SENATOR HARMS: They'll be required to meet the law with seat belts. It doesn't make any difference whether you contract, lease, you will be required...if you haul students from the public schools you will be required to have the seat belts, and when you purchase your new buses you will have to have the same requirements. [LB1092]

SENATOR HOWARD: So the bill applies whether it's contract or the buses are purchased by the school board themselves. Thank you. That certainly helps just for...to make it more transparent, as we like to say. Thank you. Then if Senator Stuthman is still available? [LB1092]

SENATOR FRIEND: Senator Stuthman, are you available? Senator Howard, I do not see Senator Stuthman. [LB1092]

SENATOR HOWARD: Thank you for inquiring. Since he is unavailable I'll just reflect on one incident that was of concern to me. Earlier this year we had a very tragic situation occur with a student, a high school student, who was a wrestler and was killed in a traffic accident in Iowa. He was on his way to a meet. And this particular student, while not on a school bus, was on a school vehicle, I believe it was a van, with other wrestling students, and didn't have his seat belt strapped. He wasn't buckled in. And when the collision occurred he was ejected from the vehicle and the vehicle rolled over on him and he was killed. And my heart goes out to his family, to his parents, because here was a tragic, tragic accident that could have been avoided and, probably by carelessness, wasn't. And I make reference to that because on a school bus there is no opportunity to buckle your child in, to give them that measure of safety that could save them from being ejected from the vehicle, and heaven forbid that this would ever happen, but to have the vehicle roll over on that child. Thank you for the opportunity to speak, and I ask you to support this bill. [LB1092]

SENATOR FRIEND: Thank you, Senator Howard. Senator Rogert, you are recognized. [LB1092]

SENATOR ROBERT: Thank you, Mr. President. I've got a couple, just...I've been listening a little bit here and I've heard some reasons for not putting a seat belt on a bus. It sounds like it's the same reasons we had for not wanting to have a seat belt law when we put it in for cars several years ago. Crashes can pin you in the car. It may roll over, keep you in there. You could get hit by a seat belt, cause an injury. I think it goes back to the fact that seat belts saves lives in almost every type of crash. Once in awhile you're going to have something where a seat belt may cause an injury rather than prevent it, and those are just unpredictable things. I think it becomes an issue of safety

Floor Debate
March 11, 2008

versus unpredictability. When I was kid there were two accidents in a nearby school district, with buses, and kids were hurt on both of those. Luckily, I wasn't...it wasn't part of my district, but seat belts would have helped those kids from getting hurt. I was involved in a small accident when I was in kindergarten. Kids were running around on the school bus, banging around, throwing things at each other. The bus driver hit the brakes, one kid slams into another, busted open his lip on the other one's head. We therefore, after that, had to sit in our seats and were required not to move, basically in what a seat belt would do for you, and there were no more distractions for the bus driver, nobody else got hurt the rest of the year, and that is really what I think these seat belts would do for you. So with that, Mr. President, I'll yield the rest of my time to Senator Harms. [LB1092]

SENATOR FRIEND: Senator Harms, 3 minutes and 20 seconds. [LB1092]

SENATOR HARMS: Thank you very much, Mr. President. I would really ask that you support AM1974. It pretty much clarifies the things that we needed to have. I think it makes it a good piece of legislation. The things that I would like to have you keep in mind, that we are talking about safety, we are talking about making sure that our children, when they get on a bus, that we can be assured that at least we've given them seat belts that will hopefully save their life or stop them from being crippled or hurt in any manner. I believe that this is going to happen in the very near future. When you talk to the people in the federal government, we are starting to move in that direction, and, in fact, a lot of the materials that I have read and studied do indicate that. And so I would just say that whatever questions you might have or concerns you might have, that I would like to move this to Select File once we're ready, and then we'll make those adjustments and see if we can make this a better bill. Because all of it, it's really creating public policy here, and I think we have to make sure it's the best public policy possible, and you can't do that as an individual. So any suggestions you might have I would really encourage you to let us know. We'd like to make those changes. I also want to make sure that everybody understands that this includes the city of Omaha, it includes the city of Lincoln, it includes all of the public schools, and that when you look at the data from the Department of Roads, you will find that the majority of the accidents...out of the 113 accidents that I talked to you about in '06, 90 of those appeared in urban America. And that's going to continue to get worse and the further west you go, the further into rural America you go, the less of the issue you're going to see and the less of the issue you see now. But the problem is going to be with the fact that as we grow in urban America there's more traffic, more cars, and there's going to be greater accidents... [LB1092]

SENATOR FRIEND: One minute. [LB1092]

SENATOR HARMS: ...and accidents probably that are more serious than they are today. So thank you, Mr. President. [LB1092]

Floor Debate
March 11, 2008

SENATOR FRIEND: Thank you, Senator Harms. Senator Wallman, you are recognized. [LB1092]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. I am not against school children's safety. If I thought this really would commit safety I would probably really jump on board and support it. But here's a few transportation facts. We have an unequal safety record with our school buses. Fatal crashes involving occupants are very rare. Each year, 440,000 public school buses travel more than 4.3 billion miles. That's a lot of miles. And the school activities, and 24 million children ride on these buses. And I don't see Senator McDonald here. But last year, 45 states had not a single child killed as a school bus occupant. To me, that's an incredible safety record. But just go in there. It's information council takes this every year. Six hundred school-age children are killed as passengers going to high school. That's a lot of children, way too many. But could we prevent these deaths if they rode the school bus? Probably yes. My children drove to school also. So it seems driving your own children to and from school is risky if you're a parent. And pedestrian fatalities, an average of 29 children were killed in school bus-related pedestrian accidents: kids running off the buses or getting on the buses. So that's considered a school bus accident, which really it's not. And so they're the largest mass transportation program in the U.S. You go on a tour bus, do you have a seat belt on? No. And people get killed on tour buses. It's going to happen. So a federal study reported that children traveling to or from school in any mode of transportation except school buses are at a much greater risk of injury or death when compared to children traveling on school buses. This is sponsored by the U.S. Department of Transportation. This study urges that a risk assessment of student travel method be made in districts nationwide. So a school bus driver, he's got another task to do. Are you going to hire a para on that bus to have a kindergartner...I appreciated Senator Langemeier's comments. Folks, this is not a simple deal. You don't have all high school or middle-schoolers. You've got first graders, you've got elementary...I mean, kindergartners who have...maybe this tall, this tall. So are you going to have booster seats on those buses or what, or special seats for the front seats? I think the cost is way below what it's going to cost. And the bus driver may be distracted by kids and looking back to ensure all the students are in their seat belts, and then they may, you know, not see the child that's ready to get on the bus because every time he stops he's going to look back. So I appreciate safety on school buses. If I didn't think the buses were relatively safe, nothing is completely safe, whether you're belted in. People get killed who are not belted in, probably more. But, to me, I cannot support this legislation. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Wallman. Senator Nelson, you are recognized. [LB1092]

SENATOR NELSON: Thank you, Mr. President and members of the body. I want to

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

Floor Debate
March 11, 2008

thank Senator Wallman from raising some statistics here, or bringing some of those things, because I have some questions in that regard. I certainly was opposed to the previous amendment and I am giving careful consideration to this bill and listening to all the conversation and the arguments. I do have...there are some things that still haven't been covered to my satisfaction, and perhaps Senator Harms would yield to a couple of questions. [LB1092]

SENATOR FRIEND: Senator Harms, will you yield to questions? [LB1092]

SENATOR HARMS: Yes. [LB1092]

SENATOR NELSON: Senator Harms, first of all, we had a very serious accident that is germane here and that was regarding the Seward school district, wasn't it, up at Elkhorn. [LB1092]

SENATOR HARMS: Yes, that was correct. [LB1092]

SENATOR NELSON: Yes, and I believe a number of persons testified on that. Do you know when that accident occurred? [LB1092]

SENATOR HARMS: No, I don't remember, Senator. [LB1092]

SENATOR NELSON: Were...I'm looking at the list. I'm just guessing that practically all of the testifiers at the hearing were related to the Seward incident. Would that be correct? [LB1092]

SENATOR HARMS: I think it is, Senator. I don't really know, to be honest with you, but I think it is. [LB1092]

SENATOR NELSON: Um-hum. My recollection is that was a very serious accident. I'm not sure whether there were any fatalities or not. I know there were some serious injuries. And I do know that there were a number of lawsuits spawned and it's my recollection that the school district, the Seward school district, was sued, along with the state of Nebraska and others. I think that, and I may be wrong, that they settled out. But my questions is this. Do you know if a lawsuit that involved the school district, were they sued, if you know, because there were no seat belts on the bus? [LB1092]

SENATOR HARMS: No, I don't have any idea, Senator. I don't know. [LB1092]

SENATOR NELSON: Okay. All right. [LB1092]

SENATOR HARMS: Thank you very much. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR NELSON: You mentioned that in 2006, I guess it was, there were 113 accidents involving school buses. Was that here in the state of Nebraska? [LB1092]

SENATOR HARMS: All the data I gave you, except for one series, is from Nebraska. The 113 and then the 139 are all from Nebraska. [LB1092]

SENATOR NELSON: All right. [LB1092]

SENATOR HARMS: And I have...this all comes from the Department of Roads. They have a wealth of information. In fact, I can give you what roadway it was, whether it's urban, whether it's rural America. I can give you information in regard to the ages, what kind of collision type it was, drivers, whether it was alcohol-involved. I mean, they just have a phenomenal amount of information, which really surprised me, to be honest with you. So everything that I have quoted on this particular data comes from Nebraska. I've used no out-of-state information. [LB1092]

SENATOR NELSON: If you recall, in that number of accidents involving student bus injuries, were there any serious injuries or fatalities? [LB1092]

SENATOR HARMS: Well, let me give you just a breakdown, okay, if I can. In regard to January 2006 through December 2006, there were two what they call disabling injuries, which were serious injuries of children that were seriously hurt. There were 19 that were visible but not disabling. That's where maybe they have a skinned up nose or a bloody nose or they're just not sure...it's not disabling. And then they had 22 were possible injuries that they probably were going to take to the hospital to check to make sure. And out of that group there were 70 that were property damage only. And in that, none of those were head-on collisions where most of your serious accidents occur. They were from side or they were from being hit from the rear or an angle, they were sideswiped. I mean, there are just a whole phenomenal number of ways that these accidents have occurred. [LB1092]

SENATOR FRIEND: One minute. [LB1092]

SENATOR NELSON: Thank you, Senator Harms. I appreciate that. That's very informative and helpful. One final question here in the last minute. I'm looking at the fiscal note on the last page and this was done as recently as February, and I think you mentioned this but it states in there that the capacity is going to be reduced from a 60-seat school bus to 42, and with, of course, additional cost. I think you mentioned a system that would accommodate three lap seat belts, but is that available or are (inaudible)? [LB1092]

SENATOR HARMS: Yes, it is available and they are...one of...the seat is about 6 inches too wide, and they are now negotiating that. They will have that, without any concern,

Floor Debate
March 11, 2008

resolved. They will not... [LB1092]

SENATOR FRIEND: Time. [LB1092]

SENATOR NELSON: Thank you. Thank you, Mr. President. Thank you, Senator Harms. [LB1092]

SENATOR FRIEND: Thank you, Senator Nelson and Senator Harms. Senator Kopplin, you are recognized. [LB1092]

SENATOR KOPPLIN: Thank you, Mr. President and colleagues. I heard some interesting comments on the floor today, and I guess what I'm really doing is kind of thinking out loud here because this is doable, certainly, and it probably should be done, but a couple of you have talked about the time to purchase buses. Now, I had to purchase a new bus every year to get through a fleet, but there's a period of 9 or 10 years that you are going to be running buses without seat belts. And I guess what I'm thinking out loud, how would I as an administrator do that? Because you are really sticking your neck out when you are saying which kids are going to do which. Maybe there's something we can look at in this bill to do something about that. I don't know how, but it certainly would be worth considering. We've had some more comments about reducing the number of seats, and I looked again at these one company's seats, and you can do three, but that center one is really difficult. But when you're, you know, when you're buying an 84- or a 90-passenger bus, you've got to have that middle seat in there. So I think the bus companies can solve that part. I like the way the construction of those seats are. I am just really wondering about if there is a better way that we can do this. Not every school buys a new bus every year. I've seen some communities where they have buses that are very old, and I'm wondering how they are getting by with them. So we drive these things for a whole long time. And we talked a little bit about parochial schools. I have sold used buses to parochial schools. There is still some use in them, and certainly that probably should be done, but I'm not sure the bill, if that was the intent of the bill, if somebody is going to fill their fleet with used buses, they haven't gained anything, and yet I'm not sure that this bill keeps them from doing that. So I haven't any answers here. Oh, I was going to mention, too, I don't know how other schools do it, but I had a depreciation fund where you put the money in every year, and sometimes you could put in more money than one bus so that you could keep this going, but eventually it does become part of the state aid formula. So it is unfunded but not completely unfunded. Thank you. [LB1092]

SENATOR FRIEND: Thank you, Senator Kopplin. Members, we are discussing committee amendments, AM1974. Senator Hudkins, you are recognized. [LB1092]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. You might have noticed on the committee statement that I was the only one that voted against this

Floor Debate
March 11, 2008

particular bill, and I thought I probably should tell you why. Senator Harms gave us a very impassioned speech earlier about why we should be doing this: that children's lives are at stake and that no amount of money can replace a child's life. Now, I agree with all of that. But you have to look at the big picture. Now, our smaller schools, and maybe Lincoln, Omaha, Grand Island, North Platte, Columbus, they can afford to have coach buses for activity buses. I would venture to guess that the majority of the schools, the high schools in this state, do not have coach buses. They go to the football games or the basketball games or the music contests in school buses. And as someone said earlier, the real danger on those buses are the band instruments. Our girls both played in band. One was a big case and one was a very small case. But when you've got a big case going through the air on a rollover, it's a lethal weapon. So maybe instead of talking about seat belts we should be talking about some way to secure the band instruments if that is going to be a band activity. This bill says that each bus purchased new shall have the seat belts installed. Again, not every school buys a bus every year. Our particular school probably has, I'm going to say, five, maybe six buses. And I don't think we've purchased a bus in several years, maybe just one. So it could take a long time before the whole fleet is equipped with seat belts. If you have a set of parents that are very adamant that their child is in a bus equipped with a belt, how does the administration decide? Do we use the new bus for the activities? Do we use the new bus on the route where the driver is driving the oldest bus? Do we use the new bus on a route where the most people have complained because there were not seat belts? And you cannot tell me that these kids are going to wear these seat belts. The younger ones, perhaps, because they have been, since they were just tots, babies, to wear a seat belt, a seat of some kind in their cars. They get on the school bus. They're with their friends. Everybody is bouncing around. It's not cool to be belted in when your friends aren't. And then you've got the junior high kids, where they've got a fifth grader sitting next to them, and this eighth grader is...going back to Senator Howard's bill, the bullying bill...you've got a bully on the bus that uses the seat buckle for a weapon. The information that we were given said, oh, no, no, no, that won't happen because these belts are retractable. Well, if these belts are so retractable that these students cannot pull the belt out of the seat and hang on to one end while they use the buckle for a weapon, there is something wrong with that child. The bill also says that there will be instruction twice a year on how to use these. What if you have kids that are gone on those two days? There's an accident. They weren't wearing their seat belt or it wasn't adjusted properly. And like Senator Langemeier said, if you have a very tall child and then you have a very short child, those kids are going to have to be sitting in the same seats day after day... [LB1092]

SENATOR FRIEND: One minute. [LB1092]

SENATOR HUDKINS: ...and we know that kids don't like that too. Their friends change weekly. I see this bill as an unfunded mandate. What is the one thing that all of our constituents fuss about? Unfunded mandates. What does an unfunded mandate mean?

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

Floor Debate
March 11, 2008

It means increased property taxes. Is a child's life worth an increased property tax? Of course it is. But as I said before, you have to look at the whole picture. The increase nor decrease of liability causes another problem. What kid isn't going to lie when he says, well, I was wearing my seat belt and I still got hurt. Well, you can bet that that parent is going to be the first one on the line to sue. So at this point...well, no, from now on I will be voting against this bill. Is it necessary? Probably. Is it practical? No. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Hudkins. Senator Burling, you are recognized. [LB1092]

SENATOR BURLING: Thank you, Mr. President and members of the body. This is a tough issue because we're all saddened when especially young people are severely injured or killed in transportation to and from school. There are a lot of students traveling around this state every morning and afternoon, going and coming from school, and I think we need to be thankful there aren't more injuries and deaths than there are. But most deaths occur in private cars. School buses are a very relatively safe mode of transportation already. And life itself is a risk. We're not perfect people. We make mistakes, and accidents cannot be avoided. So it's a situation where we just do the best we can, and seat belts are an answer. And the idea in this bill is good. It would be nice if it could happen. I don't think it's practical, like Senator Hudkins said. We already pose levy limits and budget limits and spending limits on our school districts. We decide how much state aid to send to these school districts. They have elected boards. They can make these decisions, I think, on their own without our unfunded mandate from this body. This requirement that they buy seat belts does not decrease the districts' liability, so even though it's a good idea and it might be nice to happen, as far as this body mandating school districts to buy buses with seat belts in, I will be opposing for that reason. Thank you. [LB1092]

SENATOR FRIEND: Thank you, Senator Burling. Mr. Clerk, you have some items? [LB1092]

ASSISTANT CLERK: Mr. President, I do. Amendments to be printed: Senator Dwite Pedersen to LB880, and Senator Erdman to LB1049. A new resolution, LR274, by Senator Pirsch. (Legislative Journal pages 904-907.) [LB880 LB1049 LR274]

Mr. President, I do have an amendment to the committee amendments to LB1092. Senator Stuthman would move to amend. (FA204, Legislative Journal page 907.) [LB1092]

SENATOR FRIEND: Senator Stuthman, you are recognized to open on your floor amendment. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. What my amendment states is that it's an amendment to the committee amendments. And on page 2, after...on line 26, I'm adding a subsection (4). And (4) would then read that the cost to implement this bill would be funded by the general appropriations of state funds by the Legislature of the state of Nebraska. And the reason that I'm bringing this up is I think that if we are really serious about the safety of the kids, which I am, too, but if we are thinking of enacting something that is going to be a cost to taxpayers, it is going to be a cost to school districts, school districts that are already up to their lid limit, I think if we're going to put another thing onto those school districts that they have to do a mandate, I think we should be able to stand behind ourself and say it's the right thing to do and I think we should fund it. I think that's very important. I think if this bill passes I think this would be a good amendment that the state would fund it. I do not, at the present time, do not have the total cost of what it would cost for the state of Nebraska, but we can get an A bill worked up on that after this thing gets passed. I'm very, very concerned about the fact that, like I had stated before, we continually come up with these ideas but we don't come with our checkbook behind it, and we're putting the demands on the people in the communities, the taxpayers. And a year ago what was the most important thing that we heard from the people when they were out on the campaign trail? Property taxes. Property taxes. Lower my property taxes. Property taxes are set by the local governments. They are set locally, collected locally, and spent locally. The only impact that the state can have to affect property taxes is by taking money from the state, which is collected on sales tax and income tax. Those funds are utilized for state aid to schools, state aid to communities, state aid to counties. That is how property taxes are lowered. But what we're...what the intent right now with this bill and with this amendment is that we're going to tell the school districts, you know, when you buy that new school bus, it has to have the seat belts on, and that's going to be an additional cost. And the schools are already up against a lid limit. State aid maybe doesn't come in like it was supposed to come in. I visited with one school district. They said their state aid was cut by \$270,000 from one year to another. Where do they make that up at? Property taxes. That's where it comes from. I think if we're serious about this bill and pass this bill, we also should be responsible and be able to fund it. I think that would be only the right thing to do, and that would show that we are serious about this and we will fund it when we pass this bill. But if we're not able to fund this, then I think we should really take a serious look as to whether we want to direct and mandate the school districts, you know, to, when they purchase new buses or purchase a new bus in 2010, that they do have the seat belts on. But I think we are going to run into a very serious problem when this occurs when you have one school bus with seat belts and four of them without seat belts. And it may take six or eight years before all of the school buses have seat belts. It may be another generation of kids before we have all the seat belts placed in the school buses. I think we should be serious about this. So with that, I would ask for your support on this amendment. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Stuthman. Members of the Legislature, you've

Floor Debate
March 11, 2008

heard the opening on FA204. Senator Pankonin, you are recognized. [LB1092]

SENATOR PANKONIN: Mr. President and members of the body, I was already in line to speak before Senator Stuthman entered his amendment, but I'll talk about that, as well, as I get going here. First of all, I want to say I appreciate Senator Harms bringing this bill, bringing this concept in front of us, and I know he sincerely believes that this is going to make a big impact on safety of students traveling, and I think that's a legitimate concern and something we do need to talk about. This afternoon, during the discussion, I had the opportunity to go down to my office and call a superintendent in my district about this issue, about several issues, about this one as well, and he mentioned the same thing that Senator Kopplin has mentioned, Senator Stuthman has mentioned. If you have a fleet of buses and half have seat belts and half don't, how do you morally make that choice about who takes what bus, and does it open us up to a lot of questioning or even legal liability about if someone gets hurt in the bus that doesn't have it? And his suggestion, and I agree, would be that we pick a date five or six years down the road, we'll say January 1, 2014, and we mandate that all buses are going to have this whether it's retrofit or new buses; that there is a date out there far enough that gives districts plenty of time to plan for it, but that they all have it or they don't. And after we took the vote, I came up to the floor on whether the private, parochial schools would have it and if they're going to be exempted out, then I'm not going to be for the bill. Because if we're serious about safety for kids, how can we say that a large percentage of our kids are not going to have this protection? I just don't think it's consistent or morally right to say only public school students are going to have this protection. And so I am going to vote for Senator Stuthman's amendment because if we are expecting districts to do it, and I was on the school board for eight years, we should pay for it, but I'm not going to support this bill without having more consistency on the kids that are going to be in it, and that all the buses are going to be this way some point down the road. Because I think it puts our superintendents and school people in a very untenable position to have some buses with and some without. I just don't think that's going to be good policy down the road, and make it very difficult if there is an accident and a district had...let's say they had eight buses that had seat belts, two that didn't. There is an accident on the one that doesn't. You know that that is going to be a huge problem for all of us. Thanks for the time. [LB1092]

SENATOR FRIEND: Thank you, Senator Pankonin. Senator Howard, you are recognized. [LB1092]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I see Senator Stuthman has returned, and if he would be available for me to ask the question I had for him earlier. [LB1092]

SENATOR FRIEND: Senator Stuthman, would you yield to a question? [LB1092]

Floor Debate
March 11, 2008

SENATOR STUTHMAN: Yes, willingly. [LB1092]

SENATOR HOWARD: Thank you, Mr. President, and thank you, Senator Stuthman. Senator Stuthman, I recall earlier in this legislative session you had a bill that was very important to you. As a matter of fact, you designated it your priority bill. And if I remember right, that was the safe haven bill. [LB1092]

SENATOR STUTHMAN: Yes, that is correct. [LB1092]

SENATOR HOWARD: And why did you feel that bill was important? [LB1092]

SENATOR STUTHMAN: I felt the safe haven bill was important. My real intent of the safe haven bill was to hopefully develop some method so that we can avoid the chances of finding an infant dead or near death in a dumpster or in a creek bed. That is the reason I did that. [LB1092]

SENATOR HOWARD: Thank you. And as I recall you speaking on the floor, you said it was important to save even one baby, am I correct, one baby, one child? [LB1092]

SENATOR STUTHMAN: Yes, that is true. [LB1092]

SENATOR HOWARD: And so that life was very valuable to you. You cared that much that you made that your priority bill and worked on that bill for two years. [LB1092]

SENATOR STUTHMAN: Yes, that is true. [LB1092]

SENATOR HOWARD: Two years of your energy you put into that because you cared about one child or one baby. I would say...thank you, Senator Stuthman. I would say to you this is every bit as important. Every baby, every child is important to us. This is an important bill, and while I appreciate Senator Stuthman working to find a solution, an equitable solution to the cost issue, I would ask you to listen to this. This is a letter that I received from an individual in Seward, Nebraska, and this individual had been on that bus, October 13, 2001, when that bus went off that bridge. And I'm just going to go down to the part where he addresses the financial costs, because this is Senator Stuthman's amendment. Financial cost to society and taxpayers when an individual dies or is critically injured in a school bus accident far outweighs the costs of seat belts. For example, my medical expenses have reached nearly \$1.5 million. I was in ICU for 20 days, an inpatient at Madonna for nearly four months, attended outpatient therapy full time for another six months, and continue therapy at Madonna on a full-time basis for another four years. I will continue to have a lifetime of medical and medical equipment expenses. Then there are the intangible expenses, such as my loss of short-term memory, loss of independence, loss of ability to generate an income and, most important, the loss of friendships because of the deaths resulting from the accident. This

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

Floor Debate
March 11, 2008

individual writes, many lives were changed on that October day. My family and I ask you as our state legislators to enact this bill so that no other child has to experience the kind of October day and all the days that followed. Please vote yes to make seat belts mandatory in all new school buses in this state. I offer the remainder of my time to Senator Harms. [LB1092]

SENATOR FRIEND: Senator Harms, 1:45. [LB1092]

SENATOR HARMS: Thank you, Mr. President. Senator Stuthman, would you yield to a question, please? [LB1092]

SENATOR FRIEND: Senator Stuthman, will you yield? [LB1092]

SENATOR STUTHMAN: Yes. [LB1092]

SENATOR HARMS: Do you really believe that this body is going to...or the Governor wouldn't veto an amendment like this if we approved that as an open-ended sort of thing? Do you have any idea what the cost would be of something like that? [LB1092]

SENATOR STUTHMAN: Senator Harms, at the present time I have no idea as to what the cost would be, and I think that would have to be developed, you know, between the time frame of General File and Select File to get an A bill adopted for it. [LB1092]

SENATOR HARMS: Do you think it would be better, Senator, to do kind of like what Missouri has done? They've added a surcharge, to every moving violation, of \$3, and they took care of all of their issues with their school buses in regard to...I don't think you have to take this out of the general budget. [LB1092]

SENATOR FRIEND: One minute. [LB1092]

SENATOR HARMS: I think you can do other...there's other means about doing that. I think the thing we have to be careful of, as I understand it, that if we move this direction, and I'll have to double-check, I guess, with our attorneys to see whether or not that's legal, but I know that some other states are doing that to address the very issue that you're addressing, to make a pool of money available through a surcharge or whatever they want to call it for whatever the moving violation might be, \$2, \$5, and it pays for it. [LB1092]

SENATOR STUTHMAN: Well, Senator Harms, you know, I would be very receptive into trying to research that further, but right at the present time we are dealing with a bill that's by the Legislature and I think, you know, it needs to be funded by the Legislature. I just think that we should be able to back... [LB1092]

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

Floor Debate
March 11, 2008

SENATOR FRIEND: Time. [LB1092]

SENATOR STUTHMAN: Thank you. [LB1092]

SENATOR FRIEND: Thank you, Senator Stuthman and Senator Harms. Senator Rogert, you are recognized. [LB1092]

SENATOR ROBERT: Thank you, Mr. President. I yield my time to Senator Harms. [LB1092]

SENATOR FRIEND: Senator Harms, 4 minutes, 55 second. [LB1092]

SENATOR HARMS: Thank you, Mr. President. Mr. Stuthman, would you yield? [LB1092]

SENATOR FRIEND: Senator Stuthman, would you yield? [LB1092]

SENATOR STUTHMAN: Yes, yes. [LB1092]

SENATOR HARMS: Let's finish this conversation, okay,... [LB1092]

SENATOR STUTHMAN: Okay. [LB1092]

SENATOR HARMS: ...so that we can get more focused into this. Quite honestly, I really believe that for no more dollars than this tacks onto into the new bus, that's going to break any school. I mean, we're only talking about \$10,000 total to add seat belts to a brand new bus, and a bus may cost you \$70,000 or \$75,000. In the long haul and in the bigger picture, it's not a lot of dollars. Not only that, I'm not sure there is a lot of turnover in the buses, maybe every five to six years. And so it won't be long for us to get ourselves caught up here. So I really think that the amendment really hurts the bill and I don't think anybody is going to vote for anything that's...at least I wouldn't...that's open-ended, and I don't know what the price is or the cost is. And what it boils down to, that you're not really in favor of the bill. Is that correct? [LB1092]

SENATOR STUTHMAN: I'm not in favor of the bill the way it presently is. [LB1092]

SENATOR HARMS: Yeah, but are you in favor of the bill? I mean, just say...if everything was equal here, are you in favor of the bill? [LB1092]

SENATOR STUTHMAN: Senator Harms, the only way that I could support this bill is if we could get it funded by the state and it would be put in all the school buses at the same time. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR HARMS: Thank you very much. [LB1092]

SENATOR STUTHMAN: Yes. [LB1092]

SENATOR HARMS: I appreciate that. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Harms and Senator Stuthman. Senator Carlson, you are next and you are recognized. [LB1092]

SENATOR CARLSON: Mr. President and members of the Legislature, in this amendment and discussion that's transpired here in the last couple of minutes, a question comes to mind. I'd like to address Senator Harms. [LB1092]

SENATOR FRIEND: Senator Harms, will you yield to a question? [LB1092]

SENATOR HARMS: Yes, I will. [LB1092]

SENATOR CARLSON: And, Senator Harms, this is going to be manufacturing ideas on the run here. But on those statistics that you had over the last ten years... [LB1092]

SENATOR HARMS: Yes. [LB1092]

SENATOR CARLSON: ...on accidents,... [LB1092]

SENATOR HARMS: Yes. [LB1092]

SENATOR CARLSON: ...how many fatalities were there? [LB1092]

SENATOR HARMS: Seven. [LB1092]

SENATOR CARLSON: How many serious injuries? [LB1092]

SENATOR HARMS: I wish I could find that information that's laying before me, but it over...about 227, 277. [LB1092]

SENATOR CARLSON: Two hundred and seventy-seven. [LB1092]

SENATOR HARMS: Yeah, I'm guessing at that. If I could find my sheet I could give you exactly, but that's pretty close. [LB1092]

SENATOR CARLSON: If those figures that you had are correct and there were approximately 1,800 school buses in the state, public school buses... [LB1092]

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

Floor Debate
March 11, 2008

SENATOR HARMS: Yeah, there were 1,841. [LB1092]

SENATOR CARLSON: The bill for that, to equip all those buses or to equip all buses as they are replaced, is about \$21 million. Now, as I stand here I can't do this, but if that would save 7 lives and 277 disabling injuries, and we listened to what one of these disabling injuries cost, it's probably worth figuring out a way to do. [LB1092]

SENATOR HARMS: I don't disagree with that. Let me correct. I finally found my sheet, so, okay, so I want to give you exactly...and I want the record to show exactly: 7 fatal crashes, 216 injury crashes, and 514 property damage crashes, with a total of 737; so 7 deaths and serious injuries, 216. Okay? [LB1092]

SENATOR CARLSON: Okay, thank you for that. [LB1092]

SENATOR HARMS: So that you at least have...so it's a matter of record. [LB1092]

SENATOR CARLSON: And I don't have the answer. I'm going to figure it out. But somewhere along the line it would be worthwhile in pursuing your idea about perhaps adding \$1 or \$2 or whatever to a moving violation. Thank you. [LB1092]

SENATOR FRIEND: Thank you, Senator Carlson and Senator Harms. Senator Hansen, you are recognized. [LB1092]

SENATOR HANSEN: Thank you, Mr. President. Senator Lautenbaugh brought up some liability questions a little while ago, but he's not in the room, so I would like to ask Senator Harms a couple of questions, I guess. [LB1092]

SENATOR FRIEND: Senator Harms, will you yield to a couple questions? [LB1092]

SENATOR HARMS: Yes, I will, Mr. President. [LB1092]

SENATOR HANSEN: Senator Harms, I just looked at the video again. I saw it the other day and then I looked at it twice right now, and that camera view showed the bus with the children in it, and you couldn't quite tell if the bus was full or not because some of the heads didn't stick out over the seats. How high were those seats, do you (inaudible)? [LB1092]

SENATOR HARMS: I don't believe those...that one that occurred in Nebraska? [LB1092]

SENATOR HANSEN: Pardon me? [LB1092]

SENATOR HARMS: Are you talking about the one that occurred in Nebraska? [LB1092]

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

Floor Debate
March 11, 2008

SENATOR HANSEN: The one that was on the Web site that you gave us. [LB1092]

SENATOR HARMS: Okay. Well, there's two on the Web site. The first one, I think, was from the state of Nebraska, and I don't believe that those seats were 24 inches. I think they were probably 22 inches. [LB1092]

SENATOR HANSEN: Okay. The... [LB1092]

SENATOR HARMS: (Inaudible) probably the older style buses. [LB1092]

SENATOR HANSEN: The other handout that you had is from the SafeGuard Company, and they show a picture here with a standard 39-inch seat with a lap and shoulder belt. Is this what we're talking about in a new bus, in a new purchase? [LB1092]

SENATOR HARMS: Yes, (inaudible). [LB1092]

SENATOR HANSEN: Okay. If that...what was the purpose of the camera on the bus in the first place? [LB1092]

SENATOR HARMS: The camera? [LB1092]

SENATOR HANSEN: The camera. [LB1092]

SENATOR HARMS: I would assume that that's an easier way for them to have control of the students in the bus or to be able to document student...you know, discipline in the bus and that sort of stuff, I would assume. I don't know, not being in the... [LB1092]

SENATOR HANSEN: And maybe some...would there be any chance for some liability issues if they had the camera in the bus it showed discipline problems, and when they go to court then they have the record? Would that be part (inaudible)? [LB1092]

SENATOR HARMS: I would have to say, Senator Hansen, that could be very well correct. [LB1092]

SENATOR HANSEN: Is there any difference between the green copy and the amendment, especially on the amendment on page 3, line 26 and 27, about the liability issues? And this is what...? Oh, there's Senator Lautenbaugh back here now. Would you rather he... [LB1092]

SENATOR HARMS: Why don't you yield that question to him since he helped me put that together. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR HANSEN: Okay, I'll do that. Would Senator Lautenbaugh take the hand-off? [LB1092]

SENATOR LAUTENBAUGH: Yes, I will. [LB1092]

SENATOR HANSEN: Senator Lautenbaugh, on subsection (5) of page 3, starting in line 26 and then...I mean, you have to read it ahead of that, of course, but no increase or decrease in the liability to a school district caused solely due to the failure to use such a belt or the misuse of such a belt by the injured passenger or another passenger. So does this say that the belts must be in use all the time? [LB1092]

SENATOR LAUTENBAUGH: That specific provision does not say that, no. [LB1092]

SENATOR HANSEN: But it says that in the subsection (4) just above that. [LB1092]

SENATOR LAUTENBAUGH: Yes. [LB1092]

SENATOR HANSEN: But how...? So then is this...this seems to me like it's a little double-speak, because in subsection (4) it says these must always be worn. But then in number 5 it says there is no liability to the school district if...in the case of nonuse or misuse. [LB1092]

SENATOR LAUTENBAUGH: I think the thinking there was, Senator, that there's no way that school bus driver can absolutely guarantee that that kid keeps the seat belt on. So the limitation on liability, on the one hand we say these are to be used; on the other hand we're trying to avoid making the district or the bus driver the guarantor of use and holding him responsible if they're not. [LB1092]

SENATOR HANSEN: Okay. Do you see a difference between a 22-inch seat back and a 39-inch seat back, the use of a camera for any liability issues brought up in court? [LB1092]

SENATOR LAUTENBAUGH: I'm not sure I follow the question, Senator. [LB1092]

SENATOR HANSEN: You can't see those kids with a 39-inch seat back, anything that's happening in the seat behind, whether they're in their seat belt, not in their seat belt, making out, or maybe smoke is coming up from some seat... [LB1092]

SENATOR FRIEND: One minute. [LB1092]

SENATOR HANSEN: ...that the bus driver can't even tell which seat that's coming from. So from a safety standpoint, from a liability standpoint, do you see any downside to a 39-inch seat back? [LB1092]

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

Floor Debate
March 11, 2008

SENATOR LAUTENBAUGH: It would possibly obstruct the vision depending on the placement of the camera, certainly. [LB1092]

SENATOR HANSEN: That's all. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Hansen and Senator Lautenbaugh. Senator Wallman, you are recognized. [LB1092]

SENATOR WALLMAN: Thank you, Mr. President. I, too, if we are really serious about this, I think we have to do it all at one shot. I would like to ask Senator Lathrop a question, please. [LB1092]

SENATOR FRIEND: Senator Lathrop, would you yield to a question? [LB1092]

SENATOR LATHROP: Sure. [LB1092]

SENATOR WALLMAN: Thank you, Senator. Don't you think if we buy one new bus, two new buses, or buy used buses, we're really opening ourselves up to the liability issues if we're serious about seat belts? [LB1092]

SENATOR LATHROP: I actually...can I take a little bit of your time to answer this question? [LB1092]

SENATOR WALLMAN: Sure. [LB1092]

SENATOR LATHROP: I actually turned my light on because I've been listening to this discussion, and I wanted to weigh in on the liability issue. First of all, I think if we have a bill that says this is what's going to happen with seat belts in Nebraska on school buses, we've done something. Okay? School districts can say we're doing what the law requires and they're going to have protection from liability. The problem that I see for school districts, if we don't pass anything, eventually we're going to have another bad bus accident and then someone is going to come along and sue the school district for not putting belts in the buses. And so in some sense I think doing nothing exposes school districts to more liability. I think it exposes them to liability. I could see that very easily. You know, the bus gets hit by a cement truck and nobody is in a seat belt because the school district didn't spend a couple more bucks a seat for belts. So I think that this is, in some sense, proactive. It's taking up the measure and saying, this is what the rule is going to be in Nebraska with regard to seat belts in the buses. So I think it makes good sense. I think it minimizes the liability, and if you do nothing, if you do nothing and seat belts are available, you are, as a school district, exposed to liability for not having seat belts. And at least we have a statute they can point to and say this is the time table the Legislature set; we're doing what they asked us to; you can't sue us.

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

Floor Debate
March 11, 2008

[LB1092]

SENATOR WALLMAN: Question number two: What if two or three children...you can use my time...do not have a seat belt on, and if you have a fatality accident, and one of those children dies, without a seat belt? [LB1092]

SENATOR LATHROP: Yeah. And I think that was something that Senator Lautenbaugh was trying to address, and that is this doesn't change the liability, and the people who drive the buses and the school districts are not guarantors. They don't promise or guarantee that people are going to wear the seat belts, but we have to have them in there, I think, so the children can take advantage of them. [LB1092]

SENATOR WALLMAN: Thank you. Thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Wallman, Senator Lathrop. Senator Kruse, you are recognized. [LB1092]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand to oppose the amendment that we fund seat belts. We have a responsibility in local school districts for the children's safety, and we put directives on that all the time. We don't provide grants for them getting this job done. There are responsibilities in the design of a building, in sprinkler systems and glass and doorways and all the rest of that. That's something they have to do. And I also affirm the conversation just had, that the school boards already have the liability. It's up to us to address that, but the school districts are the ones that need to fund it. Thank you. [LB1092]

SENATOR FRIEND: Thank you, Senator Kruse. Senator Stuthman, there are no other senators wishing to speak. You are recognized to close on FA204. [LB1092]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I think if we are serious about enacting the seat belt law, I think we've got to be also serious about funding it. To me, it is no different as to what the cost is going to be fund it. It's going to be the same cost on the local level, property tax paying for it, as it will be on the state level. If we're going to put them in just the new buses, if we're going to put them in all the buses, I think that's very important. But we I think we've also got to keep in mind of the possibility of having one or two school buses of your six or eight or ten with the seat belts. And, yes, I've heard the discussion about the liability portion of it, but I would hate to be a school district that had a school bus that had a fatality on it where the school bus didn't have the belts on, and the other two buses had belts on. I think that really opens up a possibility of a real lawsuit there. So I'm serious about this. I think that if we want to pass LB1092, I think we should fund it, and I...those are my comments and I will close with that, but I would also like to ask for a call of the house. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR FRIEND: Thank you, Senator Stuthman. Members, you've heard the closing on his amendment. There has been a request for a call of the house. All those in favor of the house going under call please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB1092]

ASSISTANT CLERK: 24 ayes, 0 nays to go under call, Mr. President. [LB1092]

SENATOR FRIEND: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Nelson, Senator Engel, Senator Pedersen, Senator Synowiecki, Senator Chambers, Senator Lautenbaugh. Senator Stuthman, all senators are present and accounted for. How would you like to proceed? [LB1092]

SENATOR STUTHMAN: Just request a board vote, please. [LB1092]

SENATOR FRIEND: Members, once again you've heard the closing on FA204. The question is, shall FA204 be adopted to the committee amendments? All those in favor please vote aye; all those opposed vote nay. Have all those voted who wish to? Record please, Mr. Clerk. [LB1092]

ASSISTANT CLERK: 8 ayes, 23 nays on the adoption of the Stuthman amendment to the committee amendments, Mr. President. [LB1092]

SENATOR FRIEND: The amendment is not adopted. [LB1092]

ASSISTANT CLERK: Mr. President, I have nothing further pending to the committee amendments. [LB1092]

SENATOR FRIEND: I do raise the call. Thank you, Mr. Clerk. Members, back to discussion of AM1974, the Transportation and Telecommunications Committee amendments. Senator Fischer, there are no senators wishing to speak. You are recognized to close. Senator Fischer waives closing. The question before the body is, shall AM1974 be adopted to LB1092? All those in favor please signify by voting aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB1092]

ASSISTANT CLERK: 32 ayes, 4 nays on the adoption of committee amendments, Mr. President. [LB1092]

SENATOR FRIEND: The committee amendments are adopted. Members, back to the discussion of LB1092. Senator Harms, there are no senators wishing to speak. You are recognized to close on LB1092. [LB1092]

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

Floor Debate
March 11, 2008

SENATOR HARMS: Thank you very much, Mr. President. Colleagues, thank you for a really great discussion. There are going to be some changes, I think. I've talked with Senator Langemeier, and he brought some pretty good points out, and we'll do some clarification if it passes on to Select File. So I would urge you to go ahead and support it, and I thank you, Mr. President. [LB1092]

SENATOR FRIEND: Thank you, Senator Harms. Members, you have heard the closing on LB1092. The question is, shall LB1092 advance to E&R Initial? All those in favor please vote aye; all those opposed vote nay. Have all members voted who wish to? Record please, Mr. Clerk. [LB1092]

ASSISTANT CLERK: 33 ayes, 4 nays on the motion to advance the bill, Mr. President. [LB1092]

SENATOR FRIEND: LB1092 does advance. Mr. Clerk, items for the record, please. [LB1092]

ASSISTANT CLERK: Mr. President, I do. LB1095 is reported by the Committee on Urban Affairs to General File with amendments. Education reports LB1125 to General File with amendments. Enrollment and Review reports LB1014A to Select File. (Legislative Journal pages 908-909.) [LB1095 LB1125 LB1014A]

SENATOR FRIEND: Thank you, Mr. Clerk. Next item.

ASSISTANT CLERK: Mr. President, the next bill is LB777 introduced by Senator Hudkins. (Read title.) The bill was read for the first time on January 9 of this year, referred to the Revenue Committee. That committee reports the bill to General File with committee amendments. (AM2002, Legislative Journal page 680.) [LB777]

SENATOR FRIEND: Thank you, Mr. Clerk. Senator Hudkins, as sponsor of LB777, you are recognized to open. [LB777]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I would like to share with you a partial letter that I received from a family from Raymond who this bill, among 900 others, affected. The Lancaster County Assessor's Office sent us a notice of disqualification from special greenbelt valuation regarding our property taxes. They contend that our land is not being primarily used for agriculture or horticultural purposes. They want to tax our land at its market value as an acreage as opposed to its agricultural value as a farm, which as you can imagine is a large difference. Land near a city is worth more because of its developmental or acreage potential. The market value increases far higher than the agricultural value, and the taxes on the land go up in accord with the market value. Small farmers cannot afford the taxes, and have no

Floor Debate
March 11, 2008

choice but to sell out. Lancaster County and many others in the state has a greenbelt exemption for land being used for agricultural purposes. This exemption limits the property taxes to its agricultural value, and a person qualifies for the exemption by demonstrating income from the land. In 2006, the Legislature made changes and recommendations to reevaluate the use of the greenbelt exemption, in large part a response to pleasure acreages that were benefitting by claiming ag use by having a few horses for pleasure, for example, or in a quite well-known case, a certain person in Omaha growing turkeys on his acreage for his own private hunting pleasure. Lancaster County, the assessor, decided that anything under 20 acres is not agricultural land because supposedly anything less than that would or could only provide incidental income. Not only does Lancaster do it this way, but Seward County, Saunders County, Douglas County, and I'm sure that there are more. This particular family received the notification that their exemption would be denied, along with a lot of other folks, and I think there were approximately 900 families. Given the economics of farming, organic produce, and eggs, as this family did, they are doubtful that they could continue farming. They would tax taxed off the land and they say obviously we are using the land for ag, pretty much every inch of it, whether it is cow grazing, chicken grazing, veggies...well, you get the idea. And this family does grow organic vegetables and cattle and chickens. We wouldn't be the first farm to get taxed out of production nor the last, but it is pathetic that the assessor refuses to acknowledge that we are a farm. In 2006, this Legislature passed LB808, which was a combination of bills, including LB407. In that bill we inserted one little word: primarily. That, at least in Lancaster County, as I said, Seward, Douglas, and Saunders and others, has resulted in a massive change in assessment practices by the county assessors. My review of the legislative history doesn't reveal that the introducer, Senator Raikes--and I signed onto his bill--nor the committee consciously decided that the method for determining agriculture or horticultural land should be dramatically changed. This bill was meant to tighten the requirements on receiving special ag land valuation. I introduced LB777 this year to make it clear that when determining whether or not a piece of land is being placed in use as horticulture or agricultural land, then the process should be the same as it was prior to LB808. The inclusion of the word "primary" in that legislation has brought a level of uncertainty to the process and, quite honestly, a high level of subjective assessment rather than objective. If we're going to value land based upon use, which the assessor seems to want to do, then LB777 sets up a fair and equitable system for doing so. It creates a classification of multiuse parcels so that the land contained in the parcel is valued upon its use. Under the current law where the assessor is required to determine primary use, there is just too much room for disagreement as to what the actual primary use is of the total parcel. Is the primary use based upon the income derived from the land? Is it based upon the number the acres? The percentage of income from each of those parcels? Is it the value of the buildings? Or is it some combination of the above or something altogether different? The current law fails to create any mechanism for determining primary use when the land is put to multiple purposes. When you have some land taxed at 75 percent of its market value based upon its use, and other land taxed at 100 percent of

Floor Debate
March 11, 2008

its market value, then having a system that directs the assessor and the county board and the Tax Equalization and Review Commission as to how to determine primary use is very important to have a fair and equitable property tax system statewide. This is not a difficult process for assessors, figuring how each parcel is used. Under the current law, if they determine that a parcel is primarily used for agricultural purposes but it has a residence on the parcel or some other type of buildings, then the portion of the property containing the buildings and the residence is valued and taxed at 100 percent, and the rest of the parcel should be taxed at 75 percent of its market value. Homes and buildings on these parcels do not and have not received preferential tax consideration. That acre under the house is and has been taxed at 100 percent of market value. The remaining land on these acreages is what is in question. Unfortunately, after LB808 was passed the assessors have taken that one word, "primary," and are using it to deny special ag land valuation to small, 20-acre parcels that are, in fact, using 19 or so acres to grow and sell ag or horticultural products. LB808 was passed to remove the tax advantage to owners who were using their property for raising pheasants for their own hunting pleasure or for recreational purposes. If these birds had been sold to individuals to stock their hunting areas, it would have been different. The point is the bill was passed to tighten up the reasons why a property received farmland status. In Lancaster, Seward, Saunders, Douglas, and more, as I mentioned, but especially in Lancaster County, the assessor has decided arbitrarily that 20 acres couldn't possibly be a viable farm, as it is just too small. I have two words for that: hog wash. There are many 20-acre properties that derive income, and sometimes a great deal of income from some form of agriculture: grapes, geraniums, bucket calves, rabbits, Christmas trees, corn and soybeans, typical agricultural products. However, because of the words "primary use," the assessors are saying 20 acres with a \$300,000 house and 19 acres of crops, hmm, the primary usage of that parcel is as a residence valued at 100 percent of market value. And I repeat those words: hog wash. How do you determine primary? Is it the value of the improvements versus value of the land, and that's what the assessor seems... [LB777]

SENATOR FRIEND: One minute. [LB777]

SENATOR HUDKINS: ...to want to do; gross income of the property versus income of the owner; percentage of the land used for ag or the ag used for other purposes? In 2007, there were approximately 900 property owners who were informed that their greenbelt status wouldn't be renewed. Over 500 taxpayers appealed to the county board of equalization: 292 of those owners were upheld, and the assessor was sustained in 121. Each person who appealed was asked three questions: Do you have a federal FSA number? Did you file an income tax Schedule F showing income? Is the land used for recreation, a hobby, or for commercial agricultural or horticulture? If there was a USDA farm status, a federal income tax return, and the property was used for ag production, the assessor was overturned and greenbelt status was granted, and the property owners had the burden of proof... [LB777]

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

Floor Debate
March 11, 2008

SENATOR FRIEND: Time. [LB777]

SENATOR HUDKINS: ...that they were a farm. Thank you, Mr. President. [LB777]

SENATOR FRIEND: Thank you, Senator Hudkins. Members, you have heard the opening on LB777. As the Clerk mentioned, there are committee amendments. Senator Janssen, as Chair of the Revenue Committee, you are recognized to open on AM2002. [LB777]

SENATOR JANSSEN: Thank you, Senator Friend and members of the Legislature. The committee amendments would replace LB777 with one section amending Section 77-1359, the definition of agricultural and horticultural land. Under the committee amendments, a parcel of land, excluding any farm home site or a farm site, shall be examined in total. If the primary use of this part of the parcel is agricultural or horticultural, the land qualifies for classification as agricultural or horticultural land. The amendment retains the emergency clause. That is the extent of the amendments. Thank you. [LB777]

SENATOR FRIEND: Thank you, Senator Janssen. Members, you have heard the opening on AM2002. Mr. Clerk, you have an amendment to the committee amendment. [LB777]

ASSISTANT CLERK: Mr. President, Senator Janssen would offer AM2170 to the committee amendments. (Legislative Journal page 812.) [LB777]

SENATOR FRIEND: Senator Janssen, you are recognized to open on AM2170. [LB777]

SENATOR JANSSEN: All right. Thank you, Mr. Speaker. As introduced, this would strike Section 3 and insert the following new sections. In Section 2, the act becomes operative on July (sic) 1, 2009, and renumbers the remaining section. Is a date change. With that, thank you. [LB777]

SENATOR FRIEND: Thank you, Senator Janssen. Members, you have heard the opening on AM2170 to AM2002. Senator Hudkins, you are recognized. [LB777]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. While I appreciate the work that the Revenue Committee has put into in trying to create a committee amendment that they believe will further the objectives of the bill, I cannot support the amendment. The amendment fails to address the underlying issues that LB777, in its original form, corrects. And indeed, the amendment adds other problems. Currently, in Nebraska, we have agricultural land in some areas of the state being taxed at 100 percent of value, while in others it is receiving the ag valuation of 75 percent or

Floor Debate
March 11, 2008

the special valuation when it is impacted by nonagricultural valuation pressures. The cause of this is the use of the word "primarily" in the definition of ag and horticultural land. The committee amendment continues to use this word. The use of the word automatically assumes that there is more than one use on a parcel of land. The assessor is then directed to determine which use is primary without any direction on how to determine which is primary. The committee amendment also creates a circular argument and fails to remedy the issues when the two uses on a parcel are commercial, recreational and/or industrial, and at least one other of the issues is ag or horticulture. The addition of the language "farm home site" and "farm site" is what creates the circular argument within the amendment. If you would look with me at the definition on page 2 of the amendment, lines 10-18, of a farm home and farm site, you'll see that you cannot have a farm home site unless it is contiguous to a farm site. You can't have a farm site unless it is contiguous to agriculture or horticultural land. And lo and behold, you can't have ag or horticultural land unless the parcel is primarily used for ag or horticultural purposes. So how do you determine if the land is being used for agriculture? And in so doing, do you look at the value of the buildings to determine the use of the property? If that's the case, then at least in Lancaster County, under the current interpretation of primary use, you'll never have parcels that consist of an expensive residence and ag land classified as ag land; thus, you will never have a farm site and then you'll never have a farm home site to subtract from the value. Are you confused yet? Think how the assessors and the property owners feel. I would ask you to reject the committee amendment at this time. However, I have spoken with the interested parties and before we take this bill up again on Select File I can assure you that there will be meetings to try and address all the concerns raised. One last comment: Our constitution provides that like land shall be valued uniformly. The current system for determining primary use is contrary to that constitutional provision. Land used for residential purposes is valued equally. Land use for commercial purposes is valued equally. Ag land should receive this same consideration. An acre of corn in Lancaster County should be valued uniformly, not just in Lancaster County but statewide, based upon the market value of such land. Thus, if you have a parcel put to multiple uses, it should be valued based upon all of those uses and not just one of them. If this body feels strongly about retaining the word "primary" in the statutes, and I would hope that you would agree with me that it should not be there, then we're going to have to have other amendments in the statute, directions to the assessors about what processes and informations should be... [LB777]

SENATOR FRIEND: One minute. [LB777]

SENATOR HUDKINS: ...considered in determining which use is primary. Is it going to be the use that the majority of the land is used for? Is it the use that generates the most income? Is it going to be the use that adds the most value? What documents will be accepted to support a particular position? Tax returns? Federal ID numbers? How much more time do you want the county boards and property owners, not mentioning the

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

Floor Debate
March 11, 2008

money that was spent, to spend in listening to appeals? I thank you for your time. I urge you to reject the amendment and vote for the bill, and between now and Select we'll try to get this all ironed out. Thank you, Mr. President. [LB777]

SENATOR FRIEND: Thank you, Senator Hudkins. Members, we are discussing AM2170. Senators wishing to engage in discussion are Senators Stuthman and Janssen. Senator Stuthman, you are recognized. [LB777]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to engage in a little conversation with Senator Hudkins. [LB777]

SENATOR FRIEND: Senator Hudkins, will you engage in conversation with Senator Stuthman? [LB777]

SENATOR HUDKINS: Yes, I would. [LB777]

SENATOR STUTHMAN: Thank you, Senator Hudkins. Explain to me a little bit about...this bill, this only affects the greenbelting issues, the land that is in the greenbelt zone? [LB777]

SENATOR HUDKINS: Yes. [LB777]

SENATOR STUTHMAN: That's what it does. And... [LB777]

SENATOR HUDKINS: Well, no. No. Because, depending on what the assessor decides, he might...you might have a 40...okay, it could be all ag land. If he decides that you have a 40-acre parcel or a 160, and if you've got this humongous house out there and the rest is all grass or whatever, then he could say, well, the value of that home is much more than the rest of it. Primary use, a residence. So we've got to get this changed. [LB777]

SENATOR STUTHMAN: So in other words, Senator Hudkins, what you're trying to accomplish here is what the primary use of the portion of ground that is like the home site, the home, and then the balance of the acreage or the balance of the farm is valued according to the primary use of that ground? [LB777]

SENATOR HUDKINS: Actually, I want to get that word "primary" out of there altogether. Let's say you have a 20-acre parcel. You have an acre devoted to a residence. [LB777]

SENATOR STUTHMAN: Yes. [LB777]

SENATOR HUDKINS: The other 19 acres is used for growing Christmas trees. That's horticultural. Or it's growing grapes. That's agriculture. Or growing bucket calves. That's

Floor Debate
March 11, 2008

agriculture. If there's any barns or any sheds, then those aren't included in that 19 acres. No buildings can have that special valuation. But let's say that on that 20, the house is 1; I don't know, the garage and the shed is another 1; so you've got 18 acres. So I'm saying that that 18 acres should be valued at horticultural or agricultural values if that's what it's used for. Now, can I continue? [LB777]

SENATOR STUTHMAN: Yes. Yes, you may, because I'm trying to get it clear in my mind as to what we are really dealing with, and in our county we did not adopt a greenbelt issue. We did not adopt that, but... [LB777]

SENATOR HUDKINS: Okay. Well, and as I said, it isn't just greenbelt, but that's what brought it to a head. In Lancaster County, the assessor sent out, oh, gosh, over 900 notices saying that your greenbelt status would be disqualified for this year. Of those 900 and plus, over 500 of those taxpayers appealed to the county board, because before that they had been growing corn or beets or grapes or whatever it was. And this year the assessor said, well, pfft, you're 20 acres; that isn't big enough to be a farm. And the county board actually upheld the protests of almost 300 of that 500, and they did sustain the assessor on 121, I think, which was 16 percent or 24 percent--it doesn't matter. But when the appellees, the people who appealed, came before the county board, they were asked three questions, and it was their responsibility to prove that they were a farm. But they were asked three questions: Do you have a federal farm service agency number? Have you filed a Schedule 1040F with your income taxes? Is this parcel primarily used for recreation, a hobby, or commercial agriculture or horticulture? Some of them were very honest. Well, they all were honest. But some of them said, nah, it's just a pasture for the kids' pleasure horse and... [LB777]

SENATOR FRIEND: One minute. [LB777]

SENATOR HUDKINS: ...where they ride their dirt bikes. And if that was the case, if it was recreational, then they were denied. But if they qualified as, on those other three, then they were said, you should get your ag land usage valuation back. So I've got more, but we're out of time so we'll continue later. [LB777]

SENATOR STUTHMAN: Thank you, Senator Hudkins, and I've got my light punched again and we'll continue in the discussion. I've got numerous other questions that I need to get addressed at this time. Thank you, Mr. President. [LB777]

SENATOR FRIEND: Thank you, Senator Stuthman and Senator Hudkins. Senator Janssen, you are recognized. [LB777]

SENATOR JANSSEN: Thank you, Senator Friend and members of the Legislature. It seems to me that this is a situation that is happening in Lancaster County. I don't know of any other county, that I've heard from anyway, that has the same problems. Maybe I

Floor Debate
March 11, 2008

will find that out in a little bit. Senator Hudkins is writing something down. But to me it's very clear. If the use of that land other than the home site is used as agriculture, the primary use...I know you don't like to hear that word, Senator...but if the primary use of that land is for agricultural or horticultural purposes it should be taxed as agricultural property. It's producing money, whether it's grapes or you're raising thoroughbred horses or whatever it is. To me it's very simple. Now, unless I can be swayed another way, to me this is doing exactly what Senator Hudkins wants to do. It's working in other counties. So with that, I'd give the rest of my time to Senator Hudkins. [LB777]

SENATOR FRIEND: Senator Hudkins, 3 minutes and 30 seconds. [LB777]

SENATOR HUDKINS: Thank you, Senator Janssen. Thank you, Mr. President. Yes, Senator Janssen, other counties are having a problem with this, as well. It is because of that word "primary," and you were probably involved in another conversation. But the assessors are saying, okay, on this parcel, however big it is, the house is valued at, pick a figure--\$200,000. The parcel itself is worth \$6,000 or \$10,000 or \$20,000, it doesn't matter. He is saying that the primary use of that parcel then, because of the value of that house, is a residence. Therefore, the whole 20 acres gets valued at the full market rate, not even considering that the other 19 acres is being used for horticultural or agricultural purposes, because he has said 20 acres is not big enough for a farm. The Lancaster County Board, when they were going through all of this, they called in the State Property Tax Administrator, Catherine Lang, for a work session on the subject because the assessor refused to have meaningful discussions on the subject prior to the hearings. At the public hearing, the only person in opposition happened to be the assessor from Sarpy County. After he explained how they do it, which is different from how Lancaster County does it, there was one of the proponents--and there were ten of those against one opposition--the one proponent said, privately, if Lancaster County would have done it like Sarpy County did, I wouldn't have had to spend six hours in meetings getting this straightened out. But Ms. Lang said that CRP and wasteland could be counted as agricultural land, and that the courts have generally held that 51 percent or more of the parcel was considered majority, so if more than half of that parcel is used for agriculture, it should have been valued as such. And Lancaster County is not doing it that way. An Omaha World-Herald article or editorial in May 2007 on this subject said, the law as written specifies that the primary use of the land should determine how it is assessed. [LB777]

SENATOR FRIEND: One minute. [LB777]

SENATOR HUDKINS: If a home has hobby farming on the side, it's a home, and I agree with that. If the property is a small farm, it's agricultural land. I agree with that. Some of the assessors are not looking at it that way. There are bona fide agricultural and horticultural operations on 19 acres producing llama wool, replacement bucket calves, calving a herd of cows, raising geraniums--and there is a geranium farm out by Davey; I

Floor Debate
March 11, 2008

wish you could go see it--and vineyards for commercial wine production. Feeding 29 buckets calves every morning and night or caring for two acres of grapes is not a hobby. Thank you, Mr. President. [LB777]

SENATOR FRIEND: Thank you, Senator Hudkins. Senator Langemeier, you are recognized. [LB777]

SENATOR LANGEMEIER: Mr. President and members of the body, if each of you would look at the committee statement, this came out of committee with 5 votes in the positive, 2 in the affirmative (sic), and 1 was absent. We had a lot of discussion on this bill as a committee, and I've talked to most of my committee members that are still around here that voted for this, and I can tell you this bill would never come out of committee without this amendment. There was a lot of discussion. As you can see 2 voted against it. Usually you see a lot of committees put things out unanimous or they don't put them out. We heard a lot of great testimony from a lot of different assessors, and it seems like Lancaster County happens to be the assessor that drew the most fire. We've had testimony from other counties, mainly Sarpy County, that said they think they do what this amendment would do, AM2002 to LB777. So I would encourage you to support the committee amendment. I think it gives the assessors some ability to go out and assess these farms, as Senator Hudkins would refer to them as farms, or these acreages as some call them, and look at how much of the ground is used for farming, how much is used for gardens and flowers. And I look forward to it. I want to go see that geranium farm; we've heard about it already today and we heard it in committee. I would encourage you to support both AM2170 and AM2002, and I want to voice for our committee that if we had not amended it, it would not have come out of committee. Thank you. [LB777]

SENATOR FRIEND: Thank you, Senator Langemeier. Senator Stuthman, you are recognized. [LB777]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to engage in a little more conversation with Senator Hudkins, if I may. [LB777]

SENATOR HUDKINS: Yes. [LB777]

SENATOR FRIEND: Senator Hudkins, will you engage? [LB777]

SENATOR HUDKINS: Yes. [LB777]

SENATOR STUTHMAN: Senator Hudkins, I'm trying to remember back on your comments on either supporting or not supporting the AM2170. Could you refresh my memory on that? Are you supportive of the two amendments, the committee amendment and Senator Janssen's amendment? [LB777]

Floor Debate
March 11, 2008

SENATOR HUDKINS: I do not have a problem with AM2170. That has to do with the effective date. I do have a problem with the committee amendment. And for Senator Langemeier's information, one person on the committee voted no because of the amendment. [LB777]

SENATOR STUTHMAN: Okay. Thank you, Senator Hudkins. I have a little...I have interest in this bill and the way that we're trying to establish a method for assessors to appraise or value ground, and what percentage to use on that for tax purposes. I think that's very important, because many times, you know, there are a lot of protests that come, and I was involved in numerous years of protestors that came because they protested their valuation. You go three days solid with four, five, six, seven hundred protestors. Every five minutes a new one comes in and complains about the value of their property. It gets really very tense at times. But I think we need to set the direction for the assessors to be able to value ground, as far as the use of it, and I think, you know, if it's utilized for ag purposes and that's what it's utilized for, it should be valued according to the market value of ag land in that area; that it's established of the ag land value. And that is 72 percent of the actual value of it. I think, then, you know, a home is 100 percent valuation, and I think that is right, too. But I think those have to be kept into mind. And I think what Senator Hudkins is trying to attempt is trying to give a direction for the assessors to be able to set proper valuations on ground and use the correct percentage on the valuations of the ground. Am I correct in stating that, Senator Hudkins? [LB777]

SENATOR HUDKINS: Yes, I think so. (Laugh) Would you repeat it, and then I can tell you for sure? [LB777]

SENATOR STUTHMAN: The intent of the bill is to give directions to the county assessors as to the correct use of the ground, a parcel of ground, what it is used for. And if it's used for ag purposes or horticultural purposes, then it's to be valued at the value of those set by the county, and the percentage taken on those as far as taxation is concerned. [LB777]

SENATOR HUDKINS: Yes. That's right, except that's not what's going on. He's looking at the value of that house versus the value of the rest of it, never mind that the rest of it is being used for an entirely different purpose. He's not doing it correctly. And if I may continue? [LB777]

SENATOR STUTHMAN: Yes, you may. [LB777]

SENATOR HUDKINS: If you remember what I said first about the amendment, it's a circular definition. You're talking about farm home sites, you're talking about farm sites and what the definitions of those are. And I'll repeat it: If you...you can't have a farm

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

Floor Debate
March 11, 2008

home site unless it's contiguous to a farm site. You can't have a farm site unless it's contiguous to agricultural land. And you can't have... [LB777]

SENATOR FRIEND: One minute. [LB777]

SENATOR HUDKINS: ...agricultural land unless the parcel is primarily used for ag purposes. So it's a circle, and the assessor is refusing, because of his contention that 20 acres is not a viable farm, he's not recognizing that as an agricultural piece of property, and that's the whole problem. So what we want to do is to not accept the amendment because of that circular argument; also because of the word "primarily," because necessitates more definitions. I would ask you to vote against the amendment. We'll work on this between now and Select and get something that we can all live with. [LB777]

SENATOR STUTHMAN: Thank you, Senator Hudkins. The situation that I'm hopefully getting it explained to me right is let's say we have 250 or a half section of ground in the Sandhills that's valued at...let's say 200 acres valued at... [LB777]

SENATOR FRIEND: Time. Senator Hudkins, you are next. You may continue. [LB777]

SENATOR HUDKINS: Thank you, Mr. President. And, Senator Stuthman, we'll finish this together. [LB777]

SENATOR STUTHMAN: Yes. [LB777]

SENATOR HUDKINS: I wanted to finish a couple of other things, and then I'll give you the rest of my time. I said that feeding calves every morning and night, or taking care of two acres of grapes is not a hobby. That, ladies and gentlemen, is agriculture. The assessor was sustained--and I was incorrect, I said 16--it was 24 percent of the appeals. But after thoughtful, reasoned deliberation, the county board found the rest of them to be actual small farms. In Lancaster County you need to have 20 acres to build a house in any agriculturally zoned areas. Usually one to three acres is used by the house and building site and doesn't receive special valuation. The remaining 17 or so acres is zoned agriculture and can't be used--cannot be used--for residence or commercial purposes. The only permitted use is agriculture or recreational. If it was agriculture, it should have the greenbelt status. Senator Stuthman, you may have the rest of my time. [LB777]

SENATOR STUTHMAN: Thank you. Thank you, Senator Hudkins. Thank you very much for the information you've given me, and I will continue on what I was talking about, 200 acres in the Sandhills. Some investor comes out of...some individual comes back to Nebraska, has made a lot of money in another state, comes back and builds a \$300,000 home on those 200 acres. The 200 acres, like I had stated, is valued at \$200

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

Floor Debate
March 11, 2008

an acre. It's grassland. He rents it out to the neighbor for pasture. That is 200 acres at \$200 an acre, is \$40,000. He's got a \$300,000 home on those 200 acres. Okay, he's got...so the way I understand it, at the current...what we have currently right now is, there's 100 percent of the value of that \$300,000, and we should be having what the rest of that ground, those 190 or 195 acres of pasture, which is valued at \$200 an acre, but the way I understand it, what we currently have is, they're taking that at 100 percent of the value for taxation. What we would like to see is what I understand, is that we want to have those 195 acres be valued at the \$200 an acre, and the value of that, 75 or 72 percent, because it's agriculture, and it's just like anything else. That's the taxable part of that ground because, because of the value, the value is a lot higher than what you can generate off of that ground to pay for the taxes. That, I think, is what we're trying to accomplish, so that the percentage used on that agricultural portion of it that's pastured, rented out to the neighbor, you know, is valued at its regular valuation rate, but it's taxed at 72 or 75 percent of the valuation, compared to the 100 percent on the home. And I think what is currently right now is that, since the home is \$300,000 and the other parcel is only \$40,000, it's taxed totally at 100 percent. That is, the way I understand it, the way it is. So with that, those are my comments. And thank you, Mr. President. [LB777]

SENATOR FRIEND: Thank you, Senator Stuthman. Senator Hansen, you are recognized. [LB777]

SENATOR HANSEN: Thank you, Mr. President. Members of the body, I'd like to ask Senator Hudkins a couple of questions, if I could. [LB777]

SENATOR FRIEND: Senator Hudkins, will you yield to a question? [LB777]

SENATOR HUDKINS: I would answer questions, yes. [LB777]

SENATOR HANSEN: Thank you, Senator Hudkins. I have two scenarios for you, and just, if you would, just listen and then tell me how you would go about working these under LB777. Scenario one, grassland section in Lincoln County, 640 acres at \$400 an acre, and this was a couple years ago, so the prices are a little low. That totals \$256,000. The county assessor says, for what purpose are you going to use this section of ground? The answer was raising cattle. She says, okay, that will be valued at ag land and taxed at ag land. The rest of the story is that they use about a fourth of the grazing capacity on that land, by cattle, and then they rotate the cattle out after a short period of time and let the grass grow up and it has a lot of cedar trees on it, so in come the elk. And then later on in October when the elk season starts, a charge, and a substantial charge, like I've heard as high as \$4,000 a gun, comes in there and hunts elk. We need...this needs to be a multipurpose parcel, also. Scenario two would be a retired person that bought like 20 acres of ground, and he builds a house on it. And we know that that's rural residential. He has no problem with that. That house is valued at the comparable sales, and there's no problem there. But he also, as a hobby...I'm sorry. I

Floor Debate
March 11, 2008

never should have used that word...excuse me. It's not a hobby; it's other than a hobby. It is a...as a retired person, he wants to raise horses, and he's not raising horses to trail just for a recreation, but he's raising ranch horses. And ranch horses are expensive to raise. We buy them, we use them, and they're hard to find. He has three mares and raises three horses a year. He doesn't have enough land to pasture all of them, so he boards them out, has them trained and whatnot. But he sells those horses for a profit, and I'm sure he reports that as income. At the end of the...just as a sideline, Senator Hudkins, the end of the...or at the beginning of the Industrial Revolution, United States had about three million horses. This was horses that did all the agriculture in the nation. It pulled the taxicabs in the big towns. Did all the work that was done prior to a lot of vehicles. Today, 2008, we have nine million horses. We have many more horses, but we still don't have any more ranch horses than we did probably at the end of the...at the beginning of the Industrial Revolution. This gentleman is raising horses on a 20-acre patch and then boarding them out, besides when they get...when he runs out of pasture. He bought that land for \$300, and it was assessed \$1,700 as rural residential. What should be do with those two scenarios? [LB777]

SENATOR HUDKINS: Okay, you threw a lot of facts at me really quick. [LB777]

SENATOR HANSEN: I'm sorry. [LB777]

SENATOR HUDKINS: Let me see if I can get through all of this. Whatever the size of the parcel is, you first of all take out the house and adjoining buildings and the land underneath them. Those cannot be given special valuation. Now was this particular scenario in a greenbelted area or not? [LB777]

SENATOR HANSEN: Was it what? [LB777]

SENATOR HUDKINS: Greenbelted area. A greenbelt area. A greenbelt area is land... [LB777]

SENATOR FRIEND: One minute. [LB777]

SENATOR HUDKINS: ...contiguous to a larger city, that if it didn't have that special valuation, it would be taxed much, much higher because of potential developmental purposes. But to go back to the original question, if those horses are being sold for income then, yes, it's agriculture. If they are being raised as pleasure, then no. What we're saying is that whatever that land is used for, that's how it should be valued. And unfortunately, some assessors are not doing it that way. They see that big parcel at a certain value, and they look at the value of the house and they say, aha! The whole thing is used as a residence. And that's not the case, and that's what we're trying to change. [LB777]

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

Floor Debate
March 11, 2008

SENATOR HANSEN: And what about the scenario where the person says, we're going to raise cattle on it, but it ends up actually a hunting facility? [LB777]

SENATOR HUDKINS: Part of that would... [LB777]

SENATOR HANSEN: I think the multipurpose...if we're going to use the multipurpose... [LB777]

SENATOR FRIEND: Time. [LB777]

SENATOR HANSEN: Thank you, Mr. President. [LB777]

SENATOR FRIEND: Thank you, Senator Hansen and Senator Hudkins. Senator Wallman, you are recognized. [LB777]

SENATOR WALLMAN: Thank you, Mr. President. I think we hit the issue on the head here about property taxes, and the pressure there is on county assessors to raise the valuations for funding government things, and...whether it be your house, you can appeal. I have already. But in Gage County, the land your house sits on, it may be raised and your house may be lowered. So you're probably not going to gain. But the greenbelt situation is around major metropolitan areas, so you leave it agriculture land. It should be used for ag land. So I appreciate Senator Hudkins bringing this forth, and it seems like, in my area, I have lots of complaints about property taxes, and they tell me they bought their place--there's quite a bit of land exchanging right now, and it's actually...the homes in the cities like Cortland and Adams and Firth and Hickman and Panama, they're actually paying less than what the house is valued at, and yet they cannot get it brought down. And I think that is terrible. And what Senator Hudkins is trying to do is straighten some of these issues out, so I can appreciate her bill, and I look forward to more knowledge on this. Thank you, Mr. President. [LB777]

SENATOR FRIEND: Thank you, Senator Wallman. Senator Hansen, you are recognized. Senator Hansen waives. Senator Janssen, there are no other senators wishing to speak. You are recognized to close on AM2170. [LB777]

SENATOR JANSSEN: Thank you, Senator Friend, members of the Legislature. I think the committee amendments do the right thing. Now it is up to the assessors to follow the law. If that parcel of land is agriculture or horticulture, used for raising crops or hay, and they're selling it off of there, it should be taxed that way. So with the committee amendments, I believe we do address the issue, and I'd ask for your support and a positive vote for the committee amendments. Thank you. [LB777]

SENATOR FRIEND: Members, you have heard the closing on AM2170 to the Revenue Committee amendments. The question is, shall AM2170 be adopted? All those in favor

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

Floor Debate
March 11, 2008

please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB777]

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB777]

SENATOR FRIEND: AM2170 is adopted. Members, back to discussion of AM2002, the committee amendments. Senator Hudkins, you are recognized. [LB777]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. The explanation that Senator Janssen did was technically correct, but it's not accurate. The assessors are not doing it that way. They are looking at the whole parcel, they are looking at the value of the buildings. They are not looking at what the rest of the land is used for, and that's our problem. Sarpy County doesn't do it that way. Probably 80 other counties don't do it that way, but there are some that are. There are too many...there's too much subjectivity used in this, rather than objectivity. If one assessor decides to do it one way and another assessor decides to do it another way, which one is right? Well, they both have their reasons, but Sarpy County chose to look at it the way that Senator Janssen said--the use of that property. Yes, the use, not the primary use. If you want to value part of it at 100 percent, fine, go ahead, but you value the rest of it has to how it's used. Never mind what everything is used for, you do it individually. And that's what we're trying to say. After the Sarpy County Assessor spoke in opposition to the bill and said, well, we don't do it that way, we look at what each part of the piece is used for--yes, that's what we want. And one of the people that spoke in favor of the bill who has a small farm south of Lincoln, he said, well, if Lancaster County would do it like Sarpy County does it, I wouldn't have spent six hours in appeals and in this hearing. So yes, Senator Janssen, it should be on the use of the property, not the primary use of the parcel. And in the committee amendment, you go right back to that primary use--that's the problem. How do you determine primary? Do you do it on value, which the current assessor is doing? No, no, no! You look at how each piece is used. That's what we want. And as long as that word "primary" is in there, the assessors can do it however they darn well please. Going back to the circular argument, the farm home site, the farm site, contiguous to agriculture land. If the assessor is not recognizing this as agricultural land, then you don't have the farm home site, you don't have the farm site, and you're right back where you started. So all I'm asking is please do not accept this amendment. It makes it worse. It causes all kinds of problems, one of which is constitutional. It says that like property will be valued like. If you've got an acre of corn here, it should be valued the same way as an acre of corn someplace else, based upon the value of the land, not based on how it's primary used for, if that's good English. So please, I'm asking you--the amendment makes it worse. Senator Langemeier doesn't agree with me, Senator Janssen doesn't agree with me. I beg to differ. I think that we've talked about this long enough. We're almost ready to go home. It doesn't look like we're going to finish the bill today--maybe we can, if you would all just simply vote no on the

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

Floor Debate
March 11, 2008

amendment and yes on the bill, we'd be done. [LB777]

SENATOR FRIEND: One minute. [LB777]

SENATOR HUDKINS: And we will work together with all of the interested parties between now and Select File to get this fixed. And I...Senator Langemeier, I really disagree with you in saying that this wasn't a good bill to begin with. Maybe you didn't like it, but that isn't a reason to say that it would never have passed without the amendment. The amendment makes it worse, in my opinion. Thank you, Mr. President. [LB777]

SENATOR FRIEND: Thank you, Senator Hudkins. Senator Synowiecki, you are recognized. [LB777]

SENATOR SYNOWIECKI: Thank you, Senator Friend. I'll just be very brief. I have a quick question for the Chairman of the committee, Senator Janssen. [LB777]

SENATOR FRIEND: Senator Janssen, will you yield to a question? [LB777]

SENATOR JANSSEN: Yes. [LB777]

SENATOR SYNOWIECKI: Senator Janssen, I notice that NACO provided testimony in opposition to the green copy. Do you know where they're at on the committee amendment, as an organization? [LB777]

SENATOR JANSSEN: No, I don't. No, I don't. I don't know. [LB777]

SENATOR SYNOWIECKI: Okay, all right. Okay, thank you. [LB777]

SENATOR FRIEND: Thank you, Senator Synowiecki and Senator Janssen. Senator Langemeier, you're recognized. [LB777]

SENATOR LANGEMEIER: Mr. President, I'll be real brief here, so we can get to a vote here. And I...Carol Hudkins, I want to reiterate what I'm saying is, is what I'm saying is the committee wanted the amendment, and I think we need to look at it in that regard. I'm not standing up...matter of fact, I'm going to vote for the amendment. I'm not voting for LB777 when we're done today. But I think it's important that we state that the committee thought it was appropriate to have the amendment on to advance the bill, and so I just want to make sure that's clearly just what I want to say. Thank you. [LB777]

SENATOR FRIEND: Thank you, Senator Langemeier. Senator Janssen, there are no other senators wishing to speak. You are recognized to close on AM2002. [LB777]

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

Floor Debate
March 11, 2008

SENATOR JANSSEN: Thank you, Senator Friend. Members of the Legislature, I just ask for your positive vote on the committee amendments. I believe it's the right thing to be doing. It sends the correct message: This is the way we expect land to be valued, on what its use is. With that, I hope you can vote green on the committee amendments. Thank you. [LB777]

SENATOR FRIEND: Thank you, Senator Janssen. Members, you have heard the closing on the committee amendments, AM2002. The question is, shall the committee amendments be adopted to LB777? All those in favor please vote aye; all those opposed vote nay. Have all members voted who wish to? Senator Janssen, for what purpose do you rise? [LB777]

SENATOR JANSSEN: I would like to ask for a call of the house and a roll call vote, please. [LB777]

SENATOR FRIEND: Members, there has been a request for a call of the house. All those in favor of placing the house under call please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB777]

CLERK: 34 ayes, 1 nay to place the house under call. [LB777]

SENATOR FRIEND: Members of the Legislature, the house is under call. Senators, please record your presence. Those senators outside the Chamber please report to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Members of the Legislature, the house is under call. Senator Heidemann, Senator Preister, Senator Chambers, and Senator Ashford. Senator Hudkins, for what purpose do you rise? [LB777]

SENATOR HUDKINS: I'd like to ask for the roll call in reverse order, please. [LB777]

SENATOR FRIEND: Thank you, Senator. The house is under call. The house is under call. Senator Chambers. Senator Janssen, for what purpose do you rise? [LB777]

SENATOR JANSSEN: You can go ahead. [LB777]

SENATOR FRIEND: Thank you, Senator Janssen. Mr. Clerk, there has been a request for a roll call vote in reverse order. Please call the roll. [LB777]

CLERK: (Roll call vote taken, Legislative Journal pages 909-910.) 28 ayes, 7 nays, Mr. President, on the committee amendments. [LB777]

SENATOR FRIEND: AM2002, Revenue Committee amendments, are adopted. Back to discussion of LB777. I do raise the call. Back to discussion of LB777. Senator Hudkins,

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

Floor Debate
March 11, 2008

there are no senators wishing to speak. You are recognized to close on LB777. [LB777]

SENATOR HUDKINS: Thank you, Mr. President and members. I am very disappointed in that last amendment, but we will be meeting between now and Select to get it done right. All we're asking is that, like Senator Janssen said, the land should be valued based on its use, not primary use, because that's too open to interpretation. So yes, please advance this bill. We'll work on it. There can be a few amendments maybe put in to make it better, but those of you who voted for this, you don't understand the problem that it has caused, and it has caused a lot of problems, and it's going to continue to cause other problems if it's left the way it is. I appreciate all the discussion on the floor, and I appreciate the fact that the committee has to go along with their committee Chairs, but unfortunately it's not right. So thank you. [LB777]

SENATOR FRIEND: Thank you, Senator Hudkins. Members of the Legislature, you have heard the closing on LB777. The question is, shall LB777 advance to E&R Initial? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB777]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB777. [LB777]

SENATOR FRIEND: LB777 does advance. Items for the record, Mr. Clerk? [LB777]

CLERK: Thank you, Mr. President. Your Committee on Enrollment and Review reports LB756 and LB855 as correctly engrossed. I have an amendment to be printed to LB1113. (Legislative Journal pages 910-911.) [LB756 LB855 LB1113]

I have a priority motion. Senator Hansen would move to adjourn until Wednesday morning, March 12, at 9:00 a.m. []

SENATOR FRIEND: Members, the motion is, shall the Legislature adjourn until Wednesday, March 12, 2008, at 9:00 a.m.? All those in favor please signify by saying aye. All those opposed say nay. We are adjourned. []