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Floor Debate
November 17, 2011

[LB1 LB1A LB2 LB4A LB4 LR30 LR31]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twelfth day of the One Hundred Second Legislature, First Special Session. Our chaplain for today is Senator Coash. Would you all please rise.

SENATOR COASH: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Coash. I now call to order the twelfth day of the One Hundred Second Legislature, First Special Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review reports LB4 and LB4A to Select File with E&R amendments attached. New resolutions: Senator Langemeier offers LR30; that will be laid over. And that's all that I have, Mr. President. (Legislative Journal pages 95-96.) [LB4 LB4A LR30]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll now move to the first item under Select File.

CLERK: Mr. President, LB2 on Select File, no Enrollment and Review. Senator Wightman would move to amend the bill with AM40. (Legislative Journal page 85.) [LB2]

PRESIDENT SHEEHY: Senator Wightman, you're recognized to open on AM40 to LB2. [LB2]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. If you'll remember when this bill was on General File, we said that we would have to amend it if the duration of the session was to be more than or even less than 14 days. Well, it appears now that the session will last 15 days, and that, perhaps, isn't a given entirely because it's possible that we could have to extend that, depending on the amount of debate or amendments or whatever, but right now it appears it will be 15 days. So what

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the amendment AM40 to LB2 provides is that we have just increased three numbers as we go through the...if you go through the amendment. Section 1 is \$101,587; that was previously \$96,192. Section 2, which is Program 123, is now \$38,229; it was \$36,922. And Section 3 has gone from \$2,000...it's still the same, \$2,879. And Section...or the \$2,500 in the second paragraph of Section 3 remains the same at \$2,500. So all this is it increases by a total of \$6,702 the expenses for this session because of the fact that it will extend at least one additional day. Thank you, Mr. President. [LB2]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You've heard the opening of AM40 to LB2. Are there members requesting to speak? Seeing none, Senator Wightman, you're recognized to close. Senator Wightman waives closing. The question before the body is on the adoption of AM40 to LB2. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB2]

CLERK: 38 ayes, 0 nays, Mr. President, on adoption of Senator Wightman's amendment. [LB2]

PRESIDENT SHEEHY: AM40 is adopted. [LB2]

CLERK: Mr. President, Senator Larson, I have no further amendments to the bill. [LB2]

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB2]

SENATOR LARSON: Mr. President, I move that LB2 be advanced to E&R for engrossing. [LB2]

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye. Opposed, nay. LB2 advances. Next item, Mr. Clerk. [LB2]

CLERK: Mr. President, LB1, no Enrollment and Review. I do have amendments. The first amendment, Senator Haar, AM41, Senator. [LB1]

PRESIDENT SHEEHY: Senator Haar, you're recognized to open on your amendment. [LB1]

SENATOR HAAR: Yeah. Mr. President, I'd like to withdraw that amendment. [LB1]

PRESIDENT SHEEHY: AM41 is withdrawn. [LB1]

CLERK: Senator Schumacher, Senator, I have AM45, which was the first amendment that you filed, but a note you want to withdraw. [LB1]

SENATOR SCHUMACHER: Withdraw that one. [LB1]

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PRESIDENT SHEEHY: AM45 is withdrawn. [LB1]

CLERK: Senator Dubas, Senator, I have AM52, which I believe is the amendment you'd like to withdraw at this time. [LB1]

SENATOR DUBAS: That's correct. [LB1]

PRESIDENT SHEEHY: AM52 is withdrawn. [LB1]

CLERK: Senator Dubas would move to amend with AM55. (Legislative Journal page 96.) [LB1]

PRESIDENT SHEEHY: Senator Dubas, you're recognized to open on AM55 to LB1. [LB1]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor, and good morning, colleagues. Before I get into discussion of the amendment, I'd like to take just a moment to maybe set the record straight. This, the bill and this following amendment, they're mine. My name is on them. I have been working on this issue for many, many months with many people, especially my legislative aide, Joselyn Luedtke, who has done yeoman's work on this. But I want to be very clear that nothing has gone into this amendment and bill or came out of this amendment or bill that I have not been able to fully support and believe in. So what I'm putting forward to you this morning for your consideration is something that I, again, do firmly support and believe in, and there's nothing in here that would make me feel like I was forced to or coerced into agreeing to. I do take a great deal of pride in authorship. I don't normally do that, but, again, I've invested a lot of my time and my staff's time into this so...and I want to be very clear that I would never ever agree to any back-room deals and I'm not about to change that. I've been...I've tried to be very honest and straightforward throughout this entire process. When we leave here at the end of our time to serve, we can probably take a lot of pride in what we've accomplished. But I think all of us want to be able to leave here with pride in how we conducted ourselves, the integrity of the Legislature as well as ourselves personally. And so again, I stand very firmly and resolutely behind my amendment and the underlying bill and was not ever coerced or had my arm twisted into agreeing to anything. So with that, I would like to thank everybody for their input on this. As I said in my opening on the original bill, any bill is usually a work in progress and this is by no means any exception. I did take all of your points into consideration as we worked on the amendment, and I think these changes are reflected in the amendment. Many of you wanted a process that was business friendly, and it was certainly never my intention to induce...introduce anything that would put impediments to business in place. But I think it's also important that we have a fair and balanced statewide process so that businesses know the rules, and I think that's going to be what we have, what we will

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have when we put this forward. But I also feel it's equally important that we have policy that reflects the importance of citizen input on these kinds of decisions because these decisions definitely will impact them personally in their own communities and in their own livelihoods. So that's been my intention from the very beginning. I've not wavered from that. We need a state agency that will represent and look out for the best interests of our state citizens. And I feel LB1, as amended, gives us great public policy and I think it will serve us very well far into the future. I'll just kind of go through and hit the highlights of the amendment. One of the key components of the bill, and it was not changed from the original bill, is the eminent domain provision that dictates that any oil pipeline company must have an approved application before they can engage in using any such procedures. One of the first changes made to the bill is in Section 4(1). We further clarify the savings clause. In visiting with all of the attorneys, they felt that that was a good thing to have in the bill, so we just added some language that comes directly from the federal oil pipeline and safety regulation act. Again, I think this only strengthens the bill and the intent of the bill to acknowledge that there are areas that the state absolutely has no jurisdiction over. In Section 5 we change the definition of major oil pipeline to mirror the language in...that's in LB4, although we kept our pipeline size at 6 inches and I think it may be different in LB4. But we put that size in there after looking at all of the other states' regulations and felt that that was probably the appropriate size. And again, with the language that we added, it exempts the gathering and flow lines for what we already have in our state. In Section 6 we've removed the requirement to provide the number of jobs that are connected with any such proposed projects. Again, I think this streamlines the process for the pipeline company applicant and, you know, further reduces any burdens. And there will probably be other opportunities throughout the application process maybe to bring that information into inclusion. Many comments were made about shortening the time frame surrounding the application and the ultimate decisions. In Section 8(1)(a) we limited the time to schedule a public hearing to within 60 days after the application is submitted. In my original bill, it was pretty much open. So we have come back, we've put a 60-day time line in place for them, not to hold the public hearing but to schedule the public hearing. And Mr. Hybl has been very helpful in helping us understand these time frames and how, you know, what his commission has to do to move forward through the process. And again, this is in some ways protections for the applicant to make sure that they have the due process that they deserve. Also took into account the staffing needs. You know, if the Public Service Commission is dealing with more than just this application, they do have limited staffing needs so it kind of takes some of the pressure off them in that respect. In (3) of that section we still require the agencies to file reports but only if those reports are requested by the commission. And again, Mr. Hybl, when I worked with him earlier, said, you know, not every application may require us to talk to all of these agencies but we do need that authority that, if we do need to have them be a part of the process, we need to be able to ask them to do that and make sure that they will follow through and that the agencies will also be able to submit a request to the commission for reasonable and necessary expenses for any contracted work. This wouldn't be work that their own staff

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would do but any work that they would have to go outside of their staff to complete. Also, the counties and municipalities are free to weigh in with concerns related to zoning and community planning and development during the public hearing process. In (4) we added additional language to support our understanding of the federal government's exclusive authority in regard to safety, operation, and maintenance, again just further supporting that understanding of we can only go so far with any type of regulation we would put in. Let's see, the state may not adopt safety standards, such as the pipe must be aboveground or double-walled or surrounded with concrete. Safety is still...is still in...under that purview. So the next probably big issue or item that we dealt with, we removed the "unusually sensitive groundwater areas" language from Section 6. And from the beginning, as we worked on this, we knew that this was kind of a gray area and the potential to be perceived as stepping into the realms of safety and again into the federal government's realm. I was just looking for criteria that we could give to the Public Service Commission as they were evaluating this application based on the diversity of our state's geography. And again, the federal government does have definitions for high-consequence areas, but they're probably more fit for more urban populations. You know, it may be beneficial for the federal government to look at these definitions and come up with some of their own that couldn't possibly apply more towards rural settings. But again, this is a federal area and just felt the need to take it out so that we're very clear that we understand where we may and may not step into. But we did insert language that would require the application to look at any other utility corridors that exist that could be used for a route as an evaluation point. So they could look at transmission, they could look at other gas lines that are in place. [LB1 LB4]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR DUBAS: In Section 9 is another time line determination. The original bill called for eight. We settled on seven because that's the amount of time that the commission normally takes for natural gas rate cases. In (2), deals with the time extension for the commission. We shorten that from 18 months to 12 months. It was 18 months after the public hearing. We've gone now to 12 months after the receipt of the application. So again, we did shorten the time frame there but the Public Service Commission felt it was doable. So all in all, I am very satisfied with the changes and the cooperative process that we went through to consider the environment, the business communities, economic development, land use, state agency resources, and citizen involvement again, and so it's...I, again, appreciated all of the input from everybody. I did take your concerns into consideration seriously and told you if I couldn't make the change I'd have a reason why we couldn't, and I hope that... [LB1]

PRESIDENT SHEEHY: Time, Senator. [LB1]

SENATOR DUBAS: ...that's what we've laid out. So thank you very much. [LB1]

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PRESIDENT SHEEHY: Thank you, Senator Dubas. You have heard the opening of AM55 to LB1. Members requesting to speak: Senator Sullivan, followed by Senator Carlson and Senator Coash. Mr. Clerk, do you have an amendment to the amendment? [LB1]

CLERK: I do, Mr. President. Senator Schumacher would move to amend Senator Dubas' amendment with AM57. (Legislative Journal pages 96-97.) [LB1]

PRESIDENT SHEEHY: Senator Schumacher, you're recognized to open on AM57. [LB1]

SENATOR SCHUMACHER: Mr. Lieutenant Governor, members of the body, I thought long and hard as to whether or not to proceed with this particular amendment. I wanted to make sure that I felt deeply that it was necessary and that we had to do it now and couldn't do it later on. So last night on the way home to Columbus I went out in search of a pipeline pumping station and I found one. As you approach it, you see something about a block square. You see chain-link fence around it; something that looks like a two-story, double-wide trailer house with two orange porch lights on it and a regular yard light; a machine shed off in the corner; and a large electric transformer station. Pulled up into the area in front of the front gate and I noticed a couple latrines there, they were unlocked, that was a good thing; also a truck, a flatbed truck with out-of-state plates. As I looked closer you could see, on top of the chain-link fence, barbed wire. Then there was this big gate with a padlock in the middle and I was wondering how would you get over that barbed wire, have to have a ladder or something. But then I noticed that the gate was about 16 inches off the ground. Could have rolled in there really easy but I didn't want to get my expensive suit dirty. It's \$100 after all. I figured somebody is going to come out and say something to me. I began walking around it--nobody, no lights came on, no sirens, nothing; walking along the west side--nothing. I even waved at the double-wide trailer house thing--nothing happened. Got behind the corner where there's a big pile of dirt. If I wanted to do something nasty, I'd a parked my car behind that. Headed along the south side of the property, I was waving, trying to look suspicious--nothing happened; surely some lights or something would come on. I even smiled. Didn't hear intruder alert or anything like that. Got farther to the east on the property and they've got like a tarp thing laid down in case the oil drips; I suppose they figure they can catch it. You know, had I been a kid with a shotgun or just somebody wanting to do damage, I could have easily shot that thing up. Walked along the east side of the property, pretty close to the big control box on the pumps, because the pumps are about 4-foot, U-shaped tubes, nice big targets. They come out of the ground and go back down with whirring engines or motors of some kind that run those pumps inside of it. Got closer up, there's a satellite dish. I suppose that's a satellite dish that communicates every five seconds about every drop of oil going through it but, boy, it would have been an easy target, as would the SCADA little antenna next to it. I walked along the road, a couple cars went by, I waved at them. They didn't even slow down.

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Got back to the car and I sat there for 15 minutes, figured the sheriff would surely show up, town marshal, somebody would, State Patrol, National Guard, black helicopters, men in black, men with white jackets to take me away--and nobody. I don't think I was saw. As this infrastructure becomes more and more developed and our country becomes more and more, out of this, necessary to pull out of the sands oil sands, more and more pipelines come through our state, we're going to be increasingly vulnerable to people trying to do us in or damage that infrastructure. And you know we can't put a deputy, we can't afford...we may not even have as many counties 40 years from now when these things are still running. We can't afford to put a deputy on every one of these locations or space them along the route to stop somebody from messing with that line, and we're going to be vulnerable. I could have taken that thing out last night if I had the proper arsenal. One way that we can make sure that we have a chance of economically protecting that pipeline to, in turn, protect our environment is to have strung along it a fiberoptic cable to transmit sensing devices, infrared to control on-the-ground response robots, whatever it takes to protect those things from any number of threats to our national security. Now is the time to put that fiber or at least reserve the right to put that fiber in the ground. And what this little amendment, that maybe is creating a bit of a stir, does is says if you're going to use our eminent domain laws, all we're going to ask for you is the right, we're not even going to ask you to do it, we're just going to ask you to, if we want to, give us the right to lay a piece of fiber down it, and that fiber will be used for: first, the protection of the pipeline, our water, our soil, our rivers, our streams, our environment--the exact purpose of this legislation; second, to protect your power sources; third, for you to use in case you don't want to use that little smiley dish with the...pointed toward the stars to communicate where every drop of oil goes; and finally, if there's leftover capacity, and there probably will be, for us to enhance the telecommunication structure of our state. It's important we do it now because every piece of real estate and easement that is acquired after this without this in force we may end up having to go out and redo in order to have a right to put that fiber there. This is an important thing that could save the state a lot of money, save law enforcement a lot of money, save this infrastructure, make our country more secure, and it is intimate that we do it now and in this piece of legislation. It costs us nothing. We're not crossing the bridge yet of how we're going to put this fiber in or who's going to put it in or whether the little phone companies are going to get a tariff out of it. It's just reserving a right, an opportunity to save money and to protect this infrastructure. And it's necessary that we do it now and not play some political games because somebody wants to collect a tariff off of a fiberoptic line somewhere. I ask that this amendment be adopted. Can't see where it would do any harm. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. You've heard the opening of AM57 to AM55. Members requesting to speak: Senator Carlson, followed by Senator Coash, Senator Hadley, and Senator Loudon. Senator Carlson. [LB1]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I

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thought that I should get up and speak at least once this morning. When we had our initial debate on LB1, I was very direct with Senator Dubas about things that were of concern to me and that I thought that those needed to be addressed before I could support a bill. I think the meeting that was held on Tuesday evening involving representatives from TransCanada, as well as those that are against the pipeline, and members of the Natural Resources Committee was a very productive meeting. I think in my five years in the Legislature what came out of that meeting, with recommendations for changes to the bill, was the best work in a short amount of time that I've experienced in five years in the Legislature. And so with that, it is very, I'm going to say, easy. I don't know if that's the right word or not. But I certainly do support AM55, as amended to LB1. I am not in support of AM57. I think that's a new subject that's come up that's not really what we're here for and I do not support AM57. But I certainly do support AM55, would ask for your support as well. And thank Senator Dubas and all those that have been involved in tailoring this bill to the point that we are debating it today. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Coash. [LB1]

SENATOR COASH: Thank you, Mr. President. Good morning, colleagues. I hit my light on when we were talking about AM55, so I'm going to focus my comments on that. And first of all, I'd like to thank Senator Dubas for her work on this. She has been a leader in this effort. She's been very open with all of us. And I appreciate her opening comments here but I'm not going to let her off that easy. I would ask if Senator Dubas would entertain a few questions. [LB1]

PRESIDENT SHEEHY: Senator Dubas, would you yield to a question? [LB1]

SENATOR COASH: Mr. President, I will continue on my comments and if Senator Dubas shows up I will be glad to ask my questions at that time. I think it's time that we start to call it like it is, colleagues. There were accusations that Senator Dubas did not write this amendment, that others wrote this amendment. I appreciate her comments there. The mantra for many of us, and I'll only speak for myself here, has been if it's possible to put a process in place to move this pipeline and have Nebraskans have a say in how that works, that's the process we ought to push forward with. We were presented with two options and now it looks like we're going to move forward with both because we've got a short-term need and a long-term need. Senator Dubas is addressing the long-term need here. And we put the process in the hands of Nebraskans and we put it where it belongs. Nebraskans will choose where it makes sense to put this pipeline and future pipelines. Nebraskans will take control of it. And through us, we've listened and we've put this process in place. But the tune, colleagues, will begin to change once these bills are done. The tune will change from move the pipelines to stop the pipelines. And I encourage you to do your research. I encourage you to look at the groups who would currently say move it and see what their real agenda is. Look it up. See what they say about energy. See what they say about how

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we ought to move forward with our own destiny. Look at the source, colleagues. Ask yourself what the tune will be. And Senator Dubas has presented us with a bill here to make sure that we get the chance to impact that destiny, but it may not be good enough for some. Senator Dubas is back so I would like to ask her a few questions, if I might. [LB1]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Coash? [LB1]

SENATOR DUBAS: Yes, I will. [LB1]

SENATOR COASH: Thank you, Senator Dubas. Welcome back. Senator Dubas, I appreciated your opening comments about who owns this particular amendment, AM55, and I just...I want to make it clear on the record here. As I look at this, I believe it's a 19-page amendment that you filed, can you point to a part that TransCanada wrote for you? [LB1]

SENATOR DUBAS: No, I can't. [LB1]

SENATOR COASH: Can you point to a part that the Sierra Club wrote for you? [LB1]

SENATOR DUBAS: No, I can't. [LB1]

SENATOR COASH: Okay. I appreciate that, Senator Dubas. Senator Dubas, I serve on the Urban Affairs Committee, and I'm going to change the subject here a little bit, and we regulate and have spent quite a bit of time on gas pipelines, and so I do have to make some clarifications... [LB1]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR COASH: ...I think that's important for the record with regard to pipelines. It's written...this amendment is written to major oil pipelines, correct? [LB1]

SENATOR DUBAS: That's correct. [LB1]

SENATOR COASH: And what is the definition of "major oil pipeline"? [LB1]

SENATOR DUBAS: If you look on page 4, Section 5, a major oil pipeline means a pipeline that's larger than 6 inches in inside diameter; it's constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska; does not include in-field and gathering lines or major oil pipelines exempt under subsection (3) of Section 3 of this act. [LB1]

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SENATOR COASH: Okay. Thank you, Senator Dubas. Is there a definition in your amendment of what oil means? [LB1]

SENATOR DUBAS: That's included in what I just read to you. [LB1]

SENATOR COASH: Okay. It also says or "fraction of crude oil." Is that correct? [LB1]

SENATOR DUBAS: That's correct. [LB1]

SENATOR COASH: Is that just a reference to petroleum that includes any... [LB1]

PRESIDENT SHEEHY: Time, Senator. [LB1]

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

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Hadley. [LB1]

SENATOR HADLEY: Mr. President, members of the body, I rise to oppose AM57. We're in a special session. If you look at Section IV-8 of the Nebraska Constitution, it says special sessions: The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they are called together. The Governor's proclamation for this special session says enacting legislation relating to oil pipelines. I believe that AM57 is outside the scope of the Governor's call for this special session. AM57, primary purpose is to allow the state to lay, relay, operate, and maintain fiberoptic cable in the right of way or other interest in real estate acquired through negotiations, eminent domain, or otherwise. Any part of AM45 relating to pipelines is tangential at best. AM45 deals with the right of way and fiberoptic cable. AM57 would open up significant statutes for revision that in no way relate to oil pipelines. There are a myriad of statutes that deal with the state and its role in laying and operating and maintaining fiberoptic. This amendment would open all of those statutes up for revision. I feel that AM57 is outside the scope of the Governor's call and, if not voted down, could lead to a constitutional challenge based on scope of the call for LB1 if this is included. And if the courts were to find that this was outside of the scope of the call, the courts would have the ability to rule LB1 unconstitutional. We spend a lot of time talking about the constitutionality and are you willing to roll the dice on a scope-of-the-call issue in dealing with the constitutionality of LB1 as amended? Other items I'd like to talk about: A number of you have talked about the people of Nebraska being a second house. We've heard that numerous times. I don't know whether it's true or not but it's certainly well quoted. This is a major policy change for the state of Nebraska that has not had any type of public input or public hearing, none. Secondly, we have LB645 from six years ago that basically says public entities cannot get into this business, so this would have to be amended to allow public entities in to compete with

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private businesses. LB827 earlier talked about the sale of excess or what they call dark fiber, and this only was allowed to be sold to commercial carriers at tariff rates because NPPD had gone ahead and got...installed the dark fiber and then was told they couldn't use it. If you were to enact this, it would set in motion a proposal to put fiber down the pipeline. The pipelines may not be where we need the fiber. I have handed out two maps. One of them shows the major seven companies... [LB1]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR HADLEY: ...where the fiber is right now. The map not in color deals with where all of the fiber is right now in the state of Nebraska. So you're going to say that wherever they happen to put a pipeline we want to put fiber down it whether we need it or not? Another thing I would bring up, I think there could be a problem with preemption, because I would assume that the pipeline companies would be very concerned about the safety of their pipeline if you're going to allow fiber to be in the right of way of the pipeline. That gets into the federal laws regarding safety. So would that open up LB1 to a challenge on preemption? How much time do I have left, Mr. President? [LB1]

PRESIDENT SHEEHY: Time, Senator. [LB1]

SENATOR HADLEY: Time? [LB1]

PRESIDENT SHEEHY: Senator Louden, you're recognized. [LB1]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Schumacher yield for questions, please? [LB1]

PRESIDENT SHEEHY: Senator Schumacher, would you yield to Senator Louden? [LB1]

SENATOR SCHUMACHER: Yes, I will. [LB1]

SENATOR LOUDEN: As I look at your amendment, Senator Schumacher, if I understand this correctly, what this amendment does is set a precedent or set it up so that the Public Service Commission can order a pipeline company that's digging a ditch that...allow someone else to use that same ditch. Is that how to sum it up? [LB1]

SENATOR SCHUMACHER: No. [LB1]

SENATOR LOUDEN: Okay, then how would you sum it up? [LB1]

SENATOR SCHUMACHER: Basically, all this does is says that when a pipeline company uses our eminent domain authority for a pipeline, we have the right to lay fiber

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in that line in an area that the Public Service Commission would direct. This doesn't even decide that we're going to lay fiber. [LB1]

SENATOR LOUDEN: Okay. I know, but this...it sets it up so they use that eminent domain corridor. Is that what you're talking about? [LB1]

SENATOR SCHUMACHER: Yes. And the reason it's important to be in the corridor is because that is where you would have sensors, cameras, things to watch people go through these pumping stations so you could defend the things and record what goes on there at night. [LB1]

SENATOR LOUDEN: Do we have to have statutes in order to do that, because that can be agreed upon amongst the corporations or whoever owns the pipeline. Because, first of all, eminent domain is for a specific item or specific...whether it's a pipeline, railroad or whatever, and then when you set it up so that someone else can use that same corridor, would they have to then go in and ask for eminent domain to use that same corridor? [LB1]

SENATOR SCHUMACHER: The state of Nebraska would be the someone else using that corridor, should we elect to use that right, and we don't have to do it in all lines. What we can set up in legislation that will be fought over later on: when, where, and how much, and who, and all of that. This is very limited. It says when you use our eminent domain right, you allow us to lay a piece of cable if the Legislature wants to at a future date. [LB1]

SENATOR LOUDEN: Now are you familiar with this business? Do you lay pipe or do you lay lines or do you have fiberoptic companies? How did you get acquainted with this situation like this? [LB1]

SENATOR SCHUMACHER: I think I have got one piece of fiber in the air in Humphrey for about two blocks, but I've been involved in the Internet business and I know how this stuff works and why fiberoptic is the optimal way to convey this kind of data. [LB1]

SENATOR LOUDEN: Now they're laying fiberoptic out where I live. There for the last two or three years they've been laying around the Sandhills and stuff, and they're somewhat particular about where they put that. They want to be near areas where they don't think it will be disturbed and they usually don't go that deep into the ground. And for the most part, I don't know as they've ever used eminent domain to lay that fiberoptic. They usually went wherever they asked, they usually got permission and went, because about all it ever amounted to was digging a ditch about like a gopher machine. So I mean is this really something that has to be in there or what are we trying to I guess head...what problem are we trying to head off by drafting this legislation? [LB1]

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SENATOR SCHUMACHER: The problem we're trying to head off is so we maintain a right of way close to that pipeline, parallel with that pipeline, in the cheapest possible way for our safety enforcement and monitoring. You can't lay this in a road mile...a road ditch a half a mile away and then go back and forth. This is the time to do that. Well, this is the time to reserve the right to have the option to do that at a future date. [LB1]

SENATOR LOUDEN: Now if that optic... [LB1]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR LOUDEN: ...optic line was near there, what would happen then if the pipeline had some type of a rupture or something needed to be done? Where would that fit in if they were in there tramping around and digging around where that fiberoptic was? Would that be automatically cut then? [LB1]

SENATOR SCHUMACHER: My guess is if the pipeline ruptured, whatever caused the pipeline to rupture would also take out this line. This is another reason for doing this. Assuming we have several up-and-down routes through the state, if we connect those routes properly, if there's a cut, because they got to get in there with a bulldozer quick, the fiberoptic signal still flows because it flows reverse in what they call a ring. This is a good way to start structuring a ring communication that unites a lot of our communication but primarily protects this pipeline. [LB1]

SENATOR LOUDEN: Okay. Thank you, Senator Schumacher. And thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Louden. Members requesting to speak on AM57 to AM55, we have Senator Fischer, followed by Senator Hadley and Senator Price. Senator Fischer. [LB1]

SENATOR FISCHER: Thank you, Mr. President and members. First of all, I would like to thank the Natural Resources Committee for believing in the legislative process, because I know there were members on that committee who did not support any bill coming out of committee, any bill that had been presented to them during this special session. But yet there were members that voted it out and they had faith in the process. They had faith that we would have a discussion on this floor concerning this important situation and hopefully that we would be able to work through and come up with a compromise with a situation that it's been very hard to find compromise on. So I thank those members. I also thank the Speaker for bringing a solution to this very difficult situation. I have been working on this pipeline issue for a number of years, because before redistricting I represented west Holt County where a number of people were concerned about the pipeline. But I can tell you that in the two to three years that I have

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been working with landowners and constituents, I have a balanced number for the pipeline and against the pipeline. I have people who want the pipeline in this area, I have people who want the pipeline moved, I have people who don't want the pipeline coming across Nebraska, and it's a balanced number. But I think what we've heard, as we've continued our discussions here and after the Speaker has worked with business, that we will be seeing a pipeline, and I do support a pipeline through the state of Nebraska. It's important not just for Nebraskans but it's important for this country. Many people speak on the mike about the issue and that's how we get things done. Many people work behind the scenes on an issue and that's how we get things done. And people come forward with amendments on bills because, well, you know, Senator Langemeier told us we had to because we all had to be a part of the Natural Resources Committee, and I thank him for that. Senator Schumacher brought me his idea on this amendment and he said I didn't shoot him when he came in my office with it, and I'm not going to shoot you now either, Senator, but I can't support it. Senator Hadley I believe laid this out very well for all of us and I support Senator Hadley and his comments. There's a few of us, I think there's eight of us that were here in 2005 when LB645 was passed and a task force was established at that time to look into the broadband services task force. They came out with a report then at the end of 2006. I would recommend, if you are interested in this issue, that you get a copy of the report. You can certainly contact my office and we will help get a copy of that report to you. And then I would ask that you bring forward ideas in January when we start our regular session. I'm sorry, Senator Schumacher, but I don't believe that now is the proper time and I think it also presents us with a number of problems and it brings into question, I believe, the constitutionality of the issue that we're dealing with now. So while I thank you for your interest and your long-time interest in this issue, I do rise in opposition to your amendment, AM57. I do support Senator Dubas' amendment,... [LB1]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR FISCHER: ...AM55, and I support the underlying bill. And I again thank all of the members of this body. There are 49 of us who have worked on this issue in our own ways, in our own time throughout the last two to three years, and I thank you for your work on the issue and I thank the citizens of this state for coming forward and sharing with us not just their concerns but their suggestions and their ideas on what we need to do to address it. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Hadley. [LB1]

SENATOR HADLEY: Thank you, Mr. President. I, too, talked with Senator Schumacher about this and I appreciate him being interested in this issue. I wonder if Senator Schumacher would yield to a question. [LB1]

PRESIDENT SHEEHY: Senator Schumacher, would you yield to Senator Hadley? [LB1]

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SENATOR SCHUMACHER: Yes, I will. [LB1]

SENATOR HADLEY: We have LB1 and LB4 in front of us. LB1 is prospective, after the Keystone pipeline, the way I understand it; and LB4 deals with the Keystone XL pipeline. So your amendment would not...how do you see your amendment fitting in with the Keystone XL pipeline? [LB1 LB4]

SENATOR SCHUMACHER: The amendment that I have applies to all pipelines equally, which is a problem, I think, with the other proposed legislation which may end up being dealt with by the courts, but at any rate, everything prospectively, any easement, any acquisition of right of way prospectively by anybody. We don't single out in this particular amendment TransCanada and create a closed class, because the other proposal we have may very well...creating a closed class. When we pass that legislation we're going to know exactly who's exempt, who's specially exempt, and there's no way else anybody else can get into that class. [LB1]

SENATOR HADLEY: Okay. Thank you. I raised a point earlier about major policy changes and the public not having input. Senator Schumacher, do you have any concern that we are tacking this on as an amendment in a special session and it's not had a hearing whatsoever in front of the public? [LB1]

SENATOR SCHUMACHER: No. And the reason I say no is because we're not doing anything. We're not making any fiberoptic lays. We're not choosing anything. We're not doing anything but saying if you use our right of eminent domain, which is our right, the state's right, you got to let us piggyback along the edge. [LB1]

SENATOR HADLEY: Okay. Thank you. I would just say, to follow up on that, if we're doing nothing why should we be passing this amendment? I hope that you fully understand, as you vote for this, what this could possibly entail for the legislation, LB1. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Price. [LB1]

SENATOR PRICE: Thank you, Mr. President, members of the body. I rise up in opposition to this amendment because this, even a cursory glance at this, you can see that when you look on lines 14 and 15, where it talks about "or other interest in real estate," so anytime eminent domain was being used it seems to say that they would be able to...we'd have a fiberoptic channel laid down. I mean that is a very, very broad activity. When we think about all the roads that we're building and what railroads do and everything going on, this is saying, hey, we're going to do nothing, but we're doing something. So I think that's problematic. And then we move in...we move over to the next page on page...line 1, "any excess capacity." I don't know how that whole excess

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capacity thing is coming about to fruition or what drove this, but I believe Senator Hadley has covered it thoroughly about the public entity getting into competition. And then...well, the real curve ball in line 8 within the language itself of the amendment, it says "impair the safety" of (sic) operation, and right there, if you're talking about safety we're getting into the federal domain. So I find that problematic. And then just the reality of it, so we're giving someone a right to lay fiber in the same trench or near the same trench. Anybody here ever have an Internet outage? Anybody here ever hear of the company having to do some repair work on this cable? That means we're going to have heavy equipment operating in or around the area of a pipeline. I find that extremely problematic because no matter how well the guys use their little devices to find the trails, they have a leeway on either side of a couple of feet. If you call the You Dig It, what do they tell you? Well, it's kind of on this line but, you know, better stay four feet off of center line. Well, if you go to lay something in a pipe trench, that would and could put you very close to the pipe, you're plus or minus four feet. I believe that is problematic. I know that Senator Schumacher is just trying to do something good. He's trying to take advantage of an opportunity so that we can get things done, but this is not the time, this is not the manner, and especially around these pipelines, especially around this that we have devoted so much time and concern to. The last thing we want to do, even as Senator Schumacher said, is have someone coming on board, doing some digging, no one notices it, and the next thing you know you have much more than a broken cable line or some other problem. I think that this should be brought back during the regular session, it should be fully vetted and understood, and we can move forward then, because again if we're doing nothing, we can do nothing later. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Smith. [LB1]

SENATOR SMITH: Thank you, Mr. President, and good morning, colleagues. I just wanted to stand up and speak on a couple of points that Senator Schumacher brought up. One was there's a...it was implied that without the fiber lines being there that the facilities that are in place, not only for this pipeline but for other energy facilities around the state, may be in jeopardy, may not be safe. And just spending 25 years in the energy industry myself, I've seen the protocols, I've seen the backup and the safeguards that are in place for many of these facilities, and I don't want anyone to be left with that particular impression. These facilities have a lot of redundancy, and they may not be as proactive as sending up a Blackhawk helicopter to stop you, Senator Schumacher, but nonetheless there are many, many safeguards in place that make these facilities safe. So I don't want to have this session go on without at least being able to comment on that statement that Senator Schumacher made. However, you know, I think it's fantastic to have Senator Schumacher part of our legislative body. I think it's great to have his business sense here. He is a great innovative thinker and I think this is exactly the way of thinking that we need this in the Legislature. We need businesspeople in the Legislature that can challenge us and that can bring their critical

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thinking skills to the Legislature. So I do want to commend Senator Schumacher for bringing up this idea. I think it's a fantastic idea, however, I do not believe that this is the time for this one. In any other place, I would support you, Senator Schumacher, but I do not believe that this is the time to support that amendment. However, I will support Senator Dubas' amendment, AM55, to LB1. Thank you very much, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Smith. Seeing no additional requests to speak, Senator Schumacher, you're recognized to close on AM57 to AM55. [LB1]

SENATOR SCHUMACHER: Thank you, Mr. Lieutenant Governor, members of the body. Opportunity is an odd thing. It doesn't stay there forever. This is an opportunity for us to save some money down the road to have the option of being able to police these many, many lines that we may be seeing remotely and effectively. We don't have to do it in every case, in every line, but we should have a mechanism in place to take advantage of a reserved right that costs us nothing to be able to put this infrastructure into place. We want to do this in the future. Without this, over the old pipeline, for example, that they have, we're going to end up paying for right of way, not going to be possible. This is much too important to simply say, look, you know, we'll worry about it later. Now is the time to do it and the only thing we're doing is reserving the chance to do it cheap in the future. That's good business. It's good common sense. And if the little phone companies want to fight about getting a tariff later, that's, you know, a fight for a later day when we decide how we're going to do this. Senator Fischer mentioned a broadband study. That broadband study in 2005 had a report. But know what there also was? There was a minority report that was far better than the majority report. And you know where that majority report went? On a shelf, never to be looked at again. But that's an issue of whether or not public should compete with private and all that. That's not today. Today is whether we should say to the pipeline companies, look, you can use our right of eminent domain, but should we want to, should it be...not interfere with you, should it be in your protective interest to lay a piece of fiber there that would do you and us and everyone else some good and create some public value, we can do it without paying. We don't have to cross those bridges today, but we have to reserve the right today or anything between today and the time we might do something will be water under the bridge and we'll be in the same boat as we were on the first one. And I feel strongly about this. I think now is the time to do this. I realize I probably won't have the votes to do it, but I felt it my obligation to at least offer the opportunity to the people. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. You have heard the closing of AM57 to AM55. The question before the body is on the adoption of AM57. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1]

CLERK: 2 ayes, 27 nays, Mr. President, on the adoption of the amendment. [LB1]

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PRESIDENT SHEEHY: AM57 is not adopted. Next amendment, Mr. Clerk. [LB1]

CLERK: Mr. President, Senator Haar would move to amend with AM54. (Legislative Journal pages 97-98.) [LB1]

PRESIDENT SHEEHY: Senator Haar, you're recognized to open on AM54 to AM55. [LB1]

SENATOR HAAR: Mr. President, members of the body, first of all, let me say I support LB1 as amended by AM55. My amendment is an avoidance area, creates a statutory definition for an avoidance area through what we know as the Sandhills, and I think this is very important because we've heard from citizens across the state the importance of not putting a crude oil pipeline through the Sandhills. The area is not completely off limits to proposed pipelines but, instead, should be avoided unless no other reasonable alternative is available. So very clearly, this does not outright prohibit pipeline being built through the Sandhills but requires pipeline routes first to look to other reasonable alternatives. I believe this is the amendment that the public wants, that we get this on the record. That's the purpose of this amendment really. In all of the 30 hours of public testimony, when Nebraskans testified, real Nebraskans who attended the hearings and spoke on their own account, the overwhelming message was that they wanted legislation that made it clear that the Sandhills should be avoided, avoided, not necessarily excluded. This amendment sets forth clear standards that provide predictable results for pipeline companies as they propose routes through the Sandhills...I'm sorry, through Nebraska. More pipelines will be built, and I handed out a map the other day showing at least in 2007 there were anticipated four pipeline routes through the state of Nebraska, and all of those were through what I would now call by my definition as the Sandhills. It sets forth clear standards that provide predictable results for pipeline companies as they propose routes through Nebraska. More pipelines will be built and we need to be prepared to stand up for our natural resources. I believe this amendment treats all pipeline companies fairly. If TransCanada is expected to bypass the Sandhills because of their sensitivity then so too should other pipelines in the future. And it has been said that a pipeline company would be crazy to go through the Sandhills again. Well, if that's the case then that expectation should be clearly stated in our laws. Our nation has already decided this area of our state is important enough to protect from the first route through our state. It's time for our state to step up and make the same decision. It's legal, it's constitutional. I worked with the same lawyers that Senator Dubas worked with. And I believe it's an expression of the will of the people of Nebraska. I would ask you to support AM54 to AM55. Thank you very much. [LB1]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Haar. Members, you've heard the opening to

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AM54 to AM55. Those wishing to speak: Senator Schilz, Sullivan, and Karpisek. Senator Schilz, you are recognized. [LB1]

SENATOR SCHILZ: Good morning, body. Thank you, Mr. President. I just want to say that I appreciate Senator Haar's commitment to this issue. I know that he has worked very hard and has a very deep passion for what he believes in. That being said, we've been in this special session now for quite a few days, more than I think many of us wanted to be. When it started, I had no idea that we could come to an agreement and find something that all of us or most of us would be willing to move forward with. I didn't know if that was possible. I really didn't think it was. But sometimes things have a funny way of working out and I'm thankful for that because we do have a path forward and I think it is very thoughtful and makes a lot of sense and works for the situation that we find ourselves in. That's why it's rather disturbing to me to think that after what we all have found that we can agree on, that we come back and we see people wanting to move further down the road than where we are. I think that's dangerous. We have to understand that really, quite honestly, this is a pretty fragile arrangement that we have here. We need to make sure that this moves forward. If we let this fall apart because of trying to do too much too soon or too much at the wrong time, then shame on us. I do believe there is a place for Senator Haar's amendment and it looks very similar to the bill that he introduced in the special session that should be pulled back, I would hope, and introduced in the next regular session. To as we talked about and as we have moved forward on this, we understand that this is not something that this special session is going to solve completely. I think it makes sense to look at what Senator Haar has talked about. I just don't think it makes sense to vote on it and to try to put it in to this bill in this special session when we've come so far. Thank you very much. [LB1]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Schilz. Members requesting to speak on AM54 to AM55, we have Senator Sullivan, followed by Senator Karpisek and Senator Dubas. Senator Sullivan. [LB1]

SENATOR SULLIVAN: Thank you, Mr. President. I'll first preface my comments by saying something directly to Senator Haar. I remember when my bill on oil pipeline reclamation, LB629, was discussed and you labeled me as tenacious and as somebody who persevered and doggedness on an issue, and I say touche because the same applies to you, and I certainly commend you for that and appreciate that in you. But I will also say on the floor what I mentioned to you yesterday with respect to your amendment, and that's that I really think that with LB4 and LB1 we are putting in place, LB1 as amended with AM55, we are putting in place a process that to a certain extent addresses your concern, because with this LB1 as amended we have a clear process and then, if there is additional concern by the citizenry that that's not enough, then we have the additional dimension of LB4. So with all due respect to your concern for the

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Sandhills, where I grew up and where I currently live on the edge of, I think that if we go forward with these two pieces of legislation, we can address some of your concerns. Thank you. [LB1 LB4]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Karpisek. [LB1]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Would Senator Dubas yield for a question, please? [LB1]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Karpisek? [LB1]

SENATOR DUBAS: Yes, I will. [LB1]

SENATOR KARPISEK: Thank you, Senator Dubas. Going back to the original bill, of course the concern always has been the aquifer and the Sandhills, but as I see as we're working now, we're talking more just about the Sandhills. So how does your bill protect the aquifer? [LB1]

SENATOR DUBAS: I think if you look in the amendment starting on page 9, we're in Section 8(4)(b), we worked really hard on that particular section to try to make that...that's the direction that the Public Service Commission can use to gather the information that deals with the Sandhills, that deals with the aquifer, that deals with all of our diverse geography, and I'll just read it out loud for everybody: Evidence of the impact due to intrusion upon natural resources, not due to the safety of the proposed route of the major oil pipeline to the natural resources of Nebraska, including evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources--connected, that would be the land connected with the aquifer and other water sources--and the depletion of beneficial uses of the natural resources. So, yes, that's broad language but it would also allow the Public Service Commission and anybody who is involved with a particular application to bring in evidence to support that particular section. [LB1]

SENATOR KARPISEK: Okay. So as we're moving forward here, a lot of people are under the assumption, I think, that we're moving it and we're putting...the pipeline is going to go closer to the first pipeline, but that's probably not the case, correct? [LB1]

SENATOR DUBAS: We have no... [LB1]

SENATOR KARPISEK: Well, we don't really know yet. [LB1]

SENATOR DUBAS: We have no idea whatsoever where this next route will be proposed. [LB1]

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SENATOR KARPISEK: But...and so we're not determining that route. We're not the ones telling them where it's going to be, correct? [LB1]

SENATOR DUBAS: Correct. This is a process. This is a state agency that puts a process in place that allows all sides, citizens, state agencies, everyone, allows them to come in just like what we've gone through here in the legislative process. They're able to bring their evidence in, their supporting testimony, whatever it takes, to allow the Public Service Commission then to go forward and make the determination. [LB1]

SENATOR KARPISEK: So every time another pipeline comes up, we're not here debating it again and again and again. [LB1]

SENATOR DUBAS: I certainly hope not. [LB1]

SENATOR KARPISEK: All right. Thank you, Senator Dubas. I would just like to comment a little bit that we're here, trying to work through this, and I think we're making great strides. We've been put in a position where there's people on both sides of this issue that are very far one way or the other, and I think Senator Coash alluded to this. We can't make any mistake that there are people on both sides of this issue that don't agree with everyone else on their side. I think everyone in here, every senator, is for the pipeline; just put it safely where it will do the least harm and the most amount of good. The people who keep beating the drum are not helping anyone in here one way or another. They're not helping the process; they're hurting, and they're hurting themselves. This is a process, as Senator Dubas has said, and I'm very proud of everyone who's worked on this bill. It's come a long, long way and... [LB1]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR KARPISEK: Thank you, Mr. President. And we have found some compromise. Is everyone going to be happy in this? No. But what I see happening is the Legislature, again, is going to be the bad guy in this when we're trying to do the best for everyone, find a compromise. We all know that when nobody is happy walking away it's probably the best thing that happened. It moved, it got done, and nobody got their way completely. But I am very concerned that we're going to walk away, we're going to be the ones that didn't do it right, when we probably did but everyone outside wants to keep blaming us for not doing the right thing. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Dubas. [LB1]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. And I guess I would just kind of like to pick up on the questioning that Senator Karpisek started us on. You know, I so much appreciate all of the work that Senator Haar has...as much time and energy that my office has put into this, he's probably put tenfold that into it. This is a man who reads

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publications that I can't even pronounce the name of so, you know, I just so much respect the work that he's done and I've appreciated working with him. And I so understand where he's coming from on this. But as we worked on...as my office worked on this and we worked very closely with the Public Service Commission in understanding how they go through the application process and the types of people that they bring into it, you know, when we put policy together, there has to be some latitude in there, because the more specific you get sometimes you run...you create more problems than you are trying to solve. And so again, in working with the Public Service Commission in coming up with these definitions and the criteria that they would use to evaluate, this was one of the points they discussed is, you know, we have a very diverse state, our geography, the Sandhills, the aquifer, all of our rivers, streams. I mean we just have untold natural resources. We are such a rich state in that capacity. And so how do we give the Public Service Commission the latitude to make decisions but also the ability to take that amount of diversity into consideration? And so I think that's what I just read to you when Senator Karpisek asked me the question. I think that gives them that latitude to take each individual application, look at it based on its merits; allow for the input of citizens, state agencies, other experts in the field so that they are able to take into consideration all of our natural resources, the irreversible and irretrievable commitments of land use connected to those natural resources, so whether it's the aquifer or whether it's surface water or any of the other natural resources that we have in our state; and then how those particular natural resources would be depleted. You know, Senator Haar's amendment is a very specific amendment. My bill kind of takes the bird's-eye view, the big picture view, however you want to look at it. So again, I certainly understand where Senator Haar is coming from but I think we have been able to address his concerns through this particular section of the bill and, you know, I've encouraged Senator Haar to keep working on this and I would like to be a part of what he's working on because I think we're putting something out that is going to be sound public policy for the long haul. But as we know with any policy, as I said with this bill and any policy once it's enacted, it's always a work in progress and as we move forward and learn more about what we're trying to deal with, you know, we're able to come back and make adjustments as they need to be made. So again, I just want to thank Senator Haar for all he's done and believe we have addressed his concerns through this particular section of the bill. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Members requesting to speak on AM54 to AM55, we have Senator Coash, followed by Senator Hansen, Senator Lautenbaugh, and Senator Ken Haar. Senator Coash. [LB1]

SENATOR COASH: Thank you, Mr. President. Would Senator Dubas yield to questions? [LB1]

PRESIDENT SHEEHY: Senator Dubas, would you yield to Senator Coash? [LB1]

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SENATOR DUBAS: Yes, I will. [LB1]

SENATOR COASH: Thank you, Senator Dubas. We ran out of time in our last discussion and there were just two more things I wanted to make sure we got on the record, and then I may have some other questions. As we were talking earlier, on the Urban Affairs, we oversee these natural gas pipelines. The federal government regulates them already and the Public Service Commission has authority over the natural gas pipelines as well. Now natural gas could include a "fraction of crude oil," as defined in your amendment. Correct? [LB1]

SENATOR DUBAS: Yes. [LB1]

SENATOR COASH: Does that pull that definition? [LB1]

SENATOR DUBAS: I don't believe so. Natural gas, natural gas falls under a completely different regulatory scheme, federal laws, state laws. So this deals with major crude oil pipelines as defined in that section of the bill. [LB1]

SENATOR COASH: Okay. Thank you, Senator Dubas. Final question, Senator Dubas: I hate to put you on the spot here but where are...do you support AM54? I mean I know how hard you worked on LB1 and you put everything and put all these...all the feedback you received over the last months and in the last couple days. Is it your opinion that AM54 is too narrow? I was trying to listen to your last discussion. [LB1]

SENATOR DUBAS: Well, again, I think what my bill has put in place as far as defining that criteria does take what Senator Haar is doing with his amendment. So, you know, I've been supportive of Senator Haar's work all the way through this. You know, whether we actually move forward with this amendment or not, you know, I'm not sure, but again, I think...I really do feel very strongly that what we've laid out in the application process through this bill is getting us to where we need to be with Senator Haar's bill. Now I do know that what Senator Haar is proposing is what they have in place in North Dakota and I certainly have not done the amount of research on this particular issue as Senator Haar has. Also know he's worked with the same legal counsel that I worked with on those particular questions. But you know, again, I feel very strongly that that section of my bill answers that question. [LB1]

SENATOR COASH: Thank you, Senator Dubas. Would Senator Haar yield to a question? [LB1]

PRESIDENT SHEEHY: Senator Haar, would you yield to Senator Coash? [LB1]

SENATOR HAAR: Yes. [LB1]

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SENATOR COASH: Thank you, Senator Haar. What I'm trying to wrap my head around here, Senator Haar, is what you're trying to solve with AM54 that's not already addressed in LB1. What parts of LB1, or LB4 I guess for that matter, aren't working for you to the extent that you feel that AM54 is needed? [LB1 LB4]

SENATOR HAAR: Well, I guess that I have believed, in listening, in sitting through 25 hours of testimony and all kinds of trips and so on that this whole process is happening now because of these input of Nebraskans to avoid the Sandhills. I'm listening carefully to my good friend Senator Dubas and her bill and what she's addressing. I guess in a way it's to add emotion to the intent. [LB1]

SENATOR COASH: Okay. [LB1]

SENATOR HAAR: Thank you. [LB1]

SENATOR COASH: Well, Senator Haar, as I read through LB1 and I look at all of the opportunities for citizen input, we've got citizen input happening through hearings of the Public Service Commission, certainly through environmental study process that we're putting in place. There's going to be citizen input. And so I'm just trying to get as to, you know, who...what problem are we trying to solve with this? I mean I've been very transparent, Senator Haar. I'd like to see this pipeline moved; that's going to happen. I want to see it built. And that's where I'm at. [LB1]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR COASH: But I'm not sure if that's where everybody is at and I'm going to yield you the remainder of my short minute here to tell me where you are. Do you want to see this moved just off of the part that is defined in your amendment or do you just not want to see it happen at all? Thank you. [LB1]

SENATOR HAAR: Thank you...(microphone malfunction) ...clarify. I think I need to clarify, and I've been very up-front about... [LB1]

PRESIDENT SHEEHY: Time, Senator. Senator Hansen, you're recognized. [LB1]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I want to rise in opposition to AM54 and I'll give you several reasons why. I stated the other day that a pipeline right of way is similar to me to a highway right of way, and the reason is both of them contain a lot of restoration in the formation of those projects. The Sandhills area, the map that Senator Haar sent out, I mean, it's...there's nothing to complain about the map, there's nothing to question about the map. It's a very accurate map. When I was in college, I learned...and I'm not even exactly sure what class it was but I'm sure it had something to do with range management, but the Sandhills area was

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a post-climatic ecosystem. And those of the ones in the class, you know, we were either "Sandhillers" or not. But what does that mean to be a post-climatic ecosystem? That means that as short of time as a 150 years ago, the Sandhills were blowing dunes with buffalo on them and they would graze the green spots and then move on. The wind would come up, blow. Wildfires were a huge hazard where it would burn everything in the fall once it got started to a river, to a riverbed. When humans came, we started to manage the land. And barbed-wire fences were in vogue then and some of the pastures were huge even with the use of barbed wire, but the management system came in. There were humans there to stop some of the wildfires, and that grass took hold; the native grasses took hold in the Sandhills and grew and grew and grew and filled in. And even now the grass is thin, but it still stabilizes those dunes. And that's what makes it a post-climatic ecosystem. We can do a lot with that ecosystem and humans have to be involved. When we talk about the restoration process of these Sandhills either in a highway or a proposed pipeline zone, I think the Public Service Commission would be wise to follow one guideline is if they follow section lines. If you follow section lines, they're much easier to fence out, reseed. Hay, they will come in with hay and put on, just very similar if you've ever seen a road built in the Sandhills or even the interstate does the same thing. They use netting to hold the hay that...after they reseed. These areas can be restored with not a huge amount of expense. But the main thing is, you still have to rely on the management of humans. The Sandhills are not all that fragile. Sandhills are tough; "Sandhillers" are tough. I've lived in the Sandhills all my life. My family has lived there for 133 years. The popular question being asked now, are you better off than you were four years ago? The Sandhills are. Are you better off than you were 40 years ago? The Sandhills are. Are you better off than you were 120 years ago? Yes, the Sandhills are. Due to the work of humans that are dedicated to the land, we have formed this post-climatic ecosystem and we're going to continue that too. I would yield the rest of my time to Senator Haar to finish his statement of what Senator Coash asked. [LB1]

PRESIDENT SHEEHY: One minute. Senator Haar, you're yielded 55 seconds. [LB1]

SENATOR HAAR: Okay. I would just like to yield that and use my time or can I roll it into my time? I'm up next. [LB1]

PRESIDENT SHEEHY: You will be up next for your time, so you can just continue. [LB1]

SENATOR HAAR: Okay. Thank you, Mr. President, members of the body. I've listened very carefully, especially to the talk about Section 8(4)(b), the protection that it can give to our environmental concerns. I have listened to Senator Schilz who said probably there's a place for the...well, he didn't say probably, there is a place in the next session to talk about this. And (laugh) I may be persistent, but I learned early on that sometimes you can get ahead of yourself. I...the first time I rode a bicycle with handle brakes, I hit

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the front brake instead of the rear and went over frontwards. I got ahead of myself, in other words. Perhaps falling off the front of the bicycle right now, I'm getting ahead of myself. So I would like to withdraw this amendment. [LB1]

PRESIDENT SHEEHY: AM54 is withdrawn. Next item, Mr. Clerk. [LB1]

CLERK: Mr. President, Senator Avery would move to amend with AM58. (Legislative Journal page 98.) [LB1]

PRESIDENT SHEEHY: Senator Avery, you're recognized to open on AM58 to AM55. [LB1]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. I have submitted this amendment, AM58, because I believe that we all understand that we can expect that the permitting process outlined in AM55 will involve a great amount of documents and records. This amendment simply states that an applicant shall not withhold any documents or records relating to the permitting process from the public unless those records are of a type that already can be withheld from the public as defined in current law--that current law is found in 84-712.05--or if it's...if federal law provides otherwise, they can also be withheld. If you look at the current law, you will find a list of about 18 categories of information that can be lawfully withheld, that includes personal information, medical records, for example, and I would point out that it also includes trade secrets which I think would be pertinent to this particular bill. The intent of this amendment is merely to establish firmly and unequivocally that the records and documents of the permitting process will be public records, that is to say, open to the citizens of this state, open to the press and others. This is merely a safeguard of the public's right to know so that all citizens of the state can examine documents should they choose to. The amendment places no undue burden on pipeline carriers, but it does provide a clear indication of what we expect in this state with respect to public records. So I'm trying to make a clear and unambiguous assertion of our commitment to transparency in the public affairs of the state in this particular issue. With that, Mr. President, I would urge your adoption of this amendment. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening of AM58 to AM55. Member requesting to speak, Senator Lautenbaugh. [LB1]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I rise in ambivalence to Senator Avery's amendment. Don't know what to think about it. And this has been a struggle. This has been a difficult time for so many people, including those of us who have wanted so often to stand up and yell: Are you kidding me. And we've had to restrain ourselves. There's an old movie called As Good as It Gets where Jack Nicholson plays a writer, and Senator Larson, he was a prominent actor back in the day. (Laughter) And he's asked at one point, and I have to make this neutral, how

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do you write for a certain type of character? And he responds, I write for a normal adult and remove all reason and accountability. I got a press release last night, all of us did, and I am so tired of this, so weary of this, and frankly tired of being quiet about this. The groups that sent this thing out were fascinating to me, as we had Bold Nebraska, the Sierra Club--I jotted them down--the Audubon Nebraska, Nebraska Wildlife Federation, and the League of Women Voters. That last one jarred me a bit, but in any event, I read the thing. And somehow there was talk of backroom deals and attorneys from TransCanada meeting in the back room. And I'm pretty sure the Sierra Club attorney was there, too, in these negotiations, but apparently that just doesn't count. It's the bad TransCanada people who were there with their attorneys in the room. And this has grated on me throughout this process. Every time I hear a foreign corporation mentioned, I get angry because, first of all, it's just factually false, and, second of all, why does that matter? We are supposed to be a business-friendly state, all other things being equal. And foreign corporations, we want them to come here just like other corporations because last time I checked we need jobs and want jobs. And the tactics on this have been despicable. And we've heard allegations that TransCanada sent a letter that was threatening to people. I've read that letter; it was not a threatening letter. But what I have also become aware of is people standing out in the hall, real Nebraskans, as we're using the term, who are being photographed talking to TransCanada lobbyists. And those people support the pipeline. Now why do you suppose they're photographs are being taken if not to intimidate, if not to go back to the neighbors and say, these are the people that are dealing with TransCanada, these are your neighbors who oppose you? What could the other possible purpose be? I could guarantee you the people who are doing it are not preparing a scrapbook for this thing. They're not trying to preserve their memories. They're trying to intimidate. And we've been put into a horrible position, and I wish we weren't here. And I've been very clear that I'm frankly embarrassed by this whole thing, but we've worked through it as best we could and we've made the best with the hand we're dealt. And, again, I have to thank the parties involved for doing that and getting us to something that is at least defensible that we can move on from at this point. But I just am so tired of hearing...reading press releases and hearing the TransCanada people demonized and condemned when the tactics, and I've been using this word too much this week, but the tactics of some of the organized opponents are simply despicable. They're designed to intimidate. They're designed to distort. [LB1]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR LAUTENBAUGH: And this has been going on and on. I was standing out in the hall last week when someone came running down the hall, an opponent to the pipeline, saying Keystone I has been shut down, as if that was important. Well, some power station, as I understand it, had a power failure, so they stopped pumping for a while. But that became a big deal in the hearing. There was another woman who posted a picture of the pipeline steel on her Facebook page and said, this is how thick the steel

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is. And I asked, well, are you saying that's too thick? That's not thick enough? Are you a metallurgist? I'm not a metallurgist. What are you trying to tell us? Well, it didn't matter. Because there's another movie I remember called Say Anything, and that fits this to a T as well, that fits the organized opposition to a T. I don't read this current bill as saying we won't go through the Sandhills or the aquifer ever. I see it as we're going to rely on science and rationality, and that's long overdue and I look forward to that. [LB1]

PRESIDENT SHEEHY: Time, Senator. [LB1]

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

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Smith. [LB1]

SENATOR SMITH: Thank you, Mr. President. I had the opportunity or privilege being part of those working...that working group as well on as we were going through this AM55 from Senator Dubas. And I just want to take an opportunity to commend Senator Dubas and her work on AM55. I think a great job to bring all sides together. And I do appreciate all of my other colleagues, particularly on the Natural Resources Committee. Senator Haar I know has put his heart into this process and I think he's...I cannot doubt at all his commitment to what's gone on here in this special session, so I appreciate that as well. And I do appreciate Senator Haar withdrawing his earlier amendment. I appreciate that because I do not support any further restrictions on the siting process beyond AM55. And I do appreciate that AM55 did not specifically exclude any geographical areas from its siting process, so I appreciate that very much. And, Senator Lautenbaugh, I appreciate your comments as well, and if you would like to have the remainder of my time, you're welcome to it. [LB1]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 3 minutes, 30 seconds. [LB1]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Smith. Unfortunately I just threw away my notes, so (laughter) I don't know what I would say. But, Senator Smith, will you yield to a question? [LB1]

PRESIDENT SHEEHY: Senator Smith, would you yield to Senator Lautenbaugh? [LB1]

SENATOR SMITH: Yes, I will. [LB1]

SENATOR LAUTENBAUGH: Just to be clear, Senator Smith, and I kind of touched on this at the end and gave it short shrift and that wasn't my intention, there's no specific prohibition in this bill that we have before us as, you know, with the proposed amendment saying that we will not put a pipeline in any specific area. Is that correct? [LB1]

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SENATOR SMITH: That is my understanding. That is correct. [LB1]

SENATOR LAUTENBAUGH: And that's not your intent, is it? [LB1]

SENATOR SMITH: It was not the intent of that working group and it certainly does not appear to be in the intent of the bill. [LB1]

SENATOR LAUTENBAUGH: Okay. Thank you, Senator Smith. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Thank you, Senator Smith. Seeing no additional requests...Senator Council, you're recognized. [LB1]

SENATOR COUNCIL: Yes, thank you, Mr. President, Mr. Lieutenant Governor. I have been intently listening to the debate on all of the amendments, and I understand and appreciate the purposes and intent of those who have introduced the amendments. I had some questions regarding Senator Haar's amendment and I appreciate his willingness to withdraw the amendment and work on trying to clarify his intent later. The same holds true now for Senator Avery's amendment. I think I understand what the intent is, but it's not really clear the way the amendment is written. It says that no pipeline company shall withhold any documents or materials from the public. And in the context of LB1, I guess I'm not understanding what the intent is in terms of how the public would access those documents. If the intent is that the pipeline company not withhold any documents from the commission, then I think the amendment should be revised to reflect that the pipeline company shall not withhold any documents or materials from the commission who then, in turn, is the body that the public would go to, to access that. As the amendment reads, it appears to suggest that the public has some direct access or requesting ability to obtain these documents directly from the pipeline company as opposed to obtaining those documents once the documents are submitted to the commission. Senator Avery, would you yield to a question so I can seek some clarification on this? [LB1]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Council? [LB1]

SENATOR AVERY: I will. [LB1]

SENATOR COUNCIL: Is it your intent that any documents that are submitted to the commission, which would then become public documents, be documents...only documents that they could not withhold? Is this... [LB1]

SENATOR AVERY: That is correct. And there is a floor amendment that Senator Lathrop has prepared that will address that. [LB1]

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SENATOR COUNCIL: Okay. Well, then I will yield the balance of my time back to the Chair in hopes that Senator Lathrop's amendment addresses that issue. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Nelson, you're recognized. [LB1]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have some reservations as Senator Council does. Perhaps they will be addressed by Senator Lathrop's amendment. But I would like to ask a few questions of Senator Avery with regard to AM58 if he will yield. [LB1]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Nelson? [LB1]

SENATOR AVERY: Yes, I will. [LB1]

SENATOR NELSON: Senator Avery, let's talk about TransCanada. Is that a public or a private corporation? [LB1]

SENATOR AVERY: It's a private corporation. [LB1]

SENATOR NELSON: In here, and let's go to other private corporations, is this the ordinary thing that we expect or do we have a statute in Nebraska that requires any private corporation to provide all of their records, their e-mails, everything that relates to a project that they have and make it public information to your knowledge? [LB1]

SENATOR AVERY: Senator, you raise a good point. We are working to change the amendment to strike "a pipeline carrier" and insert the language "the Public Service Commission." The Public Service Commission is the lawful custodian of the records once they're submitted by the pipeline company in the permitting process. That was the intent of the amendment. I believe, however, that there was a miscommunication with the drafters. [LB1]

SENATOR NELSON: All right. Well, with that, thank you for your response. And with the hope that this will be defined a little better and restricted by the upcoming amendment to AM58, I will return my time to the Chair. Thank you, Senator Avery. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Fulton, you're recognized. [LB1]

SENATOR FULTON: Thank you, Mr. President, members of the body. The amendment, AM58, Senator Avery's amendment, touches on a section of the statute, 84-712.05, that

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it's important to point out, and I point this out just to put this in the record, there was a bill that I introduced some years ago, and Senator Sullivan actually introduced a similar bill and brought it across the finish line last year and it's part of the statute. And there is...it's found in Section 84-712.05. The reason I bring it up is because there are times when it is legitimate to withhold information, critical information from infrastructure drawings and whatnot to preserve the public safety. You know, and I won't give any examples, but there is a section. I'm just going to read it to have it into the record. This is 84-712.05. There are some records, unless publicly disclosed in an open court, which may be withheld from the public by the lawful custodian of the records. And so if we can make a floor amendment that indicates "the Public Service Commission" is intended where the words "a pipeline carrier" is presently written in AM58, I think this will be much more clear. One of the things that can be withheld, one of the reasons for which these records could be hold...could be withheld, "Information solely pertaining to protection of the security of public property and persons on or within public property, such as," and then it goes on. This is (8) within 84-712.05. So it's just important to get that into the record because that would...anyway, for the public safety, and this is something that we just passed in last year's session. So I'll stop with that. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Members requesting to speak on AM58 to AM55, we have Senator Lathrop, followed by Senator Avery. Senator Lathrop. [LB1]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I looked at this amendment by Senator Avery and it says, and you can see just the same as I can, new, "Section 14. A pipeline carrier shall not withhold any documents," and that's a significant problem for two reasons. One is that this provision of the statutes applies to public entities, and a pipeline company isn't a public entity. We don't make them a public entity in the process that we're engaging in here in this special session. And so what we've determined is that this should read, and it's consistent with what Senator Fulton just said, it should say: the Public Service Commission shall not withhold any documents. Why is that important? Important for two reasons: one is it doesn't belong in this section of the statute; the other is, we don't want to put into statute an opportunity for someone who opposes a pipeline to harass a pipeline company with endless requests. In litigation we have what we call a discovery process, and for lawyers who do that kind of work there are limitations on what you can ask your opponent to produce. This would be wide open, a wide open authorization for anybody to request anything, including privileged and protected and confidential things. Just like Senator Fulton said, we don't want the pipeline company to have to say, this is where I'm putting my pipeline route or these are the communications I've had with my lawyer. So what we have is an oversight. And I think that's what you heard Senator Avery say. It also addresses the concern Senator Fulton had. And so what's taking place while we're talking is Bill Drafters is putting together a new amendment, because I was going to

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simply amend the amendment by taking out "a pipeline carrier" and replacing it with "the Public Service Commission," but apparently I can't do that. And I'm not really sure why, but I trust that that's not something that I can do. So what's happening is they're drafting a new amendment. And why is this a good idea? All the agencies of government have to provide information to the public. It's a democracy. It helps in our form of government. And I think Senator Avery is onto something here. The information provided that would be available on the amended version of this amendment would be things like, what was the report from the historical society or what was the report from this expert or that expert that was submitted to the Public Service Commission? And I think the more access people have to the information that goes into the decision, which will be controversial, the better we are in the process. And so I think Senator Avery is onto something. It does need a fix. And with your patience, I expect that we will replace AM58 with a new AM as soon as it comes down from the Bill Drafters, and hopefully that will be in very short order. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Avery. [LB1]

SENATOR AVERY: Thank you, Mr. President, and thank you, Senator Lathrop, for pointing out a drafting error. Actually, we did not, late yesterday afternoon, specify the exact language of this but simply communicated to the Bill Drafters what we were trying to achieve. I would refer you, as did Senator Fulton, to 84-712.05 which is entitled, "Records which may be withheld from the public; enumerated." And it reads that, "The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records." I think that's important that we make this change from a public...or from a pipeline carrier to the Public Service Commission because the Public Service Commission will be the lawful custodian of these records. And then it will read that the Public Service Commission shall not withhold any documents or records relating to a major oil pipeline from the public unless the records or documents are of the type that can be withheld by a public entity under Section 84-712.05 or unless federal law provides otherwise. I think it's important that we make it clear and completely unambiguous to all people who would seek a permit and seek to go through the permitting process that the documents they submit in that process will be open to the public, because not everybody that may be interested in the permitting process will know about our open meetings law, our open records law. This is an important part of the way we do business in this state. I think we can be proud of the fact that Nebraska, for a great many decades now, has had very strong, open records laws. And we have made reasonable exceptions to it when it's been needed. But the public has a right to know. It is extremely important that we continue to conduct our business in the public eye and that transparency always be a part of how we do business. That is the intent of this amendment. I appreciate all of you who have expressed support for it and would urge that you support it when we get it down from the Bill Drafters, which I expect should be very soon now. Thank you, Mr.

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President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Lautenbaugh. [LB1]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And my ambivalence regarding this has passed. And I've been talking to some people from the Public Service Commission and otherwise, and people are having trouble figuring out why we're addressing this now and what it actually does and what it...how it supplements what is already existing law. And I'm very uncomfortable proceeding with something like this on the fly on the floor when we don't know what it does or why we're doing it is not clear to me at this point. And when I talked to the people whose records we're going to be giving out, the Public Service Commission, and the response I get is, we don't know what this does, if it changes what we do, if it impairs what we already do as far as disclosing records to the public. This is the type of thing that can surely wait. I think we need to know why we're doing this. And if this bill or whatever we're doing or this section of the law needs to have this added to it next session, then let's have a discussion about this. I suspect this isn't a big deal, but I don't know that we know. And with respect to Senator Avery and Senator Lathrop, I understand what they're saying, but I don't know what this does and I'm not in a position to say we should tack this on right now. If it really is as straightforward and doesn't do harm, we can surely deal with it in January and the following months. But I don't think we should be doing this right now. I think we have an understanding with various parties as to what is going to be proposed. And when we start offering these additional amendments, well-intentioned or otherwise, and I believe this is a well-intentioned, sincere concern raised by Senator Avery, I think we need to reflect on this a bit. I don't see the urgency in this and I really, really wish we would wait on this until the regular session and actually discuss it in the appropriate committee and see if there's something here that we actually need to address. So I would...I don't want to sound like I'm being stridently opposed to this, but I guess I would urge you to vote no on this amendment and the amendment that's coming because we're not ready to address whatever it is we're trying to address with this particular topic. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Avery, and this is your third time. [LB1]

SENATOR AVERY: Thank you, Mr. President. We're setting up, with AM55, a whole new process of gathering information and holding public hearings and issuing permits to build pipelines in the state of Nebraska. It's a whole new process. So there are a lot of potential pipeline carriers out there that may want to lay pipe in this state that have not had to deal with the state of Nebraska before because we have not had such legislation in place previously. There will be a lot of documents generated, a lot of records will be generated. This amendment I believe is important to do now so that we can make it unambiguously clear to all potential pipeline carriers who may want to do business

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under...in Nebraska under the law that we are about to adopt. They will know clearly that the records they submit to the Public Service Commission will, in fact, be subject to the open meetings law. Now, it's important to point out that if they have some sensitive trade secrets in the information they submit to the Public Service Commission, then they will need to make the case to the Public Service Commission that this information needs to be withheld, and we have provisions in our current law for that. But it seems to me that we don't want to wait to do this next year; we want to do it now while we are crafting this legislation. Make it complete. Let's make sure that we don't leave anything undone so that we have to come back next session to tie up loose ends. This is not a hard thing to do. I would have expected the amendment to have already come down from the Bill Drafters, but it seems to me that if we need to stand at ease for five or ten minutes, that we've done before and we could do it again. I would urge you to consider voting for this for the reasons that I have specified. New law, new procedure, complicated, lots of documents will be generated, and a lot of new, private entities will be involved who are not familiar with our way of doing business. This is a reminder. In this state, if you're going to do business in this state, then you have to know that we do take seriously our public records law. And this is a clear and unambiguous reminder of that for all who may be wishing to do business. I believe the amendment has arrived. So at the appropriate time I would withdraw this current amendment and ask that the new one be substituted. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Avery. Members, we're going to stand at ease for a short period of time. Members, we will resume with AM58 to AM55. Seeing no additional lights on, Senator...Senator Avery, you're recognized to close. [LB1]

SENATOR AVERY: Thank you, Mr. President. I'm going to request that AM58 be withdrawn and I will bring this back next year. We will have a public hearing in the Government, Military and Veterans Affairs Committee on this, and at that time Mr. Hybl and others from the Public Service Commission will be able to testify and we'll get more information about their process. I do continue to support this kind of legislation and I believe that in this new area of law we're going to need to have this statement part of that law, but I believe it can wait until next session. So with that, I request that this be withdrawn. Thank you, Mr. President. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Avery. AM58 is withdrawn. [LB1]

CLERK: If I may, Senator Lathrop, I assume yours goes away, right? [LB1]

SENATOR LATHROP: Sure. [LB1]

CLERK: Thank you. Senator Avery, the subsequent amendment goes away as well? [LB1]

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SENATOR AVERY: That is correct. [LB1]

CLERK: Thank you. I have nothing further pending to Senator Dubas' AM55, Mr. President. [LB1]

PRESIDENT SHEEHY: Senator Sullivan, you're recognized. [LB1]

SENATOR SULLIVAN: Thank you, Mr. President. Perhaps at this point people are just drawing a sigh of relief. But I also want to join the choir in some ways to rise in full support of what we now have before us as LB1 as amended with AM55 potentially. I, too, thank those who have worked so diligently to get us here today. I don't need to mention them individually for fear of overlooking someone, but I do thank them from the bottom of my heart. But, you know, this has been a subject that's been on my mind, in my plate even before I was elected, because I truly remember standing in the Legion Club at Burwell looking at all the maps that were laid out and the landowners looking at them with rather perplexed looks on their faces. And, quite frankly, it's going to be an issue that's going to continue to be of concern to me and the citizens in District 41 because I'm quite sure that the proposed new route from TransCanada will continue to go right through the heart of District 41. But getting back to the legislation at hand, I truly believe that we will, if we pass this, have a sound process in Nebraska for siting oil pipelines, a process that is not meant to stop pipelines. It simply puts in place a process that will be clear to everyone, citizens, state government, and oil pipeline companies, and a process that I truly think will work for everyone involved. I really think we've done a good job here in the Unicameral, and we were able to do our job because of the Unicameral way of doing things. I venture to guess that this could have not happened in any other system other than the Unicameral. As I mentioned earlier, the issue of oil pipelines and siting and locating them in our state will continue to be of concern to me. And to that end, I bring up a few cautionary notes. I've already heard from local public power districts wondering if the new and/or additional pumping stations will be located in their areas. So I'm quite sure that TransCanada will be engaging conversations with Nebraska Public Power District to that end. I also fully expect that soon landowners in my district will be contacted by TransCanada regarding easements. My advice, first and foremost, to all landowners is to seek legal advice to help you negotiate a favorable contract, not to run away from it but to engage in negotiation and conversation. And, secondly, I think it's important to remember that the limitations of eminent domain, which are outlined in LB1, do not apply to TransCanada and the Keystone XL in this next step of the rerouting of the pipeline. And so my message to TransCanada is that I hope you will be up-front in your conversations with our citizens. Do not hold out a hand to shake and in the other hold the club of eminent domain in the other. Work with our citizens. Nebraskans are good people. They are reasonable people. And they will meet you halfway if you engage in an honorable, forthright conversation with them. So, again, I applaud the work that everyone has done to bring us to this point today, and I hope that this will lead us to the successful passage of AM55 and LB1. Thank you. [LB1]

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PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Council. [LB1]

SENATOR COUNCIL: Thank you, Mr. Lieutenant Governor. And I rise initially to express my support for the purpose and intent of LB1 as amended by AM55. But I also must state concerns that remain with regard to LB1 as amended by AM55. As I stated yesterday in discussions with regard to LB4, LB4 essentially sets up a review process that could result in approval of a pipeline route by the Governor. In terms of LB4 provides that if the Department of Environmental Quality decides to engage in a supplemental environmental impact study, that the result of that study shall be furnished to the Governor who will in turn submit to the federal government his or her opinion and his or her approval of any one of the routes that may have been addressed by the environmental impact study. If you look at LB1 on page 18, it...as amended by AM55, it essentially now acknowledges that a route can be approved under LB1 or approved under LB4 which, in my opinion, creates two conflicting approval processes. I believe that LB1 needs to be further amended to take into consideration in the future, and admittedly this applies to the future. I understand that LB4 was intended to address specifically the issue before us now, and that is the Keystone XL pipeline, and has set forth a procedure that can be implemented immediately to address all the concerns associated with the location of the Keystone XL pipeline. But both LB1 and LB4 will apply to future pipelines. And as they stand now, they create two separate, distinct, independent approval processes which are conflicting. And, in fact, if LB4 is the route that is taken, it doesn't contemplate a permit being...an application being filed first under LB1. It just says that if the Department of Environmental Quality decides that it's best to join in with a supplemental environmental impact statement with the federal agency who's conducting it, it outlines what the process is, and the ultimate result of that process is a Governor...gubernatorial approval of a route. It doesn't have the same notice and public hearing provisions as LB1, and so I firmly believe that LB1 needs to be amended to take into account and reference LB4 in a manner that LB4 would...makes it clear that LB4 would come into play once an application for a permit under LB1 is submitted. And then LB1 would need to be amended, although there is a provision that speaks to a delay in the process. I think that LB1 needs to take into consideration and make reference to LB4 to this extent, that LB1 should make some statement that if the Department of Environmental Quality... [LB1 LB4]

PRESIDENT SHEEHY: One minute. [LB1]

SENATOR COUNCIL: ...decides that it is necessary to enter into a memorandum of understanding to perform a supplemental environmental impact statement, that the application is placed in abeyance until that process is completed. And then the commission takes into consideration what those reviews reveal, and then that is what is then submitted to the federal government. As it stands now, LB1 and LB4 provide for a permit process that may not involve a supplemental environmental impact statement,

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and that route is approved by the Public Service Commission. But under LB4, it's approved by the Governor. I think these measures need to be reconciled so that in the future, there is no doubt, no confusion that it is the Public Service Commission process that is the process that will ultimately result in a permit for... [LB1 LB4]

PRESIDENT SHEEHY: Time, Senator. [LB1]

SENATOR COUNCIL: ...construction. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Council. Seeing no additional requests to speak, Senator Dubas, you're recognized to close on AM55. [LB1]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. Thank you, again, for all of the discussion this morning and the supportive comments that were made. With the passage of this bill and the Governor's signature, we will have what I have sought to achieve for the last couple of years and what our citizens have been asking for. We will have state siting authority through an independent state agency. Our natural resources are our state's most precious commodity, and we are certainly rich. We have a legitimate interest to minimize any intrusions into those natural resources. We also have the ability and should never pass on exercising our sovereign authority. We also need to provide clear rules for our businesses when they come into the state so that they know what's expected of them and we won't run into issues like we ran into here. And last and most importantly I think is we've given our citizens a voice. So I appreciate the support and the comments made on the floor this morning, and a green light for LB1 as amended. Thank you. [LB1]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You have heard the closing. The question before the body is on the adoption of AM55 to LB1. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of Senator Dubas' amendment. [LB1]

PRESIDENT SHEEHY: AM55 is adopted. [LB1]

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

PRESIDENT SHEEHY: Senator Larson, you're recognized for a motion. [LB1]

SENATOR LARSON: Mr. President, I move that LB1 be advanced to E&R for engrossing. [LB1]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.

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Opposed, nay. LB1 advances. Mr. Clerk, we'll move to the first item under General File, appropriation bill. [LB1]

CLERK: Mr. President, Senator Dubas would offer LB1A. (Read title.) I do have a motion from Senator Dubas, Mr. President. She would move to indefinitely postpone LB1A. [LB1A]

PRESIDENT SHEEHY: Senator Dubas, you're recognized to open on your motion to indefinitely postpone. [LB1A]

SENATOR DUBAS: Yes, thank you, Mr. Lieutenant Governor. Through discussions with Fiscal and Appropriations, I believe we'll be able to handle this through a deficit appropriation when we return next...into the next regular session. We're spending around \$10,000 a day being in the special session. If we have to move forward with this, this would prolong the special session. We're looking at an appropriation of about \$10,000. So it would just seem to make sense to use this route of using a deficit appropriation rather than an A bill. And I'd appreciate the body's support. Thank you. [LB1A]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Heidemann. [LB1A]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I do support this motion. This isn't a precedent that the fiscal people or I want to start. This is a special session and this is special circumstances. And I fully support what Senator Dubas said that this is...would cost us \$10,000 to be in one more session day for a \$10,000 bill. That doesn't make sense. But this isn't the way that we normally like to operate. But at this time with the special circumstances, I do agree that we should IPP this and I urge your support. [LB1A]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Seeing no additional requests to speak, Senator Dubas, your recognized to close on your motion to indefinitely postpone LB1A. Senator Dubas waives closing. Members, the question before the body is on the motion to indefinitely postpone LB1A. All those in favor vote yea; opposed, nay. Record, Mr. Clerk. [LB1A]

CLERK: 42 ayes, excuse me, 0 nays, Mr. President, on the motion to indefinitely postpone. [LB1A]

PRESIDENT SHEEHY: The motion is adopted. Speaker Flood, you're recognized for an announcement. [LB1A]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. We're going to start up tomorrow at 9:00 a.m. We will take up LB4. We'll wait for that to come back, be

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reported back so it can be placed on Final Reading. Monday will be our layover day. We will start at 1:30 p.m. on Monday, again, a 1:30 p.m. Monday start, and we will be taking up some substantive resolutions. And then I'm anticipating a 9:00 a.m. start Tuesday morning and potentially considering a motion to adjourn sine die. Thank you very much.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, do you have items for the record?

CLERK: I do, Mr. President. Senator Flood would like to print an amendment to LB4. Senator Mello would offer LR31, a resolution that will be laid over at this time. Senator Sullivan would like to add her name to LB1 as cointroducer. (Legislative Journal pages 98-100.) [LB4 LR31 LB1]

And a priority motion. Senator Smith would move to adjourn to body until Friday morning, November 18, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Friday, November 18, at 9:00. All those in favor say aye. Opposed, nay. We are adjourned.