

FEBRUARY 8, 2005

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 171, 533, 640

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning. Welcome to the George W. Norris Legislative Chamber for the twenty-third day of the Ninety-Ninth Legislature, First Session. Our chaplain for today is Senator Adrian Smith.

SENATOR SMITH: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Smith. I call the twenty-third day of the Legislature to order. Senators, please record your presence by roll call. Mr. Clerk, do you have any corrections for the Journal?

CLERK: Mr. President, I do. (Read corrections.) That's all that I have, Mr. President. (Legislative Journal page 453.)

PRESIDENT SHEEHY: Mr. Clerk, do you have any messages, reports, or announcements?

CLERK: I do, Mr. President. Your Committee on Banking, Commerce and Insurance, chaired by Senator Mines, reports LB 171 and LB 640 to General File; those reports signed by Senator Mines. And I have a priority bill designation by the Banking Committee, LB 533. And that's all that I have at this time, Mr. President. (Legislative Journal page 453.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll now move to the legislative confirmation report.

CLERK: Mr. President, the report I have this morning is from the Natural Resources Committee, chaired by Senator Schrock. It involves the appointment of a Jerry (Pat) Trotter to the Environmental Quality Council. (Legislative Journal page 449.)

PRESIDENT SHEEHY: Senator Schrock, you are recognized to open.

SENATOR SCHROCK: Mr. President, members of the Legislature, the Natural Resources Committee held a confirmation hearing on February 4 for Pat Trotter. He is a new appointee, representing the food processing industry. Jerry (Pat) Trotter is from

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005

Gothenburg, Nebraska. He is manager of the Frito-Lay plant there, and any of you know anything about the Frito-Lay plant there, they receive grain from farmers, about 60 percent yellow corn, about 40 percent white corn, and they are the main plant for Frito-Lay as far as receiving grain. They ship that grain all over the country to their processing plant, and it's made into chips and tortillas and other corn products that are meant for human consumption. I think it's safe to say the Gothenburg plant is the largest receiving plant for human consumption corn in the nation. He is from Texas. He is a graduate of Texas A & M, and I know Pat fairly well and we have a good argument over who's going to win the football game when Nebraska and Texas A & M play. He said they won the battle of the bands, but that's still debatable also. But it's my pleasure to bring to you this morning the confirmation of Jerry (Pat) Trotter. He's been a resident of that Gothenburg area since that plant opened, and I think it's been there about seven or eight years. And so he's a good friend, he's a good choice, and I would recommend his confirmation.

PRESIDENT SHEEHY: Thank you, Senator Schrock. Senator Cudaback.

SENATOR CUDABACK: Mr. President, members, I'll make this short, but Senator Schrock stated the facts about Mr. Trotter. Mr. Trotter came to Gothenburg about ten years ago, Frito-Lay, and he did an excellent job there and I highly recommend him. He's a really efficient person and he'll do the absolute best job he can and the people of Nebraska will like what he does. And with that, I hope you vote to confirm Mr. Trotter to the commission. Thank you very much.

PRESIDENT SHEEHY: Thank you, Senator Cudaback. Is there anyone else wishing to speak? Senator Schrock, you are recognized to close. Senator Schrock waives closing. The question before the body shall be the adoption of the Natural Resources Committee report. All in favor vote yea; opposed, nay. Mr. Clerk, please record.

CLERK: (Record vote, Legislative Journal page 454.) 28 ayes, 0 nays, Mr. President, on the adoption of the confirmation

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

report.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll now move to...Natural Resources Committee report was adopted. We'll now move to General File. Mr. Clerk.

CLERK: Mr. President, LB 28, a bill originally introduced by Senator Connealy. (Read title.) Bill was introduced on January 6 of this year, referred to the Revenue Committee, advanced to General File. At this time, I have no amendments to the bill. There was some limited discussion yesterday on the bill, Mr. President.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll recognize Senator Connealy to summarize.

SENATOR CONNEALY: Thank you, Mr. President, and the Clerk did summarize it. It is a tax credit for planned giving. It would be a 10...up to a \$10,000 annual. We had discussion on the bill and we're in the middle of it.

PRESIDENT SHEEHY: LB 28 is open for discussion. Senator Redfield, you're recognized.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. I did distribute to you yesterday a number of handouts talking about the different kinds of mechanisms that are legal under federal tax code, and one of the ones that I gave you is marked letter "D," and this talks about charitable remainder unitrusts and I want to tell you about Gene and Carol. They purchased stock in a small company several years ago. The company has done well and Gene and Carol are looking for a way to save taxes. Gene said, we were fortunate to invest in a medical service company. Over the years, we thought this stock would grow, and indeed it has increased in value. We paid about \$50,000 for the stock, and it is now worth \$400,000. If we were to sell this stock, we would pay a large tax. We have always talked about taking part of that stock value and buying a home on the lake. I have found a very nice summer cottage on a nearby lake. The price is going to be approximately \$120,000. So how can we take \$120,000 in cash from the value of the stock

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

and not pay tax? We checked with our CPA, and he suggested that we talk to a gift planner. We were happy to discover that we could transfer \$280,000 worth of the stock into a special trust. This trust is called a unitrust. When we transfer the stock into that trust, it can then be sold tax-free. Best of all, we were able to sell the other \$120,000 of the stock for cash. The deduction on the charitable trust saved enough in tax that we did not have to pay tax on the \$120,000. The full \$120,000 was available and we could purchase our lake home. This was a wonderful agreement. We now have income from our unitrust and are enjoying our lake home. So in fact we find that Gene and Carol have discovered a way to take their capital gains, save taxes, enjoy a home on the lake, and enjoy an annuity for life. So if you look at the handout that I gave you, you see that previously they would have...or under this scenario they actually increased their income \$11,200 over their prior \$5,600 income. They have increased their unitrust value to \$570,000 from an original \$400,000 investment. They have saved income taxes of \$80,000 over this package. So again, my point is that the deal is sweet. It's a great way for people to enjoy their retirement years, have a fixed income that they can count on that's safe and secure, and enjoy those benefits during their lifetime at the same time that they benefit a charity in the future with the proceeds that remain. But I don't believe that it is necessary for the state of Nebraska to contribute a \$4,000 tax credit in order to encourage this behavior. The deal, again, is very sweet and if you look at handout "E," marked "E," there is a story about Mary and how they actually have used the same unitrust mechanism to increase their income and their enjoyment of life during their remaining years. So I will, with that, return the remainder of my time to the Chair and hope that the discussion focuses on the cost to Nebraska and whether that is necessary at this time with our limited revenues. Thank you, Mr. Lieutenant Governor.

PRESIDENT SHEEHY: Thank you, Senator Redfield. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President and members. I do appreciate Senator Redfield's discussion of the way people can use different instruments to give to charities and to provide

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

for planned giving. There's no double-dipping in this bill. If you use this, you can't use other things. There is a great increase that's happened in other states when they put a program like this in place. Montana actually got a \$74 million increase in planned giving when they put a comparable piece in place. This is for an expansion of endowments in Nebraska so that we can keep that money here in Nebraska, not just for tomorrow but for years and years to come. As I talked about the other day, there are monies leaving this state on a yearly basis. I talked about how a small piece of ground that I farmed for years had transferred out to a laudable group, the Shriners, but it has gone to...those assets have gone to Florida and they're going to go there from now until forever. We need to retain those assets here in Nebraska. We need to quit being...becoming a tenant state, that I think that we see more and more, especially in rural Nebraska and in the Midwest. This will help our state for years to come. It is a bill that I hope to get past the first or second round and see if we have enough revenue and enough resources at the end of the session to pass this. It's not my intent to drive this through before the middle of the session...before the end of the session, because I believe that it has to be affordable, it has to be something that we can sustain. If it's not, we've been through the tough times here in the last few years in the Legislature, and I'm not going to spend resources that we don't have or advocate that happening. I believe that this is a tool that the state of Nebraska can use to retain wealth in our state and it's something that we ought to do. There is going to be a huge generational transfer come here in Nebraska in the years to come. If we could retain just some of that here and increase some, it's going to serve us well for years to come.

PRESIDENT SHEEHY: Thank you, Senator Connealy. (Visitors introduced.) Senator Don Pederson, you are recognized.

SENATOR D. PEDERSON: Thank you, Mr. Lieutenant Governor. Members of the Legislature, yesterday I tried a little bit to be a wet blanket, and hopefully I succeeded to a certain extent, because this bill is pivotal in how we are going to approach our legislative spending in the future. I so appreciate what Senator Connealy said, that he didn't want to push this through

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

now; he was preferring to wait and see how we're doing revenue-wise this year. But, unfortunately, that's only part of the story. The story isn't how we're doing this year. The story is that, as I described yesterday, I'm concerned about the long range of this program because we are talking about taking a minimum of \$4 million, and probably \$5 million or more a year for the next four years out of the revenue of our state, and once you take it out of the revenue of the state, then you no longer have the opportunity to use it for things that I think are very important. When I was giving a talk about being the Chair of the Appropriations, I said I believe that we have several priorities in this state. One is to take care of the needs of our citizens. The second, I think we need to provide for the education of our citizens. And, thirdly, I think we need to provide for economic development so that we have an opportunity for our citizens to develop their lives so that they can have productive business lives. So we need businesses here, so we need all of those things. Now, if you take \$5 million a year out of our budget, that means there are \$5 million less to take care of the basic needs of our citizens. And I know it doesn't sound like a lot of money when you think of the totality of our budget, but it is a lot of money. You remember just two years ago when we were struggling to see that we could provide enough for our K-12 schools and \$5 million would have been a big item at that point. Money is never a big item unless you don't have any, and we've been through that, and I'm afraid that we could go on the path to being in that same situation in the future. So I'm not as concerned about how the dollars are coming in this year. Let's look at the total picture of our revenue in this state. The average of our revenue since 1982, revenue increase has been 5 percent. I described to you yesterday that approximately 50 percent of our budget now is increasing at almost 10 percent a year. Well, you don't have to use much mathematics to see that we don't have much money left in the long run to take care of our basic needs. And although gifts to charities is a very important thing, I can't put that up in the same category that I would put the need to our individuals, the need to our citizens that we're having to pare down even now. We're only able to fund part of what we have been cutting for the last four years. So we've not come out of that. We're getting better revenue, but we still have cut

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

severely, and there are great pent-up needs within our state that we haven't met before and that we will not have the opportunity to meet if we take a substantial portion of our revenue in the future and dedicate it to a specific purpose over which the Legislature actually has no control. We can't decide where that money is spent. It doesn't come through the appropriations process. It's spent at the direction and desire of the particular agency that gets that credit, or the particular beneficiary of that. I practiced law for a number of years and, parlaying on what Senator Redfield was talking about,...

PRESIDENT SHEEHY: One minute.

SENATOR D. PEDERSON: ...I set up enumerable charitable trusts, unitrusts and so forth. So there are opportunities to still give to these organizations and utilize the benefits that are already available. We are adding another benefit. I will tell you also that when the college savings plan was initially proposed it couldn't get out of the committee because it was going to allow a \$10,000 deduction and it was thought that that's what we had to have in order to get the college savings plan going. When I took it over as a priority, it was restructured and we had \$1,000. They said, oh, that will never work. Okay. In just a little over three years now we have \$1 billion that's been invested in that college savings plan of Nebraska. So it isn't the money deduction that's needed. I think that effort on the part of the people who are looking for monies for their particular charities, I think that they're going to have to work that much harder...

PRESIDENT SHEEHY: Time.

SENATOR D. PEDERSON: Thank you, Mr. Lieutenant Governor.

PRESIDENT SHEEHY: Thank you. Senator Byars, you're recognized.

SENATOR BYARS: Thank you, Mr. President. I'm going to try to be brief. That's going to be difficult for me on this subject. I have worked for foundations, not-for-profit foundations, for a good portion of my life. My education has been in business.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

I'm a very strong, strong advocate of economic development in the state of Nebraska and elsewhere. And I certainly hear where Senator Redfield is coming from and absolutely Senator Pederson and the hard choices that you, as an Appropriations Committee, the executive branch, and ultimately we as a Legislature need to make in making our priorities. It's not easy and I, for one, pat every single member of the Appropriations Committee, from the leadership on down, with the tremendous job and the very difficult decisions that they make. But I wanted to let you know that when, Senator Pederson, when we talk about need, of our needs of our citizens, we talk about education, this is what we're talking about in this bill. This is exactly what we're talking about. If you look out at the foundations, you look out at those not-for-profit organizations that are asking you for another vehicle that is going to cost us something in General Fund dollars, I admit that; but if you start...if we could do the empirical evidence, the dollars that come back, that flow back to the state of Nebraska because of those not-for-profits, it is absolutely amazing. I think of need of our citizens and I look at the foundation which I head right now in my community hospital. Without private dollars that are given to that foundation, we would not be able to fully fund our home health department, which has a tremendous impact on citizens. These are individuals that aren't getting Medicaid dollars or other dollars. They're getting private...they're being...paying out of their own pocket and the only way we can afford to continue to provide those services are through extra dollars in the foundation. Our hospice program, our palliative program, which anyone that's had any kind of exposure to through your family, the majority of the funding on your hospice programs is coming out of the private pockets of individuals who are supporting those programs. These are needs of our citizens. Immunization clinics across the state of Nebraska are getting some state funding, rarely federal funding, but not enough to be able to provide the immunizations that are necessary to keep our kids healthy; and preventative medicine. These are private dollars that come from a foundation. Health fairs across the state, these are private dollars that come from foundations. Most of the dollars that set these up are not dollars that are provided elsewhere. They're provided through not-for-profit foundations, such as the one that I run. Education; how many people in

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

healthcare organizations and hospitals across this state are given additional opportunities to improve their education that is no expense through private government, through state or federal funds, to improve healthcare through scholarship programs that are provided through not-for-profit entities that are given...that are supported and funded by private funds? This isn't just a whimsical thing of asking for this type of incentive. It's incentive to provide the type of dollars and to replace dollars that ultimately we would have to make that hard decision on whether we as a state would provide. I look at the provision of services for people with developmental disabilities and with...

PRESIDENT SHEEHY: One minute.

SENATOR BYARS: ...mental illnesses. You know, you do have some...you have some agencies out there that are totally government-funded. The majority of those providing services in the state of Nebraska are not-for-profit. Where do you suppose the homes...or the money comes to purchase a home, to remodel it, to structure it to be able to meet all the health code rules and regulations? It comes from private dollars from foundations. Those dollars don't just materialize out of thin air. Without those dollars, they're never given back by government, and if we don't have those agencies to be able to provide those services, where are we to provide those services for the people of our state? It's absolutely imperative. The purchase of vans; once in awhile the Department of Transportation gets federal help to be able to purchase transportation equipment to be able to transport people in need, but typically those dollars again come from private sources. Now,...

PRESIDENT SHEEHY: Time.

SENATOR BYARS: ...can you make the argument...thank you.

PRESIDENT SHEEHY: (Visitors introduced.) Senator Redfield, you're recognized.

SENATOR REDFIELD: Thank you, Mr. Lieutenant Governor. Members

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

of the body, I do want to correct one thing I said previously. Four thousand dollars would be the credit on a \$10,000 contribution, but in fact the bill allows up to \$10,000 in credit. So far I've been discussing what would happen if a person made a planned gift, but in Section 5 of the bill it also deals with corporations, a small business corporation, a partnership, or a limited liability company that can provide a gift to a qualified endowment for which deductions are allowed under the IRS code. And under that provision of the bill, the maximum credit is \$10,000 per shareholder, per partner, or per member in the limited liability company. So we're probably talking about people within a limited liability company that may be at the federal income tax rate of 35 percent. Currently, they would receive a 35 percent deduction...because of the income tax, the equivalent of a 35 percent deduction on their taxes. The state of Nebraska currently allows them at our maximum rate, which is just under 7 percent. So right now the taxpayers are actually contributing part of that gift to any endowment, but under this bill we would also be giving them a 40 percent credit per shareholder or per partner or per member right straight out of our treasury. So 40 percent here and a 35 percent deduction cost at the federal level, and what we end up with is a contribution to one of these organizations equivalent to 75 percent paid by the taxpayers and only 25 percent actually paid by the donor. Remember, per person. So Section 5 is...has a lot of potential damage to our state. If you are a small corporation and you're looking at your tax statement for the state of Nebraska, you could say, well, I could pay those income taxes, corporate taxes, to the state of Nebraska, or I could give the money away and I could limit that payment so actually the charity gets 75 percent. That's good for the charity, but it's not very good for the revenue receipts of the state of Nebraska. So again, unlimited, because it would be dependent upon the number of members or shareholders in that small corporation, times \$10,000 each, is what we're talking about here in Section 5. When we were in Revenue Committee, you'll see that I was one of the members that voted no to advance this bill. Senator Landis made a strong argument last Friday as to the existence of some entities, both in the state of Nebraska and nationally, that were really 501(c)(3)s, nonprofit organizations, that were set up more for the benefit

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

of the people who drew their salaries from that entity than for the public welfare. That's not true of all, certainly, and there are a number of very worthwhile projects out there. Senator Byars was telling us about some of them. But the question always goes back to whether in fact it should be funded by...75 percent funded by the taxpayers of Nebraska and the United States, or whether in fact it should be...

PRESIDENT SHEEHY: One minute.

SENATOR REDFIELD: ...funded by the person who is giving the gift. I believe that that's what charity is about; that when you give a gift there should not be a reward other than the satisfaction of knowing that someone is going to benefit and that there will be a good done because you have been willing to sacrifice. It should not be a gift that you give and have your name on the building while the taxpayers pay the bill. Thank you, Mr. Lieutenant Governor.

PRESIDENT SHEEHY: Thank you, Senator Redfield. Mr. Clerk.

CLERK: Mr. President, Business and Labor will have an Executive Session in Room 2022 immediately; Business and Labor Committee, Room 2022 now.

PRESIDENT SHEEHY: Senator Janssen, you're recognized.

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. Senator Pederson, you know, you said nothing this morning that all of us don't realize. We have an obligation. We have an obligation to see that our agencies are run. This is something that we must do. And I know that the Appropriations Committee, as in the past, will have a difficult time making sure that the revenues are there. Then I look at some of the information that I have on this bill. We have a hundred million dollar...or hundreds of millions of dollars will be inherited and transferred through generations over the next 50 years, you know. And then I think about some of the tax incentives we give to business and, you know, it's great. We need more business in the state. We need more jobs. Actually, we really need more people. This state isn't growing the way it

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

should be and tax incentives are something that are going to be around for a long time. And we look at wealthy people, that they want to...want to do something with those dollars to help endowments and so on and so forth. I'm struggling with this bill. I am a cosigner on it and I realize the problems we're going to be facing in the next couple of months. If revenues keep on the path, keep going on the path that they are right now, you know, we'll probably be all right. But over the last 13 years, I've seen the ups and downs in revenues in this state. I want to be cautious, I want to do the right thing, so I'm going to listen to the rest of the arguments. And, Senator Connealy, good luck. You've got a good idea and I hope I can be behind you. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Janssen. Senator Synowiecki, on LB 28.

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor, members. You know, Senator Pederson, as Chair of the Appropriations Committee, you know, obviously there's concern. I think that concern is echoed throughout the body and particularly with the task that's been assigned to you, as Chair of the Appropriations Committee. And some of the other sentiments that have been expressed are echoed throughout the Chamber. But it just seems to me that there's this assumption that this \$5 million is going to be put in a Mason jar and buried in someone's backyard. There's...and Senator Byars kind of hit on this. These nonprofits, particularly those that provide direct service, do a lot of heavy lifting in terms of addressing the needs of the citizens of this state. The nonprofit organizations, again, particularly those that provide direct service, drastically, drastically mitigate state expenditures in many ways. Nonprofit organizations make up a majority of our nursing homes in our state; hospitals, Senator Byars spoke of the hospital care and what is done for those less fortunate in terms of foundation uses; child welfare services. If everything that the nonprofits did in the area of child welfare services alone were turned back and brought back to the state, where the state social services ran it, I think Senator Pederson would agree that it would have a huge, huge negative impact relative to our expenditures. Substance abuse and mental

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

health treatment for both children and adults, if not for the presence of nonprofit organizations in our state, one cannot even imagine the state expenditures that would befall us. The interesting thing, again, relative to the \$5 million fiscal note, is that if that \$5 million is particularly used for expansion of capacity relative to these nonprofit organizations, and particularly the direct services that they provide, what are the potential mitigating circumstances of this relative to our state budget and our state expenditures? I think one can reasonably assume that this money being circulated through our state, through our nonprofits, one can reasonably ascertain that there would indeed be an expansion of capacity for the direct services provided by these nonprofit organizations, and I think that's something that needs to be considered by the body. Just to address also a couple of points made by Senator Redfield; in the last time she spoke, she spoke of the advantages to corporations relative to LB 28. I would just draw your attention to the fiscal note in which it's been indicated in the fiscal note, and I'll just quote, corporations will not participate because the benefit of the deductibility of the contribution is greater than the benefit of the 20 percent credit. That is outlined within the fiscal note that's been offered here. There seems to be a thinking that corporations will not participate under the program afforded them under LB 28 because of greater benefits in another program. Also, I think it needs to be mentioned, relative to Senator Redfield's synopsis of different financial packages and so forth and in approaches to what is now available...

PRESIDENT SHEEHY: One minute.

SENATOR SYNOWIECKI: ...to individuals within our state, is that while that is available, it's available for national nonprofits. What I see LB 28 doing is trying to incentivize individuals within our communities to benefit Nebraska nonprofits, Nebraska nonprofit services, so that the monies can be focused here in our state, maintained in our state, as Senator Connealy has eloquently indicated, and as a result of that, potentially, I think, mitigate, mitigate state expenditures with expanded capacity in the nonprofit sector for services. Thank you.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

PRESIDENT SHEEHY: Thank you, Senator. (Doctor of the day introduced.) Mr. Clerk, do you have a motion on the table?

ASSISTANT CLERK: Mr. President, Senator Don Pederson would move to amend with FA15. (Legislative Journal page 454.)

PRESIDENT SHEEHY: Senator Don Pederson, you're recognized to open.

SENATOR D. PEDERSON: Mr. Lieutenant Governor, members of the Legislature, I have sensed a strong feeling for this bill and certainly it would be hard not to be in favor of it, if we could afford it. And in discussion with Senator Connealy, we have been looking into ways in which this could be made more affordable by the state, and it's in that light that I would like to amend this bill, particularly...well, Section 4, where the amount of the deduction is 40 percent of the present value of the charitable gift, and reduce that to 30 percent. Now, the net effect of that kind of a reduction, according to the Fiscal Office of the Department of Revenue, is that in the fiscal year of '06 it would reduce the amount from between \$4 million and \$5 million to \$1,688,000 as a deduction. And, correspondingly, in '07 it would be approximately the same amount. So we're talking about less than \$2 million each year, which is, in my mind, much more affordable than the \$5 million or \$4 million we've been talking about. So, in that light and in the spirit of compromise, I would suggest that we consider reducing the 40 percent to a 30 percent deduction, and it will have a corresponding net effect. And I would agree with what Senator Synowiecki just said and Senator Byars in that there are...this is not just money that's gone, frankly; this money is going to circulate within our state. But I'm looking just in terms of the long-range effect on our state fiscal responsibilities and I feel that very strongly and I just don't want to impinge the efforts of future Legislatures by having an obligation that they would find very difficult to afford. So, in that light and in the spirit of compromise, I am offering this amendment. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Pederson. The floor is open for discussion on the amendment. Senator Raikes.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I appreciate Senator Pederson's amendment and also the comment by Senator Connealy that if we can't afford this, then he's certainly not of a mind to try to force this through in a hurry. I think that's very helpful. And certainly one of the issues is the cost, but the other issue is whether or not this is good policy, good state policy. And I am concerned about the costs and this little...helps a little bit on the costs, but my big stumbling block is whether or not this is good state policy. The...at least the way this was presented to me, and I think maybe to many of you, is this was going to be a big help for community foundations. One question you might ask is, was it presented in such a manner that community foundations are important? And I would certainly concur with the arguments of Senator Byars and Senator Synowiecki. These folks do a great many very, very good things. But are they a failing organization? Are they going down the tubes? Is it the case that they simply can't get enough donations to do what they have been doing and, in fact, to even increase what they're doing? And I think the evidence is counter to that. I think these community foundations are doing very well and without this sort of a provision in the tax codes. My main policy concern, and I think several of you have raised it, does it make good sense to take funds out of the legislative appropriations process? Now, I will agree with you, trying to convince the Appropriations Committee or this body of the Legislature to spend money for anything is a tough go, and it may be tougher this year than it's ever been. Certainly you want to avoid that if at all possible. But I think, by the same token, that's the merit of it, that there is going to be extreme scrutiny on what's done, that it's going to make sense, that it's consistent with what we're trying to achieve as a state. You know, in the best of the cases, if you take the money out of the appropriations process, it goes to a community foundation and perhaps they remodel the opera house, and it may well be that it makes sense at the moment. But it's a...it's a sort of an act that may not make good sense fiscally, that no one may ever go to the opera or, if they do, that this is still a project that doesn't make sense to, in effect, outweigh or overtake other important activities that the state has to finance. And then the greater

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

difficulty, and I think this is getting somewhat to the points that Senator Redfield has been pounding on, this is much broader than that. There are a whole vast number of things that would...could be qualified and could enable people to get tax credits and, therefore, take money out of the appropriations process to do various things which may or may not be related to the general betterment of the state or of local communities. So my concern is certainly with the fiscal impact, but more with the state policy impact. I am not, at this point, convinced that this is good state policy. So I appreciate Senator Pederson's effort, but I'm probably not supportive of this amendment because I don't think it addresses the real problem here. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Raikes. (Visitors introduced.) Mr. Clerk, do you have a motion at the table?

CLERK: Mr. President, Senator Chambers would move to amend Senator Pederson's amendment. (FA17, Legislative Journal page 454.)

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open.

SENATOR CHAMBERS: Mr. President, members of the Legislature, my amendment would strike "30" from Senator Pederson's amendment and insert "20" in its place. I'm opposed to this bill. I'm opposed to what it purports to do. We're talking about charity, charitable giving. Where there's a quid pro quo, that is not charitable giving. The people supporting this bill fly the banner of nobility, but behind it is very utilitarian type investment designed to produce a profit. As I said when I was talking to some of my colleagues in the back part of the Chamber, if people are going to give to charity, let them give; if they want to invest, go talk to Smith Barney. We are not talking about people giving out of the goodness of their heart or because of the expansiveness of their spirit. I can understand Senator Synowiecki supporting a bill like this because he works for an operation that would get some of this money. I would like to ask Senator Synowiecki a question or two because he can help me, due to his expertise.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

PRESIDENT SHEEHY: Senator, would you yield?

SENATOR SYNOWIECKI: Yes, of course.

SENATOR CHAMBERS: Senator Synowiecki thought I was going to mess over his name and call him Senator "Snookie," but I'm not going to do it. (Laughter) And don't anybody else do that either. Senator Synowiecki, when we get to page 4 of this bill...not page 4 but page 6, there is talk of the creation of a commission, and the purpose of that commission, which would be called the Endowed Giving...Commission on Endowed Giving, would try to promote the giving of money to these various endowments. Are these endowments private operations, or public?

SENATOR SYNOWIECKI: Well, there's certain qualifications under the IRS code, Senator Chambers, that, quite frankly, I'm not all that familiar with, relative to the establishment of a 501(c)(3) and, thus, you know, an endowment type apparatus.

SENATOR CHAMBERS: I'm not talking about profit status or nonprofit status, but these endowments are operated as private entities, aren't they? They are not a part of any political subdivision. Is that true?

SENATOR SYNOWIECKI: I believe so, Senator. Yeah.

SENATOR CHAMBERS: So we are creating a commission to benefit private operations, if we want to simplify and be very direct in what we're doing with this bill. Isn't that true?

SENATOR SYNOWIECKI: Yeah, to coordinate and to do work on behalf of private foundations and...

SENATOR CHAMBERS: And to promote. And they will be given space in the Department of Revenue. Is that right?

SENATOR SYNOWIECKI: Yes, according to page 6.

SENATOR CHAMBERS: And the Department of Revenue will give administrative support to the commission, is that right, based on...

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

SENATOR SYNOWIECKI: Yes.

SENATOR CHAMBERS: Okay. That's all I will ask Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you.

SENATOR CHAMBERS: Thank you, Senator Synowiecki. Members of the Legislature, I'm not in favor of creating another layer of government, not to make government itself more efficient, but to serve the whim of private operations, private operations. Senator Stuhr persuaded the Legislature to eliminate a commission that had to do with rural oversight or looking over the shoulder of those who assess property. The Legislature is going to agree to get rid of that commission. So what do you do? Is this like a teetertotter? When the number of commissions goes down, thanks to Senator Stuhr's labors, it goes back up thanks to Senator Connealy and his minions. But here is the difference. No money or anything of benefit from the state went to that commission that Senator Stuhr has persuaded the Legislature to abolish. This so-called charitable activity is going to commence, based on a charitable contribution from the state. You've got to give them money to start a commission, which is going to cost money, to persuade people to give money that would go to the state but instead go to them. I'm not an economist. There is a very unflattering comment made about economists. If you stretched all of the economists in the world end to end, they could not reach a conclusion. Then I would add, if they reached a conclusion, it would be wrong. This bill does not constitute good policy. I can see once again that I'm going to have to be the garbageman and try to turn the Legislature off the path of doing something that is unwise. People who are interested in these moneymaking propositions for themselves and their agendas know how to attach words and notions to them which will make it difficult for legislators to speak against them. None of that works on me. We need to be far more critical of what we're being presented with. If this bill does not pass, the state is not harmed in any way, and we're here to help the state, not certain segments of the society, unless it is a segment which is being treated unfairly,

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

unjustly, and lacks the means to look out for its own interests. These endowments don't fit that category. These are not little mom-and-pop, brother-and-sister, uncle-and-aunt organizations limping along, barely able to make it to the life support machine. And if they were, we should not provide sustenance because it would be cruel. It would be delaying the inevitable. But, as Senator Raikes, who is an economist which, because of his perspicacity, is the exception which proves the rule that I laid down earlier. These endowments are not crimping along. There are people lined up to get the jobs that are going to be created by this bill. Do I think there's anything venial about that? No. People try to get work any way they can. They try to get money any way they can. If they can persuade the Legislature to create a nice little nesting place for them where the dough comes rolling in, they're going to do it. And if the Legislature is foolish enough to do it, like that one person said some time ago, if you find a sucker bump his head, bump the collective head of the Legislature. But I will not be in that number. This is not good policy. It is not necessary. And I mentioned the rule of 33. Now you all went along with Senator Landis and "Emperor" Walt Radcliffe to put something in the constitution to give gratis, \$2 million, to the State Fair Board to help the city of Lincoln. Now the city of Lincoln is putting up a pitiful mouth and crying because they're going to have trouble finding the 10 percent matching money that they need. That's what happens when you all allow yourself to be bulldozed into things, because there are lobbyists out there dictating to you what you ought to do. This is not good policy. If these endowments cannot make it on their own, then they deserve to fail. The state should not buoy them up in this fashion. If people are going to give, let them give. And if they're not going to give, they're not going to give. Every time I turn on television and hear some group begging for money, they say this is a tax-deductible contribution. So the federal government is...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...already taking away the meritorious nature of this so-called charitable giving. The government, in effect, makes the contribution, then gets the population as a whole to

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

make up the gap in federal revenue that occurs when they allow these good people, who are going to donate to charity, deduct for what they gave. Then these supposed noble givers are going to get credit for having given so much. I am going to fight this bill. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) The floor is open for discussion on amendment FA17, an amendment to FA15. Senator Landis, you're recognized.

SENATOR LANDIS: Thank you, Mr. Lieutenant Governor, and welcome and congratulations on your ascension to your position. I start my discussion with LB 28 by issuing a public apology to my friend Senator Connealy. As Hamlet says, "I shot my arrow o'er the house and wounded my brother." I made an impish and inappropriate comment about the timing of the bill coming up on Monday as perhaps being strategic, and it was far from that. It was inappropriate and I apologize to Matt. I don't think it was in any way, in fact, strategic on his part that that was the case. Now, first the bill, then the Pederson amendment, then the Chambers amendment to the amendment. Institutionally, I serve as the Revenue Chair and we are, over time, committed to the idea of maintain the base. It wouldn't make a difference if it was Bob Wickersham or Vard Johnson or other Chairmen of the Revenue Committee. They're likely to stand up and say, you know what, let's protect the base when we can. And that's their normal default position and the reason is, for all of the noble purposes that John, I think, listed, and they were many, I'd have to say that Medicaid, Health and Human Services, the university, the Game and Parks, the child welfare agenda, the criminal law administration, the use of the National Guard, the locking up of the violent offenders, the use of health services that we fund through the General Fund are the highest and best purposes that we can use tax dollars for. They're justifiable, legitimate, appropriate expenses that we ask people to take money out of their pocket, put it into a communal pile and then buy public goods, and those public goods are important. We don't ask for money for unimportant things, and we spend money for very critical social purposes that serve big, big social ends--education, health, the welfare of our children, the future of our state, the safety of our citizens and the safety of our

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

streets. There are many nonprofits that work in the same area. They are deserving entities, but they are not entities that are part of the appropriations process, they're not part of the public process in which we vote and choose and make priorities. They operate independently of that. They have a noble purpose for which they get a tax status that makes them nonprofit, and they get a tax, you know, deduction for when you make a contribution, but they are their own entities. And I, if I am forced to choose which has the higher social purpose, I would say that the higher education, the law and safety, those have a higher social purpose than giving a tax deduction for an individually-owned-and-operated 501(c)(3). My guess is that at least here we do the fights about...that divide us, whether it's the existence of the death penalty or the abolition of the death penalty, and yet there are 501(c)(3)s on both sides of those questions that will get tax deductions if they have a foundation; if you want to have Friends Against the Death Penalty getting a tax deduction to fight that fight, or those entities that are for it. My guess is that this body would divide seriously between whether or not...

PRESIDENT SHEEHY: One minute.

SENATOR LANDIS: ...Planned Parenthood should have a foundation that got tax-exempt status or Rescue for Life or some other on the other side of the issue, where like-minded people have strong opinions, but it's outside the appropriation process. We generally support maintaining the base. I support that here. I support the Pederson amendment. I think making a reduction is a good idea. I'm going to vote against the advancement of LB 28, but I'm not going to stand in its way. I've had my say. I had it on Friday. I've had it today. Senator Chambers is, I think, after reducing it even further, but if I understand where he's going to, I think it's in general opposition to the bill. I'm going to register that same end as a red vote on the bill. I'm going to vote against advancement of the bill. So what I'm going to do is, I think that Senator Chambers and I are alike on that, I'm going to express my opposition to the bill by voting red on the advancement. I'm going to vote for the Pederson amendment. I'm...

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

PRESIDENT SHEEHY: Time.

SENATOR LANDIS: ...not sure what I'm going to do on FA17. I may not vote on it. So that's what I'm going to do on this bill, and I've had my say for the day. Thank you.

PRESIDENT SHEEHY: Senator Chambers, you're recognized.

SENATOR CHAMBERS: Mr. President, colleagues, brothers, sisters, friends, enemies, and neutrals, I have been taken to the woodshed by the Speaker. I have been talked to and persuaded to alter my course, not in terms of my ultimate opposition to the bill, not in terms of my intent to wage unrelenting warfare against the bill, but on occasion a person who is asea, a-s-e-a, must strike sail and await a more favorable breeze. This bill is unworthy, but when fish are in a barrel and you decide that you will not shoot the fish today, the fish remain in the barrel. They are as easy, appealing and appetizing a target on a future day as they are this day. The Speaker has spoken to me about collegiality and the need to advance the agenda of the Legislature, not a particular piece of legislation, and explained that there had been discussions between and among people who have an interest in this bill. I don't have to be made a party to any discussions, but if I have an interest in a bill, whether for or against, it might not be the wisest course to leave me out of what they call the loop, and I'm not speaking egotistically. Sometimes I may be prevailed on to at least let the people whose bill it is get a vote when I understand what the overall strategy is. That won't always be the case. But on this bill, because it is attempting, in the body of the bill itself, to appropriate money, which it can't do, it's surplusage, and one of my amendments would remove that. I'm not even going to pursue that amendment today. I am in the position of one similar to that articulated by Senator Landis. I will vote against the bill. I am going to be a roadblock. I'm going to try to derail it. But a train on a track can go no place other than where the track goes. I can go farther down the track and do the same thing there that I could do here, and perhaps I may be more effective farther down the road. So, Mr. President, in the interest of being collegial and in order that no more flesh be stripped from my hide, I'm going to

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

withdraw my pending amendment to Senator Pederson's amendment.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Chambers has withdrawn amendment to FA15. We'll return to discussion on amendment FA15. Senator Byars.

SENATOR BYARS: Thank you, Mr. President. I'm feeling so much love from my colleague, the senator from North Omaha, I'm overwhelmed. I've seen it exercised so many times in this body and I'm...thank you, Senator Chambers, so much for that compassion and love that you have shown to all of your colleagues, particularly to our Speaker. I'm sure he appreciates that very much. I want to stand in favor of the Pederson amendment and make some brief comments. I think we often talk about public-private partnerships in this body. We talk about them on the floor. We talk about them off the floor. We talk about them in committee. We talk about them in groups that we speak to and that we listen to, and I don't think there's any better example of public-private partnerships than those between many, many not-for-profit organizations, and we as public policymakers and people who work for government. Many of these nonprofits were established to fill those holes, to fill those gaps that we as a government, because of fiscal policies, because of restraints that we had on us, certainly those were choices that we had to make. They filled those holes, they filled those gaps, and they have done so successfully for many, many years. I think what Senator Connealy is attempting to do is to ensure that those entities can continue to fill those holes. Will every not-for-profit corporation collapse without this legislation? No. Will you see an increase in giving by passing this type of legislation? I think very definitely you will. I think Senator Chambers made a good point. Is it fairly callused that you have to entice givers with tax incentives in order to entice them to give to a charitable purpose? Unfortunately, Senator, you're absolutely right. It's sad. It's sad that we can't look at charity purely for what it is, but we can't. On the same token, we've done that with business incentives. Isn't it sad that we can't depend on Nebraska corporations to decide to stay in this state because they love the state of Nebraska and because they want to keep their employees happy and they want to contribute to the economic

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

development of this state. If Arkansas or Missouri gives them a better deal, they're gone. That's too bad. It'd be nice if we didn't have to give those incentives. But I have stood in favor of those incentives because I believe they're necessary for the good economic development of this state, as I believe that the public-private partnership that exists needs to be encouraged. And people are callused in their giving and they're looking for ways to give that will also give them tax advantages. It's sad, but it's true. I know of at least three major estates in my community that were reduced substantially in the giving to local, local not-for-profits that provide tremendous personal assistance to individuals with low incomes that went to other states with other organizations because they gave them a better tax advantage. Do I like that? No. Would I like us to see purely we give out of our heart, we give because of the love that Senator Chambers has shown? Or do we give in a callused way because we get incentives?

PRESIDENT SHEEHY: One minute.

SENATOR BYARS: Sadly to say, many people want those incentives. I stand in support of the Pederson amendment. I think it's a good compromise and I think it's...we can move forward in a positive way. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Byars. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President and members. We have some history with this. It's been done in other states at 30 percent and at 40 percent, so that we know that it's dramatically more effective at 40 percent, but I do appreciate Senator Pederson's help on this and at least his willingness to move it to the next if...to do some improvement in his area to allow it to be less costly. Part of the reason that you decrease the cost from 5 to 1.6 is the actual cost, the less amount of credit, but it's also the fact that it's used a lot less because the effectiveness does go down. So there is a reason for it at 40 percent, but reluctantly I do rise to support the Pederson amendment and hope that the credit and the bill can pass eventually if we have the revenues to do it. You know, foundations, as Senator Raikes said, are increasing and

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

they are doing more work, and I agree with that, but that's not a reason why not to drive this more, to put more good work in and (inaudible) expanded utility in these foundations. Iowa and other places are doing a lot more economic development with their foundations and their endowments. So I believe in a perfect world you wouldn't need to do this. People would give of their excess and that that would sustain itself. But, of course, we're not in a perfect world. We have to give people reasons to do this, and this is a small reason. Reluctantly, I support the Pederson amendment.

PRESIDENT SHEEHY: Thank you, Senator Connealy. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. Yesterday I was in opposition of this bill, in opposition of the amendment now, and that is going to be my stand. But in my observation this morning, you know, I listen, tried to listen, and I have a person, senator, seated behind me which I listen very close to. One of the things that I have observed this morning is that because of our senior members, our members that have been here a long time, you know, they communicate together. They go through the process. They develop some kind of a consensus as how we're supposed to try to move this process on. This bill could have taken all morning, realistically, but there's been some conversation, the way I understand it, and we're not going to take that much time this morning at this moment. But in respect to the fact that two years down the road, four years down the road, when term limits take effect, a lot of us senators, myself, my class, and the eight new senators this year are not going to have that historical knowledge sitting behind them, you know, to listen to, you know, to go to, to respect those people, to understand, you know, how are things done, how are things passed. Good legislation, is that what's going to happen in the future? I have a very much of a concern about that. But I truly respect, you know, the people, the senior members of the legislative body at this time. Some people have stated, you know, there will be ringing in my ears, you know, from Senator Chambers. I appreciate that. Realistically, I appreciate that, because the more times I can hear things in my ear, I can follow that. I

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

really appreciate his principles, what he's doing for the legislative body, and also the other members of the legislative body, the senior members, because there is a wealth of knowledge here and we need to respect that. And I'm just...I'm a member of the class, the first class that is going to be affected by the term limits when, hopefully, within...when in four years from now there will not be any of those senior senators here any more, and that will be a tragic loss, in my opinion, because of the knowledge that these people have, how to accomplish things, how to get things done. And, you know, all I'm saying is that the new freshmen senators of this year, this year's class, you know, need to observe what the senior members of the legislative body are trying to do and how we accomplish things. Yes, we debate things here on the floor. That is where it needs to be debated. And it's from members, the senior members are doing the debating. They know where we've been. They know things that need to happen. So, realistically, I respect those people. I admire Senator Chambers on his efforts and I realistically think the debate will not get as contentious in future years when these senators are not here. Maybe it will be good, but I don't think so. I realistically think this is the place where we need to debate it and iron things out, and we've got a lot of different interests and, you know, that needs to be aired. So, with that, I will turn the balance of my time back to the Chair. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Any further discussion? No other lights. Senator Don Pederson, you're recognized to close.

SENATOR D. PEDERSON: Thank you, Mr. Lieutenant Governor. Members of the Legislature, we've had an interesting and I think long-range discussion about how we're going to go in the future. My amendment...as you know, I wasn't wild about this bill, but the amendment that I proposed was one that I thought could make it workable and we could still live with it. And in that respect, I would ask your support for this amendment. I think it makes the bill more workable in the future. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Pederson. The question before the body is, shall FA15 be adopted to LB 28? All in

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28

favor vote yea; opposed, nay. Have all voted who wish to?
Please record.

CLERK: 33 ayes, 3 nays on adoption of Senator Pederson's
amendment.

PRESIDENT SHEEHY: Amendment FA15 was adopted. Mr. Clerk.

CLERK: I have nothing further on the bill, Mr. President. Oh,
Mr. President, excuse me, I do have. Senator Chambers, the
first amendment you filed with me, Senator, FA16.

SENATOR CHAMBERS: Is it all right if I let that linger but be
taken up on Select File?

CLERK: Yes, sir.

SENATOR CHAMBERS: Thank you.

PRESIDENT SHEEHY: So ordered. Mr. Clerk, next item on...

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

PRESIDENT SHEEHY: We'll move to discussion of LB 28 itself.
Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I
just want it made clear that I'm not giving up my opposition to
this bill. And the fight that I would have waged today, I'm
simply postponing it to another day. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Further
discussion? No lights. Senator Connealy, you're recognized to
close.

SENATOR CONNEALY: Thank you, Mr. President, members. Once
again, this is an incentive to give to long-term endowments here
in the state. As I close I'd go ahead and ask for a call of the
house.

PRESIDENT SHEEHY: Do have a request for a call of the house.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28A, 28

All in favor vote yea; all in favor vote...all in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, to place the house under call.

PRESIDENT SHEEHY: The house is placed under call. All unauthorized personnel please exit the Chamber. All unexcused members please return to the floor. Senator Connealy.

SENATOR CONNEALY: Thank you, Mr. President. I appreciate the debate we've had. This is a cost in the future to the base for four years. It's not a relieving the base forever. It's a four-year program that ends in...starts in 2006 and ends in 2010. It is a decision we're going to have to make and hopefully we'll have more information when we end up on Final Reading, if we do get there with this bill. I believe that this is an incentive that will help the state for years to come, that it will keep money that now is leaving the state. And I would ask that you would help the endowments to grow here in the state of Nebraska, and I urge that you support this movement to the next stage.

PRESIDENT SHEEHY: Thank you, Senator Connealy. The question before the house is, shall LB 28 advance? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk.

CLERK: 32 ayes, 9 nays, Mr. President, on the advancement of the bill.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. The bill is advanced. The call is raised. Next item on the agenda, Mr. Clerk.

CLERK: LB 28A, by Senator Connealy. (Read title.)

PRESIDENT SHEEHY: Senator Connealy, you're recognized to open.

SENATOR CONNEALY: Thank you, Mr. President. This is the A bill that goes along with the bill. It does have an appropriation

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 28A, 28

for the operation of the commission and for the promotion of this bill. As you see on the Select File now amendments, there is an amendment to change...that could change this in the future, but right now we need the A bill to move along with the current fiscal note of this bill.

PRESIDENT SHEEHY: Thank you, Senator Connealy. The floor is open for discussion on LB 28A. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Brashear and I had talked about the underlying bill, LB 28, but not LB 28A, so really, based on the letter of our discussion, I'm not bound to let LB 28A move. However, there is such a thing as the spirit of the law or an agreement, and the letter of the law and an agreement. The letter of the law is an attempt to capture in words what the spirit is, and because sometimes people will not abide by the spirit of an agreement, whatever parts of it can be reduced to words will be done. And a stickler could say, Ernie, anything outside of what you and Senator Brashear agreed to is off the table. But I think the spirit of the law is more important than the law itself. The spirit includes the reasoning, the motivation, the purpose. The letter of the law will never include all that. Since it's clear to me what Senator Brashear was intending and discussing, the spirit of our agreement would include LB 28A, even though we did not discuss it. I view LB 28A in the same way I would view the four wheels on an automobile. When I purchase an automobile, I do not have to specify that it will have four wheels. The concept, the understanding, the definition of automobile, includes all of those parts essential to make it what it is. LB 28A being essential to Senator Connealy's LB 28, LB 28...he's just nodding over here like a bobblehead doll, but he's nodding to that which is right. I'm also not going to mess with LB 28A at this time. But farther down the line, if we get to it, I will then unleash all of the venom of which the king cobra is capable. As my friend Senator Combs, I don't see her, she has come up with a standard by which you can judge the degree of my opposition to the bill, a bill. She has one which she calls a "four-fanger." This will be a "four-fanger," but I will retract my fangs at this time and let the body do what it pleases with this bill. Thank you, Mr. President.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 11, 28A

PRESIDENT SHEEHY: Thank you, Senator Chambers. Anyone else wishing to speak? No other lights are on. Senator Connealy, you're recognized. Senator Connealy waives closing. The question before the body, shall LB 28A advance? All those in favor vote yea; opposed, nay. Have all voted who care to? Senator Connealy.

SENATOR CONNEALY: I would like a call of the house, please.

PRESIDENT SHEEHY: The question before the body, shall the house be placed under call? All in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: 27 ayes, 3 nays to place the house under call, Mr. President.

PRESIDENT SHEEHY: The house is placed under call. All unauthorized personnel please exit the Chamber. All those unexcused absences, please return to the floor.

SENATOR CONNEALY: Call-in votes. I'll accept call-in votes, please.

PRESIDENT SHEEHY: Senator Connealy will also accept call-in votes. They are also accepting call-ins.

CLERK: Senator Mines voting yes. Senator Kruse voting yes. Senator Smith voting yes. Senator Brashear voting yes. Senator Cunningham voting yes. Senator Janssen...

PRESIDENT SHEEHY: Record, Mr. Clerk.

CLERK: ...voting yes. 27 ayes, 6 nays, Mr. President, to advance LB 28A.

PRESIDENT SHEEHY: LB 28A advances. The call is raised. Next item, Mr. Clerk.

CLERK: Mr. President, LB 11, introduced by Senator Landis. (Read title.) Bill was introduced on January 6, referred to the

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 11

Government Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM0053, Legislative Journal page 339.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Landis, you're recognized to open.

SENATOR LANDIS: Thank you, Mr. Lieutenant Governor, members of the Legislature. I believe there will be some committee amendments offered after I introduce this measure. There is a process overseen by the United States Post Office called the electronic postmark. Electronic postmark is a way of essentially sending mail, with the level of assurance and reliability that we have with the Post Office, through e-mail. And this came to a fellow who works for the university, John Wiltse, when he was reading about a bill that had passed in North Carolina. The situation that occurs in the university is something like this. A student is having an interview with a potential employer tomorrow, and that interviewer says, well, bring along your transcript. And this former student is in another state. Well, a transcript needs to be certified by the university, verified, if you will, that it's accurate, to have it be effective. So if you were to call up the university and say, I've got an interview tomorrow; can you send me a verified transcript to prove to this employer what my grade average was and how I've done? The university would have to print off the transcript, put it in an envelope, put a stamp on it, mail it, and it would not get there the next day anyway. The process of mailing a document, faxing it, folding it, stamping it, addressing it, and mailing it, well, anybody who's in charge of a business will tell you, that's an expensive process. That's a \$3 or \$4 process, at a minimum, to send a letter. E-mail, on the other hand, is a way in which you download the document and send it off through the e-mail at a very minimal cost. Now, what if you want to be able to verify that this is an accurate state record? Well, the U.S. Post Office has a process called the electronic postmark. And what you're doing is, you're essentially sending to the Post Office an e-mail address that you want this e-mail eventually to get to, but you use the intermediary of the United States Post Office, because it creates a record to prove that the e-mail was unaltered and that

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 11

it got there. You send in the e-mail to the electronic postmark of the U.S. Postal Service. The sender receives a message back from the Post Office that says, we got your message, we got your order. Then the Post Office sends back a second e-mail that says, we sent on to the e-mail address you gave us the message that you sent us, and we sent it in pristine form. It is what you said it was; it has not been altered. Then, when the receiver of the message opens their e-mail and takes that...you know, that record, or opens up that record, the Post Office is aware of that fact, and they send you back another e-mail that says, ah, the receiver has opened the message. If the receiver of the message doesn't get it and it fails in the transmission, the Post Office sends back another e-mail that says, the receiver did not receive and the message has failed. So the sender knows all of these things, because of these bouncing e-mails that go back and forth between the sender of the message and the United States Post Office and the eventual receiver of the message. This bill says that if both parties agree to use this mechanism, if the eventual receiver of the message and the sender of the message agree, that they may use this electronic postmark for the mail of the state, and that in sending out a record under this format, that this method would allow us to verify that a record of the state, of the agency, is true and accurate. In other words, that what is being sent out is the state record. To do that, we're going to have to have rule- and reg-making authority by the Secretary of State, to make sure that we have some observable method to establish consent--perhaps e-mail, perhaps some kind of a record of a phone call, some kind of a letter that would establish that consent on both parties was received. In addition to the verification of the record, this will, again, with both parties' consent, serve as an in-lieu use by the state agency of certified mail or certified mail with return receipt requested, because, of course, you get back the message that the receiver has in fact received the e-mail. So if it's okay with both parties, they both consent, we can use this method for either the sending of a verified state record; or, we can use it as an in lieu of a certified standard of mailing between the state agency and another individual. The university is...wants to make use of this, because they are requested by hundreds and hundreds of people to send out transcripts--people who are

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 11

on-line when they send those messages, people who are able to receive an on-line response, but who want a verification that an e-mail now cannot give them, but that this would allow. Should we be able to do this, we're looking at, I think, some rather considerable savings per transaction. And the more transactions that are used, the more savings are here. The use of the U.S. postmark is basically about 80 cents. You do it by opening up a charge account, if you will. And a state agency could only use this if the state agency wanted to. But there's every reason why a state agency would want to, because compared to a snail mail or certified mail, this would be considerably cheaper, and it would save the agency money. It is, I think, the fact of 21st century living that the e-mail and the use of the computer highway is a wave of the future. It holds us the opportunity for savings without a loss of security. And for that reason, I support...I introduced LB 11. I was gratified to see that the Government, Military Affairs Committee sent it out unanimously. There is an amendment, and I would ask for that amendment to be adopted when it comes up. And I also have a minor amendment to that offered to me, that I will make clear at that point. Thank you, Mr. Lieutenant Governor.

PRESIDENT SHEEHY: Thank you, Senator Landis. We'll move to the committee amendment of Government, Military and Veterans Affairs Committee. Chairperson Schimek.

SENATOR SCHIMEK: Thank you, Mr. President and members. The hearing was...well, it was basically proponents. Nobody appeared in opposition to this bill. And the committee advanced it on a 7 to 1 vote, with the 1 person actually being absent. And we thought this was a great idea, a good idea. And not only would it save money, but it would actually make things more doable long-distance than they were...that they are at the present time. The committee amendment simply clarifies that an electronic postmark may be used to verify that a record of a state agency is true and correct. It also clarifies that the use of the electronic postmark will require consent by the sender and receiver of the communication. You just heard Senator Landis talk about that. The amendment specifies that the electronic postmark may be used by a state agency in lieu of certified mail, or with return receipt requested. The provision

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 11

in the original bill regarding registered mail is removed by the amendment. The amendment further provides that a person or state agency is not authorized to use an e-mail address for service of process of legal documents upon a party to a lawsuit. And finally, a postsecondary educational institution of the state is added to the definition of "state agency." With that, Mr. President, I would simply urge adoption of the amendment.

PRESIDENT SHEEHY: Thank you, Senator Schimek. (Visitors introduced.) The floor is now open for discussion on AM0053. No lights are pressed. Senator Schimek, you're recognized to close.

SENATOR SCHIMEK: Good. Oh, I'm sorry, Mr. President. I was speaking with staff and I didn't even realize my mike was on until I heard the word "good" come over it. I would simply say that this is pretty much a clarifying amendment, except that it prohibits legal documents from being used in this manner. So with that, I would just urge adoption.

PRESIDENT SHEEHY: Thank you. The question before the house is, shall AM0053 from the Committee of Government, Military and Veteran Affairs be adopted to LB 11? All in favor vote yea; opposed vote nay. Please record, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

PRESIDENT SHEEHY: AM0053 is adopted.

CLERK: Senator Landis would move to amend with AM0313. (Legislative Journal page 455.)

PRESIDENT SHEEHY: Senator Landis.

SENATOR LANDIS: Thank you, Mr. Lieutenant Governor. This amendment says that instead of the Secretary of State "shall" issue rules and regs, they "may" issue rules and regs. Now, let me tell you why that would be a valuable change. There has been a legal challenge in the past that where a statute said the Secretary of State "shall" adopt rules and regs, and the

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 11

Secretary of State has not yet done that, that actions taken prior to the Secretary of State issuing those rules and regs are not binding. Well, there are agencies who want to be able to use this, whether or not the Secretary of State has yet done the rules and regs. And so if you say "may," there will be no problem with the use of the bill, whether or not the Secretary of State has acted. That legal challenge will be vitiated. Now, there may be some other reason. But at least this technical challenge that has existed for the last couple of years when this was brought up in a lawsuit, brought to my attention by Bob Wickersham, moving from "shall" to "may" will make sure that we'll be able to use this bill. And when the Secretary of State gets around to doing rules and regs, we'll then have to follow those rules and regs to make sure that that's the way that we carry out the intention of the bill. But until they do so, we still will be able to do these transmissions towards the end that we want them to be done. I would ask for the adoption of the amendment. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Landis. The floor is open for discussion. Seeing none, you're recognized to close, Senator Landis. Senator Landis waives his closing. We'll now move...the question before the body is, shall AM0313 be adopted to LB 11? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Landis' amendment.

PRESIDENT SHEEHY: AM0313 is adopted.

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

PRESIDENT SHEEHY: Discussion of the bill on LB 11? Seeing none, Senator Landis, you're recognized to close.

SENATOR LANDIS: Mr. Lieutenant Governor, members of the Legislature, I think this bill holds the chance of savings and efficiency for our state agencies, and it will grow over time. We will move from a process that costs us, at a minimum, the fee of \$2.50, and then, on top of that, the creation of a physical

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 11, 53

document, down to the transmission of an e-mail document that has all the same legal authority and power, at a cost of 80 cents. We should...it's entirely possible that we will see a reduction in costs of these kinds of transaction by 300 or 400 percent. For that reason, I think LB 11 is a very good idea. I'm delighted that John Wiltse brought it to me from the university. And I hope that we see significant use of this for savings in the upcoming years. I ask for the adoption and advancement of the bill.

PRESIDENT SHEEHY: Thank you, Senator Landis. You've heard the closing. The question before the house is, shall LB 11 advance? All in favor vote yea; opposed, nay. Have all voted who care to? Please record, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB 11.

PRESIDENT SHEEHY: LB 11 advances. Next item, Mr. Clerk.

CLERK: Mr. President, LB 53. It's a bill by Senator Schimek. (Read title.) Bill was introduced on January 6, referred to the Government Committee. Bill was advanced to General File. There are committee amendments pending. (AM0058, Legislative Journal page 340.)

PRESIDENT SHEEHY: Senator Schimek, you're recognized to open.

SENATOR SCHIMEK: Thank you, Mr. President and members of the body. I stand before you today to introduce LB 53, which is a bill which restores voting rights to felons upon completion of their sentence, including parole. The bill also applies the same rule to any person convicted of a felony under the laws of any other state, who moved into Nebraska. I have actually introduced this legislation several times. In 2002, I introduced both the constitutional amendment and a bill to restore felons' rights. And in 2003, I introduced a bill that was advanced to General File. Actually, we just ran out of time last year and never took it up. Although I have introduced similar legislation in recent years, this year I introduce the bill, in part, because it is a recommendation of the Vote

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

Nebraska Initiative. The initiative was created in the year 2003 by this committee, by the Government Committee, and consisted of members from all over the state with wide-ranging backgrounds and opinions. The initiative studied the issue of felons' voting rights, and then voted overwhelmingly to recommend legislation be introduced. And the final vote was 12 to 2 by that group. Current law provides that felons' voting rights can be restored only through the Board of Pardons. The process to apply for a pardon can be a long and difficult one. In fact, Nebraska is one of the few states that does not allow felons to vote after completing probation and/or parole. Let me tell you a few of the merits or reasons for restoring felons' right to vote. And actually, once you've left prison, I think technically it's correct to say "ex-felons," once you've completed your sentence. One of the reasons that we need to do this is that we are denying the right to vote to millions of people in our democracy throughout the United States. Not allowing felons to vote violates two core American values--the right to vote, and the ability of an individual to leave the past behind and start a new life. And some of you who have been in this Legislature for the past few years know that we've been moving more and more in the direction of community corrections and restoration to the community at different stages of the sentence. The U.S. Supreme Court held in Reynolds v. Sims in 1964 that the right to vote is a civil right. It's a civil right. It also would help to more effectively rehabilitate felons. Felons who have paid their debt to society by completing their sentence should be allowed to reintegrate back into the communities. Making these individuals feel a part of their community will only benefit them and society. As part of our movement toward community corrections and allowing felons to complete their sentence within the community, this provision seems like a logical next step. Once they have completed their sentence in the community, they should be given the opportunity to be fully integrated and active. Organizations such as the American Correctional Association and the American Bar Association are now urging states to allow felons to vote after completion of sentence, citing reasons such as rehabilitation and reintegration into society. The third reason that we should consider doing this is that disenfranchisement has a discriminatory impact. Voting right restrictions based on

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

criminal conviction disproportionately affects African-Americans and Latinos. The average disenfranchisement rate is nearly five times higher for blacks than nonblacks. According to a study by Christopher Uggen and Jeff Manza, the percentage of disenfranchised African-Americans in Nebraska is close to 19 percent. A report by the Human Rights Watch in the sentencing project puts the figure at 10 percent. Either figure is significantly higher than the rate of disenfranchisement for the majority population. Nationally, it is reported that about 13 percent of African-American men in the United States are disenfranchised. The fourth reason you should consider this is because of its impact on veterans. More than a half a million military veterans are unable to participate in the electoral process due to felony disenfranchisement laws. Numbers estimate that a half a million, 585,355 veterans, are unable to vote. This means approximately one out every eight disenfranchised persons is a veteran. And if you have any trouble thinking about those kinds of numbers, you should visit the Vietnam veterans club out at the Nebraska State Penitentiary. They are out there. We had a very good hearing on this bill, as I mentioned, in the committee. We advanced it to General File on a 6-1 vote, with 1 person absent. If you will look at the committee statement, you'll see that among those supporting the bill were the League of Women Voters; Friends and Families of Inmates; Coalition for Voting Rights; Coalition of Religious Denominations through Interchurch Ministries of Nebraska; Delta Sigma Theta Sorority, Inc., Omaha Alumnae Chapter. Election Law Committee Clerks came in in favor of this very strongly. They served on the Vote Nebraska Initiative, and said that the way it is is just very difficult, from their perspective. Plus, they believe that a person ought to be restored to the right to vote. We had the NAACP of Omaha came in; OASIS, Inc.; the NAACP of Lincoln; people who came in on their own behalf, some of whom were ex-felons; Nebraska Voting Rights Coalition...I think I just mentioned them. But you can see there was a long and very impressive hearing that we had on the bill. The only thing I would like to add in my opening comments is that I've just had a sheet distributed that shows you the categories of felons disenfranchised under state law. And if you will notice that there are only, I believe it's six states--it was seven, but now it's only six states on this chart actually totally

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

disenfranchise ex-felons as we do here in Nebraska. There are seven...or eight more states, I should say, that do a partial, depending on a time limitation or the kind of felonies committed. But look at the number of states that disenfranchise in prison--all of them except two. There are actually two states that allow felons to vote while they're in prison. There are a number of states that allow felons to vote while they're on probation. And there are a number of states that allow them to vote while they're on parole. We have the most restrictive law of any of the states. And it's very, very problematic, because I don't think a lot of people ever go back and get their voting rights restored, because you have to go through the pardons process, which is very difficult. And later, if we have time, I'd like to share some of the thoughts of those people...

PRESIDENT SHEEHY: One minute.

SENATOR SCHIMEK: ...who do not want to go back through that felons process, because it brings up their past again, and they're moving on with their lives, and they don't want that kind of publicity. So with that, Mr. President, I would ask that we have a good discussion on this, and that we move the bill to Select File. Thank you very much.

PRESIDENT SHEEHY: Thank you, Senator Schimek. We will now open on the committee amendment. Chairperson Schimek.

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. One of the discussions that we had in committee after we heard the bill...and I have to tell you, there were some people on the committee that I think came into the committee hearing thinking they weren't going to support the bill, but after hearing the testimony, really did have, perhaps, a change of heart. At least, they wanted to consider the policy, but they also wanted to consider maybe putting a time limitation on the bill. And so we discussed that. It was suggested that maybe we go with a three-year limitation. And at some point, I said, how about a two-year limitation? Because if you put a three-year limitation on, you restrict some ex-felons from two elections, depending on when they get out, and others from only one. If you make it an even number, everybody gets treated the same way. So the

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

committee went with that, and the committee amendment simply says that the two-year...there will be a two-year waiting period after completion of the sentence, in order to see that that person is back in the community, is, I guess, functioning, and hasn't committed another felony, frankly. If they commit another felony, of course, you lose your rights all over again, if they have been restored. But I think that's the thought behind it. Let's just put a waiting period in of two years before the right to vote is automatically restored. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Schimek. The floor is now open for discussion on AM0058. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have always supported legislation of this kind. I support the idea. When a person goes to prison, it is only because he or she has been convicted for engaging in certain conduct which the Legislature has made illegal. The Legislature establishes the penalty for that crime. When the person has paid the penalty, that individual should be restored to the family of the so-called free world. Those of us out here who have any awareness of how elections go are well aware that many of the people in the so-called free world don't think much of voting. So the percentage of voters is always shamefully low. Many times, people who are deprived of their freedom begin to develop a greater appreciation of it, for having been deprived. Those who come out of prison and are interested in assuming the role of a civically-active, responsible citizen, should have no impediments placed in his or her way. Some people had been of the opinion--myself among them--that perhaps only the Pardons Board could grant the restoration of the right to vote to a felon. But the Nebraska Supreme Court, in a case decided in 2002, it was Ways, W-a-y-s, v. Shively, S-h-i-v-e-l-y, at 264 Nebraska 250, said at page 256, Section 29-112 is the statutory provision directly addressing restoration of a felon's right to vote. The purpose of 29-112, as evident from its plain language, is to provide the mechanism by which a felon's right to vote is restored. Thus we conclude as a matter of law that pursuant to Section 29-112, the specific right to vote was not restored to this gentleman who was trying to get his rights

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

restored, because he did not meet the standards established in 29-112. The corollary is, had he met those standards, the statute would have entitled him to have his right to vote restored. So it is not exclusively in the hands of the Pardons Board, and we should not put it there. The Pardons Board has not been willing to restore the right to vote. As a matter of fact, it has been draconian in handling practically every case and type of case that has come before it. When people look at the disproportionate impact of criminal convictions and sentences on black people, other nonwhite people, Latinos, Asians, Native Americans, they want to say that's because they commit more crimes. A commission was established by the Supreme Court of Nebraska, the State Bar Association, to look at disparities in sentencing, but even going backward, the charging, the trying, the handling of jurors, jury lists, and all of the things that go into making up the criminal justice system. And at every point along the way, discrimination against nonwhite people can be found. The court said it wants to find out why these disparities exist. So although,...

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...looking at the facts and the numbers, you can see what amounts to discrimination, the court wants to pin it down specifically. It is clear in Douglas County that black people are charged with felonies for committing an act which, if the same act was committed by a white person, may not be a felony. If a black person and a white person are convicted of the same basic offense, the black person will tend to get a much stiffer sentence. So the discrimination is in the system that is being used to deprive black people of the right to vote, and other nonwhite people. But as Senator Schimek pointed out, it goes beyond in its reach to the nonwhite groups. Veterans and others are included, too. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you. Senator Dwite Pedersen.

SENATOR DW. PEDERSEN: Thank you, Mr. President, members of the Legislature. So often we want to punish people. And the punishment in itself isn't always a punishment. I have been privileged, most of my life, to work with people who have been

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

in trouble with the law, and can tell you that there's very few of them--most of the ones I've worked with are young--even realize they have lost this benefit, until they've been in jail, prison, and released, or maybe just on probation, for a felony, and then have learned what they have missed out on, and would like to be part of it. I've said before on this floor, and I'll say it again, the only difference between at least 50 to 60 percent of the inmates that we have locked up in our prisons in the state of Nebraska, the only difference we have between them and us, most of us, anyway, is they got caught. I mean that very sincerely. And I'm not talking about every inmate that is out there has committed some kind of a heinous crime. But some of them are there for paper crimes, possession crimes. And they've learned, in a lot of cases, what they have missed. I was privy this last election to know one individual who had recently got a pardon, and had to wait that full ten years for that pardon. The person got the pardon in September, and could not wait to vote in November. This particular person stood in the rain and cold for two hours, in a line where they were short of ballots, so he could vote. These people want to vote. And we're not punishing them by taking away their privilege to vote. This is America. And I don't believe, by committing these crimes, that they thought up-front, I'm going to lose the purpose...lose the ability to vote. So I think we ought to give them the right to vote, especially when they are in the institutions or in the criminal element, or the people who have been locked up called off-paper. They should surely be allowed to vote. Thank you.

PRESIDENT SHEEHY: Thank you. Mr. Clerk, do you have an announcement?

CLERK: I do, Mr. President. The Retirement Systems Committee will meet in Room 2102 now; Retirement Systems, Room 2102, immediately.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Mister...Senator Smith, you're recognized.

SENATOR SMITH: Thank you, Mr. President and members. If Senator Schimek would yield to a few questions, I'd appreciate

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

it.

PRESIDENT SHEEHY: Senator Schimek, would you yield?

SENATOR SCHIMEK: Yes.

SENATOR SMITH: Senator Schimek,...and I apologize; I'm no longer on the committee, and perhaps should have looked at some of the transcripts of the committee hearing. But I do have some concerns. And I know that you pursued the constitutional amendment avenue before this effort. Can you say again why a statutory change can complete this, as opposed to a constitutional amendment?

SENATOR SCHIMEK: Yes. Thank you for the question, Senator Smith. As a matter of fact, that has been an ongoing discussion. And there have been several court cases which have spoken to that very issue. And one of them Senator Chambers just talked about a little bit ago, Ways v. Shively, in which the court basically said, yes, the Legislature can cure this through legislation. And there's another court case, too, that I won't go into in detail. But I have in my possession a couple of very, I think, authority kind of opinions. One is from a College of Law professor at the University of Nebraska in Lincoln. His name is Professor John Lenich. And he writes to say that...see if I can find the exact words. He says that...and I'm not going to read the whole thing; there's a very lengthy letter from him. He says that the Legislature has delegated the Legislature's power to restore the right to vote by authorizing the board to issue writs of discharge. And he understands that the board has refused to exercise the power the Legislature has delegated to it. He doesn't know why. In any event, if the Legislature repealed the delegation of its powers to the board, the board would lack any authority to restore the right to vote to convicted felons, unless, of course, it granted them a pardon, in which case all of their rights would be restored. In conclusion, I support what you're trying to do through LB 53. I believe that it is permissible as a matter of constitutional law, and justifiable as a matter of public policy. And then he encourages us to think about the waiting period in the bill. He doesn't happen to think two years is

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

long enough. I also have a letter from the Brennan Center for Justice. I won't take any more of your time, Senator Smith, but I could if you wish me to. It goes along in the same vein.

SENATOR SMITH: Okay. Well, perhaps a little bit later. But I'm glad that you mentioned the Brennan Center, because they've chosen to get involved in some campaign finance issues here in Nebraska. Is that also accurate? Do you recall that?

SENATOR SCHIMEK: I have no idea.

SENATOR SMITH: Okay. Well, I won't belabor you with that. But I think we need to look at a balancing act here. And Senator Schimek has...it's her priority to open up voting for, I think, some 44,000 voters in Nebraska. Is that correct?

SENATOR SCHIMEK: Senator, the figures vary on that. It depends on whose figures you read, but anywhere from 11,000 to 44,000. I mean, there are very good, reputable groups that just don't know for sure.

SENATOR SMITH: What...

PRESIDENT SHEEHY: One minute.

SENATOR SMITH: ...factors are missing, then, in that question, or the information? I mean, do we not know how many ex-felons live in Nebraska? Is that...?

SENATOR SCHIMEK: No, we don't.

SENATOR SMITH: Okay. And I'm going to need more time here. But when you say that they're totally disenfranchised now, is that with the exception of being granted a pardon through the Pardons Board?

SENATOR SCHIMEK: Yes, it is. But very few ever get through that process. And I'll try to get you some actual figures. But we heard about those in the committee.

SENATOR SMITH: But that option is there.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

SENATOR SCHIMEK: It is, but it's a very long process, and it is sometimes costly. You have to hire an attorney. And I believe that at least in 50 percent of the time, it's not successful. It gets lumped in with everything else, frankly.

SENATOR SMITH: Okay. And I realize I'm out of time. So thank you, Mr. President.

PRESIDENT SHEEHY: Time. Senator Brown, you're recognized.

SENATOR BROWN: Mr. President, members of the Legislature, I am standing in support of this bill and of the amendment. And it is a change of position for me. After first hearing the bill, and believing that it was a real change in position for us to take, that...I assumed that everyone understood that felons did not have the right to vote. When you begin researching what the implications are, what other states are doing, I have changed in my attitude. But I would address one of the concerns that Senator Smith raised. He talked about a balancing act. I believe that the balancing act is in the form of the amendment that you have before you, because we should assume that a person who has completed their debt to society has the right to participate in society. And as Senator Schimek pointed out, the Supreme Court has ruled that voting is a civil right. And so the process in Nebraska...Nebraska is one of six states that does not allow automatic restoration. Those states tend to be southern states. These laws came into being, in many cases, after the Civil War, to restrict black Americans' rights to vote. And so the...some of the southern states have maintained these laws. There are two states, Iowa and Nebraska, who also have the laws. But we...in this amendment we are proposing a two-year window, so that if the felon reoffends during that two-year period, then they will not be eligible to vote. And so I do think that we are proposing a moderate approach that still allows people to...who have made changes in their lives, to move forward with those changes. And that's the reason I'm in support of the bill. I'm also in support of the amendment. And I would yield some time to Senator Smith if he wants to continue with the discussion with Senator Schimek.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

PRESIDENT SHEEHY: Senator Smith, you have about two minutes.

SENATOR SMITH: Thank you, Senator Brown. I wanted to speak to some of the issues that have been addressed already, or at least spoken of already. And it's in a general sense, and I'm trying to keep an open mind as to the bill itself, with the amendment, if the two years is sufficient. And I'm trying to sift through that. But I do want to share some thoughts and feelings of my own as it relates to voter turnout, as it relates to participation in the political process. I think that government has chosen to get so involved, whether it's campaign finance limitations, or an attempt thereof, or whether it's a Motor Voter registration, that I think has skewed the voter turnout. And we cannot force anyone to vote. And there have been, especially at the federal level, efforts that...through Motor Voter, where we've placed this burdensome process on the DMV. And they're finally used to it, I think, and that's fine. But we hear about voter turnout being down all the time. And actually, when you have...

PRESIDENT SHEEHY: One minute.

SENATOR SMITH: ...an artificially high number of registrations, it's a different scenario. And they're asked to choose a political party without any great deal of forethought. When they go to get their driver's license and they're asked to choose a political party, and they can't decide which, so they just say, nonpartisan, and so then we hear arguments here in the Legislature that there's disenfranchisement by the parties, because they had to make a split-second decision of what political party to join. And then we see, at the federal level, again, in this overall attempt to "enfranchise" the voters, I guess you could say, of this McCain-Feingold, and we need to crack down on money in politics and bring more people into the political process by eliminating money. And I hope that it's agreed upon that the more we meddle in those affairs, and even at the state level,...

PRESIDENT SHEEHY: Time.

SENATOR SMITH: Thank you, Mr. President.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

PRESIDENT SHEEHY: Senator Wehrbein, you're recognized.

SENATOR WEHRBEIN: Thank you, Mr. President, members of the body. I just simply want to add my support to this amendment and to the bill. I probably was somewhat neutral going into the hearing, having not given it a lot of thought over the time, although I did recognize that felons couldn't vote. But I think they made a good case. If you really believe that when you end your parole and your probation and your term in prison that you've paid your debt to society, there really is no rationale left to deny a prisoner or a felon the right to vote. Two years is probably a compromise, if you will, for some that think it should not happen. Ten years is what the present Pardon Board uses as a guideline, is the way I understand it. Two years, really, in essence, doesn't deny much of a participation in the ballot process, under normal...most circumstances, because most elections are two years apart or more. So I support the amendment and the bill.

PRESIDENT SHEEHY: Thank you, Senator. Senator Aguilar.

SENATOR AGUILAR: Thank you, Mr. President, members. I rise in support of LB 53. I would support the amendment, and I would support the bill without the amendment as well. I used to serve on the Government Committee, and I've heard a lot of the arguments, and I've always supported this whole concept. I believe that once a person has paid his debt to society, it should be paid in full. There's no sense in kicking a man when he's down. The right to the vote is very precious, and I think if we have an opportunity to help in this matter, we should always do that. Senator Chambers talked about the Pardon Board and how they're reluctant to grant pardons and allow people the opportunity to move on with their lives. We have an opportunity as a body to correct that. We can do something about that in a very positive manner. And I would urge the body to do just that, and voting to support this legislation. Thank you. I'd yield the rest of my time to Senator Chambers, if he chooses to use it.

PRESIDENT SHEEHY: Senator Chambers, you have about four

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

minutes.

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Aguilar. I am pleased that various of my colleagues have spoken in support of this bill. When it comes to things like this, I'm what you could call a purist, but I'm also a realist. I would like not to add the amendment. But because, as Senator Wehrbein mentioned, and others, this may smack of a compromise, I think something is better than what we have now, which in effect is nothing. So I'm going to support the committee amendment. I will support the bill. And this is one of those areas where I wish some people could begin to think of how they themselves wish to be treated. I used to go to church. I never go to church now. But every now and then, I will acknowledge, I will flip on the television and hear a preacher, I don't even know the denomination. Sometimes there are people on the radio preaching and telling people how they ought to live their life. And although invariably much is made of sinfulness, sinning, wrongdoing, and so forth, but it's like that's a backdrop or a canvas on which they're going to paint a different picture, using forgiveness as the paint. They will tell you that there is nothing you do which cannot be forgiven, that God is known for grace, mercy, and forgiveness. That is the message that all of the religions emphasize--forgiveness. It is what every person wants. But sometimes there's a tendency to feel self-righteous, and say, since I have not, quote, sinned, unquote, in the same way or to the degree that somebody else has, I should be forgiven but the other person should not. Now, one thing I remember when I was little and going to church, there was a verse...well, a story, and this person came to Jesus and asked how many times he should forgive a person. Should it be seven times? And Jesus said, no, seven times seventy. And there are people who cleave to a religion which carries the name or designation "Christian." I took that to mean that people of that persuasion followed what Jesus taught because they agreed with it. But many times it seems that they disagree with what Jesus taught, and substitute a harsh, punitive approach toward people who have, to use their word, sinned.

PRESIDENT SHEEHY: One minute.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

SENATOR CHAMBERS: That same book says, all have sinned and come short of the glory of God. So if religion means anything, should it not come into play when we have the opportunity to adopt a policy of forgiveness, not one which says you will not pay the full price for your wrong? But after you've paid the full price, we could not even call it forgiveness to restore the right to vote, because you're not decreasing the punishment, you're not relieving any of the punishment. The person went through all of it. And on top of it, we're adding an additional two years of deprivation. So this bill is not unreasonable at all, except by adding the amendment, in my opinion. But I'm going to support the amendment and the bill. And I hope it moves on to become law.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Aguilar's time has expired. Senator Chambers, you're recognized.

SENATOR CHAMBERS: I may not use the full five minutes, because there may be others who do want to speak on this issue, and there's not much more that I can add. And Senator Smith, if you're interested in the case where the Nebraska Supreme Court stated that the Legislature has the power to do this, and cited the very statute that is being amended as the one that sets the terms for the restoration of an ex-felon's voting rights, I will give that to you when we get through. But I don't want to take the time right this minute. I have a copy of it on my desk, and I'll be glad to share that with you. The philosophy and the policy is what I think most people are looking at. And from what I have heard, there is a strong inclination to allow people to recover the right to vote. And what I would like to see happen--because I know a lot of felons, and I know a lot of people who would be felons if, as Senator Dwite Pedersen pointed out, they had gotten caught. We have people who have been in public office, committed 12 violations, and could have been convicted of a felony, I believe, but the Attorney General, showing mercy, collapsed them all into one charge, the weakest one of all, and let the person get probation. But there are a lot of people out at that penitentiary who may have written a series of bad checks that were aggregated to an amount that made it a felony. Somebody could have damaged property. And

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

somebody may have hit another person in the head with a hammer. There are people who committed acts of domestic violence, all kinds of things, under the statutes of this state, are felonies. A lot of young people wind up convicted of felonies. And that albatross is around their neck for the rest of their life. Businesses ask the question, have you been convicted of a felony, in some cases; others, have you been convicted of a crime; still others, have you ever been arrested; narrowing the opportunities for a person to be a productive citizen. If you take away every legitimate means of making an honest living, a person is going to live. Even Kruschev, when he was explaining why Francis Gary Powers did not bite into that poison capsule and kill himself when his U-2 was shot down over Russia, he explained it, living things want to go on living. People want to make a living. If they cannot make an honest living, they're going to live somehow. They become a slyboots, a thief, a robber, a burglar. They're going to take what they need. What we are doing here is not taking away the fact that a felony was committed. This does not expunge any record. Whatever purpose a felony could be used for to disadvantage the one who had committed it is still available. All this does is to give the opportunity to people to vote. Some, because of their age, meaning their youth, never cast a vote in their life. It should not be a situation where, in America, a person could spend his entire life, her entire life, never having voted, desiring to vote, but being denied that right. And it is a right. And I hope this bill will move forward. Thank you, Mr. President. I will not have anything further to say on the bill.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Kruse, you're recognized.

SENATOR KRUSE: Thank you, Mr. President, members. I strongly support the bill. I think it is imperative that we get these persons, who have served their time in prison, back into society, back into the community, back into their families, in full activity. That's the handicap we have right now, because we make them less than a full citizen. They need to be a full citizen in order to move forward. I recognize the personal factors in there. I appreciate that. Many a time, when I have been going door to door, I have been followed out the door by a

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

person with whom I'd had a polite, generic conversation, with his children around his side. He closed the door and followed me out to tell me that he could not vote. And I should emphasize, since some know my district, the three or four that I'm thinking about were all white. These persons have a good business, and all that kind of thing, they document what they're doing, and with tears in their eyes, state how they were trying to get back going. But they really didn't want to say, in front of their kids, that they weren't voting, because that would be a bad model. So I appreciate that. I recognize that. But to me, our doing it is not in sympathy for anybody. It is to recognize that when the punishment is over, it's done, and we all move on. And that's in the benefit of all of us within society. I know several felons who are voting, and I haven't noticed any great problems in society because of it. When they get out of prison, they're given a piece of paper which says their civil rights are restored. Some of them take it at the word, and go down to the election commissioner, who has, in times past, taken them at their word and registered them. It's made sense to both of them. Well, it should make sense to us, if we really want these persons to get on with it. I'm wrestling with the amendment. I do not like it, because it delays getting this person involved. And it seems to me there's a factor of recidivism. A person who's voting, who feels like a part of the whole community, is not as likely to reoffend. I would hope we would take that into our thoughts as we consider the entire matter. Thank you.

PRESIDENT SHEEHY: Senator Smith, you're recognized.

SENATOR SMITH: Thank you, Mr. President and members. This discussion of completing a sentence and going back to how life was before the crime was committed I think is a very relevant discussion that we have. I commend various efforts within the prison systems that work toward restoration, mostly of common, everyday things in life that may or may not include voting. But there are other issues involved as well. Senator Schimek, would you ask...or answer a couple questions?

PRESIDENT SHEEHY: Senator Schimek, would you yield?

SENATOR SCHIMEK: I will if I can, Senator Smith.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

SENATOR SMITH: Okay. Now, is it your desire to restore basically everything back to the way it was, including voting? Or is that...I understand that LB 53 is only about voting. But once an offender, a convicted person, completes the sentence, should there be anything left to consider upon the completion of the sentence?

SENATOR SCHIMEK: I don't understand your question, Senator Smith.

SENATOR SMITH: When you want to restore full...

SENATOR SCHIMEK: Are you asking me, do I think all rights should be restored,...

SENATOR SMITH: Yes.

SENATOR SCHIMEK: ...even though the bill only speaks to the voting rights?

SENATOR SMITH: Right.

SENATOR SCHIMEK: No, not necessarily. I don't even want to go there, because that's...my focus is really on the right to vote. It's a basic right of citizenship. Now, I know that there are some people maybe following me who are going to talk more to that issue that you're talking about. But I don't...I mean, it's okay to talk about it, but that...I don't want to get it confused with what we're trying to do in this bill. There are some people who commit crimes when they're young, and that are, you know, forever precluded from doing certain things in life, when it was one of those mistakes that youth often make. And we could talk about that, but not in this context of this bill, because all this is talking about is your basic right to vote.

SENATOR SMITH: Okay. So does the right to vote...I mean, obviously, through LB 53, it rises to a higher level of acceptability. Why the right to vote, compared to other rights?

SENATOR SCHIMEK: Well, the right to vote is basic. It's a

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

basic civil right. The courts have said it's a civil right. And we should be very careful about precluding people from being able to exercise that right to vote, as we've done in the past with certain groups of people, myself included, my gender included. You know, I think it's just...it's part of the idea of somebody being able to get back into the community and being a productive member of the community.

SENATOR SMITH: Okay. And...okay, thank you.

SENATOR SCHIMEK: Okay.

SENATOR SMITH: And I'm going to run out of time here. But I want us to be mindful of the fact that two years ago--and I'm not going to say the sky is falling if LB 53 passes. And I may even support it. I'm wrestling with that right now. But there is more and more speculation and even evidence of voter fraud. And two years ago in South Dakota, they...

PRESIDENT SHEEHY: One minute.

SENATOR SMITH: ...caught a person with over 1,000 forged absentee ballot requests. And I don't know the disposition of that case in South Dakota. But I believe that we need to be more and more mindful of voter fraud. As technology is opened up, we look at that. And when I, a couple of years ago, asked the question about voter fraud as it relates to the effort to restore voting rights, I was laughed at. And since that point, I think there is a little heightened awareness of voter fraud. There are accusations on both sides. John Kerry swears up and down that Ohio was in his column, and thinks that voters were disenfranchised there. But we don't need to get into that. But the fact is, I think we need to be more and more mindful of voter fraud, and I think that that should be included in LB 53, perhaps an amendment to exclude an offender...

PRESIDENT SHEEHY: Time.

SENATOR SMITH: ...based on voter fraud. Thank you, Mr. President.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

PRESIDENT SHEEHY: Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. I do rise in support of the amendment and to the bill. In behavioral health reform, we have talked about recovery. And we try to move individuals to recovery, back to productive citizenship. And to me, to hold somebody who has completed a sentence and has paid their debt, to not restore some of those rights I think is wrong. First of all, once you have that designation "felony" on your record, it's a life term. Now, we talk about term limits here, but that's a life term. It doesn't go away unless you ask for that pardon. And you don't ask for that pardon until at least you've had ten years. I don't know where we came up with that figure, whether that was arbitrarily applied, what other the states are doing with that. I don't know. I do know that many individuals make mistakes in their lives, and we as a society, sometimes we forgive and sometimes we don't forgive. But I think if...I'm more interested in what they're doing with their lives at that point in time. And if they have tried to make restitution, and if they've tried to change their life around, to me, that's more important than a number of days or a number of years. So I would really say, let's not hold any citizen back from their full potential. And if they have paid that debt to society and wish to lead productive lives again, boy, I'm more than willing to allow that to happen. So I would...I'm certainly going to vote for this amendment and the bill. And Senator Smith, if you would like some of my time, you're welcome to that. And I'll render my time to Senator Smith.

PRESIDENT SHEEHY: Thank you. Senator Smith, you have three minutes.

SENATOR SMITH: Thank you, Mr. President and members. Would Senator Schimek yield to a question?

PRESIDENT SHEEHY: Senator Schimek, would you yield?

SENATOR SCHIMEK: Yes, I will.

SENATOR SMITH: Senator Schimek,...and I don't want to spend an

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

inordinate amount of time on this. But on Select File, would you accept an exclusion for those who commit voter fraud?

SENATOR SCHIMEK: Well, Senator, there's already provision in law for that. For instance, when you go in to register to vote, you have to take an oath, and part of that oath is...I happen to have one of those forms with me. It says, to the best of my knowledge and belief, I declare under penalty of election falsification, I live in the state of Nebraska at the address provided above. I have not been convicted of a felony, or if convicted, my civil rights have been restored; and I have not been officially found to be non compos mentis. Any registrant--it says in heavy black print--any registrant who signs this form knowing that any of the information on the form is false shall be guilty of a Class IV felony under Section 32-1502 of the Nebraska State Statutes. The penalty for such is up to five years' imprisonment, a fine of up to \$10,000, or both.

SENATOR SMITH: Okay. Now, Senator Schimek, if LB 53 passes, the question would probably be, have you been convicted of a felony and...well, the two-year point in time threshold.

SENATOR SCHIMEK: Right.

SENATOR SMITH: So in theory then, you could commit voter fraud, serve your sentence, wait two years, and vote again.

SENATOR SCHIMEK: Well, yes. If you served your sentence, that would be true. If you served...if you've gone to prison for five years for voter fraud,...

PRESIDENT SHEEHY: One minute.

SENATOR SCHIMEK: ...or you've paid \$10,000, or whatever, and you've completed your sentence, yes, that would be true. But I bet you wouldn't be very likely to try it again, if you paid that heavy a penalty.

SENATOR SMITH: Okay. Let me get back to my original question then. Would you support an exclusion then for those who commit

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

voter fraud?

SENATOR SCHIMEK: No.

SENATOR SMITH: No. Okay. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you. Senator Beutler, you're recognized.

SENATOR BEUTLER: I support the bill, and I guess I'll support the amendment, too, if that's necessary in order to reach a consensus in the group. Senator Schimek, I would like to, though, have a little dialogue with you on intent, and perhaps a possible amendment or two on Select File, which hopefully can make things a little clearer. But I'm not sure I'm right on what I'm saying, and so I want to ask you. And I want to acknowledge, first of all, that you had an extremely ill-drafted set of statutes to deal with, in my opinion, for openers.

PRESIDENT SHEEHY: Senator Schimek, will you yield?

SENATOR BEUTLER: So Senator, let me state...let me be sure I understand the framework of the law, and then let me state some of the things that I would be interested in. First of all, in Section 1 of the bill, Section 29-112 is changed. And then in Section 2 of the bill, 29-113 is changed. Now, 29-112, is that...is the intent of that statute to deal only with the laws of the state of Nebraska?

SENATOR SCHIMEK: Yes.

SENATOR BEUTLER: Okay. And then for 29-113, the intent is only to deal with the laws of other states. Is that correct?

SENATOR SCHIMEK: Yes.

SENATOR BEUTLER: Okay. Now, in the first instance, 112, it uses the language "Any person sentenced to be punished." In the parallel statute that applies to other states, it says "Any person who has been convicted." Is there any reason that you know of for using two different words?

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

SENATOR SCHIMEK: You're the lawyer, Senator Beutler; I'm not. But from a layman's point of view, I don't think so.

SENATOR BEUTLER: No difference in meaning was intended,...

SENATOR SCHIMEK: No,...

SENATOR BEUTLER: ...anyway?

SENATOR SCHIMEK: ...I don't think so. And it could be that we just relied on some existing language, and that's all it is.

SENATOR BEUTLER: Okay. Then, under 112, the new language you put in includes the statement, "the disqualification is automatically removed" at such time. Do you see that sentence?

SENATOR SCHIMEK: Yes, I do.

SENATOR BEUTLER: In the next statute, that applies to other states, that sentence is not included. Is there any reason why that same sentence, alerting the public to the intent of the statute, shouldn't apply to convictions for felonies under the laws of other states? In other words, when they're two years past their completion date of their sentence, we want that to automatically pertain, whether it's our state or another state, do we not?

SENATOR SCHIMEK: I'm sorry, Senator Beutler. I missed your question.

SENATOR BEUTLER: Okay. There is a sentence in the statute that applies to felonies committed under our own laws in this state. It says, "the disqualification is automatically removed" at such time, so that no further action is necessary, and they know they can vote when two years is up. Then in the next statute, which applies to the laws of other states, that is, convictions of felonies under the laws of other states, that sentence is omitted. But I'm assuming that the intent is the same, that it is desired that it be automatic.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

SENATOR SCHIMEK: That is correct.

PRESIDENT SHEEHY: One minute.

SENATOR BEUTLER: Okay. Then, looking back on...well, let me stop there, Senator.

SENATOR SCHIMEK: Sure.

SENATOR BEUTLER: I only have one minute. So rather than start a new subject, let me end here, Mr. Lieutenant Governor, and I'll push my button again.

PRESIDENT SHEEHY: Senator Brown.

SENATOR BROWN: Mr. President, members of the Legislature, one issue that has not been addressed that I wanted to add, in terms of my support of the bill, is that the American Correctional Association has statistics that show that individuals who vote are much less likely to reoffend. Now, I suppose you could argue that those kinds of individuals who wish to participate in society, who go through the...and people are still going to have to go through the process of registering to vote in order to participate...that those people are the kinds of people who probably have learned the lesson of their time in prison, and so are more likely to move forward anyway. But I still think that this is...makes a...more of a nexus for the whole idea of rehabilitation and the relationship between voting and rehabilitation. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Brown. Senator Louden, you're recognized.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I guess I've listened to the dialogue on this situation here for a while. And I have some questions that I'm kind of concerned about, on which people would be allowed to vote, and how it would come about. I was wondering if Senator Schimek would yield to a question, please.

PRESIDENT SHEEHY: Senator Schimek, will you yield?

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

SENATOR SCHIMEK: Yes, I will.

SENATOR LOUDEN: Senator Schimek, several years ago, nearly 50, I suppose, but there was a person killed. We'll say her name was Karen. And the fellow that killed her, we'll say his name was Duane. Anyway, he ended up with life in prison sentence. And after about 20 years, he was paroled. And then after he got paroled, why, he was back out, I don't know where. Now, my question is, with this bill and the amendment and everything going here, would a person like that be eligible to vote then in a few years?

SENATOR SCHIMEK: Not while they're on parole, Senator, but once they've completed their sentence.

SENATOR LOUDEN: But right after they've...what is it, two years after their parole is up, or something like that?

SENATOR SCHIMEK: That is...no, not after their parole is up; two years after they've completed their sentence and have been released by the Department of Corrections.

SENATOR LOUDEN: Okay. But anyway, they would be eligible to vote again?

SENATOR SCHIMEK: Yes.

SENATOR LOUDEN: Yeah. Well, now, my question is, Karen never did get to vote; why should this guy get to vote?

SENATOR SCHIMEK: Senator, you'll have to answer that for yourself. And I understand exactly what you're saying. But we can't go back in time and do anything about that.

SENATOR LOUDEN: True. Now, my answer then would be, should there be a classification in here of people that are sentenced for certain classifications of felonies don't receive these benefits? I agree that some of these people, they have some minor crimes and they get down in the bottom end of the felony classification, and that sort of thing, that some are young

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

people. I've known young people, they got three DUIs, or something like that, or whatever it is to get classified as a felony. And probably when they get to be 35 years old, they just as well be allowed to vote, because it's all been behind them. That's one thing. But I think, are we putting together some of these very serious crimes...you've had some serious crimes happen in your end of the state; we've had some serious crimes happen in our end of the state. And I still have a problem with thinking that those people, in 30 years or so from now, that committed those crimes, will be eligible to vote. I don't know if they should be allowed those benefits or not. And I'm wondering if perhaps there shouldn't be some amendments to this somewhere along the line, that we should have some classification of felonies that would be disallowed from voting. Do you have any thoughts on that way?

SENATOR SCHIMEK: Senator Louden, we talked about that briefly in committee. And of course, those who have committed heinous crimes are going to be in prison for life, or in some cases the state may execute them. On the others, certainly...I mean, one would have to argue that the criminal justice system is perfect, in the first place, and that it's wise in distributing and meting out punishments. And I'm not sure that we're wise enough in this legislative body to decide who should and who should not get to vote, based on the severity of the crimes. You and I both know....

PRESIDENT SHEEHY: One minute.

SENATOR SCHIMEK: ...that in some counties that have a small population, it is very difficult for them to actually bring somebody to trial for first-degree murder. And oftentimes, that crime becomes manslaughter, and that's the way they're convicted, because of the costs of convictions. When you've got a lot of inequities in the system to begin with, I don't know how you sort through that, if you start looking at severity of crime.

SENATOR LOUDEN: Well, true. Of course, when it's manslaughter or car wrecks or something like that, that's one thing. But I'm going to continue listening to this. I haven't made up my mind

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

whether I'm going to support this. But I really do feel that there should be some degree of difference for serious crimes. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you. Senator Smith, you're recognized. This is your third time.

SENATOR SMITH: Thank you, Mr. President, members. The discussion we're having here I really believe is productive. And I want to remind everyone that we have on the books--and I don't know how Senator Schimek voted--but the sex offender registry. That carries out beyond the end of a sentence. Or maybe you want to consider that part of the sentence. But it certainly is a tool for the public to realize that there is still some danger there. And I didn't know until this morning that there was...until just minutes ago, once we started debating LB 53, that there is an Attorney General's Opinion that, in summary, it says, while the Spady case does offer a means to argue that LB 53 is constitutional, there still remains at least some constitutional question as to whether the right to vote can be restored solely by operation of a statute. An administrative procedure for a warrant of discharge through the Board of Pardons would avoid that problem. So Senator Schimek, I would have a couple more questions, if you would yield.

PRESIDENT SHEEHY: Senator Schimek, will you yield?

SENATOR SCHIMEK: Yes.

SENATOR SMITH: Senator Schimek, what is the minimum amount of time before someone can go to the Pardons Board to ask for restoration of voting rights?

SENATOR SCHIMEK: Ten years.

SENATOR SMITH: That is the very basic minimum?

SENATOR SCHIMEK: Yes.

SENATOR SMITH: There's no...

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

SENATOR SCHIMEK: That's the way I understand it, Senator Smith. Uh-huh.

SENATOR SMITH: Okay. So there...I was...it was my understanding that there was a three-year time period that the board could take that up.

SENATOR SCHIMEK: No.

SENATOR SMITH: Okay.

SENATOR SCHIMEK: Not presently.

SENATOR SMITH: Okay. Okay. And is that constitutional, or statutory?

SENATOR SCHIMEK: Is what constitutional or statutory?

SENATOR SMITH: The time period, the ten-year.

SENATOR SCHIMEK: I think that's done through the Parole Board's own rules.

SENATOR SMITH: The Parole Board...

SENATOR SCHIMEK: Own rules. They have decided to make it ten years.

SENATOR SMITH: Okay. So that would change with membership...

SENATOR SCHIMEK: I mean...I'm sorry, the Pardons Board.

SENATOR SMITH: Right, I knew what you meant. That would change with the makeup of the board.

SENATOR SCHIMEK: It could. And that's one reason I think this legislative body needs to decide this policy, because otherwise it becomes, sometimes, a political kind of decision, not that we're not political in here. (Laugh)

SENATOR SMITH: (Laugh) Not that this one isn't political.

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

Okay. And thank you, Senator Schimek. It's quite commonplace that the Pardons Board would offer a qualified pardon. If...generally, if it's a violent offense, they...a very common condition to their pardon is that they could no longer...or, they still could not own a firearm. Now, there is concern about the ability to hunt in Nebraska. And I think that that is a very real concern, and I hope that we can address that issue subsequently. But I think that we also need, more than anything, though, is to come up with a policy here that upholds our election...or the integrity of our election process here in Nebraska. I'm going to find out exactly what the disposition is of the voter fraud case that occurred here in Lincoln. That concerned me greatly when I heard about it, and it still does. And I think that too many of those cases just kind of get swept under the rug, and that the effort for 100 percent voter turnout trumps any factors of integrity...

PRESIDENT SHEEHY: One minute.

SENATOR SMITH: ...in our election process. And again, I don't want to say that the sky is falling if we loosen the system. But I believe that we can come up with some safeguards that uphold the integrity of our process. And there for a while, I was afraid that with the last election, we were going to need some foreign observers around our country, watching our election, like we've been attempting to police other elections around the world. Because I'm concerned; I'm very concerned that the integrity of our election process is at stake here. And I know Senator Schimek disagrees with me about the exception for the voter fraud provision. But I think that we could accommodate that exception rather easily. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Smith. Senator Schimek, you're recognized. Senator Schimek.

SENATOR SCHIMEK: Thank you, Mr. President and members. I think this has been a good discussion. And I appreciate the seriousness with which everybody is considering this question. I really don't have a lot to say until I get to the closing remarks. I've been listening very carefully. But I'm going to

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 53

ask Senator Synowiecki if he wants to ask me a few questions, because he and I just had a conversation off the mike, that he hasn't been in here, and has been in an Exec Session of some kind. So Senator Synowiecki, would you like to use my time to do that?

SENATOR SYNOWIECKI: Very much so. Senator Schimek, I appreciate that. And as you indicated, I've been off the floor, attending a Retirement Committee Executive Session. I support LB 53. I had myself put forward constitutional amendments for this body to consider, relative to reinstating a felon's right to vote. Senator Schimek, however, I do have a question relative to current language. And it concerns the authority of the court to set aside a conviction, page 2 of the committee amendment, beginning in line 6. While this is all outlined, Senator Schimek, on what duties are assigned the judiciary relative to setting aside a conviction, it is my understanding that case law, current case law in the criminal courts, has found that the authority to set aside a conviction rests solely with the executive branch, and not the judicial branch, and thus, in a sense, throws out these provisions in our state statute. I would be interested to know if that is your understanding as well, Senator Schimek, relative, again, to the authority of the court to set aside convictions.

SENATOR SCHIMEK: Senator, there is a court case, State v. Spady, which I will be happy to share with you to look at between now and Select File. But I believe we're okay on this.

SENATOR SYNOWIECKI: I believe...and I'm trying to think back to my old probation days...it was a Phillips case, State v. Phillips, which indicated that the authority to set aside a conviction rests exclusively with the executive branch. And the purpose for me bringing this up, Senator Schimek, so you understand, is, I would like, if we can, while this bill is going through the legislative process, I would be interested in attempting to do, if we can do it, in reinstating the prerogative of the courts and the discretion of the courts to go ahead and set aside convictions for those cases in which an individual was convicted for a relatively low classification of a felony, excels during the probation period, pays full amounts

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 8, 2005 LB 7, 28, 53, 66, 89, 162, 246, 271, 291
 300, 325, 341, 588, 598, 687
 LR 38

of restitution, and does, if you will, an extraordinary good job in terms of his or her response to a criminal conviction, that this two-year time line could be streamlined extensively. And I would be interested to know if you'd be willing to work to see if we can perhaps resurrect, if you will, the court's discretion relative to set aside convictions.

SENATOR SCHIMEK: Thank you for your question, Senator. And committee counsel is giving me the briefings on this. But State v. Spady actually came after Phillips, and it seemed to reach a different conclusion. So she's standing by to go over some of that with you. And if you still feel a need to talk about it further, we can do that at the next stage. I'd be happy to. Thank you.

PRESIDENT SHEEHY: One minute. (Visitors introduced.)
Mr. Clerk, do you have some items on the desk?

ASSISTANT CLERK: Mr. President, I do. Your Committee on Transportation reports LB 341 to General File. Revenue reports LB 66, LB 291, LB 300, and LB 325 to General File, all with amendments; and reports LB 598, and LB 687 as indefinitely postponed. New resolution: LR 38, by Senator Combs and others, would declare Rural Education Day. Amendments to be printed: LB 89, by Senator Chambers; LB 28, by Senator Chambers; LB 7, by Senator Baker; LB 246, by Senator Johnson; and LB 162, by Senator Schrock. A designation of LB 588 as a priority bill by the Performance Audit Committee; a request by Senator Burling to add his name to LB 271. (Legislative Journal pages 455-458.)

And finally, Mr. President, Senator Byars would move to adjourn until February 9, 2005, at 9:00 a.m.

PRESIDENT SHEEHY: Thank you. Do we have a motion on the floor to adjourn until Wednesday, February 9, 2005, at 9:00 a.m. All in favor say aye. Opposed, nay. The Chair recognizes we are adjourned.

Proofed by: Bernie Ward