

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

Floor Debate
April 12, 2010

[LB252 LB411 LB420 LB507A LB507 LB510A LB510 LB563 LB563A LB594 LB695
LB696 LB701 LB706 LB710 LB712 LB713 LB732 LB758 LB759 LB760 LB771 LB779A
LB779 LB780 LB789 LB792 LB800A LB800 LB801 LB809 LB813 LB817 LB829 LB842
LB844 LB849 LB852 LB861 LB862 LB872 LB877 LB884 LB894 LB907 LB908 LB918
LB918A LB931 LB933 LB934 LB945 LB947 LB950 LB961 LB978 LB986 LB987
LB987A LB993 LB997 LB1002A LB1002 LB1010 LB1014 LB1047 LB1048A LB1048
LB1055 LB1065 LB1071 LB1072 LB1085 LB1094A LB1094 LB1109 LB1109A LR538
LR543 LR555 LR564 LR565 LR566 LR567]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-eighth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Senator Pirsch. Please rise.

SENATOR PIRSCH: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator Pirsch. I call to order the fifty-eighth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

SPEAKER FLOOD: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, bills read on Final Reading last Friday, April 9, were delivered to the Governor at 12:05 on that particular day (re LB252, LB411 LB695, LB696, LB706, LB713, LB732, LB758, LB759, LB760, LB789, LB792, LB809, LB813, LB829, LB844, LB852, LB872, LB884, LB894, LB907, LB908, LB933, LB934, LB947, LB978, LB986, LB993, LB997, LB1047, LB1055, LB1065, LB1085). That's all that I have, Mr. President. (Legislative Journal page 1421.) [LB252 LB411 LB695 LB696 LB706 LB713 LB732 LB758 LB759 LB760 LB789 LB792 LB809 LB813 LB829 LB844 LB852 LB872 LB884 LB894 LB907 LB908 LB933 LB934 LB947 LB978 LB986 LB993 LB997 LB1047 LB1055 LB1065 LB1085]

SPEAKER FLOOD: Thank you, Mr. Clerk. (Visitors and doctor of the day introduced.) Members, please find your seats as we prepare for Final Reading. Members, please find your seats as we prepare for Final Reading. A reminder to members as we proceed with Final Reading, any bill with a motion to return to Select File for a specific

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

Floor Debate
April 12, 2010

amendment will be moved to the end of the list. It is my understanding that LB420 does have an amendment. Is that correct, Mr. Clerk?

CLERK: That is correct, Mr. President.

SPEAKER FLOOD: Therefore, we will move LB420 to the end of today's agenda. We then proceed to LB507E. [LB507]

CLERK: (Read LB507 on Final Reading.) [LB507]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB507 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB507]

CLERK: (Record vote read, Legislative Journal page 1422.) 49 ayes, 0 nays, Mr. President, on the passage of LB507. [LB507]

SPEAKER FLOOD: LB507 passes with the emergency clause attached. Mr. Clerk, LB507A. [LB507 LB507A]

CLERK: (Read LB507A on Final Reading.) [LB507A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB507A pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB507A]

CLERK: (Record vote read, Legislative Journal pages 1422-1423.) 49 ayes, 0 nays, Mr. President, on the passage of LB507A. [LB507A]

SPEAKER FLOOD: LB507A passes with the emergency clause attached. Mr. Clerk, we now proceed to LB563, where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB507A LB563]

CLERK: 39 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB563]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB563]

CLERK: (Read title of LB563.) [LB563]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB563 pass? All those in favor vote aye; all those opposed

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

Floor Debate
April 12, 2010

vote nay. Mr. Clerk, please record. [LB563]

CLERK: (Record vote read, Legislative Journal page 1423.) 43 ayes, 1 nay, 5 present and not voting, Mr. President. [LB563]

SPEAKER FLOOD: LB563 passes. Mr. Clerk, LB563A. [LB563 LB563A]

CLERK: (Read LB563A on Final Reading.) [LB563A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB563A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB563A]

CLERK: (Record vote read, Legislative Journal page 1424.) 44 ayes, 0 nays, 5 present and not voting, Mr. President. [LB563A]

SPEAKER FLOOD: LB563A passes. Mr. Clerk, we now proceed to LB594. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB563A LB594]

CLERK: 44 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB594]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB594]

CLERK: (Read title of LB594.) [LB594]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB594 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB594]

CLERK: (Record vote read, Legislative Journal page 1425.) 40 ayes, 9 nays, Mr. President, on the passage of LB594. [LB594]

SPEAKER FLOOD: LB594 passes. Mr. Clerk, we now proceed to LB701E. [LB594 LB701]

CLERK: (Read LB701 on Final Reading.) [LB701]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB701 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB701]

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

Floor Debate
April 12, 2010

CLERK: (Record vote read, Legislative Journal pages 1425-1426.) 49 ayes, 0 nays, Mr. President, on the passage of LB701. [LB701]

SPEAKER FLOOD: LB701 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB771. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB701 LB771]

CLERK: 44 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB771]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB771]

CLERK: (Read title of LB771.) [LB771]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB771 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB771]

CLERK: (Record vote read, Legislative Journal pages 1426-1427.) 49 ayes, 0 nays on the passage of LB771, Mr. President. [LB771]

SPEAKER FLOOD: LB771 passes. (Visitors introduced.) Proceeding to the next bill, Mr. Clerk, is LB779E. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB771 LB779]

CLERK: 40 ayes, 1 nay, Mr. President, to dispense with the at-large reading. [LB779]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please the title. [LB779]

CLERK: (Read title of LB779.) [LB779]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB779 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB779]

CLERK: (Record vote read, Legislative Journal pages 1427-1428.) 48 ayes, 0 nays, 1 present and not voting, Mr. President. [LB779]

SPEAKER FLOOD: LB779 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB779A. [LB779 LB779A]

CLERK: (Read LB779A on Final Reading.) [LB779A]

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

Floor Debate
April 12, 2010

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB779A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB779A]

CLERK: (Record vote read, Legislative Journal pages 1428-1429.) 48 ayes, 0 nays, 1 present and not voting, Mr. President. [LB779A]

SPEAKER FLOOD: LB779A passes. Before we proceed, Mr. Clerk, items for the record. [LB779A]

CLERK: Mr. President, a communication from the Governor to the Clerk. (Read re LB1048.) Second communication. (Read re LB1048 and LB1048A.) Mr. President, I have explanation of votes from Senator Nordquist (re LB817, LB1109, LB1109A, LB801, LB842, LB849, LB862, LB877, LB945, LB950, LB1010, LB1094, LB1094A, LB510, LB510A, LB712, LB780, LB861, LB961, LB1048, LB1048A, LB252, LB411, LB695, LB696, LB706, LB713, LB732, LB758, LB759, LB760, LB789, LB792, LB809, LB813, LB829, LB844, LB852, LB872, LB884, LB894, LB907, LB908, LB933, LB934, LB947, LB978, LB986, LB993, LB997, LB1047, LB1055, LB1065, LB1085.) Your Committee on Health, chaired by Senator Gay, reports LB710 to General File. And two new resolutions: Senator Gay offers LR564; Senator McCoy, LR565; both will be laid over. That's all that I have, Mr. President. (Legislative Journal pages 1429-1432.) [LB1048 LB1048A LB817 LB1109 LB1109A LB801 LB842 LB849 LB862 LB877 LB945 LB950 LB1010 LB1094 LB1094A LB510 LB510A LB712 LB780 LB861 LB961 LB252 LB411 LB695 LB696 LB706 LB713 LB732 LB758 LB759 LB760 LB789 LB792 LB809 LB813 LB829 LB844 LB852 LB872 LB884 LB894 LB907 LB908 LB933 LB934 LB947 LB978 LB986 LB993 LB997 LB1047 LB1055 LB1065 LB1085 LB710 LR564 LR565]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to LB800, where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB800]

CLERK: 44 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB800]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB800]

CLERK: (Read title of LB800.) [LB800]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB800 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB800]

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

Floor Debate
April 12, 2010

CLERK: (Record vote read, Legislative Journal pages 1432-1433.) 48 ayes, 0 nays, 1 present and not voting, Mr. President. [LB800]

SPEAKER FLOOD: LB800 passes. Mr. Clerk, LB800A. [LB800 LB800A]

CLERK: (Read LB800A on Final Reading.) [LB800A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB800A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB800A]

CLERK: (Record vote read, Legislative Journal pages 1433-1434.) 48 ayes, 0 nays, 1 present and not voting, Mr. President. [LB800A]

SPEAKER FLOOD: LB800A passes. Mr. Clerk, LB918. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB800A LB918]

CLERK: 39 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB918]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB918]

ASSISTANT CLERK: (Read title of LB918.) [LB918]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB918 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB918]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1434.) Vote is 49 ayes, 0 nays, Mr. President. [LB918]

SPEAKER FLOOD: LB918 passes. Mr. Clerk, LB918A. [LB918 LB918A]

ASSISTANT CLERK: (Read LB918A on Final Reading.) [LB918A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB918A pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB918A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1435.) Vote is 49 ayes, 0 nays, Mr. President. [LB918A]

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

Floor Debate
April 12, 2010

SPEAKER FLOOD: LB918A passes. Mr. Clerk, we now proceed to LB931E. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB918A LB931]

ASSISTANT CLERK: 43 ayes, 0 nays to dispense with the at-large reading, Mr. President. [LB931]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB931]

ASSISTANT CLERK: (Read title of LB931.) [LB931]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB931 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB931]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1436.) Vote is 45 ayes, 4 nays, Mr. President. [LB931]

SPEAKER FLOOD: LB931 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB987. [LB931 LB987]

ASSISTANT CLERK: (Read LB987 on Final Reading.) [LB987]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB987 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB987]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1436-1437.) Vote is 46 ayes, 0 nays, 3 present and not voting on the final passage of the bill, Mr. President. [LB987]

SPEAKER FLOOD: LB987 passes. Mr. Clerk, LB987A. [LB987 LB987A]

ASSISTANT CLERK: (Read LB987A on Final Reading.) [LB987A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB987A pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB987A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1437-1438.) Vote is 47 ayes, 1 nay, 1 present and not voting, Mr. President. [LB987A]

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

Floor Debate
April 12, 2010

SPEAKER FLOOD: LB987A passes with the emergency clause attached. Mr. Clerk, LB1002. [LB987A LB1002]

ASSISTANT CLERK: (Read LB1002 on Final Reading.) [LB1002]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1002 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1002]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1438.) Vote is 47 ayes, 1 nay, 1 present and not voting, Mr. President. [LB1002]

SPEAKER FLOOD: LB1002 passes. Mr. Clerk, we now proceed to LB1002A. [LB1002 LB1002A]

ASSISTANT CLERK: (Read LB1002A on Final Reading.) [LB1002A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1002A pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1002A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1439.) Vote is 47 ayes, 1 nay, 1 present and not voting, Mr. President. [LB1002A]

SPEAKER FLOOD: LB1002A passes. Mr. Clerk, we now proceed to LB1014. [LB1002A LB1014]

ASSISTANT CLERK: (Read LB1014 on Final Reading.) [LB1014]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1014 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1014]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1439-1440.) Vote is 45 ayes, 2 nays, 2 present and not voting, Mr. President. [LB1014]

SPEAKER FLOOD: LB1014 passes. (Visitors introduced.) Proceeding with Final Reading, Mr. Clerk, we now proceed to LB1071. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1014 LB1071]

ASSISTANT CLERK: 46 ayes, 0 nays to dispense with the at-large reading, Mr.

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

Floor Debate
April 12, 2010

President. [LB1071]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB1071]

ASSISTANT CLERK: (Read title of LB1071.) [LB1071]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1071 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1071]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1441.) Vote is 49 ayes, 0 nays, Mr. President. [LB1071]

SPEAKER FLOOD: LB1071 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB1072, where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1071 LB1072]

ASSISTANT CLERK: 38 ayes, 5 nays to dispense with the at-large reading, Mr. President. [LB1072]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB1072]

ASSISTANT CLERK: (Read title of LB1072.) [LB1072]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1072 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1072]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1442.) Vote is 49 ayes, 0 nays, Mr. President. [LB1072]

SPEAKER FLOOD: LB1072 passes with the emergency clause attached. Mr. Clerk, we now return to LB420. [LB1072 LB420]

ASSISTANT CLERK: Mr. President, with respect to LB420, Senator Council would move to return the bill for a specific amendment, that being strike the enacting clause. (FA78, Legislative Journal page 1442.) [LB420]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Council, you're recognized to open on your motion. [LB420]

Floor Debate
April 12, 2010

SENATOR COUNCIL: Yes, thank you, Mr. President. And with all due respect to my colleague Senator Hadley, I offer this motion to return LB420E for a specific amendment and that is to strike the enacting clause. I believe that this body needs to seriously consider the ramifications of advancing LB420E in its latest version, and I emphasize "its latest version." As you know, this body sent LB420E to the Governor last year on a 42 to 0 vote. LB420, as originally introduced, provided for a sales tax exemption for not-for-profit health clinics, and that tax exemption in the original bill was to become effective October 1, 2009. The bill, as sent to the Governor, reflected the amendment declaring an emergency and changing the effective date of LB420 from October 1, 2009 to July 1, 2009, again, reflecting this body's belief that the tax policy reflected in LB420 should take immediate effect. The bill was sent to the Governor and that is reflected in the official Legislative Journal as having occurred on May 21, 2009. The Governor thereafter, however, advised that he planned to veto one of the two sales tax exemption bills that had been advanced to his desk, one being LB420E and the other being the wind energy sales tax exemption bill. The Governor recommended that the body decide which one of the two tax exemption bills should go forward and not be subject to a veto and to accomplish that by moving to return one of those two bills back to this body for a technical amendment. The body, relying on its rule, voted to request the return of the bill for a technical amendment. That vote occurred on the fifth day following the day on which the bill was presented to the Governor. This is where the problem arises. First, it is to be noted that the legislative rule provided for a return after passage on Final Reading only for a technical amendment. I submit that a technical amendment is something like correcting the name of the state agency or department involved in carrying out the specific provisions of a bill. The amendment that occurred in the case of LB420E went beyond a technical amendment because that amendment sought to change the effective date of LB420E from the emergency effective date of July 1, 2009, to July 1, 2010. That amendment passed and LB420E was placed on Final Reading for a second time. However, the body adjourned sine die before a vote could be taken on that second Final Reading. The vote to change the effective date, again I emphasize, was as much a substantive change to LB420 as the emergency clause amendment that was voted on represented a substantive change because without that change that was reflected in the bill on the second Final Reading, the property tax exemption would have gone into effect last year. So to change that to July 1 of this year represented a substantive change because it imposed a sales tax obligation on those not-for-profit health clinics during a time that the original bill would not have imposed a sales tax, so it represents a substantive change. And that vote to request the return of the bill to effect that change went far beyond the authority of this body as reflected in its rules. However, that violation of legislative rules, in my opinion, pales in comparison to the violation of the constitution represented by the Governor's failure to send a veto message along when the bill was returned to this body. And that is based upon a reading of Article IV, Section 15 of the Constitution of the great state of Nebraska which states, and I quote, "Any bill which shall not be returned by the Governor within five days (Sundays

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

Floor Debate
April 12, 2010

excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it; unless the Legislature by their adjournment prevent its return; in which case it shall be filed, with his objections, in the office of the Secretary of State within five days after such adjournment, or become law." We voted on the fifth day following the date on which LB420E was presented to the Governor. We voted to return LB420E from Final Reading to Select File for a specific amendment. That specific amendment was a substantive amendment not a technical amendment. And by virtue of the language of Article IV, Section 15, LB420E became law and took effect on July 1, 2009, as reflected in the bill as originally presented to the Governor. If this body desired to change that law by reinstating the sales tax until 2013, a bill should have been introduced to that effect. That bill should have been referred to the appropriate committee, a public hearing should have been held, and the appropriate committee should have decided whether or not to advance that measure to General File. That did not occur. Instead, this body elected to make an even greater substantive change when the bill was now placed on Final Reading for the third time. And that substantive change is to essentially reinstate the sales tax and apply it to not-for-profit hospitals. By the amendment that occurred when this bill was returned to Select File last week, the practical effect of that action by this body was to reinstate a sales tax on not-for-profit hospital purchases that this body had exempted those entities from by its vote last year. I urge you to vote in favor of returning LB420E to Select File for purposes of striking the enacting clause. With that action, by striking the enacting clause, we restore LB420E to its position as it was when the Governor failed to return it with a veto message and failed to sign it, and that is that it became law and those not-for-profit health clinics were exempt from sales tax effective July 1, 2009. By striking the enacting clause of this current version of LB420E, we restore that position. More importantly, I believe taking that action reflects this body's adherence... [LB420]

SPEAKER FLOOD: One minute. [LB420]

SENATOR COUNCIL: ...to its rules and respect for this state's constitution. I urge your support and vote to return LB420E to Select File in order to amend it by striking the enacting clause. Thank you, Mr. President. [LB420]

SPEAKER FLOOD: Thank you, Senator Council. Senator White, you are recognized. [LB420]

SENATOR WHITE: Thank you, Mr. President. Members of the body, I had spoken to you and asked you to reflect on what Senator Council had said. I have done that. I have also looked at the constitution. And while we may, in fact, be in charge of our rules and you could argue that by proposing and doing this we have interpreted our rules in a way to say in this case that this is not a substantive matter, it is a procedural matter, that in no way addresses the more important constitutional issue. Senator Council is absolutely correct. The constitution does not permit us to do what we have sought to do. And our

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

Floor Debate
April 12, 2010

rules can say what they wish the constitution should and must control, the bill was passed under the terms of the constitution. What we will do is set up a long series of interminable litigation over whether or not taxes collected in the last year and going forward are lawfully collected or not. Since we are talking several million dollars a year, as I understand the fiscal note, there will be no doubt that these matters will and should be challenged, and I think if the court reads the constitution fairly and plainly, there will be no doubt that those taxes are not properly assessed, they are not properly collected, and we will be forced to refund them. I think that is a mistake from tax policy, but more importantly it holds us as a body in poor light, that we do not care enough to read the constitution and follow it. It has been a long session. I will not belabor this further, but I fully support Senator Council's constitutional reading and I believe she is accurate, and the most responsible thing we can do is follow her and vote for her motion. Thank you, Mr. President. [LB420]

SPEAKER FLOOD: Thank you, Senator White. Senator Council, you're recognized. [LB420]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I want to take this opportunity to thank Speaker Flood for correcting...drawing my attention to a correction in my recitation of what occurred last year, and it's important that I acknowledge that error because it, too, makes a point. Last year when the bill was returned, this body did take a vote to suspend its own rules in order to consider the amendment. Then that is an acknowledgement by this body that the amendment constituted a substantive change. If we didn't believe it constituted a substantive change, it would not have required this body to take a vote to suspend the rules to allow the bill to be returned for an amendment. Now despite that fact, I maintain that this body, by constitution, does not have the authority to merely ask the Governor to return a bill to it for further action after the bill has been advanced on Final Reading. That's not a legislative power set forth in our constitution. The legislative power set forth in our constitution is we can pass the bill on Final Reading, we can send that bill to the Governor. The Governor can elect to veto that bill, and this body, by constitution, has the right to override a Governor's veto. That's what our authority is. We don't have the constitutional authority to decide that we don't want the Governor to consider a piece of legislation that advanced on Final Reading--and remind again on a vote of 42 in favor, no one against--and just elect to reconsider the substance of that measure without, at a minimum, reintroducing a bill that sets forth these major substantive changes and going through the process. Pay attention to what the presiding officer says when we take a vote on a bill on Final Reading. He says, all rules being complied with and the procedure being followed, the vote before you is whether this bill passes on Final Reading. I submit to you that the answer to that question on rule LB420E has to be no, that all rules have not been complied with and the procedure properly followed because it contravenes our state constitution to now readvance--if there's such a word--a bill that clearly under our constitution is currently the law. If we wanted to change that law, we needed to consider

Floor Debate
April 12, 2010

a new piece of legislation that withdrew the tax exemption, reinstated the sales tax until 2013. I hear my colleagues comment all the time about the need for public input when we make substantive changes in legislation. This is a substantive change. The interesting thing is I don't know if anybody... [LB420]

SPEAKER FLOOD: One minute. [LB420]

SENATOR COUNCIL: ...in this room knows whether the not-for-profit health clinics know what law it is they're expected to comply with right now. Are they expected to pay the sales tax? Are they expected not to pay the sales tax? It's unclear because of the manner in which LB420E has been handled by this body. I submit there's an easy way to correct that, and that is by voting to return LB420E to Select to strike the enacting clause, restore the status quo as it existed on May 28, 2009, which was the sixth day after LB420E was sent to the Governor, and since it was not vetoed, it became law. Thank you. [LB420]

SPEAKER FLOOD: Thank you, Senator Council. Senator Fulton. [LB420]

SENATOR FULTON: Thank you, Mr. President. Would Senator Council yield to a question? [LB420]

SPEAKER FLOOD: Senator Council, will you yield to a question from Senator Fulton? [LB420]

SENATOR COUNCIL: Yes. [LB420]

SENATOR FULTON: Senator, can you go over the chronology as to how this...I'm looking at Article IV, Section 15, and you had talked about the chronology. And, I guess, I need a reminder and it might be beneficial for the body to have a reminder also. But what is the chronology by which you deduce the Governor held this for longer than five days? [LB420]

SENATOR COUNCIL: Okay. Now the question, Senator Fulton, maybe make a point. The Governor didn't hold the bill. Well, I guess he did technically hold the bill for five days since it wasn't returned until after we voted. But on May 21, 2009, this body voted to advance LB420E on Final Reading. That vote occurred on May 21. The Legislative Journal reflects that that bill was presented to the Governor on the same day, May 21. The clock starts running under the state constitution. So if you don't count the day that he receives the bill and you start counting the next day, the fifth day would have been May 27. That's because the constitution specifically states that you don't count Sunday, and a Sunday fell between May 21 and May 27. So if you exclude the Sunday, May 27 was the last day that the Governor could veto that bill. He did not do so. According to Article IV, Section 15, if he fails to veto a bill, it becomes law, and that's exactly what

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

Floor Debate
April 12, 2010

occurred in the case of LB420E. There was no veto message sent back to this body. The body, in fact, did not even vote to return the bill until the fifth day. [LB420]

SENATOR FULTON: Senator, I'm reading through the language here and it says, any bill which shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him shall become law in like manner. So there's a difference between failing to invoke veto and failing to return it to the Legislature. [LB420]

SENATOR COUNCIL: No. The constitution says if you don't sign the bill...what "like manner" is, is if he had signed the bill. So if he doesn't sign the bill, he only has two choices. He can veto it, so he has to return it with a veto message or he can elect not to sign it, and the constitution says it becomes law as if he had signed it, and he has to do that within five days. [LB420]

SENATOR FULTON: Okay. Thank you, Senator. Mr. President and members of the body, I understand that we're nearing the end here and I...it's important that we talk about this because it's the constitution. If it were our rules, that's a little bit different. The constitution is the law of our land, something we all swore to uphold. And so if indeed this is a meritorious argument and it deserves our attention. I don't know that I read this the same way as Senator Council. Frankly, I'd considered it and dismissed the argument when we voted the first time and I think I'm still there, but I'll yield that. Thank you, Mr. President. [LB420]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator White, you are recognized. [LB420]

SENATOR WHITE: This will be brief. In response to Senator Fulton's observation. Senator Fulton, the constitution does not allow the Governor to return a bill unless he vetoes it. Once it's out of our hands, the Governor...there's no provision in the constitution that permits a bill to be returned absent a veto, there just isn't, that I'm aware of. And so the real essence of the question here is, can we by rule arrogate to ourselves and the Governor, we really didn't mean it, please return it? And if we can do that, especially in this situation, what other bills can the Governor suggest to us we call back and how long after? A bill that's been in effect for two years? Ten years? Can we have that returned? And if we say, well, no, the Governor signed that one, well, how about the ones that he let become law that weren't signed? See, finality. We put it beyond our control. Now we have tried by rule to keep a string on it like a yo-yo so that we can ask the Governor to pull it back into our hand, which would be a handy power, don't get me wrong, it's just not one that the constitution articulates that we can have. Now a court may say it's implied in the legislation, although, I would tell you generally in the law that is highly unlikely because the constitution specifically defines responsibilities and powers. And once a bill moves beyond our sphere into the sphere of

Floor Debate
April 12, 2010

the Governor, the constitutional scheme is set up that we lose our power, just as though we can't enforce a law once it passes outside of this Chamber. So the issue is very...for me at least, is not one of our rules as Senator Council argues the rules. That's not what turns me on this case. The question is, are we arrogating to ourselves a power that the people did not give us and that is to keep a string on our bills and pull them back off the Governor's desk so we can tweak them? Thank you, Mr. President. [LB420]

SPEAKER FLOOD: Thank you, Senator White. Senator Council. [LB420]

SENATOR COUNCIL: Thank you, Mr. President. And that's another interesting point to note with regard to this issue. Had the Governor returned LB420E with a veto message, by constitution and by our rules we could have decided whether or not to override that veto, but let me point out to you that that's all we could have done. We could not have changed the effective date and then sent that bill back to the Governor. Not only the constitution but our rules specifically state that, "No bill vetoed by the Governor shall be taken up by the Legislature for any purpose other than passage of the bill notwithstanding the objection of the Governor or for override of a line-item veto." So assuming, for the sake of this discussion, that the Governor had vetoed LB420E and this body decided, okay, we can get around the concern expressed by the Governor by just changing the effective date so that it doesn't take effect until 2013, we could not have done that. And now we are seeking to do is exactly what we could not have done had the Governor simply vetoed LB420E. Had he vetoed LB420E, we couldn't have changed the effective date. We could have just adopted the bill again and it would have been law and it would have taken effect July 1, 2009, and according to the constitution, that's when LB420E took effect. Now if we now want to alter the effective date, I submit that a new bill will have to be introduced next session and we need to have that bill go through the process according to rules and procedures like any other bill. But in the meantime, not-for-profit hospitals, effective as of July 1, 2009, by this body's action, are exempt from sales tax. And for that reason, I would urge, so that our records are consistent with what the practical effect of our actions were, that the motion to return LB420E be adopted and that the specific amendment being to strike the enacting clause also be adopted, and the practical effect of that is we return to the status quo as it existed on May 28, 2009, and that would be LB420E was law. Thank you, Mr. President. [LB420]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Council. (Visitors introduced.) Returning to discussion on the motion to return. Senator Pahls, you're recognized. [LB420]

SENATOR PAHLS: Thank you, Mr. President and members of the body. I do not relish at this moment standing up and talking about tax exemptions because I did miss a part of this session when this topic was discussed. The only thing that I relish about it is I

Floor Debate
April 12, 2010

hope the public is listening to what we're saying today, and you start examining every time you buy something, your sales taxes, and then you wonder why certain items have exemptions and certain do not, certain items do not. And that's basically all I'm going to say on this. I probably will not vote to pull this back because I think has gone down the river quite a ways. But we need to start taking a look at exemptions that have occurred and possibly future exemptions. And I thank you for your time. [LB420]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Flood, you're recognized. [LB420]

SPEAKER FLOOD: Thank you, Mr. President and members. I've, as you might imagine, been following this fairly closely, Senator Council and Senator White's objection to the procedures used last year. As we recalled the bill from Senator Lathrop that dealt with wind...as we passed the wind energy bill, we recalled LB420 from Senator Hadley. A couple of things I want to make very clear. We as a Legislature want flexibility and latitude in what we do as it relates to making public policy. We as a body make decisions collectively for the citizens of this state. Last year, as Senator Council corrected, we did in fact suspend the rules as it related to the technical amendment. Now as we moved through the process and the presiding officer says when a bill is being passed, all rules relative to procedure having been complied with, I don't remember anybody in here standing up on a point of order raising any objections to what we were doing. And a presiding officer reads that statement at that desk up there after fully considering the bill and I don't remember one of you standing up and raising an objection. Okay. I guess I think we have to make sure we understand our role here and that is to pop up on a point of order and make a point. I think what Senator Council has done here is a good thing because it gives us a chance to walk through the actions of last year. When does finality attach to a bill? In this state, if our State Supreme Court were to look at our process, I think they would be...they would come to the point where they'd say when it arrives in the Secretary of State's Office, that's finality on a bill. When the Governor passes a bill, he doesn't bring it back to the Legislature, he takes it down the hall to John Gale's office. When we override a veto, I or the Lieutenant Governor sign a certificate that sends it back to the Secretary of State and makes the Secretary of State aware that this bill became law notwithstanding the objection of the Governor. I believe we have an implied authority to recall bills. In fact, a majority of states engage in this practice. Section 756 of the Mason's Manual of Legislative Procedure, which I might add our rules refer to in the absence of direct procedures in our rule book, Section 756, Recalling Legislation from Executive, see also Section 740, Presentation of Bills to the Governor. "(1) Legislation incorrectly enrolled may be recalled from the executive for correction. (2) Legislation is also sometimes recalled from the executive for further consideration. Legislation is usually recalled by a resolution, but sometimes a committee is sent to the executive for that purpose. (3) The vote upon final passage of a bill recalled from the governor may be reconsidered at any time after its return in the house having such bill in its possession." We followed our rule. We suspended it as it

Floor Debate
April 12, 2010

related to the technical amendment. We brought it back here, placed it back on Final Reading. It's within the One Hundred First Legislature. It's back up today. As an institution, we want the flexibility and the latitude that this bill...that this rule affords us. Is anybody able to predict what the justices of the Nebraska Supreme Court will do? I don't know. Have I done ten hours of legal research? No. But in visiting with our Clerk about this situation and mapping out a strategy last session in consultation with our Clerk, we took every reasonable step that recognized the precedence of this body, the rules of procedure of the Legislature and, obviously, I don't want to suggest to any of you that we dismiss the constitution. Nothing could be further from the truth. A majority of states in this country allow this practice. It's found in our rules of procedure in the NCSL manual, Mason's Manual of Legislative Procedure. [LB420]

SENATOR LANGEMEIER: One minute. [LB420]

SPEAKER FLOOD: And I'd offer to you that we acted appropriately, and I'm going to vote no on Senator Council's motion to return to Select for a specific amendment, and I'm going to pass LB...I'm going to vote to pass LB420. Thank you, Mr. President. [LB420]

SENATOR LANGEMEIER: Thank you, Senator Flood. Senator Council, your light is on but you've used your times until closing. Senator White, you're recognized. [LB420]

SENATOR WHITE: Thank you, Mr. President. And I deeply respect Senator Flood's understanding of the rules of the body. I don't dispute them nor do I say or claim that somehow I stood up and objected. I hadn't seen this issue. These things happen sometimes but we also, hopefully, pay attention and learn. Senator Council understood what happened and raised the issue and I looked into it. I don't understand Senator Flood's heat on the issue other than I do respect the institution and its history and I don't deny that we're acting in accordance with 25 years of experience. But I would ask Senator Flood, where in the constitution it says the finality of a bill is when it's delivered to the Secretary of State? You won't find it. And I do also understand that the majority of states might be allowed to keep a string on their bills and pull them back off the executive desk. I understand that. That may in fact be true. I also recognized that 49 states have two houses and we have one. Our constitution is different than other constitutions. This is not a matter of great emotion. It should be a matter of pure intellect and a matter of what does the constitution say and should we do it? Now I would argue in many cases it's a point that all we're doing is keeping everybody from a well-earned day in the sun. The difference in this case, for me at least, and the reason I belabor the point and stand again is when several million dollars a year are at issue, and this is the issue that has been raised and it's been raised and there's a record on the floor, my experience as an attorney, people are interested enough to litigate it. So now at least we will have looked at the issue, we will then articulate it, we will have discussed what happened, and I figure probably on this case we'll get the Supreme Court to weigh in

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

Floor Debate
April 12, 2010

and then we'll know. And whichever way it goes, at least we will have done a legitimate job trying to consider the constitution and our role in the system. With that, Mr. President, I'd yield the rest of my time to Senator Council. [LB420]

SENATOR LANGEMEIER: Senator Council, 2 minutes 51 seconds. [LB420]

SENATOR COUNCIL: Thank you, Mr. President. Thank you, Senator White. Allow me to use this time to respond to a couple of points raised by the Speaker. Your recollection, Mr. Speaker, that no one jumped up and raised the specific constitutional issues, but I believe that the record will reflect that I voted against the amendment, I voted against the suspension of the rules, and I, as a freshman senator, wished that I had had the command of our rules that I am gaining during my tenure, but I did speak to some colleagues afterwards. I, in fact, spoke to our Clerk who I respect greatly. You're correct. This body should have flexibility and latitude, but that flexibility and latitude is constrained by the terms of our constitution. If we think otherwise, then we need to reconsider the oath of office that we take that says we will uphold the constitution of the state of Nebraska. If we can bend it whenever it suits our will, then our oath of office should reflect that as well. And I appreciate that the parliamentary procedures that are recommended for Legislatures may allow for a return of a bill from the Governor. But I submit to you, as Senator White stated, that those rules are subject to whatever the state constitution mandates. And I submit that our state constitution mandates that if a bill is to be returned from the Governor's Office, it must be accompanied by a veto message. [LB420]

SENATOR LANGEMEIER: One minute. [LB420]

SENATOR COUNCIL: Now if the Governor wants to avoid taking veto actions, then he needs to be subject to the consequences of that and the constitution specifies it. If he doesn't veto a bill, it becomes law. So he had flexibility and latitude as well. He could have vetoed it, and then it would have been up to this body to exercise its right, its constitutional right to consider whether to override that veto. That did not occur. There are states in the Union that the Speaker has alluded to but didn't specifically state. There are states in the constitution who in fact prohibit a return of a bill after it has been presented to the governor despite what the Legislature and its rules may say. I submit to you that that's the reading... [LB420]

SENATOR LANGEMEIER: Time. [LB420]

SENATOR COUNCIL: ...given...should be given to our constitution. [LB420]

SENATOR LANGEMEIER: Thank you, Senator Council and Senator White. Senator Dubas, you're recognized. [LB420]

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

Floor Debate
April 12, 2010

SENATOR DUBAS: Thank you, Mr. President. Would Senator White yield to some questions, please? [LB420]

SENATOR LANGEMEIER: Senator White, would you yield? [LB420]

SENATOR WHITE: Yes, I will. [LB420]

SENATOR DUBAS: Thank you, Senator White. I'm still just trying to sort through all of this and I do know and believe that our first responsibility as senators is to uphold the constitution, so I think it's important that we're having this discussion because, as I said, it is our first duty. So if I'm understanding it correctly by the way you're looking at it, LB420 is actually already law because it made it to the Governor's desk last session? [LB420]

SENATOR WHITE: Yes. And thank you for that question. I just had discussed it with another member. Let me explain why this one might actually blow up on us. Okay. Originally nobody was paying sales tax from these nonprofits. The Department of Revenue made a determination that sales tax must be paid and they started collecting it. All right. We, then, in response to their protest as a body said, wait a minute, don't collect sales tax from nonprofits, it doesn't fit what we think is the right policy, so we passed the bill, the underlying bill. We sent it to the Governor's desk. Okay. And this bill said no longer collect tax money from nonprofits. The Governor, for whatever reason, a discussion said we can't afford that, we're in a budget crisis, postpone its effect for a year, so we pulled it back and we did that. And now we want to postpone it again for a year because we're still in a budget crisis. Okay. So the upshot and this is where it stands and this is why it becomes important because these things tend to be fought when there's money at issue. Nobody goes to court and pays lawyers just for fine interpretations. And so at this point in time, we are collecting money from nonprofits and their hospitals, sales tax dollars, millions of dollars. And Senator Council's point is, we told folks we passed a law under the constitution that says you can't collect that, but we as a state are still collecting that right now and we have ever since that law. If Senator Council, in my understanding the constitution, prevails, then we are collecting a tax despite a law passed saying you can't collect a tax on these transactions. So that means we have several million dollars every year, if the fiscal notes are to be believed, which, you know, sometimes I'd take an issue with that, that we're holding and we're spending it and we're assuming it's ours. Well, I can tell you when several million dollars are on the line, some lawyer is going to go to a big nonprofit or something and say we ought to challenge that. We file a lawsuit. They make the proper challenge. They ask to have whatever they are entitled to on statute of limitations to have it returned as an improperly collected tax, and they're going to fight this in the courts saying, was the exemption really made law because of Senator Council's argument or not? And if Senator Council is correct, if my reading is correct...and it's not correct so much as what's adopted by the court, if the court adopts this reading instead of Senator Flood's

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

Floor Debate
April 12, 2010

reading, then we're going to have to cough back all those millions of dollars, plus we kind of look foolish. So, I mean, I'm not saying that should control. All I'm saying, it's a very legitimate, technical, legal constitutional issue. Normally these things don't matter because who's going to pay to fight it all the way to the Supreme Court. But I can tell you in my experience when millions of dollars are on the line, somebody usually decides to fight. [LB420]

SENATOR DUBAS: Okay. So if we go ahead and advance LB420 to the Governor's desk and it gets signed, do we essentially have...it could be said that we have two conflicting... [LB420]

SENATOR WHITE: Yeah. Arguably we...well, certainly we do. I mean, if Senator Council is right, we have a law right now that says you cannot collect taxes from a nonprofit hospital for sales tax. That became law. Now we have this in which case then you have a constitutional challenge as to whether this whole system is real law... [LB420]

SENATOR LANGEMEIER: One minute. [LB420]

SENATOR WHITE: ...that meets the standards for our constitution to pass a law. And so it's just a very technical but a very significant discussion of procedure. [LB420]

SENATOR DUBAS: So even...okay, say we do pull this back and we do decide not to advance it, we still could be challenged? [LB420]

SENATOR WHITE: I think we're at risk for the last year of taxes that we've collected, but going forward, we won't collect taxes, you know, because the law will have passed and we're on square footing. And then the Legislature next year can really look at the issue and decide whether the budget allows them to do what they think policy should be done. You know, it's one of those things where, for me at least, it's just kind of like a crossword puzzle. It's a fascinating thing that you don't get real emotional about, but it has very real consequences. [LB420]

SENATOR DUBAS: Thank you for the help, Senator White. [LB420]

SENATOR LANGEMEIER: Thank you, Senator Dubas. Senator Haar, you're recognized. [LB420]

SENATOR HAAR: Mr. President and members of the body, I'm listening really carefully and I would like to yield my time to Senator Council if she needs more time. [LB420]

SENATOR LANGEMEIER: Senator Council, 4:50. [LB420]

Floor Debate
April 12, 2010

SENATOR COUNCIL: Thank you, Mr. President. Thank you, Senator Haar. And that's the reason I bring this matter to this body. I respect this institution. I respect its rules. I respect our constitution. And when we take action that I think calls that into question, I think we need to seriously consider that action. Senator Dubas asked you the question you asked. I think what the situation would be is if LB420E is advanced to the Governor's desk in its current version and signed by the Governor, I think it gives rise to people challenging the collection of a sales tax from a not-for-profit hospital. And that being because consistent with our rules, if we wanted to change from a tax exemption to a sales tax collection process, if we had a system that they were exempt, the bill would need to be introduced, the hearing needed to be held, the bill needed to be advanced and go through three readings. That hasn't occurred with LB420E in its current version. It sat on Final Reading last year...and let me remind you, one of the reasons it wasn't voted on again on the second Final Reading last year because we adjourned early. Had we adjourned on the regular sine die date, we would have had time for LB420E to come back before the body and the matter could have been placed on the Governor's desk again. That didn't occur. It was a carryover bill, carried over from where it stood at the conclusion of last session which was on Final Reading for the second time, so on Final Reading for the third time. And every time it's been on Final Reading, there has been a substantive amendment. First, prior to passage the first time on Final Reading, the substantive amendment was to add the emergency clause. We felt so strongly about granting this sales tax exemption that we enacted this measure with an emergency clause. We said October 1, 2009, we don't want to wait until then to grant the exemption, we want to do it July 1, 2009, and that's what this body did. When it came back from the Governor, we changed it from July 1, 2009, to July 1, 2010. And I acknowledge and recognize that it was due to the budget situation. I appreciate the fact that the wind energy sales tax exemption was equally important and needed to go forward, but this body also said that the sales tax exemption for not-for-profit hospitals was important and needed to go forth. And we made those decisions consciously, fully aware of the budgetary crisis that was looming ahead of us. We made that decision consciously. And yet now we say, well, it came back. They're collecting it. I think it's a morass. Senator White, I don't know whether they're collecting it or not collecting it, and that's one of the problems. We need to provide the residents of the state of Nebraska with some degree of certainty with regard to the actions taken by this body. And when that bill came back last year, I... [LB420]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB420]

SENATOR COUNCIL: ...like I said, I don't recall. We can pull up the transcript of the floor debate, but I raised questions about how could this be allowed to occur. You know, the first thought that came to my mind was request an Attorney General's Opinion. Well, I got sent the little letter. Have you seen the little letter? This is what you can request an

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

Floor Debate
April 12, 2010

Attorney General's Opinion on. The Attorney General won't give you, won't render an opinion on the constitutionality of legislative action because it places the Attorney General in a conflict situation if someone challenges that legislative action. So I didn't have the benefit of presenting to this body an Attorney General's Opinion on whether our action was consistent with the constitution. So when LB420E was presented on Final Reading again... [LB420]

SPEAKER FLOOD: Time, Senator. [LB420]

SENATOR COUNCIL: Thank you. [LB420]

SPEAKER FLOOD: Thank you, Senator Council. Senator Lathrop, you're recognized. [LB420]

SENATOR LATHROP: Thank you, Mr. President and colleagues. LB420 went to the Governor's desk and back to accommodate a wind energy bill. That bill was mine, with some important amendments coming from Natural Resources Committee. I remember the reason we did what we did. And I remember thinking that Senator Hadley had done something that was magnanimous in allowing this bill to be drawn back from the Governor's desk. And I...so I feel a little funny standing up here right now because I've been a supporter of LB420 because of the idea, because of the principle that's involved in LB420, and my feelings about this bill are stronger now than they ever were because of what Senator Hadley did. And I felt last year that he demonstrated statesmanship that was not common among freshmen senators and I still feel that way. You know, I like Senator Hadley a great deal. But I find myself today listening to two of my fellow lawyers talk about the law. And we cannot wish away the principles that they're talking about with a vote. We can't make what they're talking about not true by giving this bill a green light today and I'd like to, I'd like to. And here's the reason I think this is very important to the state, very important to us as policymakers. And let me start out with the idea that right now LB420 is a bill that exempts these people three years down the road. Okay. So if we pass this today, these hospitals will have a tax exemption in three years. And the difficulty is if we don't want them to have this tax exemption over the next three years, then we are running into a lot of uncertainty and may very well by moving this today, very well do exactly the opposite of what we wanted to have happen. Here's how: If Senator White and Council are correct, and I have to tell you as a lawyer I think they are, if they are correct, then the hospitals could file a declaratory judgment action against the commissioner of the Department of Revenue and say it is my judgment that LB420 became law last year. We have an exemption. We have an exemption and we want a refund on all that sales tax we've been paying on our equipment. They can do that. If it's our will that they not be able to have that exemption for three years, it occurs to me that the answer is not to move LB420 but come back here next year, put a bill in that says, you don't...if you have one you don't get one until three years from now and pass that bill. I support the idea of LB420. I think what Senator Hadley did last year was

Floor Debate
April 12, 2010

a remarkable move from a freshman senator. And I will be supportive of LB420 or its version next year, but understand, if we pass LB420, we're going to think we've done something for the next three years, think these people are not exempt from sales tax only to find out in a declaratory judgment action that... [LB420]

SPEAKER FLOOD: One minute. [LB420]

SENATOR LATHROP: ...that's not the case. And we will have passed up an opportunity to ensure that they are not exempt for the next three years by moving LB420 and thinking we've done just that. I appreciate the remarks of Senator White and Senator Council. I think at times it is the lawyer's responsibility in this body to say: Wait a minute. We don't get an Attorney General's Opinion on this subject, you're going to have to listen to the argument much like the court does and in some sense trust the lawyers. And I would encourage those who have a different point of view on the constitutionality and the issues that have been brought up by Senator Council's motion to speak up, otherwise I regret to say I think the thing to do is not pass LB420 and put in a bill that says you don't have an exemption for three years and then you do. [LB420]

SPEAKER FLOOD: Time, Senator. [LB420]

SENATOR LATHROP: Thank you. [LB420]

SPEAKER FLOOD: Thank you. Senator Hadley, would you approach the Chair. For what purpose do you rise, Senator White? [LB420]

SENATOR WHITE: Permission to use the facilities. [LB420]

SPEAKER FLOOD: Denied. (Laughter) There are no more lights on. Senator Council, you're recognized to close on your motion to return LB420 to Select File for specific amendment. [LB420]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I want to go back to my opening remark. And my opening remark was with all due respect to Senator Hadley. And I think if Senator Hadley had been asked the question, he would have responded that when I raised the point with him last year, I asked him, why are you bringing the bill back? I mean, it passed 42 to nothing. And he shared with me the concern about impacting either the wind energy tax exemption bill or his tax exemption and, as Senator Lathrop stated, he made a magnanimous decision. And I applauded him for that and I said, you don't have to do that. You know, I read the rules and the constitution, your bill passed 42 to nothing. You could override a veto easy. I said, if that's the position that the Governor needs to take, that he needs to veto it, then have him veto it. And then the bill rises or falls on a vote of this Legislature as our rules contemplate and as the constitution contemplates. But again, Senator Hadley, to his credit, trying to be amicable

Floor Debate
April 12, 2010

and tried to achieve competing objectives, agreed to offer an amendment that would postpone the effective date of his bill calling for a sales tax exemption for a period of one year. That's what the action that was taken when the bill was returned to Select File for a specific amendment. And now here we are, third time this bill is on Final Reading, no other opportunity for the public to weigh in on this issue, and we place ourselves, I think, in the precarious position of opening this subject to a legal challenge. Reasonable legal minds will differ on who will prevail on this subject. It would be a case of first impression, I believe. But when we look at how our Supreme Court has ruled on other matters involving legislative action, they have been quick to overturn legislative action that contravenes the constitution and contravenes the legislative rules. I'll remind you of the action taken by the Supreme Court when, during the special session, this body passed a bill that did not fit within the specific call of the special session, even though I suspect although I don't know because I didn't go back and research it, although I suspect that that probably involved some suspension of the rules to allow for that matter to be considered. Nevertheless, the Supreme Court said that action went beyond the authority of the Legislature which is a matter we still have to fix, Senator Wightman, with the bill that you introduced this session. We have to fix that. So what I am proposing to the body is that we avoid placing ourselves in that position and take action now to correct this situation. And one more year is not going to...in fact, it probably would offset the amount of sales tax that may be required to be refunded, would probably offset any sales tax benefit to be gained by the state from continuing to collect it. I just believe that if we want to collect a sales tax on purchases of not-for-profit health clinics until 2013, we need to introduce a bill that provides for that. When you go back and you talk about changing substance, remember LB420 was originally introduced to grant an exemption. It wasn't introduced to state that these clinics would pay sales taxes until a certain date and be exempt; it provided for a sales tax exemption. That is what the subject matter that the hearing was held on. That was the subject matter that this body voted on Final Reading and sent the bill to the Governor's Office, and now we're doing something that is, quite frankly, exactly opposite of what the original intent of LB420. I respect Senator Hadley and everything he has attempted to do in this matter. I've maintained from the beginning that he was correct in LB420 in providing for the sales tax exemption. And by my vote on this motion, my vote is to send it back... [LB420]

SPEAKER FLOOD: Time, Senator. Thank you. [LB420]

SENATOR COUNCIL: ...and enactment. Thank you. [LB420]

SPEAKER FLOOD: Thank you, Senator Council. Members, you've heard the closing on Senator Council's motion to return LB420 to Select File for specific amendment. The question is, shall LB420 return to Select File for a specific amendment? All those in favor... [LB420]

SENATOR COUNCIL: (Microphone malfunction)...vote, Mr. President. [LB420]

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

Floor Debate
April 12, 2010

SPEAKER FLOOD: A roll call vote in regular order has been requested. The question before the body is, shall LB420 be returned to Select File for a specific amendment? A roll call vote has been requested. Mr. Clerk, please read the roll. [LB420]

CLERK: (Roll call vote taken, Legislative Journal pages 1442-1443.) 13 ayes, 32 nays on the motion to return, Mr. President. [LB420]

SPEAKER FLOOD: The motion to return is not successful. Mr. Clerk. [LB420]

CLERK: (Read LB420 on Final Reading.) [LB420]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB420 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB420]

CLERK: (Record vote read, Legislative Journal pages 1443-1444.) 42 ayes, 3 nays, 3 present and not voting, 1 excused and not voting, Mr. President. [LB420]

SPEAKER FLOOD: LB420 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB420, LB507, LB507A, LB563, LB563A, LB594, LB701, LB771, LB779, LB779A, LB800, LB800A, LB918, LB918A, LB931, LB987, LB987A, LB1002, LB1002A, LB1014, LB1071, LB1072. Mr. Clerk, items for the record. While the Legislature is in session and capable of transacting business, I also propose to sign and do also sign LR543. Mr. Clerk, items for the record. [LB420 LB507 LB507A LB563 LB563A LB594 LB701 LB771 LB779 LB779A LB800 LB800A LB918 LB918A LB931 LB987 LB987A LB1002 LB1002A LB1014 LB1071 LB1072 LR543]

CLERK: Mr. President, new resolutions. The Revenue Committee offers LR566. That's an interim study, be referred to the board. Senator Pahls offers LR567. That will be laid over. Senator White would like to add his name to LR538 and Senator Pahls to LR555. (Legislative Journal pages 1444-1445.) [LR566 LR567 LR538 LR555]

And Senator Cook, Mr. President, would offer a priority motion to adjourn the body until Tuesday morning, April 13 at 10:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)