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Floor Debate
November 15, 2011

[LB1A LB1 LB2 LR8 LR16 LR17 LR18 LR22 LR23]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the tenth day of the One Hundred Second Legislature, First Special Session. Our chaplain for today is Father Dan Andrews, Sacred Heart Church in Norfolk, in my district. Please rise.

FATHER ANDREWS: (Prayer offered.)

SPEAKER FLOOD: Thank you, Father Andrews. I call to order the tenth day of the One Hundred Second Legislature, First Special 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 this morning, Mr. President.

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

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

SPEAKER FLOOD: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR16, LR17, and LR18. Members, we now proceed to the first item on the agenda. We begin with General File, LB2. [LR16 LR17 LR18 LB2]

CLERK: Mr. President, LB2 was a bill introduced by Senator Wightman. (Read title.) The bill was introduced on November 1 of this year, at that time referred directly to General File. [LB2]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Wightman, as Chair of the Exec Board, you're recognized to open on LB2. [LB2]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. LB2 appropriates funds for the expenses incurred during this special session. The dollar amounts in LB2 are based on a 14-day session because we did not have a real firm grasp on how many days it would take. We now know that it will last at least 15 days, at least that's my understanding. So it appears it will be necessary that we will adjust the amount on

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

Floor Debate
November 15, 2011

Select File to reflect the number of days that the session actually runs. The expenses include funds for per diem payments, mileage reimbursement, printing, telephone, and some additional staff costs, including the Sergeant at Arms, pages, Bill Room, transcribers, and Bill Drafting. So I'm asking you to go ahead and approve, or pass this on to Select File. There will be amendments necessary to take into account the one extra day and perhaps fine tune some of the other expenses on Select File. Thank you, Mr. President. [LB2]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Wightman. Members, you've heard the opening on LB2. Are there members who wish to be heard? Seeing none, Senator Wightman, you're recognized to close on LB2. Senator Wightman waives. Members, the question is the advancement of LB2 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB2]

CLERK: 44 ayes, 1 nay, Mr. President, on the advancement of LB2. [LB2]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB2]

CLERK: Mr. President, LB1, a bill offered by Senator Dubas. (Read title.) The bill was introduced on November 1, at that time referred to the Natural Resources Committee, advanced to General File. There are Natural Resources Committee amendments pending. (AM36, Legislative Journal page 80.) [LB1]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Dubas, you're recognized to open on LB1. [LB1]

SENATOR DUBAS: Thank you very much, Mr. President and good morning, colleagues. What a difference a day makes. So last night as I began to prepare for my comments, it was almost like I wasn't exactly sure what to say. But I did figure that out, and so I am pleased to present to you this morning LB1. This bill is the culmination of many, many, many hours of research and work and analysis and rework. And I introduced a bill last session that was kind of the starting point for this. And as we started to try to generate the support for a special session, I put another bill out, took your questions and concerns, and this is what we have today from those questions and concerns is LB1. But again, by no means is this the end product. There is a committee amendment. And I really do encourage all of you this morning to raise your questions, to raise your concerns. We will be working on this bill between General and Select, and I want to be able to take what your questions and concerns are into that working group so that if we are able to address them in a manner that will satisfy you, that is what I want to do. I do want to earn your support on this bill and for us to be able to put it forward to the Governor's desk for his signature. LB1, in my estimation, creates a very effective

Floor Debate
November 15, 2011

and constitutional piece of legislation that provides Nebraska with routing authority that the federal government has reserved to individual states. This bill would give that routing authority to the Public Service Commission, which is an independent state agency with duly elected officials. Our citizens will have a voice for any concerns that our state will...and our state will have the ability to interject conditions that will ensure any location of a pipeline serves Nebraskans' public interest. The application and hearing process in LB1 also provides pipeline companies with due process and a full and fair opportunity to present their case for economic development, expected job creation, and energy enhancement goals. I've worked to make this a very efficient process for route approval with a fast-track reapplication should there be the need to allow for any route variations while still allowing the construction of major oil pipelines across our state. I'll briefly run through the bill and then I'll speak to some of the legal concerns that were raised to me when we first began talking about this. Before any major oil pipeline company is granted the use of eminent domain, the Public Service Commission must approve the application which includes a description of proposed routes and evidence of consideration of any other routes; reasons for the proposed route selection; a list of all governing bodies of counties and municipalities that will be impacted by the route; a description of the product to be transported; the estimated number of employees in Nebraska during construction and during operation; and that number should include those who may not live in Nebraska or in the areas of the pipeline; the owner and the manager of the pipeline; a plan to comply with our Oil Pipeline Reclamation Act; and a list of all of the places along the route that are close to unusually sensitive groundwater areas. The federal government does have a definition for unusually sensitive areas, but that didn't really fit well into our more rural settings and in particular, in reference to our precious groundwater. So in working with water experts, we have defined these areas to include Class I aquifers; areas where there is not an adequate alternate water source for community water systems; private irrigation systems; private domestic wells; and private livestock watering systems. These were all areas of importance to Nebraska's agriculture economy, our culture, and our identity, but not provided for in federal law. So LB1 protects these areas from intrusion of the placement of a pipeline. This again is not a safety regulation but it is a land use regulation. A plan to minimize or mitigate potential impacts to land and it's connected natural resources. The applicant will also include a written agreement to pay expenses that are assessed to this pipeline application. So that would explain in the fiscal note you would see in the column the costs, but you would also see that cost offset by the revenues because it would be paid completely by that applicant. And in order to inform the interested parties, the applicant publish a notice in a newspaper in each county where they will place the proposed pipeline, and they will also give notice to all of the governing bodies in each of the counties and municipalities. The Public Service Commission will then schedule public hearings and serve the appropriate notices. The commission will seek information from all impacted state agencies and other pertinent entities as well as public testimony to aid in the processing of that application. The public...we've worked very closely with the Public Service Commission on this bill. They

Floor Debate
November 15, 2011

do have a regulatory framework in place. They work with natural gas pipelines, so one of the reasons why I thought the Public Service Commission was the appropriate agency to go to, because of their background knowledge on these issues, and I do really appreciate all of the input they provided in putting this bill together. To pass the public interest test, it must show that they are in compliance with state and local laws, evidence of the impact of intrusion on natural resources and methods to mitigate those impacts; the economic and social impacts; efforts to ensure the welfare of residents along the route; the impact of the route on local development; agency reports; and any other application materials or relevant factors determined...that the Public Service Commission would determine as necessary. As I spoke yesterday when I talked about the amendment that I had introduced to Senator Langemeier's bill, we all know the importance of intent language in any bill, and, of course, this is no different. And the purpose of the Major Oil Pipeline Siting Act is very clearly stated. Through the application process, I seek to ensure the welfare of Nebraskans by protecting our property rights as well as our natural resources and economic interests. I clearly understand our authority only goes to siting and can no way infringe on the federal government's control of safety, operation, or maintenance of such pipelines. The amendment that I introduced was a part of this bill. It's a savings clause that truly reinforces that fact. It really allows for, if there's any challenges to the bill, for the judge to fully comprehend and understand the intent of LB1. It's my understanding if they're able to determine what that intent is, they aren't as inclined to go to the legislative history in making their decision. So the safety clause in a nutshell says, this shall not be construed to regulate any safety issues with respect to any aspect of interstate oil pipelines, intended to deal solely with the issue of siting apart from safety considerations, and understands the...and recognizes the express preemptions that are outlined in the federal Pipeline Safety Act of 1994. As a sovereign state, we do have the authority and responsibility to protect our land and natural resources, including our water because of their value, economically and strategically to help us meet the growing demands for ag products, both food and fuel. As my original draft legislation was circulated, you raised many good legal questions, so through the course of those questions and in discerning... [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR DUBAS: ...the direction we needed to go, we worked with attorneys who helped us address those questions. And again I encourage you to raise your questions on the floor this morning about how we can move forward with this bill and put together a real sound piece of legislation. You know, some of those questions dealt with our sovereign immunity, equating this piece of legislation, and what we're going through with the pipeline to what we dealt with in the Boyd County lawsuit--very different things. In the Boyd County lawsuit we had entered a compact with other states and had essentially waived our immunity. We have not entered into any kind of contracts or agreements with any pipelines or anyone else in regards to this situation, so our

Floor Debate
November 15, 2011

immunity remains intact. So, you know, again I know that there are going to be some other legal questions that will come up. This bill was modeled off of standing laws that have been very effective in other states so that we didn't recreate the wheel. We kind of cherry-picked what other states have and put it together in a manner that I felt would serve Nebraskans and Nebraska's interest. So again, there's nothing new in these laws that hasn't already been complied with by this company as well as others... [LB1]

SENATOR GLOOR: Time, Senator. [LB1]

SENATOR DUBAS: ...in other states. Thank you. [LB1]

SENATOR GLOOR: Thank you, Senator Dubas. As the Clerk stated, there are amendments from the Natural Resources Committee. Senator Langemeier, as Chairman of the committee, you're recognized to open on the amendment. [LB1]

SENATOR LANGEMEIER: Mr. President and members of the body, thank you. The committee amendment is very simple at this point. It just excludes out pipelines that are created under Executive Order 13337, and are prior to this effective date of LB1. With that said, we are going to start meeting, hopefully, at 4:00 today and meet with attorneys on both sides to do some cleanup on this bill. I think there were some concerns out there on constitutional issues and we will continue to have that conversation and, hopefully, have a resolve in that regard for Select File when we get there in the next couple of days. So with that, I'd ask you to adopt AM36. It is the exemption, and then ask for the adoption of LB1. Thank you. [LB1]

SENATOR GLOOR: Thank you, Senator Langemeier. Members, you've heard the opening on LB1 and AM36. We now move to discussion. Senators in the queue: Ken Haar, Flood, Carlson, and Krist. Senator Haar, you're recognized to open. [LB1]

SENATOR HAAR: Mr. President and members of the body, I rise in favor of LB1 and AM36. And I want to talk about some of the reasons I think this is a very good bill. Sitting through 25 hours of testimony, much of that from citizens of the state of Nebraska, a concern we heard again and again was that with Keystone I, people really had nowhere to go with questions, with comments, and so on. And especially we heard from someone in Seward County trying to communicate such simple things as the route of the pipeline is going to go through our well protection area, writing to the State Department, writing to TransCanada and so on, and being very frustrated in those communications. So one thing I like very much about LB1 is it brings...it brings a place in Nebraska, the Public Service Commission, where citizens can go with their questions, with their comments. And I think we have in the state of Nebraska a tradition of government close to the people. The things that affect you most, in many cases, you can actually know those people, go talk to them, they live in your town or they live close-by. And so with this concept of government close to the people, I think it's really

Floor Debate
November 15, 2011

important in LB1 that we have the Public Service Commission not only holding hearings, but I would also assume that they would be available, a number to call during the process if there was...if there were questions or things that came up such as in Seward where finally it turned out that the wellhead protection area wasn't on the most current map of...that the State Department had, the most current geological map, and there wasn't time to add it, and so on and so forth. So in this case, we'll have the Public Service Commission that people can call. I'm sure that number will be widely circulated. And then I have a question about this for Senator Dubas. [LB1]

SENATOR GLOOR: Senator Dubas, would you yield for a question? [LB1]

SENATOR DUBAS: Certainly. [LB1]

SENATOR HAAR: Yes, could...thank you. Could you talk a little bit about Section 6 a little bit more and the citizen input part, which I feel is really very important. [LB1]

SENATOR DUBAS: Well, let me get to that section here real quickly. You know, one of the things that I heard over and over again when I first became engaged in this is that citizens felt they had nowhere to go to either simply get questions answered that they felt they were getting an objective answer to, or to bring what they felt were legitimate concerns. And again, without a state agency in place that can put a public hearing together or gather that information into one place, our citizens had no place to go. So as we know in our legislative process how important those public hearings are, how much we value citizens' input on this bill as well as many others, it's just as important through the Public Service Commission to have that public hearing process where the agency that is ultimately going to make a decision on that particular project has the ability to gather input from citizens, positive as well as negative. [LB1]

SENATOR HAAR: Do you also see the possibility like happened in Seward where... [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR HAAR: ...where the wellhead protection area was being penetrated by the pipeline, but there was really no one to talk to, that the Public Service Commission would be available for that kind of input? [LB1]

SENATOR DUBAS: Oh, without a doubt. And again because we have no agency in place at all, we have no mechanism to negotiate or try to put specific conditions or protections in place, or what...we just had no authority to do anything. So this, I see this as a very valuable resource to our communities as well as our individual citizens. [LB1]

SENATOR HAAR: Good. Thank you very much. [LB1]

Floor Debate
November 15, 2011

SENATOR GLOOR: Thank you, Senators Haar and Dubas. Senator Flood, you are recognized. [LB1]

SPEAKER FLOOD: Thank you, Mr. President and members, good morning. I do support AM36. Obviously from the committee, it allows us to take a prospective look with this legislation from Senator Dubas. And I think one of the key questions that's going to be asked throughout this process is, should we have a Governor, for instance, as Senator Langemeier had envisioned, make the decision on these pipelines or should we have the Public Service Commission? And the reason I favor long-term the Public Service Commission, after the rules and regulations are adopted, is that evidence is received, a record is made, testimony is received, the rules of evidence to the extent necessary are followed, and the applicant has the right to appeal through a certain process. And I think when you're looking at long-term siting of pipelines, an agency such as the Public Service Commission has the background and the expertise and the ability to really get into the rule-making process. And you're not leaving one elected official in this state with the sole responsibility of siting a pipeline. You may have in the future, people run on that very issue, and you could suggest that the tribunals has some bias. So I think that's the right direction long term for the state. And I realize and I would be the first to tell you, some of the provisions of LB1, I think, run afoul of some of the federal preemption, and I think I've shared that with Senator Dubas. I believe there's work to be done here. I would ask your interest and for your support in obviously adopting the committee amendment today. And if you find it necessary, you know, allow this to go to the next round and between General and Select, Senator Dubas and Senator Langemeier will get together with a lawyer such as Alan Peterson, who I have a great amount of respect for, and some of the others. I think "Packy" Pepper from Omaha and others might be part of this discussion. And I think that's a healthy environment to do that and then we can spend more time on Select File and it allows us to keep the session moving. As Speaker, I just want to tell you, you know, obviously, we've got to do our work. We've got to do it right. We've got to take our time and we have to make sure we're doing things efficiently, but I think everybody here would like to be out of here before Thanksgiving. And if you could find a way to move this bill sometime today and then allow us to have that hearing, I think we'll be on the right path. We just have to make sure the policy has absolutely been thoughtful and considered when we get done with this. And I think we've got a process in place that will ensure that. Thank you, Mr. President. [LB1]

SENATOR GLOOR: Thank you, Senator Floor. Senator Carlson, you are recognized. [LB1]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'm going to repeat part of...a very brief part of my testimony yesterday because I indicated that in any bill for me to support it, there would need to be three elements as a part of

Floor Debate
November 15, 2011

the pipeline siting legislation. And the first was that no company currently in the process of procuring a permit to build a pipeline would be required to comply with a new siting law, and I believe that AM36 takes care of that and I am in support of AM36. No bill should by rule restrict a pipeline from being built in any specific region of Nebraska. I believe that's very important from a long-term planning standpoint, and I'm satisfied that that's not a part of this bill. But the third request is this, that a siting bill must be pro business, inviting pipelines to be in our state, must help them find an appropriate route, and make a decision on the permit application in a reasonable period of time. And with that, I would like to ask Senator Dubas a few questions if she would yield. [LB1]

SENATOR GLOOR: Senator Dubas, would you yield for some questions? [LB1]

SENATOR DUBAS: Yes. [LB1]

SENATOR CARLSON: Thank you, Senator Dubas and thank you for the work that you put forth in this. And if you've got the bill in front of you, I'd like to make a few specific suggestions on the wording in your bill. If we go to page 4, line 17, "The construction of a major oil pipeline in Nebraska may be in the public interest." Now we can argue on this. I would say, "it is" in the public interest, rather than "may be." And I'd just ask for some consideration there. Next question is on page 6...pages 6 and 7, starting under (j) on line 20. Now I'd ask for as you meet and study this, review that section (j) again trying to make it a little bit friendlier and a little bit more in line with what can be attained and if we can turn this into a carrot bill instead of a stick bill. So I'm not asking right now a specific question. I'm just requesting that you really consider section (j). Next one is on page 9. And this has to do with expenses that are determined by the commission to be reasonable. And if the company that is requesting a permit decides these expenses are not reasonable, then there's a process. And on page 9, and I brought this up to you before, but line 9, "The commission shall determine if the assessment...is excessive, erroneous, unlawful," so forth. I think there should be a neutral party that studies that when there is dissent on expenses that have been levied rather than the commission itself because there's really no room for consideration there, I think, with the commission determining that. Then if we go to page 10, Section 8, I've really got some concerns about Section 8. "After receipt of an application"...starting on line 2, "under section 6 of this act, the commission shall: (a) Schedule a public hearing." I think there ought to be a time period in there. And some of the things that have come out in LB4, which was Senator Langemeier's bill, I think could be implemented into LB1 and make it a little bit more reasonable. Within 30 days, that's what's in LB4. [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR CARLSON: I'd like some consideration there in that section. Now let's go down to line 19 because line 19 through line 8 on page 11, I think is an area of concern. "The following agencies shall." I think the following agencies "may" file a request. That

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

Floor Debate
November 15, 2011

would be my suggestion. If they don't want to be involved in it, they shouldn't have to. But then I think that there are too many government agencies. This is too cumbersome. This is not inviting to help a company find an appropriate place. It's too cumbersome. I think it's way overdone. And I'd like you to consider that as you meet later today. How much time do I have, Mr. President? [LB1]

SENATOR GLOOR: Time, Senator. [LB1]

SENATOR CARLSON: Pardon? [LB1]

SENATOR GLOOR: Time just expired, Senator. [LB1]

SENATOR CARLSON: Okay. Thank you. [LB1]

SENATOR GLOOR: Senator Krist, you are recognized. [LB1]

SENATOR KRIST: Thank you, Mr. President and good morning, colleagues. To emphasize my vote on LB2, on the funding issue, I've had many, many calls from constituents and some e-mails. And to resurrect an old quote from Top Gun, without...I'd just like to paraphrase it, because I certainly wouldn't want to use the exact words. I think yesterday the Speaker wrote a couple checks that we have to cash, one of which is that in Phase I, or Part I of this whole endeavor, we're going to pick up...not we...we, as citizens, the Nebraska citizens are going to pick up the bill on the additional EIS study that needs to be accomplished in order for us to go through. I make that point because I believe...and if Senator Dubas would yield to a couple of questions, please. [LB1]

SENATOR GLOOR: Senator Dubas, would you yield to questions from Senator Krist? [LB1]

SENATOR DUBAS: Yes, I will. [LB1]

SENATOR KRIST: I make that point because I think the strongest part of LB1 is that any applicant for a permit to build a pipeline in this state in the future, which we are talking about now, we're talking Phase II of the Speaker's plan, is paid by the applicant, not the citizens of the state of Nebraska. [LB1]

SENATOR DUBAS: That's correct. [LB1]

SENATOR KRIST: And I would invite any lawyer or any legal beagle of any kind to make sure that that's the language in this bill. It satisfies my parochial interest although I am not a lawyer. The second question, Senator, is I know that you have substantial background in the EIS studies that have already been performed. It would seem that

Floor Debate
November 15, 2011

some of those are static. They're not dynamic in the fact that we have established where those sensitive areas are. Would you agree? [LB1]

SENATOR DUBAS: Yes. They've been very thorough. [LB1]

SENATOR KRIST: Okay. So that data probably needs to be made available not only in Phase II, but in Phase I or Part I of this endeavor which would hold down the cost to the taxpayers, if indeed that's what we vote to do. And finally, my last comment actually goes to, if you'll pardon me, it goes to Section...on page 7, the beginning paragraph actually defines water sources and places that we would consider to be sensitive. Now again, I'm not a lawyer but I know that there's technology that puts pipelines below rivers, below streams. I would think that a lawyer for any kind of opposition to a pipeline would look at this part of the bill and say, you can't put it underneath the Yellowstone River because that's the only place I get fresh water. You can't put it underneath an aquifer...you can't put it above an aquifer of a Class I, yet you can do it in eastern Nebraska over several aquifers that we use for agriculture that are not in that class or category. So I would hope that this afternoon and before this comes back for a vote, that we look at not being so restrictive in these permits that we can allow for this technology to be put into the state and jobs be created and economic development happen. If we're all about making sure that everything is safe, then I would invite us to tell everyone to go home and surround themselves with pillows and not go outside. There's some risk that needs to be mitigated, I understand. But I think these couple of paragraphs alarm me because, again, as I would look at someone who is trying to fight against... [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR KRIST: ...the pipeline developments, which we have seen plenty of, I would think that they would find particular clauses, particular phrases that would say, that's the only source I have for fresh water, that's the only source I have for agriculture. That part of it I really think needs to be defined. Thank you for your work on this effort. And those would be my comments and I would offer the remainder of my time, if you'd like to comment. [LB1]

SENATOR GLOOR: Thirty-seven seconds, Senator Dubas. [LB1]

SENATOR DUBAS: Thank you very much, Senator Krist. And, you know, there's already a definition in the federal regs dealing with unusually sensitive areas. But they didn't necessarily mesh with rural. They were more focused towards urban population, so if you have a pipeline that's going through a highly populated area, if this criteria was in place, you were likely not to be able to put a pipeline in that area. And so what we did was working with water experts, tried to craft something similar but that would fit more in the rural settings rather than the urban. [LB1]

Floor Debate
November 15, 2011

SENATOR GLOOR: Time, Senator. Thank you, Senator Krist and Senator Dubas. Senator Louden, you are recognized. [LB1]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look over this LB1 and some of the issues with it, I do have some concerns about the different sections the same as...somewhat the same as Senator Carlson had. My first one, though, is on page 1 and it has down there, "Nothing in the Major Oil Pipeline Siting Act shall be construed to regulate any safety issue." And that goes on to, you might say, discussing whether or not the federal regulations are in effect, which we all know they are. My question is, is why should we bother to put this in statutes when we really don't have to? It's already a federal issue and those can be negotiated because some states are negotiating from time to time with being able to help monitor and some of the safety regulations and the federal government does defer some of those issues and inspections to the states. So when we put something like that in there, I'm wondering are we negotiating or are we legislating an issue away that we probably don't need to? It's a case of, if they're not asking that question, why are we talking about it? And I think most lawyers usually understand something like that. The next one that I would have a problem with is, as Senator Krist has mentioned, on the top of page 7 when we talk about where we can run a pipeline. And when you start saying you can't run it by livestock wells or you can't run it by irrigation or private domestic wells, there could be such a system about like the old-timers when they were trying to drive cattle up from Texas. There wasn't anyplace to go because everything was fenced. And so if you drew a line all the way across the United States and then tried to run a well across, you'd probably have several zigzags in it. So I'm wondering if that all has to be in there, or if some other issues have to be pointed out, because as a one part said, water that is used for water supply. That right there could probably stop you from putting a pipeline across anyplace on the Middle Loup River because that's your water supply for Lincoln and Omaha. So I'm concerned about that. Also Section 7 on page 7, I'm wondering if that section should be deleted completely. And that mostly is how they're going to build a pipeline if they want to do some investigation. I think there's a better way to do it than to put into statute that if you want to put a pipeline across Nebraska, you've got to pay for all of the investigation that some commission someplace will decide. First of all, the commission if they're...as we're working on some of this other, Senator Floor said yesterday, we'll pay for some of that because that's the thing to do. So I question if that is really the way to go on that part there. Another one is the top of page 11 and when you...I would agree with Senator Carlson, there are so many different agencies involved there all the way from the Historical Society to the Environmental Control, Department of Roads. Some of them needs to be in there but I think if you're going to put this in the Public Service Commission, it's up to them to work with those agencies and go that route. Because anything going across the Board of Educational Lands and Funds, they'll automatically be involved with that let alone having to have it in statute someplace because you don't put anything on any school lands without their

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

Floor Debate
November 15, 2011

permission. [LB1]

SENATOR GLOOR: One minute, Senator. [LB1]

SENATOR LOUDEN: And, of course, Game and Parks and some of the others. So I think that could be streamlined considerably. Otherwise, as you say, a work in progress, I would like to see this streamlined a lot more. Thank you, Mr. President. [LB1]

SENATOR GLOOR: Thank you, Senator Louden. Senator Nelson, you are recognized. [LB1]

SENATOR NELSON: Thank you, Mr. President and members of the body. I share Senator Carlson's sentiments that there are sections here in LB1 that are cumbersome and what I feel are rather intrusive. If Senator Dubas would yield to some questions, please. [LB1]

SENATOR GLOOR: Senator Dubas, would you yield? [LB1]

SENATOR DUBAS: Yes, I will. [LB1]

SENATOR NELSON: Thank you, Senator Dubas, and I want to commend you on all the work that you've done and all the things that you have considered in crafting this bill. If we could go to page 11, Section 8, at the bottom of the page there, I think it's paragraph (4)(b), the third line there, "including evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources, the depletion of beneficial uses of the natural resources." What are we talking about there that we should be considering or the Public Service Commission with that wording? [LB1]

SENATOR DUBAS: The Public Service Commission would be looking at how that pipeline would impact those areas adversely. I think they would be looking for the negative impacts, not only the land but those natural resources that are connected with the land. [LB1]

SENATOR NELSON: Well, what are depletion of beneficial uses of the resources if you have a buried pipeline? [LB1]

SENATOR DUBAS: If it would impact the water somehow, if it would impact how that land is being able to be used. Those are just a couple that come to the top of my mind. We also have the unusually sensitive groundwater areas, so those are especially vulnerable. [LB1]

SENATOR NELSON: Well, my point is, if we've got ranchland or we have farmland and the pipeline is buried, then by and large there's no impact on the farmer or the rancher

Floor Debate
November 15, 2011

for the use of the land afterwards. And I know we had testimony and I heard about a rancher that was restoring the grass. Yes, it would take time, so I see an impact there. But that's about the only thing that I can conceive of as far as the normal places where you go through farmland. So that we can cover some other things here, at the top of page 12, it talks about...the first line, "Risk of depletion of beneficial uses of natural resources other than by oil spills shall be heavily weighted by the commission." You know, when I first read through the bill it just seemed to me like we're building a wall here that's going to make it almost impossible for any oil line to come through if the Public Service Commission is going to go into depth in some of these things and use that as a heavily weight...heavily weighed. So do you have some comment about that? [LB1]

SENATOR DUBAS: Well, I think, you know, we very clearly outline in the intent language how valuable our natural resources are to our economy. We're an ag-based economy and these natural resources definitely contribute to that. And so I think by that same token, we need to be able to weigh that. If you're putting a pipeline in, is there that potential for any adverse impacts that would impact that particular area of the state's ability to generate a positive economy? [LB1]

SENATOR NELSON: And then...thank you. And then on line 6 regarding the economic and social impacts. What are "social impacts" in your mind? [LB1]

SENATOR DUBAS: I think again we're looking at the diversity of the state, the diversity geographically, culturally. I mean, just looking at the Sandhills, what a unique area of the state that was...that is, and I mean everything about the Sandhills, they're connected to it socially through their families, through their ranches... [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR DUBAS: ...through their communities. [LB1]

SENATOR NELSON: Good. Are considerations like that a valid basis for opposing a pipeline in coming in and our economic interests in the benefits that we would achieve as a result of that? [LB1]

SENATOR DUBAS: I think it's certainly something that needs to be brought into consideration and we're looking at the overall impact of any particular pipeline project into the state of Nebraska. We're looking at the environmental impact. We're looking at the economic impact. We're looking at the impact to our communities, to our individual families, farmers and ranchers. So I think you look at the whole picture, you put everything out on the table when you're making this. It's an important decision. [LB1]

SENATOR NELSON: All right. Thank you. Well, there are others I would ask about but I

Floor Debate
November 15, 2011

would like to see you take into consideration, perhaps tone down some of these things, and maybe leave a few things out so that we don't have so many grounds of objection to a pipeline on these areas. Thank you. [LB1]

SENATOR GLOOR: Time, Senator. Thank you, Senator Nelson and Senator Dubas. Senator Carlson, you are recognized. [LB1]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'm just going to ask Senator Dubas to listen to the last couple of comments and I know that she will and she has been listening. But I had another concern that I ran out of time on in my previous statement and that is on page 12, Section 9. And it reads, "Within eight months after the receipt of the application under section 6 of this act, the commission shall enter an order." I think eight months is too long. And LB4 had a time period of 60 days. And I know 60 days is ambitious, but I believe that this needs to be moved along in an orderly and yet reasonable fashion so that a group that is applying for a permit can have an answer to their question. And then on page 13, Senator Dubas, Section (2), "The commission may, for just cause, extend the time" not to exceed 18 months--too long, too long. Let's get this down into a time period that is more reasonable. And then at the bottom of page 13, under (4), I like this wording. It says that if an application is denied, the applicant "may" not "shall," may reapply within 60 days. Well, within 60 days is fine. They could reapply within 3 days. And so it's not unreasonable. That's a good approach there. And so I would ask that you consider these things and I am supporting AM36. This morning I am supporting LB1. And the big test will come on Select File when we look at the kind of changes that have been made. And with that I would yield the balance of my time to Senator Dubas if she would like to speak. [LB1]

SENATOR GLOOR: Two minutes 47 seconds, Senator Dubas. [LB1]

SENATOR DUBAS: Thank you very much, Senator Carlson, and I appreciate the time. And I am taking notes on everything that everybody has raised because that is important for us to have when we go into the working group and either being able to come back with what I would consider a solid answer, and why we did this, or come back with any types of changes. You know, I just want to reemphasize the fact that how closely we worked with the Public Service Commission on this and their expertise, their experience in working with other types of pipelines, not necessarily crude oil pipelines, but other types of pipelines. And so they're very familiar with establishing a hearing process and what it takes to go through the application and doing things in a responsible manner, in an expedited manner too. I won't disagree with that. And so I think there probably will be ways that we can make this a more efficient process but by the same token we have to be very responsible in what we're doing so that we don't either, you know, infringe on due process for the applicant or for the citizens. So, you know, I do recognize the more time you give people, they're going to use as much time as you give them. But, you know, the Public Service Commission in their work with me

Floor Debate
November 15, 2011

was very thoughtful and very thorough, and I respect the issues that they brought to my attention like requiring these agencies to be a part of the process. Without that authority, you know, the Public Service Commission could go to DEQ or to any one of the other agencies and say, you know, I need you to do this, that, or the other thing. Well, without the absolute authority, you know, DEQ could say, well... [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR DUBAS: ...I don't have time or, you know, I don't see the need. So the Public Service Commission really does need to have that authority. And you look at any other kinds of projects that go on in the state, whether it's transmission lines or roads or what have you, these agencies are involved. These agencies had the ability to be involved at the federal level so I don't think we're requiring anything that's out of order. Public Service Commission said there's no absolute guarantee that they would go to these agencies on every single project, but they do need to have that ability and that authority to use their expertise when they're evaluating applications. So again, I'll take your considerations and your questions into the working group and if there are ways that we can make adjustments that will be satisfactory, we certainly will. Otherwise, I'll come back to you with very solid reasons as to why we cannot. Thank you. [LB1]

SENATOR GLOOR: Thank you, Senator Dubas. Senators remaining in the queue: Lathrop, Ken Haar, Utter, Price, and Wallman. Senator Lathrop, you're recognized. [LB1]

SENATOR LATHROP: Thank you, Mr. President and colleagues, good morning. When I saw that this special session was coming and there were a number of legal issues that would arise, I read the memos that the various lawyers had written and read a number of the cases that were cited in those memorandums. And I came away with this impression about siting legislation. And I think it's important to understand that by passing LB1, we're going to have a siting law. And in a big picture sort of way, as I read these cases and looked at the law and the subject matter, what I began to appreciate is it's important to have a thoughtful siting bill. But it's also recognized the bigger purpose of a siting bill and that's to give the people of the state of Nebraska a say in the route. We just went through the TransCanada Keystone XL discussion. And if I can use them as an example, it's a \$7 billion project. And what we owe somebody who's going to make that kind of an investment is a process that's not going to get hung up because we've overlooked something in our process. So Senator Carlson mentioned Section 8 which has the agencies that shall submit a report and his concern was is that perhaps it should be "may" and we ought to pare the list down. I'm going to suggest that we owe it to those who are going to make an application to get everybody submitting the report who may later come back and say, we don't like the route for some reason. Let me give you an example. Listed on there is the Historical Society and you may say, who else are we going to have? Do we really need the Historical Society? The answer to that I think

Floor Debate
November 15, 2011

is, yes, because the Historical Society, if we approve a route and then find out there's an Indian burial ground, then we're going to be back and having another discussion and we're going to delay a pipeline project for somebody who has made a \$7 billion investment, or intends to, because we've overlooked something. So I think when we look at LB1 and the requirement that the various agencies put a report to the Public Service Commission, I think that's important because it requires that the people with expertise submit a report, be at the table, and tell us where the land mines are in the process of approval. Senator Louden expressed some concern about the clause that said "nothing is intended to regulate safety." When I read these bills from other...or these statutes from other states and looked at the process, I thought to myself, I'm surprised none of these people have had a challenge for a violation of the Commerce Clause to this point in time. And the fact of the matter is...or for preemption. The fact of the matter is that they haven't because having a siting bill brings people to the table where they can negotiate a solution, which they've done in Montana and in South Dakota, and having language in the statute that says we're specifically not taking into account safety avoids the preemption challenge. It's not there to be cute or to be clever and it's not redundant. It's a safety measure. It's a...and by that I mean, as we legislate, it has a purpose and the purpose is to avoid a challenge on preemption in our process. I would also, as I listened, and I appreciate our concern with not overburdening someone that wants to put a pipeline through... [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR LATHROP: ...our state, recognize that they want it done right the first time. If you are making a \$7 billion investment from Alberta, Canada, down to the Gulf of Mexico, you want each state to do it right the first time and that does take and requires that we put a lot of considerations in here. But they're not veto considerations. If we find a particularly sensitive area or we find one of the things in here that is a consideration that causes concern, that doesn't end the project. It's just a consideration for the Public Service Commission as they try to determine what is the best route, not how to keep them out of the state. That's not the purpose of LB1. The purpose is to find the best route, and I believe that means that we should have as many people at the table in that process, we should hear from as many people as we can, and finally when we talk about the time lines, and this is just a thought... [LB1]

SENATOR GLOOR: Time, Senator. [LB1]

SENATOR LATHROP: Thank you. [LB1]

SENATOR GLOOR: Thank you, Senator Lathrop. The Chair recognizes Senator Ken Haar. [LB1]

SENATOR HAAR: Mr. President and members of the body, I'd like to follow up on the

Floor Debate
November 15, 2011

discussion that's been going on and first of all, I jumped the gun and I filed AM41. I'd like to have that moved to Select File, refiled to Select File if I could. But we're talking about the concept, so I will talk about that amendment here. I've called that amendment the Goeke amendment. And in response to the testimony we heard, Jim Goeke added that we ought to have the conservation and survey division of the University of Nebraska included in that list of agencies. And that's the simple part of AM41. But I believe that we need to get as many people to the table as possible. Going back to the process, the FEIS that we went through, when we talked to the various agencies in Nebraska, for example, Game and Parks did talk to the federal government but they said, we have no legal obligation or jurisdiction with regard to an oil or gas pipeline. Well, I think they ought to be at the table. I think that ought to be their obligation anyway. The Nebraska Department of Natural Resources said that they had...okay. My understanding is that they didn't file comments with the process. So again, I'm a believer that we need as many groups at the table as we can get there to talk. And another example, this was a letter, October 9, fairly recently, 2011, and this had to do with the Nebraska Game and Parks Commission sending a letter to the EIS project in which...and this was October 9, well into the process, where they suggested some changes to ten rainwater basin wetlands and how those would be impacted by the pipeline. So again I believe that as many people need to be held responsible to respond. It's sort of like having a checklist that astronauts use, airlines use, and so on. Before they take off, they say, you know, this has to be done and this has to be done and this has to be done. I think in our checklist we need as many Nebraska agencies to respond, not to hold up the process, but to make sure that they come in at the front end. And so again, I support LB1 with AM36 and respectfully disagree with my colleague, Senator Carlson, on page 10, in Section 8, line 19. I think the "shall" is very appropriate. I think we need as many people at the table as possible so we get the information early and it can be complete and dealt with, everybody knows what's going on. Thank you very much. [LB1]

SENATOR GLOOR: Thank you, Senator Haar. The Chair recognizes Senator Utter. [LB1]

SENATOR UTTER: Thank you very much, Mr. President. Good morning, colleagues. Let me start off this morning by just acknowledging the considerable work of Senator Dubas and the rest of the folks that have worked so hard on this issue. I appreciate your perseverance and certainly appreciate the final results that it seems like that we're heading for. Also would like to acknowledge Speaker Flood. I've seen many examples, I guess now in the three years I've been here, of his considerable...maybe even "considerable" is not the word, his massive skills at putting people together and arriving at solutions, and I'm in admiration and in awe of his efforts. I do have some...a question and I'd like to address, if I could, at the beginning a question of Senator Dubas, if I could. [LB1]

Floor Debate
November 15, 2011

SENATOR GLOOR: Senator Dubas, would you yield? [LB1]

SENATOR DUBAS: Yes, I will. [LB1]

SENATOR UTTER: Senator Dubas, what would be your definition of safety? [LB1]

SENATOR DUBAS: Oh, you're stumping me here, safety. I guess in regards to this particular issue or just in general? [LB1]

SENATOR UTTER: Well, I'll let you be the judge of that. Take it any way you'd like to go with it. [LB1]

SENATOR DUBAS: Well, I guess safety is, you know, making sure that the welfare of our residents is looked out for, is taken into consideration. You know, nothing...there are...nothing in life is risk free but in any way that we can minimize those risks or put some appropriate protections in place that would help us minimize those risks, that's how I would look to safety. [LB1]

SENATOR UTTER: Thank you, Senator Dubas. I did look in the...just to show you my skills with the computer, looked at dictionary.com and looked at a definition of "safety" and one of the things it says is that safety is freedom from the occurrence of injury, danger, or loss, a pretty short definition. And as I'm thinking about what we have done and what we are going to do, it seems to me like siting a pipeline is all about safety. When we are talking about protecting our natural resources, which I think is important, we are talking about preserving the aquifers, protecting the aquifers and doing all those things, we're really talking about safety. And so to me a pipeline siting bill is about safety. And certainly I appreciate Senator Lathrop's legal advice in this area that he gave us a few minutes ago, but I do have concerns with the federal preemption thing as it relates to safety because I'm not sure that there's anything else but safety when we are looking at siting a pipeline. And certainly I don't say that in a manner that would preclude us from getting to a sight line...a pipeline siting bill because I think a pipeline siting act is important. The other thing that I rise to acknowledge is the work of the Natural Resources Committee in their many hours of testimony that they received, and certainly want to acknowledge Senator Carlson and his comments this morning, because I have a tendency to agree that we need to get the necessary information in a pipeline siting bill,... [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR UTTER: ...but we don't need to go beyond that. And I have concerns that, for example, one of the things that struck me right off the bat is how important is it to know how many people are going to be used in constructing the pipeline and how many are going to be working there. What does that really help in terms of determining where

Floor Debate
November 15, 2011

a pipeline should be sited? And so I would urge the working group that you're putting together, Senator Dubas, to look at this very critically, do what needs to be done, but don't make it any more burdensome than absolutely necessary. To me, one of the great scourges of government is regulatory burden, and while we need rules and regulations and we need people to be involved, we should have just the necessary people to be involved and not beyond that. [LB1]

SENATOR GLOOR: Time, Senator. [LB1]

SENATOR UTTER: Thank you, Mr. President. [LB1]

SENATOR GLOOR: Thank you, Senator Utter. Senator Price, you're recognized. [LB1]

SENATOR PRICE: Thank you, Mr. President, members of the body. In many and much of the conversation we've had this morning I agree with what was said, particularly what Senator Carlson has brought up and others, but I did have a question for Senator Dubas, if she would yield. [LB1]

SENATOR GLOOR: Senator Dubas, would you yield to a question from Senator Price? [LB1]

SENATOR DUBAS: Yes, I will. [LB1]

SENATOR PRICE: Thank you, Senator Dubas. And again, thank you for your diligence and your efforts here. My question, when we look at a focus on the PSC, and you've said you've worked with them extensively? [LB1]

SENATOR DUBAS: Yes, I have. [LB1]

SENATOR PRICE: Okay. So can you articulate how much the PSC may have to grow? I mean do they currently have on staff the ability to perform the task that you lay out for them in this bill? [LB1]

SENATOR DUBAS: No, they do not have the staff in place that would be able to help them deal with it and they would not anticipate bringing additional staff on, simply because there probably wouldn't be that many applications. But what this bill would allow them to do is to contract with the type of expertise that they would need to have in evaluating the applications. Whether it's our own state agencies that they would use or those outside of state agencies, they would be able to contract with them. [LB1]

SENATOR PRICE: Okay. Great. So I'm then...so I just want to make sure I understand this. This is not going to cause a burden on the PSC where they're going to have to bring on people and, bluntly say, grow government. [LB1]

Floor Debate
November 15, 2011

SENATOR DUBAS: Absolutely not. [LB1]

SENATOR PRICE: Okay. Thank you very much, Senator Dubas. I have been talking with some of the members of the PSC and I didn't quite get that understanding; that a concern is, ladies and gentlemen, that when we start this pipeline act and we do these things, we are growing government. We are going to make government bigger. There are going to be more people who are going to be hired and brought on, on board; that right now they...that the PSC does not have, and the bill does speak to this, does not have the organic capability to perform the tasks and so there's going to be a fairly large bill associated with this. And as the Speaker said, we, the state, will pay this bill and we believe that we are obligated to do that; that it's important that we do this. So when we start to look at the size of this and we're trying to wrestle with, as we said, what's important, and Senator Lathrop brought up good words about the Historical Society and what they would bring to the mix, all of that is valid. But as senators have said before, to include Senator Krist, there is a cost to this and we have to make sure that we are, as stewards of our public monies, that we make a good decision here. We've all been living the reality of lower revenue and economic stress times. You don't have to go very far, either on your computer or in your newspapers here, that we are not going to recover from this malaise that we are in economically overnight. Revenues aren't going to continue to improve at an exponential rate, therefore, we have no money worries. So I would caution the body as we look at this and understanding, as you go out and question the PSC, ask them pointedly and directly how much is this going to cost, how big will this be, and does it have to be that. Thank you, Mr. President. [LB1]

SENATOR GLOOR: Thank you, Senator Price. Senator Wallman, you're recognized. [LB1]

SENATOR WALLMAN: Good morning, Mr. President, friends all, Senator Preister's famous statements. This is dear and near to my heart. This involves agriculture and we talk about economics, say agriculture is not hurting. We're helping the state out. So we shouldn't all be complaining. I don't like complainers all the time about economics. Let's be positive on this. And regulations, that's some of the biggest concerns I have, people talking to these small businesses, counties have too much regulation, and that doesn't bother near as bad as how long it takes. I appreciated Senator Carlson's statement about the too long a time because look at the gang in Washington. They haven't decided anything on economics because you give them too long a time line. You give them 60 days, 30 days, 90 days. I think if you're close to within an existing pipeline, it ought to be less than 30 days. And look at the state of Iowa. God bless them. Look at how fast they built that interstate because they used past environmental impact studies, and the state let them do that. But they had to build the highway the same height, same width, everything, but they got it done. As Senator Bloomfield knows, they did it in a hurry. It just amazes me what we can do in this nation if we take some of the blocks out.

Floor Debate
November 15, 2011

And so this is a major corporation, folks. It's going to bring a lot of jobs, lots of money spent. Do we want to keep roadblocking this thing? I think our Public Service agency, it ought to be able to do this on the fast track. Thank you, Mr. President. [LB1]

SENATOR GLOOR: Thank you, Senator Wallman. Senator Lathrop, you're recognized. [LB1]

SENATOR LATHROP: Thank you. And colleagues, I just wanted to finish a couple of thoughts I had from the last time I spoke. One thing I wanted to talk about was the time lines that we put into this bill. I think that we should appreciate that if you are...and I'm just going to use TransCanada because we're all familiar with their most recent endeavor. If you're TransCanada and you're building a pipeline that goes from Alberta, Canada, to the Gulf of Mexico, you are dealing simultaneously with a number of states. Right? And each state is going to have its own siting process and there's going to be a lot of moving parts. My point is this: That when we look at the time lines that are in this bill, what becomes unreasonable, we should measure not by...not in a vacuum but in relationship to what's going on in other states. We need to leave the door open enough so that if South Dakota does something, Nebraska still has an opportunity, and the door is still open in this bill to make some changes or do some kind of an addendum. If we just said, I think this should be 20 days, this should be 30 days, these people should have an answer in 3 months from the time they make an application, we're missing the point. We are one state in a group of states that will be along the course of this pipeline, and a process should be measured and the time line should be measured by what other states have for a time line so that we are consistent, in a manner of speaking, with other states and it is workable for somebody like TransCanada that's trying to build a pipeline. And that would be my two cents' worth on the time line in this bill. I also wanted to suggest a different way of looking at this bill. We can make it stronger by putting many criteria in it, or we can make it weaker or easier by putting fewer criteria and having fewer people involved in the process. But I think we owe it to two people or two groups to make it a strong bill with many criteria. And I'll tell you why I think that. When this is done, when we route the next pipeline under this process, there's going to be people that will say, I don't want it in my backyard. How did this thing end up going through Knox County? That's not right. If we don't have much by way of criteria, it's hard to tell them or to explain to them how it ended up going through Knox County, for example. But if we have a number of criteria, thoughtful criteria in the bill, then we can say, these were all the things we looked at. We balanced those things and this is what we've decided. And it is easier to support something that has had a good deal of thought, rather than, or in contrast to something that has very few criteria and would suggest that the Public Service Commission really didn't consider all the considerations. I also think we owe it to the next outfit that tries to put a pipeline in the state of Nebraska. They do not want a process in place that hasn't considered everything before the line or the route is approved. Why is that? Because if we don't take into account sensitive areas, for example, and they approve a pipeline, we're going to have the same protests down

Floor Debate
November 15, 2011

here that we just got done seeing. So I think it is incumbent upon the Legislature as...and I know there's going to be some work done on this bill today by people who I respect a great deal--lawyers that will be involved in this and the senators that are involved in this--and I would suggest that it is in the state's interest as we craft a routing bill to put a good deal of criteria in there, so that it is not subject to criticism... [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR LATHROP: ...the conclusion is not subject to criticism and we can say, our process thought of everything, everybody was required to be at the table, and we had input from everyone who has expertise in routing pipelines. And so that would be my suggestion and how I would encourage those who will be involved in this process this afternoon. Thank you. [LB1]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Dubas, you're recognized. [LB1]

SENATOR DUBAS: Thank you very much, Mr. President, and thank you to all my colleagues for the questions and comments that have been made this morning. I'd just like to take an opportunity maybe to clarify a few things. What Senator Lathrop just stated was one of those things that I was going to clarify, so I do appreciate his input. When Senator Utter asked me for the definition of safety, you know, I was thinking in more general terms. But it's...the federal government very clearly has a definition as to what safety is. It's outlined through the Pipeline Safety Act of 1994. It's very clear that that's under their purview. Those definitions of safety aren't necessarily the Webster definitions of safety. It's what the federal government and courts have put in place dealing with safety specific to those pipelines. And so it might seem like it's hard for us to differentiate what we're trying to do in this bill as not being connected to safety, but what we're dealing with in this particular bill, it's pipeline siting, it's land use, and how that land use is connected to the pipelines. So again there's some very clear definitions on what safety is, defined by the federal government in their act as well as judicial decisions. And it's also very clear that we can't go there and it's pretty easy to see through those definitions where we can and can't go. In reference to Senator Price and his questions about the PSC, PSC is a cash-funded agency so there are no General Fund dollars that go to support their efforts. And again, they do not anticipate bringing staff on, but this bill does allow them to contract with the experts that they would need to deal with these kinds of applications. I have duly noted all of the other questions and concerns that have been raised on the floor so far this morning and will definitely take those with me into the working group this afternoon. Thank you. [LB1]

SENATOR GLOOR: Thank you, Senator Dubas. The Chair recognizes Senator Howard. [LB1]

Floor Debate
November 15, 2011

SENATOR HOWARD: Thank you, Mr. President. And I, too, want to begin by thanking Senator Dubas for all the diligent work she has done on this issue. I can't help but compare this to the privatization of the Nebraska child welfare system that was done entirely outside of the legislative process. Just today, another longstanding and well-established agency is closing its doors to serving children in the Health and Human Services system. Medicaid restrictions and lack of funding are the reasons cited for the Uta Halee agency no longer having the resources to supplement the cost of providing child welfare services to the state of Nebraska. Make no mistake about this. It will result in higher cost to the state, and more of Nebraska state wards will be sent from Nebraska to other states for services. I commend Senator Dubas for the work she has put into this legislation and I, for one, would rather have this process done correctly rather than in haste and regret. Thank you. [LB1]

SENATOR GLOOR: Thank you, Senator Howard. Seeing no senators wishing to be recognized, Senator Langemeier, you are recognized to close on the committee amendments. [LB1]

SENATOR LANGEMEIER: Thank you, Mr. President. I appreciate the discussion and we will look to incorporate your thoughts that everyone has shared with us as we continue to meet before we get to Select File. With that, I'd ask for the adoption of AM36, the committee amendment, and then the adoption of LB1. Thank you. [LB1]

SENATOR GLOOR: Thank you, Senator Langemeier. Members, the question is, shall the committee amendments to LB1 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1]

CLERK: 43 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB1]

SENATOR GLOOR: The amendment is adopted. [LB1]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB1]

SENATOR GLOOR: Discussion continues on the advancement of LB1 to E&R Initial. Senator Lautenbaugh, you are recognized. [LB1]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I think my comments yesterday were fairly measured and completely out of character and inconsistent with what I had prepared, as we move forward on this with the understandings we had yesterday. And when I reread the comments, I realized how angry I was when I wrote the comments and I still am. I'm just not going to give voice to that because there's no value on it right now. And I was worried about a digression and causing a digression, but we just had a little door opening there so I'll jump into the void. Lots of things make us angry from time to time. I have been reported in the media as

Floor Debate
November 15, 2011

proposing some changes for the OPS school board. It's the only 12-member school board in the state. There's one bigger in the nation. I proposed taking it down to five. And I've...I have to be honest, received support from people I've never received support from before for this concept. People who normally have never had a good thing to say about anything I've tried to do have been on board with this. Some of them, and I won't name names, have been so disturbing to me that they're on my side that I've thought about rethinking my whole position. So this is going forward, and I propose taking it as I said, from 12 to 5. Now here's what I find disturbing, though. OPS has started having hearings on...and taking input, I guess, on how a superintendent should be selected, and they've invited select citizens to come testify and I don't know if these are open to the public. I don't think they are. One gentleman was testifying last week and he said, we need someone who can be fiscally responsible, read a balance sheet, blah, blah, blah, and he was interrupted. And it was alleged those comments were deemed to be racist to say that. And that gentleman who made that interruption, who serves on the Omaha City Council and whose wife is in on the school board, was asked by the media, did you really mean to call that gentleman a racist? And he said, well, no, what I meant was that Senator Lautenbaugh's proposal to change the number of people on the OPS school board is racist and sexist. So I'm hoping this gives you a window into the difficulty in accomplishing things in Omaha, whether we're talking about the Board of Education or otherwise because we've already gone there, and there's not even a bill yet. I would note that I didn't develop this in a vacuum. There are 12 seats now and there are two majority-minority districts in north Omaha. If I go to five, we go to five, there would be one majority-minority district in Omaha. And by my count, 1 in 5 is a greater percentage of representation than 2 in 12. And that's math, that's not opinion. And the fact that that could be lost on someone perhaps explains some of the budgetary woes the city of Omaha has encountered because this is simple math and it's being lost, and I'm being accused of being a racist for even proposing it. And this is despicable. It is just plain despicable. When I first floated this idea, and there may be an article coming about this, so I thought I would address it. When I first floated this idea, someone who doesn't normally agree with me on things, told someone else, well, don't trust him. [LB1]

SENATOR GLOOR: One minute, Senator. [LB1]

SENATOR LAUTENBAUGH: Sorry. [LB1]

SENATOR GLOOR: One minute. [LB1]

SENATOR LAUTENBAUGH: Thank you. Don't trust Lautenbaugh, he doesn't care about OPS. I think I can address the sheer idiocy of that statement with one fact. My children go to OPS. I don't think it is very wise to stand here and say I don't care what happens at OPS when I send my kids there. And if this type of talk saying that this is racist and sexist to propose change is meant to deter me, then the people who are saying that have just made a huge mistake because it is going to have quite the

Floor Debate
November 15, 2011

opposite effect. This will be my mission and I will see this through and I wish this despicable kind of thing would end. And I wish we could discuss things on the merits rather than making these kind of accusations and going to these kind of hateful allegations, but apparently we can't. But we will have the discussion just the same. Thank you, Mr. President. [LB1]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. The Chair recognizes Senator Krist. [LB1]

SENATOR KRIST: I have to rise one more time. The young man that was visiting us in the balcony that had to leave is expressing my opinion wholeheartedly. I just have to say, none of the members of the committee that I talked to say that this bill is any different than the one they didn't vote out last session and they didn't vote out during a special session, but it's on the floor. So what does that tell me? I'm going to vote green. We're going to vote green and we are going to trust that the things that need to be fixed, the things that need to be put into this bill are worked this afternoon. I don't want this to be another learning community bill that was invented on the floor at the last minute. I want us to think and trust in our colleagues in the committee to take everything that we've said today, vote green, and give us something that we can be proud of again today. Thank you, Mr. President. [LB1]

SENATOR GLOOR: Thank you, Senator Krist. Seeing no additional requests to speak, Senator Dubas, you're recognized to close on the advancement of LB1. [LB1]

SENATOR DUBAS: I would just, again, like to thank my colleagues for all of the questions and comments that they have registered with me this morning. They have been duly noted. I, too, like Senator Krist, want to give you something that we all can be proud of. It's been my goal from the very moment I started working on this. Nothing in this bill was meant to make it more difficult for business. Actually, it was meant to help business, but I can understand some of the comments that were made as far as a cumbersome process. But we owe any business that wants to come into our state or is already in our state a due process and an opportunity for them to protect their assets. So again, I just thank everybody for their questions and comments and appreciate a green vote on this. [LB1]

SENATOR GLOOR: Thank you, Senator Dubas. Members, the question before us is the advancement of LB1 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB1]

CLERK: 44 ayes, 0 nays, Mr. President, on the advancement of LB1. [LB1]

SENATOR GLOOR: The bill advances. Mr. Clerk. The Chair recognizes the Speaker, Senator Flood. [LB1]

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

Floor Debate
November 15, 2011

SPEAKER FLOOD: Thank you, Senator Gloor. Members, good morning. We're going to stand at ease for just a little bit, allow Bill Drafters to do some work, and then we'll adjourn shortly thereafter. Thank you, Mr. President.

SENATOR GLOOR: We are at ease.

EASE

SENATOR GLOOR: Mr. Clerk.

CLERK: Mr. President, new resolutions. Senator Nordquist offers LR22, Senator Hadley, LR23. Those will be laid over. Senator Haar, an amendment to be printed to LB1. Senator Wightman an amendment to LB2. New A bill, LB1A offered by Senator Dubas. (Read LB1A by title for the first time.) Senators Nordquist and Mello would like to add their name to LR8. (Legislative Journal pages 84-86.) [LR22 LR23 LB1 LB2 LB1A LR8]

And a priority motion. Senator Hansen would move to adjourn the body until Wednesday morning, November 16, at 9:00 a.m.

SENATOR GLOOR: Members, you have heard the motion to adjourn until 9:00 a.m. Wednesday. Those in favor say aye. Those opposed say nay. We are adjourned.