

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

Floor Debate
March 18, 2010

[LB317 LB420 LB505 LB510A LB510 LB563 LB594 LB702 LB789 LB800 LB849
LB880A LB935 LB937A LB938 LB945 LB961 LB1002 LB1010 LB1057 LB1070 LB1090
LB1091 LB1097 LB1103 LB1106A LB1106 LB1109A LB1109 LR370 LR371 LR373
LR410 LR411]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: (RECORDER MALFUNCTION)...Norris Legislative Chamber for the forty-fifth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Frederick Joseph McCullough of the St. John A.M.E. Church in Omaha, Nebraska, in Senator Council's district. Please rise.

PASTOR McCULLOUGH: (Prayer offered.)

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

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, the lobby report as required by statute to be inserted in the Journal. And two reports received in the Clerk's Office, one from the Coordinating Commission, the second from the Military Department. Both will be on file and available for member review.

SPEAKER FLOOD: (Gavel)

CLERK: There will be Executive Sessions this morning of the Revenue Committee at 10:00 in 2102; and Judiciary will hold an Exec Session at 10:00 in 2022. That's all that I have, Mr. President. (Legislative Journal pages 963-964.)

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to the first item on the agenda, Select File, the appropriations bill LB937A. [LB937A]

CLERK: LB937A, Senator Nordquist, I have no amendments to the bill. [LB937A]

SPEAKER FLOOR: Senator Nordquist, you're recognized for a motion. [LB937A]

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

Floor Debate
March 18, 2010

SENATOR NORDQUIST: Mr. President, I move LB937A to E&R for engrossing. [LB937A]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB937A is advanced to E&R for engrossing. Mr. Clerk, we now proceed to Select File budget bills, LB935. [LB937A LB935]

CLERK: LB935, Senator, I have Enrollment and Review amendments, first of all. (ER8202, Legislative Journal page 947.) [LB935]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB935]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB935. [LB935]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB935]

CLERK: Senator Heidemann would move to amend with AM2246. (Legislative Journal page 953.) [LB935]

SPEAKER FLOOR: Senator Heidemann, you're recognized to open with AM2246. [LB935]

SENATOR HEIDEMANN: Thank you, Mr. Speaker and fellow members of the body. There were two things that came to us late in the process that we wasn't able to address on General File. This amendment would address those two issues. The first issue would be to authorize the expenditure of a corporation for public broadcasting funds for a radio transmitter tower replacement. These are cash funds, will not affect the General Fund. The second issue is to add \$43,100 of General Funds for the 2011 redistrict and an additional cash fund transfer to the General Fund. We accessed a little bit more money from the Clerk's Cash Fund. We will lapse that money back into the General Fund, and that is \$43,100. So there will be no net impact to the actually bottom line. We felt it was important that we put enough money into the Legislative Council's budget for redistricting purposes. It's once every ten years that we do this. We want to make sure that we get it right. I urge your adoption of the amendment to LB935. [LB935]

SPEAKER FLOOD: Thank you, Senator Heidemann. Members, you've heard the opening on AM2246. There are no lights on. Senator Heidemann, you're recognized to close. The question before the body is, shall AM2246 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB935]

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

Floor Debate
March 18, 2010

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Heidemann's amendment. [LB935]

SPEAKER FLOOD: AM2246 is adopted. Mr. Clerk. [LB935]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB935]

SPEAKER FLOOD: Senator Langemeier, you are recognized as we return to discussion on Select File on LB935. [LB935]

SENATOR LANGEMEIER: Mr. President, members of the body, thank you for the opportunity. As I go through the budget, I first want to commend the Appropriations Committee for their work. This is a tough undertaking that they take on every year. And my first two years in the Legislature I couldn't support any of the budgets the way they were handled. But after that, as Senator Heidemann has become Chair, it's become easier to follow and be a part of this budget process. But if you go to your blue copy, and Senator Fischer brought it up on the first round of debate, and I kind of wanted to listen at that point. But we talk about there's \$1.5 million in the out-year for Cultural Preservation Endowment Fund. As a body, we need to start making tough decisions. We have a bill, Senator Hadley's bill, LB420, that's sitting on Final Reading that can't go forward because it needs funding. We need to start deciding in tough budget years, do we want our...excuse me, back up. LB420 would exempt our hospitals across Nebraska that used to be tax exempt. Due to a ruling change by the Department of Revenue, they are now being taxed. That bill sits there with approximately the same fiscal note. And, I guess, I have to look at as we're trying to do economic development and priorities in the state of Nebraska, I have a hard time saying that today is the day, although I'm very supportive of cultural endowments and the arts. But, I guess, I have to stand up today as I say I think maybe our hospitals should be a priority. I would ask if Senator Nelson would yield. [LB935 LB420]

SPEAKER FLOOD: Senator Nelson, will you yield to a question from Senator Langemeier? [LB935]

SENATOR NELSON: Yes, I will. [LB935]

SENATOR LANGEMEIER: Senator Nelson, first of all, I'm not out to single one thing out, to attack it, it just happens to be the right amount of money. Can you tell us a little more about what that Cultural Preservation...what's that money going to be used for? [LB935]

SENATOR NELSON: That money is available for a match to the Cultural Preservation Trust Fund that was established, I think, back in the nineties. And a couple, about three years ago we added, as a body, another, as I recall, and I don't have the figures in front

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

Floor Debate
March 18, 2010

of me, \$5 million to be spread over four years approximately. And that money is available for a match if the Arts Council and Humanities Council are able, through private donations, to raise contributions to match that. And if they do as of a designated date, you know, like the first of December, then that money is transferred to the extent that it's needed to match. That money...it works to the benefit of the state of Nebraska and to all of our educational system because it does things that our schools and other facilities just simply aren't able to do. And it also engenders contributions from the local communities for these programs. It's educational and cultural. I'll stop there. If you have any additional questions about it. [LB935]

SENATOR LANGEMEIER: No, you're doing fine. I really wanted to get down to the heart and the soul of what the money was going to be spent on. Is this buying artwork for a museum or is it used to educate our kids through cultural programs in school? [LB935]

SENATOR NELSON: It's educational, basically, for... [LB935]

SENATOR LANGEMEIER: Okay. [LB935]

SENATOR NELSON: ...and I think there are other persons here that are aware of it, have been involved in it. There are chautauqua programs. The way I know it best, like in my own home community, out in Geneva we have wonderful programs that come into the schools and on arts, on music, on drama, on a lot of things that the schools just can't afford and don't have access to, they bring these programs in, the Arts Council,... [LB935]

SPEAKER FLOOD: One minute. [LB935]

SENATOR NELSON: ...Humanities Council pays for this through these contributions that are made individually, but also from the interest money that comes here for the match. [LB935]

SENATOR LANGEMEIER: Well, thank you, Senator Nelson. I appreciate, our time is about to run out. I appreciate that explanation. I think it's important to get that out there to remind us all again as sometimes we can forget over time. But I do think we are in a situation where we need to start prioritizing our issues. I know LB420, which is Senator Hadley's bill on the continued exemption of hospitals is a priority for all of us as we talked about it last year and we pulled it back on Final Reading. I want to bring that to your attention. And if there's other discussion, I'd appreciate other thoughts on that bill. Thank you, Mr. President. [LB935 LB420]

SPEAKER FLOOD: Thank you, Senator Langemeier. Senator Fischer, you are recognized. [LB935]

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

Floor Debate
March 18, 2010

SENATOR FISCHER: Thank you, Mr. President and members of the body. As you remember, on General File debate on the budget, I brought up a few issues on the amendment and on the bill. At that time I questioned Section 7 in the bill, the agency efficiency review plans. I did have an amendment drafted that I was going to file that would have deleted that entire section. Senator Mello and I...Senator Mello is a strong proponent of that part of the budget, he and I had a discussion on that. I do not see him on the floor right now. But we did visit about that and he assured me that this was a one-time deal that's going to be in the budget and we will not see it in future years. The problems I had with it was first of all was it even necessary. Also, that it's somewhat unusual that we have what I would call a statement of intent like this in the budget. And I did question to what purpose this would serve because I believe we already see this planning process taking place. I see Senator Mello now, Mr. President. Would he yield? [LB935]

SPEAKER FLOOD: Senator Mello, will you yield to a question from Senator Fischer? [LB935]

SENATOR MELLO: Yes. [LB935]

SENATOR FISCHER: Thank you, Senator Mello. I was just telling our colleagues that you and I had discussed this and you had assured me that this was a one-time proposal that we're seeing in the budget, at least on the plan right now and where we stand as of today on it. But could you maybe tell us what your thoughts are on why this section was included? [LB935]

SENATOR MELLO: Absolutely, Senator Fischer. And Senator Fischer is right, we had a conversation regarding kind of the purpose of that intent language and where it derived from. The simple fact, I guess, in my short time in the Appropriations Committee, both last year and this year working through the budget process, there were some questions that I have continually asked and other members have asked as well in regards to looking at the general restructuring opportunities that are available for our state government to deal with this impending fiscal mess starting next year. And so those questions that are in that intent language are questions that I felt aren't readily available through the existing budgeting process. You know, the budget, there is one question, I was talking with someone from the Fiscal Office the other day, the point about mandates...of all the mandates that state agencies or are put on state agencies. They usually list at least the state statutes or requirements with their budgeting process when they submit their budget to the Governor of saying, you know, here are our requirements. We have to file a report on this program by this date, we have to execute this by that date. But the bigger point is, you know, with that particular question is so they provided us with some of that information. From their opinion, do they really need to be doing it? And that was why I included that question. But I think it was not only

Floor Debate
March 18, 2010

mine, but it was obviously the majority of the Appropriations Committee as a whole that this information will be beneficial to the Legislature as we go through what Senator Heidemann mentioned on the first round of budget debate, of asking individual legislative committees to bring agencies in front of them during the interim to dig in a little bit more to their programs, to evaluate their agencies with a microscope and, hopefully, these plans that agencies will give back will be essentially the blueprint of where to start for where individual legislative committees... [LB935]

SPEAKER FLOOD: One minute. [LB935]

SENATOR MELLO: ...can start to ask questions of agencies throughout the interim. And as I told Senator Fischer, this might...this information might be fruitful and in some cases it might not be fruitful. And my intention would be if it is fruitful that I would bring a separate bill next year to the Legislature to see if this is something we want to do on a more permanent basis. [LB935]

SENATOR FISCHER: Thank you, Senator Mello. I do want to make it clear that I don't support intent language in the budget. I am willing to give this a try, though, with the assurance from Senator Mello that in the future we'll be seeing individual bills that will address this. Thank you, Mr. President. [LB935]

SPEAKER FLOOD: Thank you, Senator Fischer. The banana bread being passed out this morning is in honor of Senator Amanda McGill's 30th birthday. Happy birthday, Senator McGill. (Applause) Continuing with discussion on LB935, Senator Nelson, you are recognized. Senator Nelson waives his opportunity to speak. Senator Utter, you are recognized. [LB935]

SENATOR UTTER: Thank you very much, Mr. President. Good morning, colleagues. I just wanted to rise for just a moment and express my support for the things that Senator Langemeier mentioned to you just a few minutes ago, that we're approaching the time where we have to make some really hard, tough decisions on our budget. And some of those decisions are not necessarily going to please or be popular to everybody. But I think we need to get ourselves prepared as individuals and also as a body to look at every item of state expenditures. And we're going to have to develop some priorities and look at the things that are important for government to do, separate the needs from the wants. And even though I recognize that one person's need may be some other individual's wants, that I think we're fast approaching the time that these tough decisions have to be made. With regard to Senator Langemeier's questions about the Endowment Fund for the Humanities, I think we all agree that those things are important and we all support the humanities, I do and I do privately with my private funds. And I think as we move along in this tough budget period that we are in now and that are to come, why, we'll have to take a look at items like that and look for the patrons of the arts and the patrons of the humanities to step up to the plate and start providing funding for those

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

Floor Debate
March 18, 2010

types of things while we do the things that are absolutely necessary for state government. Thank you very much. [LB935]

SENATOR ROBERT PRESIDING

SENATOR ROBERT: Thank you, Senator Utter. Senator Krist, you're recognized. [LB935]

SENATOR KRIST: Thank you, Chair. No secret that I'm new here, became one of you when I swore in on the 14th of September. This is my first budget process. And unfortunately, I guess, with the special session experience and this one I have some philosophical questions that I think we need to look at. The analogy of the ostrich comes to mind. We have our head firmly entrenched underneath terra firma hoping that somebody is going to allow us to pull our head out and, no pun intended, and see the light for the economic turnaround that somehow is going to happen. So as we continue to debate about cutting \$1.5 million here and \$2.2 million here and we continue to say that we're cutting across the board at 2 percent, the reality is we are not cutting across the board at 2 percent. There are sacred cows out there that if the budget...if our times truly do get worse instead of better, those sacred cows are going to have to be looked at hard in terms of reality and cuts. On the other side of that I would say that we cannot afford not to consider an investment in this business. Some of you are business people. You would never dream of not continuing to invest in your business at some level. Senator Hadley has a bill coming up where we have to look sincerely about investing in the possibility of bringing revenue into the state. Senator Langemeier, yesterday, reported victory, we have wind energy coming into the state. All of those things are good. We need to start looking on a positive side and look for the opportunities to bring revenue in. This budget is a good one. I've gone through it as much as I can. This old pilot has looked through it and I think that they've done a wonderful job. And I commend the committee and Senator Heidemann for all that he's done. But I think in the interim we need to realize that if we continue to react and not try to solve our problems as a state, executive branch and legislative branch, we will continue to be the ostrich. And even though we're in pretty good shape as ostriches, with a cash fund that we can still draw on, rainy day fund that's still there, unless we look at things outside of the box we'll be back here, hopefully, I'll be back (laugh) here in January and the following January and we're going to be having the same discussion. An investment in our business is going to bring the state back around. As I said, I applaud Senator Langemeier for what he's done, several years worth of work, along with Senator Haar, have got us to a point where there are new revenues coming in. I applaud Senator Heidemann and his committee for the budget that they put together. But the reality check right now is, do you want to be back here next year asking yourself the same questions? Do you want to look at the interim period and look at those things that you can honestly bring to every committee that are opportunities to bring new revenue in? And one other thing, I will commend my friend and chair, Senator Karpisek, for having the intestinal fortitude of

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

Floor Debate
March 18, 2010

going through that process and bringing a half a million dollars into this state in revenue beginning next year, with an increase in the licensing fees for alcohol distribution in the state. [LB935]

SENATOR ROBERT: One minute. [LB935]

SENATOR KRIST: Thank you, Mr. Chair. So my challenge as the new guy is to say, how about putting some thought, intent, and some real emphasis on bringing to committee those things that you think can bring revenue into this state and reversing the trend? Let's not wait for the federal government to give us another mandate. Let's not wait for Wall Street to make decisions that might be good for the state of Nebraska. Let's do what the taxpayers are asking us to do: lead, follow, or let somebody else do the job. Thank you, colleagues. [LB935]

SENATOR ROBERT: Thank you, Senator Krist. Senator White, you are next and recognized. [LB935]

SENATOR WHITE: I want to thank the members of the body for the opportunity to address this budget. It's going to be a problem I won't have to face. And I listened with great care to what Senator Krist had to say and it's sobering. At the same time I'd ask, as you look at things like the arts and funding for the arts, to recognize that it's not just today we serve, it's about the future in history, what role our stewardship of the state will have in history. If you look back at any great culture, the one thing that will always stand out is how did that culture handle and support the arts, whether it's painting, architecture, music, poetry. From the Egyptian pyramids to the Roman Colosseum, to the English great houses, the commitment of the public to having a noble, beautiful environment is really what we judge ourselves by over time. So as we face these tough choices, as we fight to decide what pain must be inflicted and where, and Senator Krist is dead right, there's going to be plenty of it to go around, remember the long-term please. Thank you. [LB935]

SENATOR ROBERT: Thank you, Senator White. Senator Dierks, you're recognized. [LB935]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. I was struck by the message that we got from Senator Krist, calling himself the new guy. So, I guess, I should refer to myself as the old guy and tell you that this is my 20th year as a member of the Legislature. And I suspect that I've heard this conversation about 20 times before. Wouldn't it be nice if we could just start from scratch, build the government up from scratch and start all over? We have this problem with the structure of government that's in place today and it's there because of the efforts of many people, the lobby included. And so if you try to restructure that, this government, you have a tall order. And I agree with you that we need to do that, we really need to restructure

Floor Debate
March 18, 2010

government, try to straighten out some of the sacred cows you're talking about. It's difficult. You have to get in the face of some of your friends and say, we need to change, something has to happen here, we have to give some credence to what our citizens are telling us out there. And when they're telling us that their property taxes are too high, folks, they're too high. And we just have to do something about that. We've got to come to grips with that. And that means we're either going to have to do a tax shift or we're going to have to reduce the need. And I've talked about this so many times it's almost like I shouldn't get up anymore. But this is what I keep hearing from home and I think you do too. I got a copy of the letter yesterday that was sent to Senator McCoy and several of you were copied on the letter too. I decided I'm going to answer the letter. And I spent some time this morning trying to do that. And I have empathy for what this lady wrote because she is, in her mind, we waste time, we spend time talking about trapping in roadside ditches, and we spend time talking about whether to hunt deer or mountain lions or whatever. And the important thing is that we should be talking about is how to solve the property tax issue, but we take time to do all these other things. That's the beauty of the Unicameral system, we each have our own priority and we can take whatever we want to and use the time we need to talk about it. And I wouldn't trade the Unicameral system for any other system in the world. I think it's the greatest way to do government. I've always been impressed with it. We can handle our constituents' needs so much better than the bicameral systems of this nation. With that, I'm going to just shut up and thanks, folks. [LB935]

SENATOR ROBERT: Thank you, Senator Dierks. Senator Wightman, you are recognized. [LB935]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I also applaud Senator Krist for the statements that he made. I think it is true that we sometimes do have our head in the sand. We tend to be, as a body, far too reactive and not very proactive. But I wanted to visit a little bit about the Strategic Planning Committee that was set in place by a legislative bill by Senator Harms, last year. That committee has been meeting regularly. I think we are addressing some of the issues that Senator Krist spoke about. Senator Mello and Senator Gloor are heading up two of the subcommittees as we look forward to how we might be more proactive as a state and look at the economy of the state, the government of the state, local governments, how we might better address the needs of the state. So I think that we do have a plan or we're starting on at least developing a plan that will address some of those issues. And I think as we come out of this economic downturn it is more important than ever that we continue that work, come up with a strategic plan for the state of Nebraska. I know we probably haven't progressed as far during this session as we had hoped to progress. But I do think that it is the one good probability out here that we may address some of the issues that Senator Krist has raised. Thank you, Mr. President. [LB935]

SENATOR ROBERT: Thank you, Senator Wightman. Seeing no other requests to

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

Floor Debate
March 18, 2010

speak, Senator Nordquist for a motion. [LB935]

SENATOR NORDQUIST: Mr. President, I move LB935 to E&R for engrossing. [LB935]

SENATOR ROBERT: Members, you have heard the motion to advance LB935 to E&R for engrossing. All those in favor signify by saying aye. Opposed, nay. LB935 does advance. Next item, Mr. Clerk. [LB935]

CLERK: Mr. President, LB317. Senator Nordquist, E&R amendments. (ER8205, Legislative Journal page 947.) [LB317]

SENATOR ROBERT: Senator Nordquist for a motion. [LB317]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB317. [LB317]

SENATOR ROBERT: Members, you have heard the motion, shall we adopt the E&R amendments, ER8205, to LB317? All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB317]

CLERK: I have nothing further on that bill, Senator. [LB317]

SENATOR ROBERT: Seeing no requests to speak, Senator Nordquist. [LB317]

SENATOR NORDQUIST: Mr. President, I move LB317 to E&R for engrossing. [LB317]

SENATOR ROBERT: Members, you've heard the motion, shall LB317 advanced to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB317 does advance. Next item. [LB317]

CLERK: LB1106, Senator Nordquist, I have E&R amendments first of all. (ER8206, Legislative Journal page 947.) [LB1106]

SENATOR ROBERT: Senator Nordquist for a motion. [LB1106]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB1106. [LB1106]

SENATOR ROBERT: Members, you've heard the motion, shall we adopt the E&R amendments to LB1106? All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB1106]

CLERK: Senator Nordquist would move to amend with AM2261. (Legislative Journal

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

Floor Debate
March 18, 2010

pages 964-965.) [LB1106]

SENATOR ROBERT: Senator Nordquist, you're recognized to open on AM2261. [LB1106]

SENATOR NORDQUIST: Thank you, Mr. President, members. AM2261 has two changes to the bill. First one, in subsection (2) was what Senator Council and I had a dialogue on the floor about. This would allow there to be a Community Advisory Council for each building that has a school-based health center. This way we ensure that there just isn't one district at large but each building would have one. And that way the voice of the community can be heard. The second one is just some clarifying language to ensure that when a federally qualified health center provides a service that they're reimbursed at their normal rate at their clinic. There have been times in the past with different services provided at different locations that that's been confusing. We just wanted to make sure that when the service is provided by a community health center that their standard reimbursement rates apply. Thank you. [LB1106]

SENATOR ROBERT: Thank you, Senator Nordquist. Members, you've heard the opening to AM2261, the amendments to the E&R amendments. Are there members wishing to speak? Seeing none, Senator Nordquist, you're recognized to close. Senator Nordquist waives his opportunity. Members, the question before the body is, shall we adopt AM2161? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB1106]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Nordquist's amendment. [LB1106]

SENATOR ROBERT: AM2261 is adopted. [LB1106]

CLERK: Senator Stuthman would move to amend with AM2247. (Legislative Journal pages 965-967.) [LB1106]

SENATOR ROBERT: Senator Stuthman, you're recognized to open on AM2247. [LB1106]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. This amendment that I have introduced I want to discuss it for a little bit. This amendment is the originally LB938, which deals with the federally qualified health departments. And it did have a hearing in the Health Committee. What this bill is, is a bill that would reimburse the federally qualified health departments on a cost-based reimbursement. And this bill, this bill at the present time, what is happening is that the Department of Health and Human Services has decided to go at a lower rate for reimbursement for these qualified health departments. So these health departments will be getting a lower

Floor Debate
March 18, 2010

rate of reimbursement from the state and from the federal government. I want to just give you a little bit of what I see is happening with these federally qualified health departments and the benefits of these federally qualified health departments. In the past years, I've been very successful to continue the support for these federally qualified health departments in monetary support from the Appropriations Committee. These federally qualified health departments and health departments in areas are, in my opinion, one of the best things that can happen to the state of Nebraska because they provide services for the low income, the uninsured. In my area, the hospital association, the people in the hospital said, they said, you know, the best thing in our area is these health departments because it keeps these individuals out of the emergency room. And we all know what the expenses are when individuals go to the emergency room and who is paying for that also. In our health department, at the present time, the past year we did get some stimulus money for operations. That stimulus money was...had to be...had to have an agreement made with the federal government as to how you were going to utilize that money. And that took place March 14, 1909 (sic). In our health department, we added a pediatrician. And by adding that pediatrician and support staff there were 1,300 new patients that go to the community health department. And it kept these out of the emergency room, a number of them out of the emergency room. The health department has been a very, very good department in our area. But the past year our health department was \$100,000 in the red. Now with the issues of the prenatal care that have come to our health department, as I had stated earlier, we had normally been seeing three new patients a week; in the two weeks ending the last week of February and the first week of March, instead of seeing six new patients, our department has seen 41 new patients. So that is also more of a burden on the health department. What this bill...what I intended with this bill is the fact that the cost-based reimbursement would continue as it was in the past. But the State Department of Health and Human Services has decided to lower the rate of reimbursement. So by lowering the rate of reimbursement, that means that the health department is not going to be receiving as much money for their services. And being in the situation that we have right now, the fact is that we've lost \$100,000 last year, we may lose a lot more than that this coming year. And what happens with a health department is if they can't get funding for services, they quit services. And these services are for the uninsured, which our health department is way higher than the national average. The national average is 40 percent of uninsured, ours is right at 60 percent of uninsured, and 92 percent of low-income people also that they serve. So if these individuals are not going to be served or there's not going to be a service to be provided for them, where are they going to end up? They're going to end up in the emergency room. And then, I'm sure, the cost is going to be a lot higher. So I want to discuss this a little bit at the present time. And I will see how the discussion goes. Thank you, Mr. President. [LB1106 LB938]

SENATOR ROBERT: Thank you, Senator Stuthman. Members, you've heard the opening to AM2247. Members wishing to speak: Senators Nordquist, Howard, and Council. Senator Nordquist, you're recognized. [LB1106]

Floor Debate
March 18, 2010

SENATOR NORDQUIST: Thank you, Mr. President and members. And I thank Senator Stuthman for bringing this and just have a discussion on it right now. That's certainly something we have to look at in the future to ensure that we have that strong safety net. And that's what these clinics are intended to be by the federal policy. Certainly the last administration was very adamant about making investments in this safety net. And the current federal administration is doing the same. As Senator Stuthman said, we're serving, with these clinics, there are six of them in Nebraska, at least since the...OneWorld, in south Omaha, I know, Senator Stuthman just said it, it runs about 60 percent uninsured. They bill people with private insurance, if they have it. Of course, they have Medicaid eligibility that they receive reimbursement for. And then the rest is either support from federal funds, state funds, and for those that are uninsured there is a sliding fee scale. I mean, these are largely high poverty individuals that they're serving that would otherwise utilize emergency rooms and drive up costs that way to people that are insured. We know that when people who are uninsured go to the emergency room, hospitals have to subsidize that by charging those that do have insurance more. So we're all paying for it. So this is a good way to make a good investment. Just to compare, I know on the prenatal issue there was discussion about what happens in other states because the other states because the other states around us didn't have policies. Well, the difference, I think, is that they, at least several of them, have made significant state investments in these community health centers. Nebraska has six community health centers, which is the same number as South Dakota and Wyoming, which have a significantly smaller population base. Other states around us, Kansas has 11, Iowa has 13, Colorado has 15, and Missouri has 21 community health centers. We spend about \$3.2 million a year on ours in state funds; Missouri is about \$11 million; and Colorado is over \$32 million, ten times what we spend. So that's where these people are falling to, that's where they're receiving care is in this safety net. And if we don't have a strong enough safety net, then these individuals aren't going to get the care that they need. I thank Senator Stuthman for bringing this forward to allow us to have this discussion and certainly we'll continue to work on it going forward. Thank you, Mr. President. [LB1106]

SENATOR ROBERT: Thank you, Senator Nordquist. Senator Howard, you're recognized. [LB1106]

SENATOR HOWARD: Thank you, Mr. President and members of the body. This morning, Senator Stuthman came over to me and told me that he was going to file this amendment and asked me if I was so inclined if I would say a few words of support. And I'm happy to do that. I remember at our hearing, Health and Human Services Committee hearing where the doctor from Columbus came in. And I was so moved by his dedication and his sincerity and his impassioned plea for assistance in addressing the needs of those in his community that really didn't have any other resources. He had committed himself to working on this. He was the backbone of this health organization.

Floor Debate
March 18, 2010

As a matter of fact, if I remember correctly, he had taken on the job of treasurer for this group. But he said they couldn't continue to do the good work they were doing. And in listening to him I was reminded of the many, many times that we've had people come into the Health Committee and talk about how there was such a lack of resources in western Nebraska and the need, the need to help people out there, physical need, mental health needs, just so many things that I take for granted, frankly, in Omaha because we're very, very fortunate there. We have medical resources, wonderful medical resources. In District 9 I have the Med Center and I have Creighton University Hospital, which is wonderful. But I don't want to overlook or forget the needs of people in western Nebraska. And contrary to sometimes popular discussion, we in Omaha do think about what's happening in the rural communities and for me especially, that's for the health needs and the needs of children. And I hope in the future as we move into even tougher budget times that we keep that mind and we stop and we think, what is important to us. And we can't neglect healthcare. So, Senator Stuthman, I appreciate this amendment. It gives us an opportunity to talk about this and to be forward-thinking and, hopefully, hopefully, we can support your healthcare clinic. Thank you. [LB1106]

SENATOR ROBERT: Thank you, Senator Howard. Senator Council, you're recognized. [LB1106]

SENATOR COUNCIL: Yes, thank you, Mr. President. I want to begin by thanking Senator Stuthman for bringing this amendment. And needless to say, I rise in strong support of AM2247. The federally certified health clinics in Omaha both had approached me about the issue of the cost reimbursement. And for years the agreement was that they would be reimbursed their costs so that they could continue to provide these services. And while both Senators Howard and Stuthman have expressed the concerns that plague these federally certified health centers in the rural parts of our state, believe me, it presents a problem to the continued maintenance and operation of medical services for many Nebraskans who rely on these federal health centers. They are their medical homes. We need to recognize and appreciate the fact that in many communities it is the federal health centers that are the only medical providers that will accept Medicaid patients. And to not allow these health centers to recover their costs of providing those services when for a significant percentage of residents of the state of Nebraska it is their only source of healthcare, healthcare, dental care, mental health care provided by these federal health centers. And as Senator Nordquist said, we only have six of these centers in the state of Nebraska who satisfy and provide the needs for most, if not all, of the uninsured in this state. Now, they provide services for Medicaid patients that they receive reimbursement. And that's what the issue is. But in order for them to provide that service, they need to be reimbursed at a rate that allows them to fill the bigger gap, the bigger part of the safety net. And that is...represents the individuals who earn too much to be medicaid eligible but have no health insurance. Those who fall in that gap of absolutely no coverage and most if not all of these federal health centers do provide service on a sliding fee basis. But when there are people who have no ability

Floor Debate
March 18, 2010

to pay, they still provide those services. Now the only way they can do that is to be sure that for the services they provide for which there is reimbursement they should be reimbursed their costs. And the problem here again is the Department of Health and Human Services had an agreement, a written agreement with these federal health centers that they would be reimbursed on this cost basis. And then the Department of Health and Human Services decides, well, we don't want to do that any longer. I think we should be held...the state and the Department of Health and Human Services should be held to the duty to provide the reimbursement at a level that allows these federal health centers to continue to provide a much needed service to residents of the state of Nebraska. And I urge my colleagues to advance AM2247. [LB1106]

SENATOR ROBERT: Thank you, Senator Council. Senator Wallman, you're recognized. [LB1106]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. And I enjoy serving with Senator Stuthman on this Health Committee as well as Chairman Gay and others. Is it pay me now or pay me later? You know, I know everybody thinks healthcare costs and insurance premiums cost, healthcare centers cost us money. But is it really a cost? Is it a cost or is it a benefit? And that's what we have to look at in the future as we have our children grow up in some of these areas. And so are we going to take care of our children? And so I thank Senator Stuthman for bringing this amendment and I would encourage your support. Thank you, Mr. President. [LB1106]

SENATOR ROBERT: Thank you, Senator Wallman. Seeing no other lights on, Senator Nordquist, you're recognized to close on LB1106, excuse me, Senator Stuthman, you're recognized to close on your amendment. [LB1106]

SENATOR STUTHMAN: Thank you, Mr. President. I thought I was going to get...not be allowed to close on my amendment. But the fact is, and I appreciate those that spoke on it this morning. What this bill has is it does have a \$40,000 A bill to it. But that \$40,000 is to get us back to what we have been normally supporting these federally qualified health departments. The cost to the state would be \$40,000, but it does generate \$60,000 of federal money. That would be \$100,000 that would be coming to the state but it wouldn't be changing anything, what we're doing right now. The reason for that...the A bill is the fact that the Department of Health and Human Services has decided to pay at a lower rate. And in order to get back to the rate that we have been reimbursing these health departments it will cost that \$40,000 of state money, which for the six health departments that would be about \$6,200 for each one of those health departments. The way I look at it is the fact that these health departments, as I stated, ours lost \$100,000 last year. And it's going to continue to lose money at a faster rate now because of the prenatal issue that we have and where we're going to send these people. The biggest issue that I have is when these health departments will stop giving services in certain areas, those individuals, a percent of those individuals are going to

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

Floor Debate
March 18, 2010

be ended up at the emergency room. And you know as well as I know who's going to be paying for that at that time. Is that going to be less than \$6,200 for my health department for emergency services? No, I think it will be a lot greater. So with that, I'm going to pull the bill, pull my amendment. I wanted to bring it up for discussion because I didn't get the support of the Appropriations Committee on this at the present time. But, hopefully, we should be looking at generating that additional \$60,000 from federal money that could come here. But I think the most important thing is, is are we saving the \$40,000 or are we going to have an expense of hundreds of thousands of dollars of reimbursement, hopefully, some reimbursement to the hospitals because of the emergency care? With that, Mr. President, I would ask to remove this at the present time. [LB1106]

SENATOR ROBERT: AM2247 is withdrawn. [LB1106]

CLERK: I have nothing further on the bill, Mr. President. [LB1106]

SENATOR ROBERT: Senator Nordquist for a motion. [LB1106]

SENATOR NORDQUIST: Mr. President, I move LB1106 to E&R for engrossing. [LB1106]

SENATOR ROBERT: Members, the question is to advance LB1106 to E&R for engrossing. All those in favor signify by saying aye. Opposed, nay. LB1106 does advance. Next item. [LB1106]

CLERK: Mr. President, LB1106A, no E&R. Senator Nordquist would move to amend the A bill with AM2243. (Legislative Journal page 958.) [LB1106A]

SENATOR ROBERT: Senator Nordquist, you're recognized to open on AM2243. [LB1106A]

SENATOR NORDQUIST: Thank you, Mr. President. AM2243 corrects the A bill to align it with the committee amendment that we passed on this bill on General File. Ultimately, the General Fund savings now will end up showing over \$1.2 million in the current fiscal year and over \$1 million the years beyond that. So I'd appreciate your support of the amendment and LB1106A. Thank you. [LB1106A]

SENATOR ROBERT: Thank you, Senator Nordquist. Members, you've heard the opening to AM2243. Are there members requesting to speak? Seeing none, Senator Nordquist, you're recognized to close. Senator Nordquist waives his opportunity. The question before the body is, shall we adopt AM2243? All those in favor vote yea; opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1106A]

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

Floor Debate
March 18, 2010

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Nordquist's amendment. [LB1106A]

SENATOR ROBERT: The amendment is adopted. [LB1106A]

CLERK: I have nothing further on the bill, Mr. President. [LB1106A]

SENATOR ROBERT: Senator Nordquist for a motion. [LB1106A]

SENATOR NORDQUIST: Mr. President, I move LB1106A to E&R for engrossing. [LB1106A]

SENATOR ROBERT: Members, the question is to advance LB1106A to E&R for engrossing. All those in favor signify by saying aye. Opposed, nay. LB1106A does advance. Next item, Mr. Clerk. [LB1106A]

CLERK: Mr. President, LB1091, Senator Nordquist, I have no amendments to the bill. [LB1091]

SENATOR ROBERT: Senator Nordquist, you're recognized. [LB1091]

SENATOR NORDQUIST: Mr. President, I move LB1091 to E&R for engrossing. [LB1091]

SENATOR ROBERT: The question before the body, members, shall LB1091 advance to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB1091 does advance. Next item, Mr. Clerk. [LB1091]

CLERK: LB1090, Senator, I do have E&R amendments. (ER8207, Legislative Journal page 951.) [LB1090]

SENATOR ROBERT: Senator Nordquist for a motion. [LB1090]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB1090. [LB1090]

SENATOR ROBERT: Members, the question before the body is, shall the E&R amendments be adopted? All those in favor signify by saying aye. Opposed, nay. Amendments are adopted. [LB1090]

CLERK: I have nothing further on that bill, Senator. [LB1090]

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

Floor Debate
March 18, 2010

SENATOR ROBERT: Senator Nordquist, you're recognized for a motion. [LB1090]

SENATOR NORDQUIST: Mr. President, I move LB1090 to E&R for engrossing. [LB1090]

SENATOR ROBERT: Question before the body, shall LB1090 advance to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB1090 does advance. Next item on the agenda, General File, 2010 Speaker priority bills. Mr. Clerk. [LB1090]

CLERK: Mr. President, LB702 is a bill originally introduced by Senator Gloor. It's a bill for an act relating to medical records. It changes provisions relating to requests for access to medical records. Introduced on January 6 of this year, referred to the Health and Human Services Committee. The bill was advanced to General File with committee amendments, Mr. President. [LB702]

SENATOR ROBERT: Senator Gloor, you're recognized to open on LB702. [LB702]

SENATOR GLOOR: Thank you, Mr. President. LB702 was included in the Health Committee bill, LB849 the other day, which received first round approval. Some members may remember that Senator Price asked me a few specific questions about that bill as part of our discussion on the Health Committee bill. I'm confident of its further advancement under the committee bill, and therefore I would like to bracket LB702 until April 14. [LB702 LB849]

SENATOR ROBERT: Thank you, Senator Gloor. [LB702]

CLERK: Mr. President, pursuant to that request, I have a unanimous consent request from Senator Gloor to bracket LB702 until April 14, 2010. [LB702]

SENATOR ROBERT: Are there any objections? Seeing none, LB702 will be bracketed until April 14, 2010. Next item on the agenda, General File, 2010 committee priority bills, Lathrop division, Mr. Clerk. [LB702]

CLERK: Mr. President, LB961 is a bill by Senator Council relating to economic development. It changes provisions relating to certain training grants and it harmonizes provisions. The bill was introduced in January, referred to the Business and Labor Committee, discussed briefly the other day on the floor, Mr. President. Senator Council, I believe, opened on her bill. There are Business and Labor Committee amendments pending. (AM2118, Legislative Journal page 808.) [LB961]

SENATOR ROBERT: Senator Council, will you...you'll be recognized to open on LB961. [LB961]

Floor Debate
March 18, 2010

SENATOR COUNCIL: Yes, thank you, Mr. President. And I will be brief because we did have a rather lengthy discussion when the bill was introduced a couple of days ago. But, essentially, what the bill does is allow employers who have established a pre-employment training program to obtain a grant to aid them in offsetting the cost of providing such pre-employment training to employees of small businesses, and those are businesses with less than 25 employees, businesses in rural areas, or businesses in areas where there are high concentrations of poverty. The employers who seek to obtain funds from this subaccount under the Job Training Cash Fund are urged to partner with postsecondary institutions, such as our community colleges and with 501(c)(3) organizations who provide job training to their customers. Under the bill, an eligible employer would not only have to submit a job training program describing how the program would be implemented, who the partners are who would be involved, but the employer in a rural area would have to commit to employ at least four new employees, and in an area of high concentration of poverty they would have to be committed to creating positions for at least eight employees. The bill additionally allows through the amendment that was introduced along with it, allows that the employer can include in the training program 125 percent of the number of employees for positions they are creating. And what that is designed to do is to provide for the possibility that an individual would not successfully complete the pre-employment training program. So it would allow, for example in a rural community, for the employer to provide pre-employment training for five employees, but only be obligated to employ four of the five. We see that that is a benefit as well, because it does prepare the employee. If all five complete the training program, at least that fifth employee has been provided with the requisite training to place him or her in a position to access other employment. In the event that the employer does not employ all of the employees that he or she has committed, the four in the case of a rural employer, and eight in the case of an employer that is in a high area of poverty, that that employer would have to refund to the state 50 percent of the pro rata cost of providing the training for the individual that the employer did not hire. Through the amendment, we also provide that the employer has to have some skin in the game in that they have to provide 25 percent of the training costs for each employee. So what essentially LB961 is for purposes of pre-employment training, it turns the Job Training Cash Fund into a grant program with regard to pre-employment training. It will continue to operate on a reimbursement basis for on-the-job training. And with that, I would urge my colleagues to advance LB961. [LB961]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Council. Speaker Flood, for an announcement. [LB961]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. Given our progress this morning, I wanted to maybe explain the agenda to you. We're going to

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

Floor Debate
March 18, 2010

continue moving south on the agenda. Obviously, right now we're at LB961. In the event that we resolve LB563 before 1:30, we're going to continue down on the agenda and will be taking up LB1109 next in order. So in the event that we do resolve LB961 and LB563, LB1109 will come up and we'll continue south on the agenda after that. We will not wait until 1:30, obviously, to get to Senator Conrad's bill, LB1109. Thank you, Mr. President. [LB961 LB563 LB1109]

SENATOR LANGEMEIER: Thank you, Speaker Flood. (Doctor of the day introduced.) You have heard the opening on LB961. The floor is now open for discussion. As the committee clerk (sic) has stated, there are committee amendments offered by the Business and Labor Committee. Senator Lathrop, as Chair of the committee, would you give us a...I think you've opened on this once, would you give us a brief reopening? [LB961]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I did open on this the other day. They're fairly simple, they set some criteria for when this can be done, set some limitations, make some accommodations and generally improve the bill. I'd encourage your support of AM2118 and LB961. Thank you. [LB961]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. You've heard the reopening on the committee amendments offered by the Business and Labor Committee. The floor is open for discussion. Seeing no lights on, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is, shall AM2118, offered by the Business and Labor Committee, to LB961 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Has everyone voted that wishes to? Senator Lathrop, for what purpose do you rise? [LB961]

SENATOR LATHROP: Well, (laughter) I was just going to announce Senator Fulton made it in. [LB961]

SENATOR LANGEMEIER: Thank you. Mr. Clerk, please record. [LB961]

ASSISTANT CLERK: 26 ayes, 0 nays on the adoption of the committee amendments. [LB961]

SENATOR LANGEMEIER: The amendments are adopted. Return now to discussion on LB961, the bill itself. Seeing no lights on, Senator Council, you're recognized to close. Senator Council waives closing. The question before the body is, shall LB961 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wished to? Record, Mr. Clerk. [LB961]

ASSISTANT CLERK: 28 ayes, 0 nays on the motion to advance the bill. [LB961]

Floor Debate
March 18, 2010

SENATOR LANGEMEIER: LB961 does advance. Mr. Clerk, LB563. [LB961 LB563]

ASSISTANT CLERK: Mr. President, LB563, offered by Senator Lathrop. (Read title.) The bill was read for the first time on January 21, it was referred to the Business and Labor Committee. That committee reports the bill to General File with committee amendments. (AM2079, Legislative Journal page 790.) [LB563]

SENATOR LANGEMEIER: Thank you. Senator Lathrop, you're recognized to open on LB563. [LB563]

SENATOR LATHROP: Thank you, Mr. President and colleagues, good morning once again. I'm happy to open up on LB563 this morning, a committee priority bill from the Business and Labor Committee. It deals with the misclassification of employees. Because the amendment replaces the bill, I'll use the opportunity to open on the bill to explain misclassification and the problems that it causes businesses and the state of Nebraska. Misclassification is as simple as calling an employee an independent contractor. It seems simple and it seems harmless and it is becoming a pervasive business model in the construction industry, in particular. There are significant consequences to our society as a result of the misclassification and I'd like to share those with you. More and more we have seen across the country and in Nebraska employers in the construction industry who will hire help and call them independent contractors. When an employee is misclassified as an independent contractor there are a lot of consequences, and I want to walk through those with you. It doesn't, on first blush, seem like that big of a deal until you understand what the consequences are. They are, when an employee is misclassified as an independent contractor the employer does that to avoid the responsibilities in law attendant with having employees. Those responsibilities include covering them on work comp, withholding their taxes to the state and the federal government, sending in their unemployment, paying overtime. They avoid all the labor laws. They avoid withholding the taxes. And the consequences that the person, the employer who misclassifies saves about 30 percent of their labor costs by not covering them on work comp, not paying overtime, not paying the taxes that are due as a consequence of the hours worked by the employee. The state and other contractors are affected by this practice. And let me explain how that happens and how this bill came to me. I was contacted by a contractor in Omaha who does cement work. And he indicated to me that it is becoming more and more difficult for a cement contractor, and it's true in all aspects of the construction industry, for them to compete with those who will hire and label folks as independent contractors. If you're bidding on a job and the person that you're bidding against is saving 30 percent on their labor costs because they are not taking care of the responsibilities attendant with having employees, you can no longer compete. This bill is about leveling the playing field so that the honest contractor, the one who is doing what he should do, covering the employees, paying the taxes can compete with a person who is misclassifying the employees. It's also important to know, I believe in this

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

Floor Debate
March 18, 2010

discussion, and I'm not trying to throw flames this morning about illegal immigration, but this is the practice used by employers to employ undocumented workers. And they don't have to comply with any requirements attendant with immigration issues. They simply call these folks independent contractors, put them on the work force, and direct them just as they would any other employee. [LB563]

SENATOR LANGEMEIER: (Gavel) [LB563]

SENATOR LATHROP: The state of Nebraska is losing out as a consequence of this practice. It is growing across the country. Other states...and you'll receive a handout, other states have passed laws, as we will today, to address the situation because it is causing a loss in revenue. We tried to get the Revenue Department to give us an estimate. They were going to do a study, didn't get it done. They had issues, as you might expect, with the budget, were unable to provide us with an estimate. So the Fiscal Office gave us their best estimate, and I've shared that with you. It looks like, conservatively, that the state is losing out on \$5 million in revenue from taxes that are not paid by these employers for...withheld and paid by these employers for the workers who are misclassified as independent contractors. So the state is missing out on tax revenue. The state is losing out on unemployment contributions that are not paid to the Department of Labor. These workers are not covered by workers' compensation so that when they get hurt they are dropped off at the hospital, nobody pays the bills, and we all end up absorbing the cost of the care that is not paid for by a work comp claim, that is not available because the person was never treated as an employee in the first place. It is a significant problem. It affects the state and it affects the honest contractor who's trying to compete with those who would hire the undocumented worker, label them as independent contractors, pay them cash. It is time to end this practice of the unscrupulous contractor, and that's what LB563 does. I'll explain how it does that when I introduce the amendment. Thank you. [LB563]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Senator Lathrop. As the Clerk indicated, there are committee amendments. And, Senator Lathrop, as Chair of the Business and Labor Committee, you are recognized to open on AM2079. [LB563]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Our solution in LB563 to the problem of misclassification is a very simple one. I should tell you that in the green copy we've provided for a standard for who is an employee versus who's an independent contractor. We've provided for a cause of action that someone could bring to enforce their right to be properly classified and to collect damages as a consequence of being misclassified as you might expect that private cause of action to cause some concern in the business community. What we have done with AM2079 is make a significant revision to LB563. As a consequence, we have virtually everyone who has

Floor Debate
March 18, 2010

expressed a concern satisfied with this bill, including the Chamber of Commerce, Nebraska Homebuilders, and the trucker's association, who we spent a great deal of time working out a way to keep the legitimate independent contractors out of the net that we are casting with LB563. Let me tell you how we've done it. The amendment to LB563 essentially says this, that if...you start out with a presumption in the construction industry and the delivery service industry that a person is an employee and there is a standard for a conclusion that they are not an employee but rather an independent contractor. That standard that we use to measure whether someone is a legitimate independent contractor is the very same standard that we use in unemployment claims. So we're not creating a new standard. The standard with is a presumption in the unemployment law is the very same standard we are using. They are the typical three things that we look for in deciding whether someone is actually an employee or an independent contractor, they have to do a control whether it's the kind of business that one typically engages in as an independent enterprise. They are tried and true criteria that will apply. So if you're in the construction industry and you meet those criteria, you are an independent contractor, assuming you are registered as a contractor on the contractor registration, and you have a combined tax number from the Department of Labor. If those things are true, you're an independent contractor, otherwise the person that works for you is an employee. And it is against the law to misclassify them. If you are found to have misclassified an employee as an independent contractor, you're subject to a \$500 fine for the first offense for each person improperly classified and a \$5,000 civil penalty for the second or subsequent occasions. The enforcement mechanism for this process is very simple. We set up a hot line and we set up a Web page with the Department of Labor. The Department of Labor then becomes a traffic cop of sorts. Complaints are made to the Department of Labor, information is provided about who is being misclassified, the job where the misclassification is taking place, the background so that the Department of Labor can sort out the legitimate meritorious complaints from those that are not. They are then, the Department of Labor is then required to investigate all credible complaints. And if they find that there is reason to believe or if they've concluded that the person has been misclassified then they make referrals. They let Department of Revenue know that they need to collect the back taxes. They let the Work Comp Court know, they let prosecuting authorities know if appropriate. And then the Department of Labor institutes its own proceedings to collect the back unemployment taxes, it's that simple. The one other thing that the bill does is it requires that if you are going to enter into a contract with the state of Nebraska or a political subdivision, you have to file an affidavit if you are a contractor or subcontractor. That affidavit must say about you and your employees that they are all properly classified, that you've complied with...you have an I-9 for each employee, that you've complied with E-Verify, and that you have no reason to believe that any of the employees that you bring to that job site are undocumented workers. As you can see, the bill addresses a significant problem, the approach is very simple. I want to talk to you about once again, we had a fiscal note on the original green copy. We will have an updated fiscal note once the committee amendment is adopted and we can address

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

Floor Debate
March 18, 2010

that on Select File. It would appear from the Fiscal Office analysis, conservatively we will be able to bring in an additional \$5 million a year in revenue if we can get ahead of the misclassification of employees in the construction industry and in the delivery service industries. I encourage your support of AM2079 and LB563. Thank you, Mr. President. [LB563]

SENATOR CARLSON: Thank you, Senator Lathrop. Mr. Clerk. [LB563]

CLERK: Mr. President, Senator Lathrop would move to amend the committee amendments with AM2227. (Legislative Journal page 941.) [LB563]

SENATOR CARLSON: Senator Lathrop, you are recognized to open on your amendment to the committee amendment. [LB563]

SENATOR LATHROP: Thank you, Mr. President, colleagues. Once again, as you might expect with a bill of this type we had...and my committee counsel, Molly Burton is to be commended for her relentless effort to accommodate the concerns expressed by different business interests in the state. We spent a good deal of time working with the truckers and accommodating the concerns of a number of different interest groups, including the Nebraska Homebuilders. We have made those accommodations without changing the substance of the bill. Those accommodations are made in AM2227 to the committee amendment. I would encourage your support of the amendments and the underlying bill. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Lathrop. Members, you've heard the opening on LB563, AM2079, and AM2227. The floor is now open for debate. Senators wishing to speak include: Nordquist, Gloor, Conrad, Janssen, and others. Senator Nordquist, you're recognized. [LB563]

SENATOR NORDQUIST: Thank you, Mr. President, members. I rise in strong support of the underlying bill with the committee amendment. I think this takes us down the right path to cracking down on this problem. For a number of years, when I was a staff member in the Legislature I worked with Senator Synowiecki to look into this issue. And I'm glad Senator Lathrop is continuing to stay on it and pushing forward because this is an issue that hurts a lot of people. It hurts employers, companies that are trying to do things the right way, are working hard, are playing by the rules and they're being undercut by other employers who are cutting 30 percent off their payrolls by misclassifying. That's wrong and we need to step in and do something about it. It hurts all of us in terms of what we pay for healthcare. Senator Lathrop said when these...when work comp is not withheld and these individuals are dropped off at emergency rooms, that's all coming back on us to subsidize that care when we go to the hospital through our insurance. And most of all, maybe not most of all, but certainly as important is the impact it has on our state and our federal government's bottom lines.

Floor Debate
March 18, 2010

Senator Lathrop handed out a great piece. I wasn't aware of all of this information. But I think some of this needs to be entered into a record, a strong list of studies done by the universities, Legislative Audit Division, joint task forces looking into this. And the results are pretty staggering, the amount of misclassification. Kansas found over 16 percent of construction employees were misclassified; Illinois, similar amount, and they estimate they're losing over...between over \$1 million...over \$2 million a year in income taxes. The state of Maine, just in construction industry is showing \$2.1 million in annual loss, and \$6.5 million in work comp insurance premiums not paid. The state of Michigan, between \$20 million and \$30 million in state income taxes in the construction industry; over \$270 million in the state of New York; and in the state of Ohio between \$60 million and \$130 million in unpaid work comp, and between \$20 million and \$30 million in foregone tax revenues. That's pretty significant, folks. And it could have a pretty significant impact on our state's bottom line. And I'd just like to reiterate the fact that this isn't something that's happening just in those states. I handed out an article from 2003, and it's an interesting read about what happened right here in Omaha during the building of the Qwest Center, how many of the subcontractors went around and misclassified workers, avoiding paying taxes. And the article says, you know, while this isn't solely about illegal immigration, they say when illegal immigrants were...are involved, which was the case at the Qwest Center, taxes tend to disappear because workers tend to be low-income, mobile, and adverse to filing government forms. So we're losing out on tax dollars. And they estimated that just that one project alone, the Qwest Center, with the employees that were misclassified, that the federal government lost out on over \$300,000 of taxes, and the state government over \$30,000 on just one project at one point in time. It's important that we take steps to correct. And I think the bill with the committee amendment does that. I would...if Senator Conrad would like the balance of my time, I'd be happy to yield to her. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Nordquist. Senator Conrad, you have a minute 40 seconds. [LB563]

SENATOR CONRAD: Thank you, Mr. President and thank you, Senator Nordquist. I will try and be as brief as possible to share my support for this legislation and for the amendments. And, friends, these issues have been on our radar screen for some time. Talk to anybody in building trades or who works in the construction industry or otherwise and they will tell you how we have been grappling with these difficult public policy issues to try and level the playing field and improve workers rights, health and safety for many years. And finally, finally, thanks to the hard work and the real leadership by Senator Lathrop and... [LB563]

SENATOR CARLSON: One minute. [LB563]

SENATOR CONRAD: ...members of the Business and Labor Committee, we finally have brought many competing interests together to find workable solutions for difficult

Floor Debate
March 18, 2010

public policy problems that not only affect our citizens and our workers rights, health, and safety, but also our bottom line. Three main points in support of this legislation. It's about fairness, it's about leveling the playing field for those contractors who are unscrupulous and who abuse our laws and our labor laws in particular so that our responsible contractors can compete fairly in the marketplace. It's also about protecting workers rights, health, and safety and ending the exploitation of those frontline workers in the construction industry, in the building trades industry, and otherwise and ensure that we are rewarding work and hard work at that. Finally, from a fiscal perspective, the state Fiscal Office estimates that this could save... [LB563]

SENATOR CARLSON: Time. [LB563]

SENATOR CONRAD: ...20...thank you, Mr. President. [LB563]

SENATOR CARLSON: Thank you, Senator Conrad. (Visitors introduced.) Senator Gloor, you're recognized. [LB563]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I rise in support of the amendments and LB563, the underlying bill. My thanks to Senator Lathrop and the committee for bringing this issue forward. I can't begin to tell you the level of frustration I have felt over the years when running up from a competitive standpoint against employers, contractors, who use, what I consider to be, a very underhanded and inappropriate and exploitive approach towards competing with, unfairly in the market. Although there's been a lot of discussion about construction, it has been made clear and I will make it further clear that this doesn't just happen in the construction industry or in the transportation industry. The frustration of trying to compete for home services, as an example, whether it's nursing care in the home, whether it's medical equipment in the home, against individual groups, small operators quite frequently who use this approach towards undercutting price, one of those issues that would have you pulling your hair out. This is a major problem. When we went through a major construction project, flipping over now to areas of construction, in our hospital we did sit down with the general contractor and go to great pains to make sure that we were working with subcontractors who did not use this approach towards trying to get competitive pricing over other individuals. Again, there is a social justice issue and there is a common-sense issue of it being unfair to the state of Nebraska, being unfair, as has been pointed out, to other individuals, whether it's workers' comp, whether it's unemployment insurance, there is a basic unfairness. And the general contractor admitted to us, it is a problem they run into all the time. So this is very common within the industry. As has also been mentioned, this also provides an opportunity to be exploitive, to use illegal workers, get them in under the radar screen, bad practice. Good bill, I think, one that makes sense. I'm, though, going to ask if Senator Lathrop would yield to a question or two. [LB563]

Floor Debate
March 18, 2010

SENATOR CARLSON: Senator Lathrop, would you yield? [LB563]

SENATOR LATHROP: Yes, I will. [LB563]

SENATOR GLOOR: As is the case with any statute, I'm always interested in the enforceability and as I know you're aware, there are also wage and hour laws that purport to throw up some barricades to this use. Could you address why this legislation helps us and how it will be enforceable, especially as relates to current wage and hour law? [LB563]

SENATOR LATHROP: I'd be happy to. If you think about it, the wage and hour laws protect employees. And the very obvious problem with misclassifying is you can avoid all those things. So if you put somebody on as a drywaller that works for you, you tell them where to be, you tell them what to do, they're there every day and you call them an independent contractor, the boss doesn't have to worry about wage and hours. They can pay them whatever they want. They don't have to pay them time and a half. So the fact that they're classified as an independent contractor permits the unscrupulous contractor to avoid wage and hour laws, for example. The enforcement in this bill is very simple. And I think it's going to be very effective because if you are a contractor that's bid for a job, to do a job for the city, for example, and you find out the guy that won the contract beat you by 30 percent, you're going to have a pretty good idea that he's using misclassified employees to do it. If you report him, assuming that you have a good reason to, you report him, the Department of Labor will then investigate and issue civil penalties. And ultimately, they can be barred from entering into contracts with the city or the county or the state if they are lying on these affidavits about compliance with LB563. So I think the enforcement mechanism... [LB563]

SENATOR CARLSON: One minute. [LB563]

SENATOR LATHROP: ...requires that the Department of Labor do some things. Early indications from the Department of Labor, I'm going to have a meeting with a commissioner this afternoon, but early indications from the Department of Labor are, they're supportive, they believe it will be effective. They will probably have to put one more person on to go through and investigate these complaints. [LB563]

SENATOR GLOOR: And would it be a safe assumption that we have modeled at least components of this under other states? With some of the information in front of us, it looks as if they have had some success in implementing this. [LB563]

SENATOR LATHROP: They've had some success. Thank you for the question. They've had some success. We've actually kind of taken a different course. A lot of them have allowed for private causes of action and the business community understandably was concerned about frivolous and abusive claims being, and claims being filed over and

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

Floor Debate
March 18, 2010

over and over and allowing the civil litigation process to weight them down. I think we've come up with a good process and it seems to be something that the Department of Labor is agreeable to. [LB563]

SENATOR CARLSON: Time. [LB563]

SENATOR GLOOR: Thank you, Senator Lathrop. Thank you, Mr. President. [LB563]

SENATOR CARLSON: Thank you, Senators Gloor and Lathrop. Senator Conrad, you're recognized. [LB563]

SENATOR CONRAD: Thank you, Mr. President. And colleagues I won't probably use up the full 5 minutes here but, and be happy to send some time to Senator Lathrop if he needs it. But I did want to at least conclude my earlier comments. In regards to the fiscal issues, it's been estimated that this could save or bring in an additional \$20 million to \$30 million in revenue for the state of Nebraska. And to be clear, I think it's important to note what that source is. It's not through new taxes, it's not through new fees, it's not increasing fees or putting an additional burden on those responsible contractors that are out there, but instead it improves our enforcement and our collection of monies already due and already owed to the state. And so I think that's a common-sense, common ground approach that we can definitely all get behind and support. That was a final piece that I did want to make sure was clearly included in the record. And in addition to the fairness and equity issues involved in this issue and the protection of workers' rights, health, and safety, I again want to thank Senator Lathrop and the committee for working so diligently on this difficult issue and finally finding workable solutions for the state of Nebraska to move forward in a better environment for all of those who work in the building trades, construction, or other industries as Senator Gloor mentioned. So thank you, Mr. President, and if Senator Lathrop would like some time. [LB563]

SENATOR CARLSON: Thank you, Senator Conrad. Senator Lathrop, you have 3 minutes and 20 seconds. [LB563]

SENATOR LATHROP: Thank you. And thank you, Senator Conrad. I thought I'd take this opportunity to talk about why we have chosen particularly the construction industry. As Senator Gloor said, this problem is a problem across the entire economy. We've chosen to direct our efforts toward the construction industry and the delivery service industries because they seem to be the place where this practice is most prevalent. The construction industry in particular is an industry which has a significant influx of the undocumented workers. The hiring the undocumented workers has certain problems, certain limitations in the law about hiring an undocumented worker and they are circumvented by the scrupulous contractor who calls his employees independent contractors. So the reason we've chosen to start with the construction industry and the delivery industries, is because this practice of the unscrupulous contractor

Floor Debate
March 18, 2010

misclassifying his employees to save labor cost is most prevalent in the construction industry and it is most prevalent in the construction industry in my judgment because of the willingness of the undocumented worker to come to this country and work in these industries for cash or without respect to their obligation to pay taxes on their income. So that's why we started here. The other point that I wanted to make is this is not about labor. It's not a labor bill. Much like the prompt pay bill that Senator White had, this is about taking care of the honest contractor. Labor will benefit indirectly when the honest contractor is protected and that's what this bill does and that's why you've seen the support of labor. They are behind the honest contractors in their attempts to remain competitive and to level the playing field which will take place in LB563. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Lathrop. Senators still wishing to speak: Janssen, Stuthman, Price, Campbell, Gay, Krist, and others. Senator Janssen, you're recognized. [LB563]

SENATOR JANSSEN: Thank you, Mr. President, members. I just have a couple questions. I talked to Senator Lathrop, if he will yield. [LB563]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB563]

SENATOR LATHROP: I would be happy to. [LB563]

SENATOR JANSSEN: Thank you, Senator Lathrop. We talked off mike extensively about this and as written when I first saw LB563, as you know and many of you know I work in the medical staffing industry, I did not like LB563. I've talked to you about AM2079. I just read your new amendment which really doesn't change much, in my opinion, so I spent quite a bit of time on your bill and the amendment and starting to see why I can support your bill now. I hate to say I support LB563 because I did not like that, but since it's changed I'm on board now. Now when you say...we talked the other day, I said you're starting with construction and delivery. You say you're starting with that. Are you looking in other areas at this time? [LB563]

SENATOR LATHROP: Frankly, I'm not. The difficulty is there are...one of the reasons we limited it to the construction and the delivery industries is because we could...that's a manageable piece of legislation. When we broaden it to every industry and every profession, then we're literally getting into insurance salesmen. We're getting into secret shoppers. We're getting into so many things that the bill would be 2,000 pages if we got into and then carved out exceptions for every industry. I think this is where the practices are most prevalent for reasons that I described a moment ago and that's why we're there. I don't have any present intent or any intent to go into any other industry. But if this works very well and somebody points out that we have a problem in another industry, then I would, of course, listen to that and see if we can resolve that and get the

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

Floor Debate
March 18, 2010

state tax dollars that we deserve. [LB563]

SENATOR JANSSEN: Glad to see we both seem to agree that it would be irresponsible to pass a bill that nobody's read that's 2,000 pages long. So since we agree on that, we can move on. I don't know if we agree on that but I'll say that. [LB563]

SENATOR LATHROP: Sure. [LB563]

SENATOR JANSSEN: We talked about penalties with respect to this. The first penalty, I don't know if it was in the hundreds of dollars, the second penalty was quite severe. If there are six people that are undocumented or misclassified in this case on a construction site, would that be six penalties--one, two, three, four, five, six--the first time or would it be an incident per incident type of deal? [LB563]

SENATOR LATHROP: Thanks for the question. If the Department of Labor went on to a site where there were misclassified drywallers working, for example, and there's four guys there drywalling on a job, they have been misclassified as independent contractors even though they're truly employees under the criteria that we have, it would be \$500 for each one of those four people on the first occasion. If they don't get the message and the Department of Labor gets another complaint and they go out to another job site and they find four more guys that are misclassified doing dry-wall work, it will be \$5,000 per misclassified employee for that second or subsequent occasion. [LB563]

SENATOR JANSSEN: So in the case of a...if it's a general contractor if they have, oh, say, a job in Lincoln, a job in Omaha, a job in Beatrice, those...if they're going on simultaneously and if it turns out they're misclassified at three different job sites, would that be three different penalties or...? [LB563]

SENATOR LATHROP: I wouldn't expect so. I would expect that that would be one occasion and probably we would mark a new occasion by...after the fines for the first occasion have been imposed and paid, then anything after that would be a second or subsequent occasion. [LB563]

SENATOR JANSSEN: And I'm certainly not trying to, in any way, indicate that I would want to protect somebody that's egregiously doing this. What I'm looking for is the person that is trying to comply. [LB563]

SENATOR CARLSON: One minute. [LB563]

SENATOR JANSSEN: Thank you, Mr. President. The person that's trying to comply with this, which I think is valuable what you're doing. But what about the person that gets caught up in...they do everything right and this happened to a manufacturer, now it's an industry that's not covered that you're talking about, it was the meat packing

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

Floor Debate
March 18, 2010

industry, but they complied with every avenue they had and people just basically lied to them and were misclassified or undocumented. What would happen in that instance? [LB563]

SENATOR LATHROP: Your...the concern that...and you and I talked about this off the mike. If someone is lying about their immigration status and we do have the requirement that somebody provide an affidavit, they don't have to be...it's not a strict liability standard, Senator Janssen. So if the employer's done what they can to comply with the law and they've been misled or deceived by the employee, and they sign an affidavit that says, everybody's...you know, I've complied with LB563, and everybody's properly classified and to my knowledge everybody that's here is...should be or could be... [LB563]

SENATOR CARLSON: Time. [LB563]

SENATOR JANSSEN: Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Janssen and Senator Lathrop. Senator Stuthman, you're recognized. [LB563]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I would like to ask Senator Lathrop a question. [LB563]

SENATOR CARLSON: Senator Lathrop, will you yield? [LB563]

SENATOR LATHROP: I will. [LB563]

SENATOR STUTHMAN: Senator Lathrop, I've been listening very close to this bill. I've got one question. Is there anything in this bill that would deal with any type of requirement for union membership or anything like that? [LB563]

SENATOR LATHROP: No, this has nothing to do with unions. And I'm glad you asked because you're the second person that's brought it up. This has nothing to do with unions. We're not here trying to take care of unions. We're not here with this bill trying to do the work of the union and unions won't...will not directly benefit from this. I will tell you, Senator Stuthman, that it's not about unions. It's about honest contractors. And some of those honest contractors use union workers. Okay? [LB563]

SENATOR STUTHMAN: Um-hum. [LB563]

SENATOR LATHROP: So if we can level the playing field so that honest contractors can compete with the people that use the unscrupulous business model that we've described here, then people who work in unions, the folks that you might have talked to

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

Floor Debate
March 18, 2010

yesterday, will benefit but it's only indirectly. There is no requirement. This has nothing to do with whether you're a union shop or not a union shop. [LB563]

SENATOR STUTHMAN: Okay. Thank you. And that's what I wanted to get on to the record the fact that, you know, it doesn't have anything in this bill that deals with, you know, any type of union membership, any type of dealings with unions. And I really...I respect that. The thing that I've been thinking about what we could get is a real benefit with this bill is child support collections. In my opinion, when they're classified right and they send their information to the state and everything like that, there's a good possibility that, you know, there could be some enforcement as far as child support. So that individuals that are due money from individuals for child support should also benefit from this and this could be kind of the offtake of it. And I don't know whether it's going to make a lot of difference but I see there could be some value in that also with child support collection. Because they will be, you know, they would be classified right. They will be paying, you know, the workmen's comp and everything like that, and by the record of that could lead to collection of more child support. So thank you, Mr. President. [LB563]

SENATOR CARLSON: Thank you, Senator Stuthman and Senator Lathrop. Senator Price, you're recognized. [LB563]

SENATOR PRICE: Thank you, Mr. President and members of the body. Would Senator Lathrop yield to questions, please? [LB563]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB563]

SENATOR LATHROP: Yes, I will. [LB563]

SENATOR PRICE: Thanks, Senator Lathrop. I agree with what you're saying here. I've had friends who worked in the construction industry and have been moved out of other states because, quite frankly, you can get the same quality of work from four people for the cost of...what it cost this one gentleman to do the job. But I do have some technical questions for you and please, again, bear with me. What I'm looking at, a couple of things. First of all, the one that Senator Janssen talked about, the increase from \$500 to \$5,000 seems fairly stiff. And I'm wondering, is that uniform in penalties in this section of law? [LB563]

SENATOR LATHROP: You know, I think originally...in the original bill, Senator, that the consequence for doing this was to take away their license to engage in their trade after the second or third time. They call it debarment, I believe. [LB563]

SENATOR PRICE: Right. [LB563]

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

Floor Debate
March 18, 2010

SENATOR LATHROP: And I think what we did is we came up with these civil penalties as a compromise and I believe that they're effective and I don't think...I think after you've faced a \$500 fine, somebody has told you what you're doing wrong and you go ahead and do it again, that they should be severe. So I think they're effective civil penalties. [LB563]

SENATOR PRICE: Okay. And that's good and I appreciate that and can understand it. And we'll get to debarment in a minute because I have a little understanding of that one. Not personally, but I've read about it. The issue also that I have in looking at this, as I looked at the...I just read the I-9 Form, read the instructions to the I-9 Form, another wonderful government document, and one of the issues I noticed on that, when you fill out an I-9 Form for all employees, whether they're citizens or noncitizen, what you have to do, the employer must provide either a document from column A or a document from column B and column C. And you have a list of documents which would meet the requirement and I see that in column B a school record qualifies for a document and column C a Social Security card. So the question comes to mind for me is, and I don't deny that there are probably unscrupulous business owners, but sometimes I wonder if there are people who are desperate for work find something and provide that. So if they provide a school record and a Social Security card, that would be clearly easy for any type of Labor Department review to realize and not hold that contractor responsible, correct? [LB563]

SENATOR LATHROP: That's true. [LB563]

SENATOR PRICE: Okay. Good. Because I just wanted to make sure that we, you know, it isn't...you can game the system as an employee is my point. [LB563]

SENATOR LATHROP: I think some employees can game the system. [LB563]

SENATOR PRICE: Okay. [LB563]

SENATOR LATHROP: Certainly, we know that that's going on but the one thing...the reason we chose the I-9 Form, Senator, is because we didn't want to make business go through another process... [LB563]

SENATOR PRICE: Right. [LB563]

SENATOR LATHROP: ...to certify that their employees are legal that the law doesn't already require. [LB563]

SENATOR PRICE: Okay. And I appreciate that and I'm afraid my time is running low. So what I will go to is, I was perplexed in Section 3, as I read through that, that when we talk about labor contracts on one of these labors should be construction contracts, you

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

Floor Debate
March 18, 2010

have one criteria for insuring that...let me see here. Construction versus delivery criteria seems different based on exemption. So if a individual is exempted from paying unemployment insurance coverage as a delivery, that's one criteria. But you don't have that same criteria if they're in the construction trade. I was wondering why there was that disparity between the construction and the delivery. [LB563]

SENATOR CARLSON: One minute. [LB563]

SENATOR LATHROP: Good question. And they essentially both use the unemployment compensation fund standard. Are you an employee or not? And that...there is a criteria in that section of the law and there are exemptions or exceptions. [LB563]

SENATOR PRICE: Um-hum. [LB563]

SENATOR LATHROP: And instead of reinventing the wheel in this bill, we just borrowed them. In the construction industry we added the additional two requirements that they be a registered contractor because that's the law in Nebraska. If you're an independent contractor, you're supposed to register as a contractor so it's an additional way to enforce the contractor registration. And they also have to have an unemployment number. [LB563]

SENATOR PRICE: Thank you. And I think time is going to go, but I'd like you to think about why when we talk about disbarment from the state and subdivisions, we, but you can still go do business then as a private contractor with other private entities, correct? [LB563]

SENATOR LATHROP: I think that's right. [LB563]

SENATOR PRICE: Okay. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Price and Senator Lathrop. Senator Campbell, you're recognized. [LB563]

SENATOR CAMPBELL: Thank you, Mr. President and good morning, colleagues. I stand in support both the amendments and the underlying bill here. And I do want my colleagues to know that I much appreciated Senator Lathrop's conversations with me regarding the nursery and landscape business and how we might fall under this. And after some extended conversations between my husband and some questions that we had with Senator Lathrop, we decided that while our industry just does not have the sheer numbers that some of the other large industries that Senator Lathrop is trying to deal with in this bill, we probably didn't fit. But I felt that I should at least share with my colleagues the support for this because we certainly see in our own industry some of the same things and same tactics that Senator Lathrop has talked about with

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

Floor Debate
March 18, 2010

companies paying people on a Friday in cash and disappearing. And what is important for all of us in this body to understand is that business does best when there is a level playing field, when all the rules are followed, and that we don't try to undercut the legitimate businesses that really do try to follow the rules and do the very best they can by their employees. And so I certainly support this and much appreciate Senator Lathrop's reaching out to a small industry in the state. Thank you. And with that, I will yield the rest of my time, at his request, to Senator Mello. [LB563]

SENATOR CARLSON: Thank you, Senator Campbell. Senator Mello, 3 minutes and 20 seconds. [LB563]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I, too, rise in support of the underlying bill as well as the amendments. And I'd like to thank Senator Lathrop and the Business and Labor Committee for the work they've done. I think in addressing perhaps one of the biggest issues that has been festering in our state for the last decade and I want to read for the record, I appreciate Senator Nordquist providing the body this Omaha World-Herald article from 2003 that discusses some of the problems regarding independent contractors as it relates to undocumented workers and illegal immigration, but more importantly as it relates to public projects that are being paid for by the taxpayers. The article starts off saying, Miguel is paid by the hour. He's told when to start and finish his work day, when to take breaks and what to do on his shift. He didn't bid for the job of hanging dry wall and he doesn't risk profits or loss. He wears a red hat bearing the E&K insignia of an Omaha contractor, Eliason & Knuth Drywall Company. He cashes a paycheck cut by a second company, an Atlanta-based labor broker, called Eagle Managed Subcontractors. By all appearances, Miguel is somebody's employee. Yet before he could work on the new Omaha Convention Center, Miguel, as we're calling him, had to sign a contract declaring himself an independent contractor. Scores of drywallers like Miguel, many of them illegal immigrants who understand little or no English, sign these English language contracts with Eagle. It was a prerequisite for them to work in area construction sites, including the \$290 million Omaha Convention Center and the University of Nebraska Medical Center's \$77 million research complex. The article goes on to explain a little bit more, as I think Senator Nordquist and Conrad alluded to, the processes that some of these labor brokers and independent contractors have to go through to work here on some of our public projects. And while I appreciate a lot of the debate that's gone on today, I really want to draw the body's attention not only to the fiscal impact that's been mentioned, but more importantly these are publicly funded projects. I was shocked to see that this was the University of Nebraska Medical Center that is using this process to benefit a public project. So hopefully, I think... [LB563]

SENATOR CARLSON: One minute. [LB563]

SENATOR MELLO: ...with what Senator Lathrop has done under the amendment of

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

Floor Debate
March 18, 2010

narrowing down the independent contractor issue as it relates to construction and delivery services, it's my hope that at least that we can get our hands on...at least get a handle on some of these public projects that are being financed by taxpayer dollars that are using a somewhat shady business process right now that's using scrupulous subcontractors that sends businesses to labor contractors in other states only to not have to pay their fair share of taxes that other contractors around the state would have to normally pay. So with that, Mr. President, I do thank Senator Lathrop and the Business and Labor Committee. I think this is a worthwhile issue that I think really moves the state forward in promoting a more fair and probusiness environment for all businesses who play by the rules. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Mello. (Visitors introduced.) Continuing with discussion, Senator Gay, you're recognized. [LB563]

SENATOR GAY: Thank you, Mr. President. I'd like to ask Senator Lathrop a few questions. [LB563]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB563]

SENATOR LATHROP: Yes, I will. [LB563]

SENATOR GAY: Thank you, Senator Lathrop. Senator Lathrop, I'm going to ask questions from the green copy and I know the amendments change the copy but one interested party...it said an interested party is a person with an interest in compliance with the law and then you stated who that is. But who could go and say, hey, we found a problem, here's what it is, I'm going to report it on the hot line and then how is that followed up by the Department of Revenue? Because I know they could pick and choose which ones to go investigate it. [LB563]

SENATOR LATHROP: Right. Thank you for the question. The interested party language came out of the green copy as you mentioned. An interested party under the green copy could bring a civil action to enforce the misclassification law. That was abandoned in favor of the reporting to the Department of Labor. So the process under the amendment is as follows: Department of Labor will set up a hot line and they will run a Web site. If you are someone that believes a contractor is misclassifying employees, you could be his next door neighbor, you could be somebody that's a competitor, whoever believes they have good information, or somebody on the job site that sees it going on. If you're a painter and you see the drywallers are all independent contractors, you can report it on the hot line or on the Web site. You're required to leave your name but you will remain anonymous, at least as necessary. I mean, if they have to prosecute somebody you may be called as a witness perhaps, but you're anonymous. You have to give them information so that the Department of Labor can make a judgment about whether or not the claim is credible. And if it is a credible complaint, then they are bound to investigate

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

Floor Debate
March 18, 2010

it. And then we have the Department of Labor report annually to the Legislature and tell us how many complaints are they getting, what did they do with them, what was the consequence, what kind of money did we collect, and was anybody prosecuted. [LB563]

SENATOR GAY: Thank you, Senator Lathrop. Then when they do collect the money, I've heard figures, Senator Conrad, I think, mentioned \$20 million to \$30 million. You're mentioning other figures. What are the figures that we should say, well, this would bring in more revenue because...? [LB563]

SENATOR LATHROP: One of the things that I handed out was this memorandum. And if you take a look at that, there are estimates there done by...I said \$5 million. I have to correct myself. The bottom line from the Fiscal Office was they did an estimate at a much lower rate of misclassification, 4.5 percent, and concluded that we're losing about \$9.5 million. [LB563]

SENATOR GAY: Okay. I have that here. Of the \$9.5 million, that's just then collected. But in the...then I was going through your amendment. When they collect this money, though, was there other funds it goes through or does it just... [LB563]

SENATOR LATHROP: No. [LB563]

SENATOR GAY: ...go into the General Fund? [LB563]

SENATOR LATHROP: No, this would just be money that would go into our General Funds because it would be income taxes collected. [LB563]

SENATOR GAY: Okay. All right. And then the posting now, on the posting, the contractor...on your amendment, it looked like I had a question on the posting. You still got to go post this on every job site? [LB563]

SENATOR LATHROP: Yes. And Catherine Lang talked to Molly, my legal counsel, and suggested that the Department of Labor can prepare these cards. You know they have them at the work site probably, where you're at at the bank that say the wage and hours and what, you know, what you're entitled to. It would just be one more posting at the job site. It would be on a placard, the terms of which are specified in the bill, prepared by the Department of Labor and handed out to people at cost. [LB563]

SENATOR GAY: All right. Thank you. And then I'm little concerned, though, when Senator Synowiecki was here earlier we had...I had questions for him on one of the bills. Now I forget exactly what it was. [LB563]

SENATOR CARLSON: One minute. [LB563]

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

Floor Debate
March 18, 2010

SENATOR GAY: It was the Department of Labor was not actually following up on a lot of the cases that they had. Now, we're asking them to go follow up on more. I don't even know if the first thing was resolved they were supposed to follow up on contractors and I don't remember the bill. Maybe you do. I'm concerned that... [LB563]

SENATOR LATHROP: I agree that the most important part of this is going to be enforcement. No question about it. These complaints come in and if nobody does anything with them, nothing will change. I'm told that the commissioner believes that they can add one more person and do the hot line and follow up on the complaints that they'll get and, you know, we're missing out on money every time we don't enforce it. So I expect the fiscal note to reflect that they will be adding somebody to enforce this law. Hopefully, we will find that in the cash account and that we will see enforcement. And the thing that we've done in this bill is require that the Department of Labor report what they've done, how many complaints are they getting, what did they do with them. [LB563]

SENATOR CARLSON: Time. Thank you, Senators Gay and Lathrop. Those still wishing to speak include Krist, Wallman, Howard, Janssen, White, Dubas, and Gay. Senator Krist, you're recognized. [LB563]

SENATOR KRIST: Thank you, Mr. President and colleagues. I know it's been said before but I want to make it very, very, very clear. The 800-pound gorilla in the room...and I support the amendment and I support the bill and I think it's great and I thank Senator Lathrop and his committee for bringing it forward. And I also believe that you started in the right place with the right businesses, but the 800-pound gorilla in the room is, this needs to be expanded to other industries like the packing houses and the rest of them down the line. Because what we had to do yesterday was a treatment of a symptom, not a disease. And I don't refer to human beings as either symptoms or diseases but I think you get my point. If we can get better control of the people who are employed, and darn, the benefit of actually collecting the money that's due, that's a good thing, too. But if we can control the people who are employed, controlling in a way of documenting them and making sure that they are properly registered, we've gone a long way to solving a problem that we couldn't really face yesterday. We couldn't face it. This does a lot going that direction. Thank you, Senator Lathrop for what you're doing. The other thing that I'd like to talk about for just one second is the continuation of this process, and I would hope that Business and Labor would bring it back to the committee in January and expand those industries that needed to be brought into the process. And I will yield the rest of my time to Senator Lathrop, if he would like it. [LB563]

SENATOR CARLSON: Thank you, Senator Krist. Senator Lathrop, 3 minutes. [LB563]

SENATOR LATHROP: Thank you. And thank you for your remarks, Senator Krist. I certainly agree that if we can identify industries where this practice is taking place, we

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

Floor Debate
March 18, 2010

can certainly amend this in the future to take those folks in. I don't know myself if the packing industry is referring to their employees as independent contractors. We may be dealing with a separate problem and certainly the Business and Labor Committee can look at those issues. There are a lot of things that are going on in the packing houses that are problematic and certainly we can look at those. If misclassification is part of that problem or is the means by which that problem continues, we'd certainly be willing to look at that and I appreciate your thoughts. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Wallman, you're recognized. [LB563]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Lathrop yield to a question? [LB563]

SENATOR CARLSON: Senator Lathrop, you're popular today, would you yield? (Laughter) [LB563]

SENATOR LATHROP: Yes. [LB563]

SENATOR WALLMAN: Thank you, Senator. Senator Lathrop, if I'm a construction manager, would I be held accountable if one of my subcontractors did this then? [LB563]

SENATOR LATHROP: I believe it would be the contractor, him or herself. If you are a foreman on the job and...I wouldn't think so because you are presumably an employee or a misclassified independent contractor. So I don't know that the construction managers themselves are on the line. I suppose if the construction manager signed the affidavit that everything that's required in LB563 has been done before they enter into a contract, there might be some exposure in that respect. But generally it's the contractor themselves. [LB563]

SENATOR WALLMAN: Thank you. And I think, too, this is a...like Senator Krist, this is a problem in Nebraska and across the nation, misclassification. So if this solves...I'm definitely for the amendments and the bill and if Senator Lathrop would like more time, I'd yield. [LB563]

SENATOR CARLSON: Thank you, Senator Wallman. Senator Lathrop, 3 minutes and 40 seconds. [LB563]

SENATOR LATHROP: Thank you. You know, I might just tell a little bit of a story that we heard in Business and Labor Committee when we took this issue up and it was from a company in La Vista, Nebraska, by the name of Falewitch Construction Company. They were also featured in the World-Herald article. They've been very active on this

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

Floor Debate
March 18, 2010

issue and have illustrated...their plight illustrates the point that we're trying to address in LB563. Falewitch is a dry-wall contractor. They hire people, they're employees, they pay health insurance, they play by the rules, and they are doing things as we want them to do and as they're required to do. And what we learned from Falewitch's testimony and their safety manager, Mr. Steele, is that Falewitch used to be able to get enough jobs right in the city of Omaha to keep all of their crews busy. But with the advent of misclassification and their inability to compete with those unscrupulous contractors who use misclassification as a business model, they've now had to broaden and they're taking jobs or having to bid on jobs as far away as Des Moines just because the work in Nebraska is becoming more and more difficult to secure because they are trying to compete against the unscrupulous contractor. And it is companies like Falewitch and others who play by the rules who are the advocates for and who we speak for today with LB563. So again, I appreciate your support. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Howard, you're recognized. [LB563]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I want to just take a moment to thank Senator Krist. He really cut to the chase with the concerns and was very frank and very bold and he's very right. I also want to thank Senator Lathrop and I think he's really done an outstanding job of getting everyone together. They certainly didn't initially come in that way, (laugh) wanting to be on the same page but that is quite remarkable. And frankly, I think that everyone...anyone who has work done or is intending to have work done should be in support of this bill. We all expect good reliable work and when a contractor misuses his employees or he deliberately chooses to turn his back on the legal status of the individual he's hired to work, he's really putting these workers in the position of being of no consequence, and they're very easily disposable. This contradicts the practice of encouraging to use workers to their best ability and to making them a part of the project. A contractor can get undocumented workers and workers that are simply at his disposal. He can get them cheap and he can use them, not as committed employees but really as weight bearers. Employers are due respect for quality work and they're due the protection that can be afforded to them through our employment laws. And, again, I thank Senator Lathrop and I stand in awe of his ability to get this bill out to us. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Howard. Senator Janssen, you're recognized. [LB563]

SENATOR JANSSEN: Thank you, Mr. President. I just kind of wanted to continue on when I was talking with Senator Lathrop earlier, if he'd yield to some questions that I'm sure, I'll have. [LB563]

SENATOR CARLSON: Senator Lathrop, will you yield? [LB563]

Floor Debate
March 18, 2010

SENATOR LATHROP: Yes, I will. [LB563]

SENATOR JANSSEN: Thank you, Mr. President. Thank you, Senator Lathrop. When we were talking earlier, I just kind of wanted to cover things that would not cover in this bill so I'm just trying to build a little bit of a record on it. Fairly certain I'm supportive of what you're doing here. I just want to make sure I got my arms around it before we pass this through. Senator Campbell brought up something up interesting, and I think you know what business she and her husband are in. Would this not cover that business then? [LB563]

SENATOR LATHROP: I don't think it would. That business being the landscape business, we did...I did visit with Senator Campbell about this when we were trying to define the industries that we were going to include and I'm not really sure what our conclusion was. We talked about it some time ago, but I think mostly that it was...it might have been just the sheer smaller size of the industry that we chose not to include those people that sell trees and shrubs and things like that. [LB563]

SENATOR JANSSEN: Thank you, Senator Lathrop. That's just something that came to me when Senator Campbell was speaking and she had mentioned that she had lost some business due to that. And I actually have lost some business in the past in medical staffing through independent contractors that were misclassifying themselves. Sometimes they work for themselves so I could see some positives in that industry, yet it's such a minute part of the business and generally, as Senator Gloor could probably attest to, we're talking about a different level of employee that we're putting in those facilities. In fact, I have placed employees, my company has, in Senator Gloor's former employer's hospital, so. Continuing on, though, I had a question...you talked delivery service. In Fremont the postal service has, basically, subcontractors that come in, in the morning and they pick up their mail. They don't distribute the mail but they pick up bulk mail and they deliver it to the hubs around Dodge County and the area like Nickerson, Hooper, Winslow, and they are independent contractors. And sometimes they hire people to work under them that may or may not be independent contractors. Was that brought up? This is kind of a random thing that somebody asked me about yesterday. Was the something that you had considered in this? [LB563]

SENATOR LATHROP: Well, we didn't...I wasn't aware of that particular circumstance, but let me share with you in response to that question what we did do. Probably the most difficulty we had in trying to come and craft language that was agreeable to the various industries was the work we did with the truckers. And I appreciate their patience and their willingness to work with us, but we did carve out of the delivery service. Those industries that are legitimate, owner-operator drivers as defined in our Unemployment Comp statute, and that wasn't just we talked to Werner, we talked to Crete, we spoke to the lobbyist for the Trucking Association and they represent a whole variety of people in

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

Floor Debate
March 18, 2010

the trucking industry and I believe we've made an accommodation that satisfies the trucking industry. [LB563]

SENATOR JANSSEN: Okay. I was just concerned, you know, when we talked about putting up posters and how that person would comply with the law. I have another concern and I brought it up earlier. When you talk about the penalties for this and Senator Price brought it up. It doesn't appear that you would have to. I guess I would ask if you would be amenable to. It's possible for somebody to violate this once and then twice. The second offense seems to be a bit severe, quite a bit severe, at \$5,000. [LB563]

SENATOR CARLSON: One minute. [LB563]

SENATOR JANSSEN: Any possibility...and then I'll finish a couple points and see if there's any time for you to respond. Any possibility that that could be worked out between now and Select? Maybe a little bit lesser of a blow because there are some people that could be complying and could basically mess up twice. It seems severe to me. Senator Stuthman brought up a good point. This will help with child support, I think. And I have seen people try to...even in my industry, intentionally try to misclassify themselves for no other reason than that. So that was a good point that you brought up, maybe an unintended consequence but a good one for this. So if there's time you can answer that question. If not, you can answer it some other way. Thank you. [LB563]

SENATOR LATHROP: Well, I would agree with you that Senator Stuthman had a great point which is, a lot of people will misclassify or find jobs where they can be an independent contractor so that their wages can't be garnished or so that they can kind of fly below the radar and certainly properly classifying them as employees will facilitate child support collection. As for the civil penalties, I can talk to you or anybody else that has concerns about them. [LB563]

SENATOR CARLSON: Time. Thank you, Senator Janssen and Senator Lathrop. Senator White is recognized. [LB563]

SENATOR WHITE: Thank you, Mr. President. I want to rise in support of the bill though I want you to understand as members of the body how limited this bill is compared to what we ought to be doing. The corrosive affect of illegal immigration and the federal government's refusal to deal with it in an effective and aboveboard and honorable manner has degraded a lot of the debates in this body. We just recently saw it on prenatal care. But it's not just there. It is on other things. It is on school funding. It is in extension of social services. It is in the extension of healthcare services. And the root cause of this without question is the fact that employers want to pay substandard wages to people who are here illegally and that has caused the massive illegal immigration. When the economy turned down, every statistician who is at all knowledgeable on the

Floor Debate
March 18, 2010

subject will tell you, the number of illegal immigrants in the United States declined abruptly. If there are not jobs, the illegal immigration problem does not exist. We don't need fences. We need control on our employees or our employers. If we do that, the illegal immigration problem will diminish and/or disappear. Now, it is not just us who suffer, the law abiding citizens, which is often lost on those who are most angry about illegal immigration. I have over and over again had people come into my law office who were injured on the job, who have been sexually harassed, and sometimes actually assaulted sexually. They have been beaten. They have been injured. They have been denied proper pay. They've been denied overtime. And every time they ask me what can I do, and I say, well, we can file a lawsuit. What will happen, will ICE come for me? I said, well, if the employer turns them in, yes. And will the employer turn them in? I said, they very well may, many do. And they leave. A hundred years of social progress in the job place is being threatened by uncontrolled illegal immigration and that is done for profit. And one of the things that everyone here ought to recognize is, there is a cost when employers violate this law. The cost is not just to the taxpayer. Those are very substantial. You can ask Norfolk what happened in their costs in criminal enforcement when a packing plant in that town closed. Their criminal violations dropped by at least a third. That is a very expensive cost to society, many that are caused by single men here illegally, working illegally, and then having no ties to the community. The cost is also on those who immigrate illegally. They're desperate. They're driven by hunger. They're driven by a desire to help their families. They are driven here in the hope that they can have a life and they can create a life for those they love. And they are taken advantage of by unscrupulous employers. And I will tell you, good, honest contractors hate illegal immigration more than anybody, because when labor is a significant portion of the cost of a bid and you don't have to pay withholding tax, and you don't have to pay Fair Labor Standard Act and you, in fact, don't pay overtime, you will win bids. So what we have are a handful, indeed some industries it's a dominant amount, the meat packing industry being one of the worst offenders. They actually dump all kinds of social costs on the community to save a few dollars in labor costs. And they abuse the people... [LB563]

SENATOR CARLSON: One minute. [LB563]

SENATOR WHITE: ...that they lure here. We need to be honest about the problem of illegal immigration and it's a horrible problem, not just because of what it does to us on our cost level, not just because of what it does to our social cost, not just because what it does in our ability to debate real problems honorably and honestly, but because it abuses the very people who come here with the hope of having a better life. The only people who win in this situation, the only people, are those who are unscrupulous and willing to violate the law. We can stop that by requiring them to honorably register their employees and then holding them accountable for the cost, the public cost that they dump on the taxpayers. And then the illegal immigration problem will end. Thank you, Mr. President. [LB563]

Floor Debate
March 18, 2010

SENATOR CARLSON: Thank you, Senator White. (Visitor introduced.) Senator Dubas, you're recognized. [LB563]

SENATOR DUBAS: Thank you, Mr. President. Good morning, members of the body. I also rise in support of LB563 and the underlying amendments. But if we're really serious about having a hard line on undocumented workers, we need to talk about the reason why these people come to our state and to this country, and that was very beautifully illustrated by Senator White's comments, Senator Krist's comments. They're here because of jobs. Plain and simple. It's about jobs and a way for them to support their families. And until we, as a state, as individual citizens, as a country, as states collectively, demand that the federal government takes real action about the mess that our immigration policy is in, these types of bills will only skirt around the edges of the difficulties that we face with undocumented and illegal immigration policy. Federal government is very quick to tell us, states, you can't do anything, anything you do will be preempted by our laws. And then in the next breath, do nothing about their laws. They tie our hands, they leave us to pick up the pieces, they leave us to try to handle the struggles that undocumented workers bring into our state. And then again, by the same token, refuse to take any constructive action to help us address these problems. I think it's been brought up on the floor about, will this particular piece of legislation be enforced? And if we aren't willing to make sure that we put the proper resources in place for enforcement, again, this is just a token gesture on the state's part. It's a futile gesture on our part to try to address legal immigration. Our federal government is not willing to put more resources into ICE. Our local government, our law enforcement is being cut back. I mean, we aren't filling State Patrol positions. We have people who are graduating from the Law Enforcement Training Center, ready to go to work, but we aren't able to fund the positions to fill those jobs. I would invite everyone in the Legislature, if you haven't read it yet, to read the Judiciary Committee's report on immigration that was done in 2008. I participated in one of their meetings and it was a very enlightening opportunity for me. And I think if you read this report, it is a very comprehensive look at immigration and all of the facets that immigration impacts...how all of the facets of immigration impact us at the state level. It's a great report to read. The Judiciary Committee put a lot of time and effort into it. It wasn't the traditional type of interim hearing. They facilitated these meetings. They brought a cross section of people from the various communities into these meetings. This report is full of a lot of great information. This is the kind of information we need to be bombarding our federal delegation with trying to get them to move off of dead center and do something. So I do support Senator Lathrop's bill. I do support the amendments. I hope, if we're really serious about addressing illegal immigration, we'll do it in a matter that really does address illegal immigration and the reason why such people leave their own homes and come to our state and other states across the county. And, again, I encourage you to read this report. I think it would be eye-opening for you as well. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Gay, you're recognized.

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

Floor Debate
March 18, 2010

[LB563]

SENATOR GAY: Thank you, Mr. President. I'd like to ask Senator Lathrop a question.
[LB563]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB563]

SENATOR LATHROP: Yes, I will. [LB563]

SENATOR GAY: Thank you, Senator Lathrop. Senator Lathrop, you know we're hearing about the bad contractors here and that's a minority, I would hope, so. But when we talk about the good contractors and you mentioned one in La Vista there, and they're following the rules and all this. I'm a little concerned, though, about when somebody turns them in and they go to this hot line and then the Department does assume it's a credible case they want to follow up on, and I talked to you about the Department earlier. When Senator Synowiecki was here we had the Contractor Registration Act and I, at that time, my argument to him was they weren't even enforcing what we had and now we're going to add more duties to the Department to go, take care of. And this was only, well, how long has Senator Synowiecki been gone? A couple years ago. And I don't think we've added more people to the Department of Labor, now we're adding more duties to the Department of Labor. There's a fiscal note coming to take care of that employee. I'm still concerned, though, how they're going to take a credible report walking it through, do all this thing. Because if this problem is as bad as we're saying, that's probably more than a full-time, one job. But have you talked to them about this?
[LB563]

SENATOR LATHROP: I have a meeting set for 30 minutes from now with the commissioner to talk about this, and presumably she's watching our debate and will be able to respond to some of the concerns that have been expressed. The one thing we did do that's a little bit different is we've asked for a report so the Legislature can get a report and presumably, it will say something like this, that we received 1,200 complaints, we determined that 400 didn't seem to be credible, but maybe just some neighbor complaining about the wrong thing. We looked into 800, referred...you know, we collected this much revenue from the Department of Revenue against these contractors. We sent it over to, or the Department of Labor collected the unemployment taxes and we sent them over for prosecution for not covering them on Work Comp. We'll know in a year or two whether or not we're getting the enforcement that we expect with this bill. And I certainly agree with you that if there's no enforcement, this is an exercise in futility. We won't see the income come in that we expect nor will we level the playing field, and I think the fact that we'll have a report from the Department of Labor telling us this is what we were able to do, I think it will show that it's worth the investment. We'll bring in more tax receipts and enforcement will take care of itself. [LB563]

Floor Debate
March 18, 2010

SENATOR GAY: Well, when you talk to the commissioner, also ask this. Here's my concern. You're from the Omaha area. When you go around and this probably happens throughout the state. Somebody camps outside a work site or a contractor all day and they'll camp out and shame on so and so or shame on so and so. The one thing that concerns me a little bit is that somebody continues to hound a contractor and if they're not doing what they should be doing, I agree, start following up. I'm a little concerned if there's some safety net in there for the good people. I'm out doing my business and all of a sudden somebody says, well, ABC Construction Company is not doing it. And I get...and it could be a lot of people. All of a sudden they're calling the hot line and saying I'm not doing this. [LB563]

SENATOR LATHROP: Right. [LB563]

SENATOR GAY: What's to prevent that? [LB563]

SENATOR LATHROP: It really is pretty simple because let's say that you're a cement contractor or a dry-wall contractor in Omaha and somebody reports you and they say...and then you have to give them the job site, tell them where it's at so Department of Labor looks at it and assuming they put it in the creditability pile, they drive out there and they grab the first drywaller and say, let me see your pay stub. Are you an employee or you an independent contractor? And that's it. I mean if the guys... [LB563]

SENATOR CARLSON: One minute. [LB563]

SENATOR LATHROP: ...if the guys on the job site say, yeah, I get a paycheck every week and they're withholding taxes and taking care of business, then it's done. They put it in the column of investigated and cleared. [LB563]

SENATOR GAY: And I am in support of the bill. I'm just seeing how it works. So, but the fact is then they will have a record, I assume. You're going to talk to the commissioner. They will have a record and they don't have to go back to ABC Company, I assume if ten more reports come in. They're going to keep track and not go to ABC's employees... [LB563]

SENATOR LATHROP: Right. That's why we don't want it to become a vehicle for harassment... [LB563]

SENATOR GAY: Exactly. [LB563]

SENATOR LATHROP: ...for competitors to bury their competition in ridiculous claims or ridiculous complaints on the hot line. That's why we set a bar in there of a credible complaint to be determined by the Department and if they find it's credible...now, if 16 complaints come in and it's the same guy and he does it over and over and over, and

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

Floor Debate
March 18, 2010

they've looked into it, they don't have to go out there. That wouldn't even be a credible complaint at that point. [LB563]

SENATOR GAY: My time is running out but on Select File and I'm in support of the bill, but on... [LB563]

SENATOR CARLSON: Time. Thank you, Senator Gay and Senator Lathrop. Senator Lathrop, there are no other senators wishing to speak. You're recognized to close on AM2227. [LB563]

SENATOR LATHROP: Oh, just very briefly on this one. We've tried to make accommodations to the various industries that have come to the table and worked with us through the interim and through this session. Some of those accommodations and improvements are found in AM2227. I would encourage your support. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Lathrop. Members, you've heard the closing on the amendment. The question is, shall AM2227 be adopted? All those in favor vote aye; all those opposed, nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB563]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's amendment to the committee amendments. [LB563]

SENATOR CARLSON: AM2227 is adopted. Speaker Flood for an announcement. [LB563]

SPEAKER FLOOD: Thank you, Mr. President, members. Given our progress this week on several different bills, it's my intention after we resolve LB563, one way or the other, and Senator Council's bill, LB1109, to adjourn for the week. So following resolution of LB563 and LB1109, we will adjourn for the week and we will return next Tuesday at 10:00 a.m. I would remind you that we begin late nights next week and that means as late as 11:59 p.m. Please make sure your calendar is prepared for that and we will be getting into the business of finishing up our session in the next couple of weeks. Thank you, Mr. President. [LB563 LB1109]

SENATOR CARLSON: Thank you, Speaker Flood. Seeing no lights, Senator Lathrop, you're recognized to close on the committee amendments. [LB563]

SENATOR LATHROP: Thank you, Mr. President and colleagues. AM2079 becomes the bill. We've had a very good discussion today about an important issue. And I want to acknowledge the tone of the discussion when we talk about undocumented workers and illegal immigration into this state. This bill addresses one of those points. I was listening

Floor Debate
March 18, 2010

to the radio the other day on the way down to Lincoln and I heard a clip from a debate in the California gubernatorial race. And I need to tell you that because I'm going to attribute a statement to one of the participants in that debate who said that we need to turn off the magnets. And I think Senator White made that point eloquently with his remarks. In a sense we are today turning off the magnets in the construction and in the delivery businesses industries in this state. It is a bill and an amendment that is the result of a lot of work to accommodate the industries but still be an effective tool to stop the practice employed by the unscrupulous contractor. I believe we've answered all the questions and concerns. I expect an amendment after we've had an opportunity to work with the commissioner before Select File, but it will be improvements and ways to make it more workable for the commissioner. And with that, I would encourage your support of AM2079. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Lathrop. Members, you've heard the closing on the committee amendments. The question is, shall AM2079 be adopted? All in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB563]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB563]

SENATOR CARLSON: AM2079 is adopted. We return to discussion for LB563. Senator Price, you're recognized. [LB563]

SENATOR PRICE: Thank you, Mr. President, members of the body. Would Senator Lathrop yield to a question? [LB563]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB563]

SENATOR LATHROP: Yes, I will. [LB563]

SENATOR PRICE: Thank you, Senator Lathrop. A quick question on the delivery portion of this bill. It's my understanding when we talk about independent contractors, people who are perhaps misclassified as independent contractors, that is a question, one of the issues, correct? [LB563]

SENATOR LATHROP: Yes. [LB563]

SENATOR PRICE: Okay. Great. How does this deal with the drivers, I believe, for UPS, who are independent contractors? So would drivers of UPS, who are currently classified as independent contractors, have to be reclassified as employees? [LB563]

SENATOR LATHROP: Actually they're properly classified over at UPS. I think it's FedEx

Floor Debate
March 18, 2010

that has the issue going on. [LB563]

SENATOR PRICE: Oh, okay. [LB563]

SENATOR LATHROP: I honestly couldn't tell you after we have accommodated the trucking industry, I couldn't tell you where that leaves FedEx, whether we capture them or they have to be employees in this state or not employees in this state. I think it's kind of complex because they have aspects that look like over-the-road truck drivers and some of them are directed and what they have to do day in and day out. They wear a FedEx uniform, they drive a FedEx truck, and they're told where to be and when to be there and how to do their job. And I don't know where they're going to end up when this is over. It was not my intention to solve that problem specifically with this legislation. I can tell you this, that I believe there are lawsuits filed by Attorneys General across the state, or across the country rather, to litigate the issue of whether those FedEx employees are properly classified or not. [LB563]

SENATOR PRICE: Well, I appreciate that, Senator Lathrop, and your candidness. I'll have to be honest with our body. I would like the members of the body make sure that they did understand that and maybe on Select or in between now and Select we can talk more about that because I want to be very careful that we don't throw a bunch of people into a classification that currently aren't, you know, really...how do I say this...a lot of the discussion today has centered around the need for the I-9's which they've predicated on the assumption of a lot of illegal immigrants being employed and for all the reasons we talked about. And no argument there, but if we have a lot of people who are currently independent contractors that are driving for FedEx or to whomever they're driving for, and we're forcing them to become employees, I have a bit of concern about that. So I appreciate your comments, Senator Lathrop, and look forward to talking to you between now and Select on this issue. [LB563]

SENATOR CARLSON: Thank you, Senator Price and Senator Lathrop. Seeing no other lights, Senator Lathrop, you're recognized to close on LB563. [LB563]

SENATOR LATHROP: Thank you. Finally, colleagues, with the adoption of the last amendment you have essentially adopted the bill. I do want to take this opportunity to thank my legal counsel, Molly Burton. As you probably know in your own committees how much the legal counsel contributes. In this case, we had a lot of sticky issues trying to make accommodations to sort out the legitimate independent contractor from the practice used by the unscrupulous employer. Molly Burton did a fabulous job working on that with the various interest groups and I appreciate her work as well as the work of the Business and Labor Committee and encourage your advancement of LB563. Thank you. [LB563]

SENATOR CARLSON: Thank you, Senator Lathrop. Members, you've heard the closing

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

Floor Debate
March 18, 2010

on the advancement of LB563 to E&R Initial. All those in favor vote aye; all those opposed, nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB563]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB563. [LB563]

SENATOR CARLSON: LB563 does advance. Items for the record, Mr. Clerk. [LB563]

CLERK: Mr. President, thank you. Before we proceed on, items. Senator Hansen offers LR410; Senator Council, LR411. With respect to LR411, a communication from the Speaker with regards to referring that issue to Reference Committee for purposes of conducting a public hearing. A Reference report referring LR411 to Judiciary Committee. Enrollment and Review reports LB800, LB849, LB510, LB1070, LB1010, LB880A, LB510A, and LB945 to Select File, some of which have Enrollment and Review amendments attached. Senator Heidemann has an amendment to LB1057 to be printed, and I have a notice of a confirmation hearing from General Affairs Committee that's signed by Senator Karpisek, as Chair. That's all that I have, Mr. President. (Legislative Journal pages 968-977.) [LR410 LR411 LB800 LB849 LB510 LB1070 LB1010 LB880A LB510A LB945 LB1057]

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

CLERK: LB1109. (Read title.) The bill was introduced on January 21 of this year, at that time referred to the Executive Board for public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM1755, Legislative Journal page 706.) [LB1109]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Conrad, you're recognized to open on LB1109. [LB1109]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. The good news and the bad news is that I'm standing before you in a four-day weekend that includes sunshine and March madness, so with that there are so many other reasons to support LB1109, but several of my colleagues have jokingly mentioned that to me before I open so I want to thank them for their good-natured support. Nonetheless, I'm thrilled to open on LB1109. This is my priority bill for the session and this is an issue that I have been working on for some time. I think during the last few weeks I've had a chance to make it around and visit with many of you, not quite all of you looking at my score card. I think I've had a direct conversation with at least 42 of my 49 colleagues about this legislation and dropped off information in support of the substantive issues contained therein. In a nutshell, what it does and there is a slight tweak with the committee amendment that Senator Wightman will be opening on later, but LB1109 establishes the Nebraska Innovation and High Wage Employment Act. And really the components of the bill are twofold. (1) it establishes an Innovation and Entrepreneurship

Floor Debate
March 18, 2010

Task Force which will be comprised of legislators in this body as appointed by the Executive Board to develop a plan which includes an inventory of current state and locally sponsored programs targeted to small businesses, microenterprises, and entrepreneurial endeavors in Nebraska. Additionally this plan will contain an overview of best practices from other states, including an examination of programs and policies like economic gardening, angel investor programs, and other specific solution-oriented public policy options that Nebraska could look at for future adoption. This task force will commission a nonprofit organization in Nebraska with business development expertise to assist us with this effort. This legislation is very specific and limited in scope. The task force report must be made to the full Legislature by December 1, 2010. The act will terminate January 1, 2011. Funding for the task force and the study will come from a reallocation of existing funds. Please note, colleagues, there is no General Fund impact other than positive on this. By passing LB1109 and its corresponding A bill, the net impact to the General Fund would actually be a \$34,889 savings. Not cost, savings. So I wanted to point that out. It's no new spending. It's utilizing existing funds which have not been allocated otherwise to promote this important effort. I have other things to say about the bill and I'm looking forward to a favorable debate on these important issues. But with that, Mr. President, I think I will close and turn it over to my good friend, Senator Wightman, so he can explain the clarifying language in the Executive Committee amendment. Thank you. [LB1109]

SENATOR CARLSON: Thank you, Senator Conrad. As the Clerk indicated, there are committee amendments. Senator Wightman, as Chair of the Executive Committee, you are recognized to open on AM1755. [LB1109]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. The committee amendment, AM1755, adds a new section that provides that the unexpended balance in the Microenterprise Development Cash Fund available on the effective date of this bill, shall lapse to the General Fund and the \$48,000 shall be appropriated to the Legislative Council to provide funding for this bill. In addition, the committee amendment clarifies that the committee shall consist of six members and that the Executive Board appoints the Chairperson and the Vice Chairperson. A little background. We had quite a bit of discussion as to exactly how this funding would work in the Executive Committee. The Microenterprise Fund is funded on an ongoing basis by an annual General Fund appropriation of \$450,000. Department of Economic Development contracts with the Enterprise Fund, a private entity to operate the program. In 2007, the Microenterprise Development Cash Fund was created and a one-time transfer of \$1 million from the cash reserve fund was carried out to provide additional program funding. The General Fund appropriation for the Microenterprise Development was not cut. Of the \$1 million deposited in the Microenterprise Development Cash Fund in 2007, \$82,889 remains unspent. This is the funding that would be lapsed to the General File under LB1109. The lapse will not harm the program because the General Fund support for the microenterprise program is still ongoing, and as I said, that is a \$450,000 annual

Floor Debate
March 18, 2010

appropriation and that is included in the budget. With that, I do ask for adoption of the committee amendment and would be happy to answer any questions that any of you may have. Thank you, Mr. President. [LB1109]

SENATOR CARLSON: Thank you, Senator Wightman and Senator Conrad. The floor is now open for debate on LB1109 and AM1755. Senators wishing to speak include Mello, Hadley, Harms, Sullivan, and Conrad. Senator Mello, you're recognized. [LB1109]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I rise in support of LB1109 because it's desperately needed in regards to an issue that I've been exploring since I've come to the body. I know that Senator Conrad, obviously, has been exploring as well. That's why she introduced the bill, and a number of other members in this body who have introduced legislation regarding entrepreneurship. Last summer I was able to attend an NCSL conference with members of the body, Senator Hadley, Senator Harms, Senator McGill, and Senator Dubas. That focused on working families and focused on looking at new ways at economic development. And one of the new ideas that...I'll let Senator Hadley explain a little bit of how this is already being done or was at least explored in the city of Kearney, was a concept called economic gardening. And it is a new way of looking at economic development in a local perspective of trying to grow your local economy from the businesses that already exist within your city. It's focused not on trying to bring in new companies or bring in new large industries. It's about looking at your existing businesses, your existing entrepreneurs, and finding a way to help them become more successful in a changing global economy. Just this last week the Ewing Marion Kauffman Foundation based out of Kansas City released a report that echoes exactly what LB1109 is trying to do. The report says a high growth firms account for a disproportionate share of job creation. A couple quotes from this new released report. It says according to a new study released today by the Kauffman Foundation the current national conversation would be more productively focused on creating a favorable environment for entrepreneurship. And particularly, high-growth entrepreneurship because top performing companies are the most fertile source of new jobs. One of the vice presidents of the Kauffman Foundation later was quoted saying, "because fast growing young firms account for a disproportion share of net job creation, policymakers who were worriedly pouring over unemployment projections might instead seek to foster the creation of more high-growth firms. While some new companies will undoubtedly fail, high-growth firms must be started somehow and more quickly they're launched in larger numbers, the faster both output and employment will grow." The reason I bring this up, colleagues, is there are an awful lot of entrepreneurship programs and initiatives around the state. But part of the problem that Senator Conrad is looking to address in LB1109 is getting our hands wrapped around all of these programs to see what is working and what is not working. To be able to streamline as we had this discussion yesterday on Senator Utter's bill regarding streamlining government, to be able to streamline existing entrepreneurship programs that the state government is involved in or that our private sector is involved in that we can foster a

Floor Debate
March 18, 2010

greater public/private partnership. With that being said, I know that some of the other cosponsors of the bill as well as some of the other members of the body did attend this conference. I'd love to let them speak a little bit more about what we've learned. But make no doubt about it, LB1109, is exactly where the state needs to be at right now at looking at economic development in relation to high-wage, high-innovation focused businesses, particularly those small businesses or entrepreneurs looking to start a new business in our state. With that, thank you, Mr. President. [LB1109]

SENATOR CARLSON: Thank you, Senator Mello. Senator Hadley, you're recognized. [LB1109]

SENATOR HADLEY: Mr. President, members of the body, good morning. I rise in support of AM1755 and LB1109. I did attend the same conference. And I want to talk a little bit about the idea, concept of economic gardening and angel investors. Economic gardening is a concept I've been working with for a number of year. It's been very successful in places like the state of Wyoming, the state of Montana. And economic gardening is basically the idea that you grow your own businesses. You grow the businesses that are in your own communities. And I think that's so important. We cannot, as I've said repeatedly, we can't tax our way out of the crisis we're in. Eventually we're not going to be able to cut our way out of the crisis we're in, so we've got to grow our way. So anything we can do to help economic growth is important. And I think economic gardening so often, it's the grass is greener on the other side of the fence. It's great to get a company in from Iowa or South Dakota or Minnesota, but let's not forget that small entrepreneur sitting in their city who can suddenly over time can grow their business and go from 5, 10, 15, 30, 50 employees. I'm not going to give you examples by name but Kearney has a number of businesses that started out literally as garage businesses that now employ with hundreds of people. So let's not forget that and I think this is a good bill. I think it's money well spent. I think we need to support this and the entire concept of economic gardening is something that we need to keep on the radar screen and do everything we can to help the entrepreneurs who are here in Nebraska. I would yield the rest of my time to Senator Conrad, if she would like to have it. [LB1109]

SENATOR CARLSON: Thank you, Senator Hadley. Senator Conrad, 2 minutes and 50 seconds. [LB1109]

SENATOR CONRAD: Thank you, Mr. President and thank you, Senator Hadley, not only for the time but for your kind words of support, and sharing that information from the conferences that you attended during the interim in support of these ideas and this legislation. I did just want to quickly recap for the membership that wasn't on the Executive Board where we had a great public hearing on this bill. We had no one come in, in opposition, but we had a wide variety of supporters from both urban and rural Nebraska, including the Lincoln Chamber of Commerce and all the way through to the Valley County Economic Development Corporation. And I think that what that

Floor Debate
March 18, 2010

demonstrates in addition to what has already been said here on the floor is that these conversations are happening in each and every one of our communities. But what they lack at the present time is a statewide platform for their development and continued dialogue. When I passed around the information on this bill and if somebody has misplaced it or never got one in the first place, please let me know. I have additional copies. One thing that I wanted to point out for people is that just as we have changed and evolved our economic development policy when it comes to larger businesses and industry and particularly as we've moved from LB775 to LB312 and then to Nebraska Super Advantage and with additional enhancements, all of which are movements that I have been very supportive of and in favor of, we need to have that same kind of focus on the other end of the spectrum for the small business, for the entrepreneur, for the innovation and new growth industries that exist in our state. And we need to constantly be examining,... [LB1109]

SENATOR CARLSON: One minute. [LB1109]

SENATOR CONRAD: ...evaluating, and evolving our public policies to make sure that Nebraska is as competitive as it can be in this ever changing global economy. In capturing good ideas from other states and trying to figure out whether or not what we have on the books is working. If it's working effectively, do we have sustainable funding sources for it? If not, what kind of enhancements need to be made? And this is part of, again, that ongoing natural evolution of our overall economic development policy in this state with a fine tune, a fine focus on small businesses. And those who are creating jobs and who are making significant investments in our state, to make sure that we're doing all we can to support them without eviscerating, weakening, or detracting from the other traditional tools of economic development that we have in our tool bag and that I think continue and deserve our strong support. Thank you, Mr. President. [LB1109]

SENATOR CARLSON: Thank you, Senator Conrad. Senator Harms, you're recognized. [LB1109]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of the amendment, AM1755, as well as the underlying bill. Senator Conrad, thank you very much for introducing this bill. This is the first time in the four years that I've been on this floor that I think we will start to get a handle on entrepreneurial development helping small businesses. And I believe that in rural Nebraska this is one of the hopes that we have. The fastest growing businesses in America are called cottage industries. They are entrepreneurs who started in their homes. And what I found in my previous profession, there's an awful lot of these people who have great ideas but don't know how to develop all of these ideas or how to market or how to even do inventory control or quality control but yet they have a great product, but they just can't seem to get this done. If we would have had something like this where we could have looked at best practices or found other places that we could send some of these people to, to get the kind of help they

Floor Debate
March 18, 2010

would need, some of these smaller businesses would have been very successful. This is something that I think if we're truly going to be interested in economic development, this is a great, great tool, colleagues, for us to get started. When you look across Nebraska and look at some of these smaller communities and they're slowly dying, for every entrepreneur that we can get to be successful, they add one employee, they add two employees, then they add five, maybe ten, and all of a sudden you have a going business. And I think that's what this is about. And as I've looked across Nebraska and been involved in the Appropriations Committee and see all these different programs that come in that we have so many that deal with economic development or deal with supposedly entrepreneurial development, you don't have any idea. They're not coordinated, they're not working together. This will give us at least a road map to understand what we have. This will give us a road map that says, you know, this is the way we need to take entrepreneurial development for Nebraska. The other thing I want you to understand also that it's not just for rural Nebraska. There are some great programs that are going on or great ideas in urban America and they have difficulty finding a solution or way to move from the home into a smaller business. And we have small businesses all across Nebraska that are struggling today because, (1) they don't know how to deal with the technology, (2) they don't know how to market their business and, (3) they don't know where to go to get the help. And so my point here is that this is a good piece of legislation. It's important and I think in long terms it will be successful. It will help Nebraska move forward and I think that we'll see entrepreneurial development and economic development grow in places that it's not growing today. Mr. President, I would be happy to yield the rest of my time to Senator Conrad, if she needs it. [LB1109]

SENATOR CARLSON: Thank you, Senator Harms. Senator Conrad, a minute and 50 seconds. [LB1109]

SENATOR CONRAD: Thank you, Mr. President. And thank you to Senator Harms for his kind words of support. As you know, colleagues, he has been a leader in this body in issues involving strategic planning or otherwise. So for him to lend his support to these concepts and ideas which really are in line with those same strategies, is really meaningful, I believe, in the context of this debate and otherwise. And I wanted to make sure that colleagues did know in terms of the questions that have been posed to me about the financing issues, will this do anything to hurt existing programs like microenterprise, which we support? The resounding answer is no. And in the packet of information that I provided to people earlier there is a letter... [LB1109]

SENATOR CARLSON: One minute. [LB1109]

SENATOR CONRAD: ...supporting that position because as I've made clear, we want to make sure that we keep those programs strong, and once we have an objective evaluation about their success or otherwise, then we need to ensure that they can stay strong now and into the future. And that's one component of what this legislation seeks

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

Floor Debate
March 18, 2010

to do. So with that, thank you, Mr. President. [LB1109]

SENATOR CARLSON: Thank you, Senator Conrad. (Visitors introduced.) We return to discussion. Senator Sullivan, you're recognized. [LB1109]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. I rise in support of the amendment and the underlying bill, and I certainly think that it's worthy of exploration, this whole concept of entrepreneurship in our state. We already have a very rich history of entrepreneurship and entrepreneurs across the state, but from the perspective of rural Nebraska you only have to look at the main streets of our small towns to know that we have had entrepreneurs for literally decades that have taken the risk and hung in there with their businesses and struggled through hard times and have enjoyed a few good times. But we also know, as has been referenced by several senators, that we continue to struggle on the main streets of these small towns. And we're also in a new era where there is competition from a lot of outside interests and entities, so I think it is important to look at what is available in this new age for entrepreneurs. But I also know, too, that the programs that have been available to help them do work, over 20 years ago in my home community of Cedar Rapids, we formed a group that took some of the early funds from the REAP Program to help businesses get started and I'm glad to say that at least one of those businesses has passed the 20-year mark in terms of its existence in our community. There are other programs that helped a locker plant in Cedar Rapids reopen. You can't really, I guess unless you live in a small community, recognize what...how important it is to either maintain a business that employs two, three, four, five people, or start a new business that employs two or three people. It can make such a difference in the community in terms of attitude and certainly from the economy of the local business. So as I said, I think it's worthy that we explore this idea and give some additional leverage to programs that would help budding entrepreneurs. That being said, I have a couple of questions with respect to this legislation. I wondered if Senator Conrad would yield. [LB1109]

SENATOR CARLSON: Senator Conrad, would you yield? [LB1109]

SENATOR CONRAD: Yes, of course. [LB1109]

SENATOR SULLIVAN: Thank you, Senator. Can you shed a little light on how you expect the task force to operate and what they might expect of this nonprofit entity that I assume is going to do some of the legwork for them? Is that correct? [LB1109]

SENATOR CONRAD: That's right, Senator Sullivan, and thank you for the questions. It does provide a good opportunity to provide a little bit more detail about the logistics of this legislation. I think as Senator Wightman noted in the opening on the committee amendment, the task force itself, which is limited to six senators from our existing membership, will conduct and manage the yearlong study contemplated by LB1109.

Floor Debate
March 18, 2010

They will work in concert with a outside entity to provide objective analysis and evaluation of existing programs and present policy options for consideration in terms of a package to present to the full Legislature next session. So that's just a kind of rough idea about how this will work and it will be done through public hearings and full public engagement on these concepts, because a critical component of this legislation is education and awareness about these issues. [LB1109]

SENATOR SULLIVAN: Do you have any concept at this point of how this task force might relate to the legislative Planning Committee? [LB1109]

SENATOR CONRAD: Thank you, Senator Sullivan, and I think there are some similarities that exist in terms of the concepts before the legislative planning commission (sic) and... [LB1109]

SENATOR CARLSON: One minute. [LB1109]

SENATOR CONRAD: ...contemplated in this legislation. But to be clear, I believe that they are separate and distinct. The strategic planning commission of this body is charged with a very broad perspective in terms of our state policy in a variety of different areas. This is very, very narrow in its target and mission in looking at the evaluation of existing programs that help entrepreneurs and small businesses and how we strengthen and improve them if they're working, how we streamline them if that's available, and how we enhance them based on the experience of other states. So I think there is definitely an opportunity to work together amongst those groups but the focus is different and so that's why LB1109 is necessary. [LB1109]

SENATOR SULLIVAN: Thank you, Senator. Thank you. [LB1109]

SENATOR CARLSON: Thank you, Senator Sullivan and Senator Conrad. Those still wishing to speak: Senators Pirsch, Wightman, Lautenbaugh, and Louden. Senator Pirsch, you're recognized. [LB1109]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I stand first to thank Senator Nantkes for bring attention to this...I'm sorry, Senator Conrad to...for bringing attention to this issue. I had introduced an idea in past sessions, LB505 last year, for a Economic Development Committee, and a lot of the issues that she's talking about I think, you know, I agree with her about that we need to have...you know, we approach issues, unfortunately, of economic development piecemeal from year to year without a consistent, I guess, organizing overall plan, overarching plan. And so I think that this may help inventory where we've been and I think at least that is needed, inventorying what we have and so that we have an...and also assessing what we need to get to and drawing a plan together to get there as opposed to approaching bill-by-bill issues without a consistent philosophy guiding us year after year. And so I do have a

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

Floor Debate
March 18, 2010

couple of questions with respect to the study, if she would...Senator Conrad might yield to a question or two. [LB1109 LB505]

SENATOR CARLSON: Senator Conrad, would you yield? [LB1109]

SENATOR CONRAD: Yes, of course. [LB1109]

SENATOR PIRSCH: There is a certain cost attached to this, the study, and so with respect to the need for an outside entity is...first of all, is your purview a little bit even more narrow than mine, not just economic development but small business and...I mean microenterprise? Is that correct? [LB1109]

SENATOR CONRAD: That's right, Senator Pirsch, and thank you for the good reminder on that legislation that you had previously brought forward for consideration by this body. I think that there are a lot of overlapping ideas in terms of what you were trying to do and what I'm trying to do here that is slightly different in approach and focus, as you acutely notice. [LB1109]

SENATOR PIRSCH: Okay. [LB1109]

SENATOR CONRAD: This is limited to just a very specific time period rather than I think, if I remember your proposal, added another jurisdictional committee to our existing legislative structure, so that would be one key distinction, and, instead of being focused on economic development as a whole, is targeted specifically to new economy issues, innovation, entrepreneurship, and small business. [LB1109]

SENATOR PIRSCH: Okay. And...well, one of the facets I guess, you're right, one of the differences would be the ongoing nature. I mean is that something that you think is...I mean, do you feel that we're going to need something structurally in place especially in the area of term limits when I, you know, you and I come in and we have one guiding philosophy but the next people who replace us might not understand or even have access to us to ask us what our, you know, what the legislative goal was, what our priorities were? I mean, would it be better to have this not as a task force, a temporary, but as some sort of structural...kind of internalize this process to the institution of the Legislature as opposed to just a one-time deal? [LB1109]

SENATOR CONRAD: Well, thank you, Senator Pirsch. And, again, my focus was rather than changing our internal structure, to be very, very targeted in approach and recognizing the fact that these issues do cut across various jurisdictional committees, from Revenue to Appropriations to Ag. And so it seemed that by bringing together an independent group of senators to look at these and gain the education and awareness about these issues, that then we can come forward next year with a very strong plan of specific action for how to address those within the context of our existing system and

Floor Debate
March 18, 2010

structures. [LB1109]

SENATOR PIRSCH: Well, I thank you for that answer. You're kind of looking at... [LB1109]

SENATOR CARLSON: One minute. [LB1109]

SENATOR PIRSCH: ...at our immediate needs in the ongoing, you know, the near future, and to that extent it is a little bit different purview. What recommendations do you hope to illicit from having this committee's...commission and...because there's a certain cost to it, \$48,000, what are the recommendations that you hope to achieve from it? [LB1109]

SENATOR CONRAD: Well, and, Senator Pirsch, I have no preconceived notions about what I want the task force to put out in terms of outputs but, rather, want it to be an open, inclusive, and broad-ranging dialogue and comprehensive evaluation of what we have on the books, whether or not it's working, and what other states are doing and if we can enhance what we already have on the books. So I really...the answer may be very clear that what we're doing right now is fantastic and that's great. That I think provides a lot of... [LB1109]

SENATOR CARLSON: Time. [LB1109]

SENATOR CONRAD: Thank you, Mr. President. [LB1109]

SENATOR PIRSCH: Thank you. [LB1109]

SENATOR CARLSON: Thank you, Senator Pirsch and Senator Conrad. Senator Wightman, you're recognized. [LB1109]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I do rise not only in support of the committee amendment, AM1755, but the underlying bill. You've heard I think good statements that have been made by Senator Hadley, Senator Harms. We have a number of these funds, including the Microenterprise Fund, the Grow Nebraska Fund, one or two others that probably we need to take a look at and see if there could be some merger and maybe better use made of these funds as time goes on, and perhaps the committee will be looking at that or the task force committee will be looking at that as we proceed on with the mission that is provided under this particular bill. So I think that is one of the good things, along with just exploring the measures set out in the bill. As Senator Conrad referred to earlier, there was a lot of support by testifiers and they ranged a great deal. Looking at the committee statement, the UN Med Center was one of the strong supporters of the bill. Some smaller groups, NUtech Ventures, even some county groups, Valley County Economic Development Group, so...and I said the

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

Floor Debate
March 18, 2010

Med Center. It's actually the University of Nebraska Med Corporation, Invest Nebraska. So there was wide support for this particular bill and, as I say, I would urge your support for the bill itself, as well as the committee amendment. If Senator Conrad wishes any time, I would yield the rest of my time to Senator Conrad. [LB1109]

SENATOR CARLSON: Thank you, Senator Wightman. Senator Conrad, 3 minutes. [LB1109]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Wightman, for the good comments there. I'm sorry I didn't have a chance to hear them in full because I was continuing my dialogue with Senator Pirsch about the outputs contemplated by LB1109. And to be clear, again, I don't have a preconceived set of notions surrounding what the findings of this study and task force will be but, rather, am excited to conduct that research and dig into those issues to figure out, again, how we can continue to evolve and modernize our economic development policies as they exist for small businesses and entrepreneurs. And I think this is the best vehicle that I was able to come up with in terms for how to do that. I'll tell you, colleagues, and I mentioned this in the committee hearing, I am not a fan of task force bills in general. And if you check my record, I have never introduced a bill that just simply puts together a task force because I feel like we can do some of that with existing resources and have. But I'll tell you, after working on these issues for at least the past two years and having the dialogue with people who have expertise on these areas in the business community, it became readily apparent, in terms of where we were in the budget cycle, where we were in terms of education and awareness levels in this term limits dynamic about these issues in the body, that we needed to set a baseline and we needed to have a task force and a companion study come together to complete that dialogue in a comprehensive manner on a statewide level. And so working with those in the business community and those with expertise in business development, particularly in these arenas, this was the best idea for how to move forward with these... [LB1109]

SENATOR CARLSON: One minute. [LB1109]

SENATOR CONRAD: ...concepts this year. I am hopeful that we will be able to come forward in the next legislative cycle with a very specific set of policy recommendations about what the conclusions support. So thank you, Mr. President. [LB1109]

SENATOR CARLSON: Thank you, Senator Conrad. Senator Lautenbaugh, you're recognized. [LB1109]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Let's call this a minor blip in the lovefest that has transpired so far. I heard Senator Council say she's a not a big fan of task forces as a general rule. Me neither. And I would feel...oh, I'm sorry, Senator Council, you didn't say that at all. Maybe it was Senator

Floor Debate
March 18, 2010

Conrad who said that. Who's to say? In any event, I'm not a fan of task forces either and I would love this bill if it were free. And in a sense, yeah, we found some money somewhere and we put it in the General Fund and we're going to take a little bit of it back out and pay to do this, around \$50,000. But I have a real problem when we continue to spend money on studies and I haven't even decided how I'm going to vote on this one because I do think there may be some merit here. I also think we're, in a word, broke. And were looking ahead and I'm looking backwards, I guess, to a year or two ago when we did a study on juvenile justice and that one didn't "cost" anything either because I think the Commission on Public Advocacy found a quarter of a million dollars and gave it to us to pay for the study. I don't recall where they got it. It was nice of them to give it back and we squandered it on a study. And the study came out on e-mail and they gave us a good bound copy. The two parts of it were probably three inches thick total. And I appreciated having the hard copy because I said I was going to keep it so I had something hefty to throw at the next person who wanted us to pay for a study, because, well, you don't get what you pay for all the time and in that case, (laugh) we didn't come close. I won't go into the specifics but it was a disaster: unscientific, unfounded, conclusions decided upon at the outset and a halfhearted attempt, I'll say, to find data to back it up based upon insignificant samples, etcetera, etcetera. And that was a good quarter of a million dollars that we just frittered away. This one doesn't come nearly close to that. And I hope that there's a point to this and I want to believe that this will do something good, and it may very well, but we have...this won't be the last study we'll discuss this session. And I've heard people say, we need to study this, when we're speaking of other studies, because you people who are wrong about this issue need this information. But when the study comes back, it's not going to change how I feel about the underlying issue and I have a problem with that. And I have a problem with spending if we're not going to get our money's worth. And, again, I'm not even necessarily against this bill. I just want us to think of what we're doing, remember that nothing is free, including this, and if we think it will lead to greater growth, well, then maybe this is an instance where we should move ahead with this. But we're going to talk about other studies and I'm going to throw up the example of my unhappy experiences in the past and caution us against spending. I know I sound like Senator Utter and that's okay. (Laughter) I'm honored. And I'll yield the rest of my...I'll just quit, Mr. President. Thank you. [LB1109]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Those still wishing to speak: Senators Louden, Council, and Langemeier. Senator Louden, you're recognized. [LB1109]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I support LB1109 and the amendments that go with it because I think what Senator Harms was talking about over the past few years since he's been down here is we do have to have a statewide strategic plan, and by that I mean we need to identify places where we do have chances to increase our retail sales to bring money in from out of state. This is

Floor Debate
March 18, 2010

something that I was working with in LB1002, which is the area up there in northwest Nebraska where we're trying to get an area started to improve the situation around the Whiteclay area. And this is something that has never really been identified as an area of retail sales up there until we started looking into it, and when you notice that Dawes County alone contributes a little over \$6 million in sales tax alone, that doesn't come from the local people that are living around there. That comes from a trade area that is coming in from out of state. If we're going to survive in the state of Nebraska with the population growth we have and the size of the population, we need to have an encouragement for ways to bring sales and trade in from other states. This is where we will make some progress and we will also increase our revenues. We can have jobs and that's fine. Whenever you have jobs there's always issues that go with it and I think Senator White mentioned before, on some of the issues when we've increased jobs, the problems that have come along with the increasing jobs. But nonetheless, when you have tourism or when you have retail sales that bring people in from other states, you come in, you smile to them, you treat them well, you take their money and they go home and they're domestic problems then are in some place else. So this is what we have to have and this is what a strategic plan is all about and I encourage something like this to come forward with a strategic plan. This is what we're working for/towards on the bill at LB1002, is to increase the economic development in that area up there, along with healthcare and also law enforcement. It all has to go hand in hand when you do something like that. With that, Mr. President, if Senator Conrad would wish the rest of my time, I will return it to her. [LB1109 LB1002]

SENATOR CARLSON: Thank you, Senator Louden. Senator Conrad, 2 minutes and 20 seconds. [LB1109]

SENATOR CONRAD: Thank you, Mr. President, and thank you, Senator Louden, for the time and for your kind words of support. And I'm, again, like I mentioned in the early part of my opening, thrilled to work on this legislation that brings so many diverse interests from each corner of our state together to talk about how we chart our future and to ensure that it is a bright one at that. I am not going to take up too much of the body's time. I know that there's a few other senators with their lights on and I'll remain available for questions off mike or directly or otherwise. But as Senator Lautenbaugh correctly noted, nothing in life is free but a few things that are maybe (laugh) worth doing, and the small investment of existing funds that is contemplated in this legislation can pay great dividends in terms of the future of public policy and the future of this state. So there are existing funds that are utilized to carry out this study, make no mistake about it, and there is an additional positive impact to the state General Fund, but it will take expending some resources, fiscal, human, energy and otherwise, to bring together people to talk about this for the next year and come forward with very specific plans for how we can make sure Nebraska's economic development tools are as good... [LB1109]

Floor Debate
March 18, 2010

SENATOR CARLSON: One minute. [LB1109]

SENATOR CONRAD: ...as they can be. Thank you. [LB1109]

SENATOR CARLSON: Thank you, Senator Conrad. Senator Council, you're recognized. [LB1109]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in support of LB1109 and AM1755. I think it's about time that the state needs to look at, from a strategic perspective, the best way to grow and improve our economy. We put a lot of effort into trying to attract new businesses to locate in Nebraska and don't pay enough attention, I believe, to growing our own and stressing to our young people that they don't have to rely exclusively on trying to obtain a job with someone; that they themselves have the ability and the capabilities of establishing their own businesses. And through this study, it is the hope that we will identify the policies that will provide assistance to individuals in our state who are willing to take that step. I know that some of the senators spoke to their attendants at a conference last year. I didn't attend the conference but I did read the article that was published in either the CSG newsletter or the NCSL magazine about what all of the other states...many of the states around us have identified as an objective, have identified as something that has been overlooked as a part of their economic development policy development and that is entrepreneurship and a focus on entrepreneurship. I read where in many states they have provided additional funding to their postsecondary institutions to develop and offer more courses on entrepreneurship, and with respect to my district, when we're trying to instill hope in young people, we're trying to make a connection between completing their education and their future to provide avenues that are alternatives to just seeking employment with someone to show them that there is a connection between completing their education successfully and the potential for establishing their own businesses right here in their home state. And for those and many other reasons, I stand in wholehearted support of LB1109 and AM1755 in hopes that we as a state develop a plan that...and implement a policy that encourages entrepreneurship in this state. And, Senator Conrad, I will yield whatever time I have remaining to you, if you'd like it. [LB1109]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Council. Senator Conrad waives her opportunity to use that time. There are no other lights on at this time. Senator Wightman, you're recognized to close on AM1755. [LB1109]

SENATOR WIGHTMAN: Thank you, Mr. President. I will take just a minute. The committee amendment, as I said, adds a new section that provides for the funding from the unexpended fund in the Microenterprise Fund, although it will come out of the General Fund after that fund is lapsed into the General Fund. Committee amendment

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

Floor Debate
March 18, 2010

further clarifies that the committee shall consist of six members and that the Executive Board appoints a Chairperson and Vice Chairperson. With that, I would ask for your support of AM1755. Thank you, Mr. President. [LB1109]

SPEAKER FLOOD: Thank you, Senator Wightman. Members, you've heard the closing on AM1755. The question is, shall AM1755 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1109]

CLERK: 31 ayes, 0 nays, Mr. President, to adopt committee amendments. [LB1109]

SPEAKER FLOOD: AM1755 is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR370, LR371, and LR373. Continuing with LB1109, there are no lights on. Senator Conrad, you're recognized to close on LB1109. [LB1109 LR370 LR371 LR373]

SENATOR CONRAD: Thank you, Mr. President. Briefly, colleagues, thank you for a great discussion this morning. Again, I'd appreciate your support. If you have any additional questions or concerns, I'd be happy to discuss them with you in between now and Select and, please, as this bill continues to move forward and I'm hopeful we're headed towards adoption, if people are interested in serving in this endeavor we need to start that dialogue as well because I plan to get to work very, very quickly. Thank you, all, and have a great weekend. [LB1109]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you heard the closing to LB1109. The question before the body is, shall LB1109 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB1109]

CLERK: 28 ayes, 0 nays on the advancement of LB1109. [LB1109]

SPEAKER FLOOD: LB1109 advances to E&R Initial. Mr. Clerk, items for the record. Instead, let's proceed with LB1109A. Senator Conrad, you're recognized to open on LB1109A. [LB1109 LB1109A]

SENATOR CONRAD: Thank you, Mr. President. This is the accompanying fiscal note that goes with LB1109, the substantive legislation that we just discussed. And with that, thank you. Thank you again for your support and I urge the adoption of LB1109A, which has a net savings of over \$30,000 to the General Fund. [LB1109A LB1109]

SPEAKER FLOOD: Members, you've heard the opening on LB1109A. Are there any senators wishing to discuss the same? Seeing none, Senator Conrad, you're recognized to close. Senator Conrad waives her opportunity. The question before the body is, shall LB1109A advance to E&R Initial? All those in favor vote aye; all those

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

Floor Debate
March 18, 2010

opposed vote nay. Have all those voted who care to? Mr. Clerk, please record.
[LB1109A]

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of the A bill. [LB1109A]

SPEAKER FLOOD: LB1109A advances to E&R Initial. Mr. Clerk, items for the record?
[LB1109A]

CLERK: Your Committee on Revenue, chaired by Senator Cornett, reports LB789 and LB1097 to General File. Judiciary, chaired by Senator Ashford, reports LB594 to General File with amendments, and LB1103 to General File with amendments. (Legislative Journal page 978.) [LB789 LB1097 LB594 LB1103]

And, Mr. President, a priority motion: Senator Krist would move to adjourn the body until Tuesday morning, March 23, at 10:00 a.m.

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